



UNIVERSITY OF MINNESOTA

# NJ TRANSIT Disparity Study

Final Report Appendix

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Submitted by:

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**ROY WILKINS CENTER FOR HUMAN RELATIONS AND SOCIAL JUSTICE**

A LEADING RESEARCH CENTER DEDICATED TO FINDING RACIAL AND ETHNIC INEQUALITY SOLUTIONS

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## GLOSSARY OF TERMS

**Availability Rate:** Is calculated by comparing the number of ready, willing, and able minority and women-owned firms in the defined geographic marketplace to the total number of ready, willing, and able firms in the same geographic marketplace.

**BizTrak:** Biz Trak is a library of companies that is maintained by New Jersey Transit. This system tracks information about firms that do business with New Jersey Transit, including if the firm is run by a female, run by an ethnic minority, and other characteristics about these firms.

**Business loans:** Loans of \$1 million or less

**Community Reinvestment Act:** An act of Congress enacted in 1977 with the intention of encouraging depository institutions to help meet the credit needs of surrounding communities (particularly low and moderate income neighborhoods). The CRA requires federal regulators to assess the record of each bank or thrift in helping to fulfill its obligations to the community.

**DBE program:** The Department's Disadvantaged Business Enterprise (DBE) program is designed to remedy ongoing discrimination and the continuing effects of past discrimination in federally-assisted highway, transit, airport, and highway safety financial assistance transportation contracting markets nationwide.

**DBEs:** DBEs are for-profit small business concerns where socially and economically disadvantaged individuals own at least a

51% interest and also control management and daily business operations.

**DBE qualification:** U.S. Department of Transportation regulation (49 C.F.R. Part 26) determine whether businesses are eligible for the DBE program.

**DBE Certification:** Firms meeting the eligibility standards must contact the specific state or local transportation entity for which they wish to participate in contracts.

**DBE Goal:** Is the percentage that can be achieved through race-neutral measures and the percentage of the goal that can only be achieved through race-conscious measures.

**DBE Decertification** DBE that has not met the DBE certification requirements.

**Dunn and Bradstreet:** Dunn and Bradstreet is a database that tracks demographic information about firms across the country. This dataset is limited to firms that are large enough to request loans from commercial banking institutions. Dunn and Bradstreet tracks information about these firms and also provides a score on the credit reliability of the firm for commercial lenders to use in determining the eligibility of these firms for a loan. For this reason, research that uses the Dunn and Bradstreet data will be limited to firms that are large enough to request loans.

**Intermediate Scrutiny:** In U.S. constitutional law, is the second level of deciding issues using judicial review. In order to overcome the intermediate scrutiny test, it must be shown that the law or policy

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being challenged furthers an important government interest by means that are substantially related to that interest.

**Large firm:** Firms with greater or equal to 100 employees with annual sales revenue greater or equal to \$1 million.

**MBE:** Minority Business Enterprises

**MFI:** Median Family Income

**NAICS codes:** The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

**Participation goal:** This is the goal that a firm needs to have to include DBE labor on their project.

**Political Jurisdictional Market:** The political jurisdictional market count firms based on the jurisdiction of which they were part.

**Prime contractors:** The contractors who have a contract with the NJT. Prime contractor undertakes to perform a complete contract, and may employ one or more subcontractors to carry out specific parts of the contract.

**Qualtrics:** A private research software company, and enables users to do online data collection and analysis including market research, customer satisfaction and loyalty, product and concept testing, employee evaluations and website feedback.

**Race-conscious program:** Measures and programs that focus on specifically assisting DBEs only.

**Race neutral program:** activities or programs that benefit and assist all business equally, including DBEs.

**DBE Recertification** Firms applying to renew their certification as DBEs.

**RFP:** A request for proposal (RFP) is a solicitation, often made through a bidding process, by an agency or company interested in procurement of a commodity, service or valuable asset, to potential suppliers to submit business proposals.

**RFQ:** A request for quotation (RFQ) is a standard business process whose purpose is to invite suppliers into a bidding process to bid on specific products or services.

**SBE:** Small Business Enterprises

**Set asides:** A firm that is small enough to be considered an SBE does not have a Participation Goal.

**Small firms:** Firms with revenues less than \$1 million.

**Subcontractors:** A subcontractor is an individual or a business who is hired by a prime contractor to perform a specific task as part of the overall project.

**Utilization Rate:** Is calculated by comparing the contract dollars assigned to minority and women-owned firms in the defined geographic marketplace to the total contract dollars assigned to firms in the same geographic marketplace.

**Virtual Market:** The virtual market places counted firms in the highly disaggregated locations where they were located

## HISTORY OF THE IMPACT OF DISCRIMINATION ANALYSIS ON BUSINESS ENTERPRISES, BY TARA KALAR

### *History of the Impact of Discrimination on Business Enterprises: Civil Rights Movement and the Emergence of Minority-Owned Businesses in New Jersey<sup>1</sup>*

#### Major Events and Case Law

As noted in the legal review, civil rights laws and affirmative action plans have advanced the theory behind establishing a justification to support such affirmative action plans. Below is a highlight of cases and events that lead to today's DBE program.

**1941 Executive Order 8802.** Prohibits government contractors from engaging in employment discrimination based on race, color or national origin. This order was the first presidential action ever taken to prevent employment discrimination by private employers holding government contracts. The Executive Order applies to all defense contractors, but contains no enforcement authority.

**1953 Executive Order 10479.** Directed that all qualified candidates seeking employment on government contracts or subcontracts will not be discriminated against due to their race, creed, color or national origin.

**1961 Executive Order 10925.** Prohibits federal government contractors from discriminating on account of race and established the President's Committee on Equal Employment Opportunity. Departing from previous presidential directives, this Order grants the Committee, initially chaired by Vice President Lyndon B. Johnson, authority to impose sanctions for violations of the Executive Order.

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<sup>1</sup> This analysis is intended to support a history of discrimination in minority business enterprise and is not intended as a comprehensive review of all civil rights events in United States history. There are many aspects of civil rights that are important, like housing discrimination or voting laws, but are overbroad for the analysis at hand. This summary may seem like an oversimplification of civil rights history, which it is. For a more extensive review of New Jersey programs since World War I, please see the *1992 Final Report: Volume I Historical Record of Minority and Women-Owned Business Enterprises in Public and Private Contracting in New Jersey*, August 4, 1992. The Afro-American Studies Program, University of Maryland at College Park, authored by Professor Samuel L. Myers, Jr. Dr. Myers has researched extensively on this topic, see also:

Survey Comparing Minority/Women-Owned Business Enterprises to Non-Minority Owned Businesses. A Report Submitted to NJ Transit and the Governor's Study Commission on Discrimination in Public Works Procurement and Contracts, May 6, 1992.

Demographic Trends: Historical Record of Minority and Women-Owned Business Enterprises in Public and Private Contracting in New Jersey. A Report Submitted to NJ Transit and the Governor's Study Commission on Discrimination in Public Works Procurement and Contracts, April 17, 1992.

Finance: An Exploratory Analysis of Race and Gender Disparities in New Jersey Home Mortgage Loans—Historical Record of Minority and Women-Owned Business Enterprises in Public and Private Contracting in New Jersey. A Report Submitted to NJ Transit and the Governor's Study Commission on Discrimination in Public Works Procurement and Contracts, April, 1992.

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1964 **Title VII of the Civil Rights Act of 1964.** Authorized the Attorney General to enforce the Fourteenth Amendment, which calls for equal protection under the law.

1965 **Executive Order 11246—Equal Employment Opportunity.** Obligated recipients of federal contracts in excess of \$50,000 to: (1) file written affirmative action plans, (2) refrain from discrimination in employment, and (3) undertake affirmative steps to recruit and promote minorities and women.

1967 **The Economic Opportunity Act of 1964.** Directed the Small Business Administration (SBA) to assist small businesses owned by low-income individuals.

1967 The federal government amended the Economic Opportunity Act and provided the first statutory assistance to minority-owned small businesses.

1969 **Executive Order 11458.** Prescribed arrangements for developing and coordinating a national program for minority business enterprise. Recognized that, “full participation in our free enterprise system by socially and economically disadvantaged persons is essential.”

1969 Office of Minority Business Enterprise was established.

1969 ***U.S. v. Sheet Metal Workers 36.*** One of the first cases regarding discrimination in the construction industry was *Sheet Metal Works 36*. The Eight Circuit held that the unions had “committed unlawful employment practices by excluding Negroes from membership in the Locals, from participation in the apprenticeship training programs and from using the Locals' employment referral systems; (2) that Local 1 and Local 36 are continuing to violate the Act by discriminating against Negroes in the operation of their employment referral systems; and (3) that Local 36 is continuing to violate the Act by conducting its journeyman's examination in a discriminatory manner and by pursuing an organizing policy that results in discrimination.”<sup>2</sup>

1971 **Executive Order 11625.** Prescribed Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprises.

1971 ***U.S. v. Ironworkers Local 86.*** The Ninth Circuit held that construction apprenticeships in Seattle were excluding African-Americans from apprenticeship programs by using tests and admission criteria that excluded African-Americans, recruited only white individuals, gave preferential treatment and held different admission standards for whites. The Court found that the respondent had intentionally engaged in such practices.<sup>3</sup>

1975 **23 C.F.R. 230** is passed which required States to take affirmative actions to increase participation of minority business enterprises (MBE) in Federal-aid highway construction programs.

1975 The Federal Highway Administration (FHWA) passed regulations that encouraged state recipients to increase the use of MBE's in Federal-aid highway activity. States were required to

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<sup>2</sup> *United States v. Sheet Metal Wkrs. Int. Ass'n, Local U. 36*, 416 F.2d 123 (8th Cir., 1969).

<sup>3</sup> *United States v. Ironworkers Local 86*, 443 F.2d 544, (9<sup>th</sup>. Cir. 1971).

identify MBE's, ensure prime contractors using subcontractors took affirmative action to consider MBE's, and report MBE participation to FHWA quarterly.

**1977 Public Works Employment Act of 1977.** Mandated that, absent an administrative waiver, at least 10 percent of federal funds for local public works projects must be used by state and local grantees to procure services or supplies from minority businesses.

**1978 Omnibus Small Business Act.** Established percentage goals in procurement for minority-owned firms for the first time.

**1980** The Department of Transportation established a minority/women's business enterprise program under the authority of Title VI of the Civil Rights Act of 1964. The program was later called The Disadvantaged Business Enterprise (DBE) Program.

**1980 *Fullilove v. Klutznick*.** First legal challenge to federal set-aside program to reach the Supreme Court. The suit alleged that *Fullilove* and others incurred injury due to the enforcement of the minority business requirement. The plaintiffs argued that the requirement violated the Equal Protection Clause of the Fourteenth Amendment and the Due Process Clause of the Fifth Amendment. The Court ruled that the program was constitutional.

**1982 The Surface Transportation Assistance Act (STAA)** is passed which instituted a ten percent set-aside that the Reagan administration implemented through race neutral means.

**1987 The Surface Transportation and Uniform Relocation Assistance Act** was a continuation of the original Act and kept the 10 percent DBE goal.

**1987 The Civil Rights Restoration Act** was passed which clarified Title VI of the Civil Rights Act. Title VI covers all of the operations of covered entities without regard to whether specific portions of the covered program or activity are Federally funded. The term "program or activity" means all of the operations of a department, agency, special purpose district, or government; or the entity of such State or local government that distributes such assistance and each such department or agency to which the assistance is extended, in the case of assistance to a State or local government.

**1989 *City of Richmond v. Croson*.** The Supreme Court held that the minority set-aside program was unconstitutional under the Fourteenth Amendment; additional evidence was required in order to demonstrate a compelling interest in the program.

**1993 State of New Jersey Executive Order 95.** Establishes a goal of 7% of public procurement and government contracts and subcontracts to go to African-America, Latino and Asian-American business and a goal of 3% for women owned businesses.

**1995 *Adarand Constructors v. Peña*.** The Supreme Court analyzed race-conscious government contracting and held that race-conscious programs must be reviewed under a strict scrutiny standard. That standard requires that the agency demonstrate a "compelling government interest" and is "narrowly tailored."



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1996 Following the decision in *Adarand*, the Clinton administration recommended that government agency goals be met through race neutral means to the extent possible.

2012 MAP-21, **Moving Ahead for Progress in the 21st Century Act** is passed.

### The Civil Rights Act and the DBE Program

President John F. Kennedy was especially concerned with civil rights and had campaigned extensively on a platform that included a promise to take action on civil rights. In 1963, President Kennedy issued Executive Order 11114<sup>4</sup> to extend Executive Order 10925<sup>5</sup> to include protections against discrimination by federally funded contractors. However, the contractor merely had to certify that it would take affirmative action but was not required to take specific measures. Several Federal court decisions also eliminated discrimination in federally assisted programs.<sup>6</sup>

President Kennedy justified the Civil Rights Act as “simple justice” and recognized the role that federal dollars have in discrimination:

*“Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation.”<sup>7</sup>*

This notion was echoed in *Croson*, where the court opined that “[i]t is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.”<sup>8</sup>

Congress recognized the need for a statutory nondiscrimination provision “to make sure that the funds of the United States are not used to support racial discrimination.”<sup>9</sup> Senator Humphrey, the Senate manager of H.R. 7152, which became the Civil Rights Act of 1964, opined that a law was necessary to eliminate any doubts that Federal agencies may have had about their authority to prohibit discrimination in their programs.<sup>10</sup> Further, action was necessary to “insure the uniformity and permanence to the nondiscrimination policy” in all programs and activities involving Federal financial assistance.<sup>11</sup>

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<sup>4</sup> Executive Order 11114, 28 Fed. Reg. 6485 (June 25, 1963).

<sup>5</sup> Executive Order 10925, 26 Fed. Reg. 1977 (March 8, 1961).

<sup>6</sup> See, e.g., *Cooper v. Aaron*, 358 U.S. 1 (1958); *Simkins v. Moses H. Cone Memorial Hospital*, 323 F.2d 959 (5th Cir. 1963) cert. denied, 376 U.S. 938 (1964) (the Fourth Circuit held that a hospital could not deny a person on the basis of race because “hospitals’ activities are also the activities of those governments and performed under their aegis without the private body necessarily becoming either their instrumentality or their agent in a strict sense.”).

<sup>7</sup> H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963).

<sup>8</sup> *Croson* at 492.

<sup>9</sup> 110 Cong. Rec. 6544 (Statement of Sen. Humphrey).

<sup>10</sup> Id.

<sup>11</sup> Id.



## Title VI of the Civil Rights Act

Title VI was enacted as part of the Civil Rights Act of 1964. It prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. If a recipient of federal funds is found to have discriminated and voluntary compliance cannot be achieved, the federal agency providing assistance should either initiate fund termination proceedings or refer the matter to the Department of Justice for appropriate legal action.

## Civil Rights in Newark

Newark in particular has experienced periods of racial unrest. In the 1960s, conditions for African Americans were grim; political officials described Newark's problems as "more grave and pressing than those of perhaps any other American city."<sup>12</sup> In an application for funding under the Model Cities Act, Newark had the nation's highest percent of housing in poverty, the most crime per 100,000 people, the heaviest per capita tax burden, the highest rates of venereal disease, maternal mortality and new cases of tuberculosis. In 1967, African Americans rioted as a result of a suspect case of racial profiling and police brutality of an African American cab driver.<sup>13</sup> Riots, civil disobedience, and social unrest followed for five days that left 26 dead and hundreds injured. This period is often cited as the catalyst of the "white flight" that ensued.<sup>14</sup>

It is unclear if the issues underlying the riots will ever be resolved; claims of discrimination persist. In 2014, the Department of Justice made recommendations in response to civil rights complaints that the Newark Police Department employ a monitor to ensure that civil rights complaints against officers were adequately investigated.<sup>15</sup> Though evidence of societal discrimination or assertions of generalized discrimination cannot support a remedial program,<sup>16</sup> this history provides context for New Jersey Transit's minority business community.

## New Jersey Minority Business and Discrimination Law

New Jersey Transit (NJT) was founded on July 17, 1979 as a subsidiary of the New Jersey Department of Transportation<sup>17</sup>. NJT is the third largest transit system in the U.S. New Jersey Transit has instituted a DBE program in various iterations since its inception.<sup>18</sup>

In 1984 New Jersey adopted the New Jersey Set-Aside Act, N.J.S.A. 52:32-17 et seq. (the "Set-Aside Act"), in an effort to address discrimination based on race and gender in the State's procurement practices. The *Croson* decision held that a race-based set-aside program established by a local government entity was unconstitutional under the Equal Protection Clause and New

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<sup>12</sup> Hayden, Tom (1967) *Rebellion in Newark*. New York: Random House.

<sup>13</sup> Max A. Herman, ed. (2002) *The Detroit and Newark "Riots" of 1967*. Newark, NJ: Rutgers-Newark Department of Sociology and Anthropology.

<sup>14</sup> Mumford, Kevin (2007) *Newark: A History of Race, Rights, and Riots in America*. NY: NYU Press.

<sup>15</sup> Investigation of the Newark Police Department, U.S. D.O.J., July 22, 2014, [http://www.justice.gov/crt/about/spl/documents/newark\\_findings\\_7-22-14.pdf](http://www.justice.gov/crt/about/spl/documents/newark_findings_7-22-14.pdf)

<sup>16</sup> *Croson* at 498, 499.

<sup>17</sup> [http://www.njtransit.com/tm/tm\\_servlet.srv?hdnPageAction=CorpInfoTo](http://www.njtransit.com/tm/tm_servlet.srv?hdnPageAction=CorpInfoTo)

<sup>18</sup> Legal challenges to NJT's DBE program and its history discussed elsewhere in this report.

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Jersey discontinued enforcement of the Set-Aside Act. As a result, Governors Kean, Florio, Whitman, McGreevey, and Codey convened via Executive Order No. 213 the "Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts" (the "Commission") to analyze past and present discrimination in 1989. The Commission issued its report in 1993 that demonstrated widespread discrimination against firms owned and operated by minorities and women in public contracting. Later that year, Governor Florio issued Executive Order No. 84 (1993) that established a set-aside program that awarded percentages of public contracts to minority and women owned firms. Florio Executive Order No. 84, Mar. 8, 1993.

Governor Christine Whitman convened the "Governor's Study Commission on Discrimination in State Employment and Contracting" (the "Study Commission") via Executive Order No. 112 (2000) with the task of analyzing discrimination in state employment and procurement practices. Whitman Executive Order No. 112, April 6, 2000. The Study Commission continued through the administrations of Governors James McGreevey and Richard Codey.

In 2003, the Set Aside Act was permanently enjoined by the holding of the court in *GEOD v. State of New Jersey*, Civil Action No. 01-2656 (SRC)(D.N.J.). In light of the court's decision Governor McGreevey issued Executive Order No. 71 (2003) that eliminated set-aside goals and implemented a race- and gender-neutral small business set-aside program. McGreevey Executive Order No. 71, Oct. 2, 2003.

In 2005, the Study Commission issued its report the "Disparity Study of Procurement in Professional Services, Other Services and Goods and Commodities Report" and the "Construction Services Disparity Report" (the "Disparity Studies"). The report documented pervasive disparities between availability of small business firms and firms actually awarded contracts to provide goods and services to the State departments, agencies, authorities, colleges, and universities. For Construction Subcontractor availability, the study found that in State Agencies, Authorities and Commissions African Americans and Asian Americans were underutilized, with a 6.3% and 4.34% availability, respectively. For State Colleges and Universities, African Americans, Asian Americans and women owned businesses were underutilized, with a 6.3%, 4.34% and 12.67% availability, respectively. For Construction-Related Services African Americans, Asian Americans and Hispanic Americans were underutilized, with a 4.51%, 7.11% and 4.09% availability, respectively.

As a result of the study, Governor Jon Corzine created the Division of Minority and Women Business Development and the Minority and Women's Business Development Advisory Council that administers and ensures equal opportunity for minority and women owned businesses. Corzine Executive Order No. 34, September 15, 2006, 38 N.J.R. 4269(c). This function is also responsible for the goal setting process and compliance for state agencies.

New Jersey's regional DBE program was challenged in *GEOD Corp. v. NJT* and, as a response, the Emerging Small Business Enterprise (ESBE) program was created.<sup>19</sup> The ESBE program would hypothetically fill in the gap in the event that the DBE program eliminated race-conscious

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<sup>19</sup> Pursuant to 49 CFR Part 26.39.

means.<sup>20</sup> The ESBE program eliminates race and gender as determinates of social disadvantage; the program only requires economic disadvantage consistent with DBE requirements.”<sup>21</sup> New Jersey Transit currently implements a coexistent SBE program, see discussion of race neutral programs.<sup>22</sup>

The current program regulations for the small business set-aside contracting program require that each State department make a good faith effort to award a total of 25% of the dollar value of State contracts for goods and services to eligible small businesses. To be eligible for the program, small businesses must have no more than 100 permanent employees and have their principal place of business in New Jersey. Small businesses should register with the Division of Revenue, Small Business Enterprise Unit in one of three categories of gross revenue. The categories are:

1. Small businesses having gross revenues that do not exceed \$500,000;
2. Small businesses having gross revenues that do not exceed \$5,000,000; and
3. Small businesses having gross revenues that do not exceed \$12,000,000 or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher.

Under the revised regulations, 5% of the dollar value of State contracts should be awarded in each of the three registered categories above for a total of 15%. The remaining 10% may be allocated among the three categories. These goals will be reached through the use of set-aside and/or subcontracting contracts.

New Jersey has civil rights laws intended to protect the rights of private citizens and provides for a cause of action against a private actor. In 2004, then-governor James McGreevey signed into law the “New Jersey Civil Rights Act,” New Jersey Statute Title 10. This law created a cause of action for any citizen who believes that someone acting under the “color of law” (i.e., someone using power granted to them by the local, state or federal government) has either interfered with or deprived them of substantive due process or equal protection rights, privileges or immunities secured by either federal or state Constitutions or laws. The action can be brought by an individual (an employee) or by the attorney general, *sua sponte*. Notably, the law authorizes the Attorney General’s office to investigate and pursue a claim when the conduct is purely private. However, recent case law has restricted the application of the Civil Rights Act to shield private individuals and businesses from lawsuits under the Act; the actor must be a government official or an individual acting under governmental authority.<sup>23</sup> Nevertheless, the holdings do not restrict the Attorney General from pursuing claims against private entities.

The New Jersey Law Against Discrimination, originally passed in 1945,<sup>24</sup> makes it unlawful to discriminate based on race, creed, color, national origin, nationality, ancestry, age, sex (including

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<sup>20</sup> Rodrigo Lovaton Davila, Inhyuck ‘Steve’ Ha, Samuel L. Myers, Jr., Affirmative Action Retrenchment in Public Procurement and Contracting, (Jan. 7, 2011).

<sup>21</sup> George R. La Noue, Setting Goals in the Federal Disadvantaged Business Enterprise Programs, 17 GEO. MASON U. C.R. L.J. 423, 472 (2007).

<sup>22</sup> NJT also implements a Small Business Set-Aside program for Small Business Enterprises (SBE). This is discussed in further detail elsewhere in this report.

<sup>23</sup> *Perez v. Zagami, LLC*, 217 N.J. 502, — A.3d —, 2014.

<sup>24</sup> The New Jersey Law against Discrimination (N.J.S.A. 10:5–12) (LAD).

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pregnancy), familial status, marital status, domestic partnership or civil union status, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for military service, and mental or physical disability, perceived disability, and AIDS and HIV status. This applies to employment, housing, places of public accommodation, credit and business contracts. Between 2002 and 2011, the Division of Civil Rights has rendered decisions on 63 cases under the NJLAD. There were no decisions that involved federal funding, rather were all employment discrimination or private discrimination cases.

## LEGAL REVIEW, BY TARA KALAR

### LEGAL REVIEW: DETAILED ANALYSIS OF RELEVANT COURT CASES AND RULINGS EMPHASIZING METHODOLOGICAL REQUIREMENTS

#### *An Analysis of Court Decisions Supporting MBE/WBE/DBE Programs and Disparity Study Methodology*

This section provides legal review for the study and is not intended as legal advice to New Jersey Transit on minority business programs, affirmative action, or any other related matter. This section provides a context for the analyses and methodology provided in the study. Previous disparity studies were reviewed that were conducted in the State of New Jersey, including the 2005 State of New Jersey Disparity Study of Procurement in Professional Services, Other Services, and Goods and Commodities.

In the context of implementing and executing a race or gender-based contracting program, it is essential that the agency study its contracting landscape in order to soundly justify running a DBE program. The agency must undertake to compile evidence that constitutes a sufficient factual predicate for the federal DBE program. A program that is not based on sound evidence and is thus not narrowly tailored is exposed to liability and could be subject to judicial scrutiny on constitutional grounds. This study anticipates weaknesses in statistical arguments and closes the loophole to many arguments that have permitted other similar programs to fail.

#### I. United States Supreme Court Precedents

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

The landmark case law that provides guidelines for state and local race-conscious minority and women business programs is the United States Supreme Court decision *City of Richmond v. J.A. Croson*, 488 U.S. 469 (1989).

In *Croson*, the J.A. Croson Co. (“Croson”), a non-MBE plumbing and heating contractor, challenged the constitutionality of the City of Richmond’s minority contracting set-aside program that required prime contractors to subcontract at least thirty per cent of the contract value to one or more Minority Business Enterprises (MBE) without geographic limits for eligibility. The district court and circuit court upheld the program as constitutional.<sup>25</sup>

The Supreme Court granted certiorari, vacated the decisions of the lower courts, and remanded the case for further consideration in light of its decision in *Wygant v. Jackson Board of Education*.<sup>26</sup>

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<sup>25</sup> *J.A. Croson Co. v. City of Richmond*, 779 F.2d 181, 194 (4th Cir. 1985).

<sup>26</sup> *City of Richmond v. J.A. Croson Co.*, 478 U.S. 1016 (1986) citing *Wygant v. Jackson Board of Education*, 476 U.S. 267, 106 S. Ct. 1842, 90 L.Ed.2d 260 (1986).

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On remand, a divided United States Court of Appeals for the Fourth Circuit refused to uphold the Richmond program. The court held that “findings of societal discrimination will not suffice [to support a race-based plan]; the findings must concern prior discrimination by the governmental unit involved.”<sup>27</sup> The Court did not eliminate the idea of racial preferences in contracting all together, however, the Court points out that *Wygant* does “limit racial preferences to what is necessary to redress a practice of past wrongdoing”<sup>28</sup>

The court further held that the program was not narrowly tailored.<sup>29</sup> The Richmond plan set aside a thirty percent quota and defined minority group members very broadly and to include groups without evidence of past discrimination.<sup>30</sup> Consequently, the Fourth Circuit struck down the Richmond program and the Supreme Court again granted certiorari.

Upon hearing the case the second time, this time with more detail, the Supreme Court held that strict scrutiny was the appropriate standard of review because the MBE program was a race-conscious remedial measure viewed under the Fourteenth Amendment Equal Protection.<sup>31</sup> Strict scrutiny is a two-pronged analysis that requires the governmental entity to have a “compelling governmental interest” in remedying past discrimination and that any program must be “narrowly tailored” to remedy the discrimination.

The Court held that the Richmond program did not serve a compelling government interest because the City had “no strong basis in evidence” that City’s prime contractors discriminated against minority-owned subcontractors and that the basis for the program was general societal and industry discrimination.<sup>32</sup> This was not sufficient evidence to demonstrate a compelling interest in race-based preferences in government contracting.

The Supreme Court in reviewing Richmond’s plan was hesitant to come to the conclusion that the plan was narrowly tailored.<sup>33</sup> The Court made two points relevant to narrowly tailoring; race neutral means should be considered to determine if there would be any increase in minority participation<sup>34</sup> and that setting the goal in proportion to the percentage of minorities does not guarantee the availability of workers in lockstep with the population.<sup>35</sup> The Richmond plan was

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<sup>27</sup> *J.A. Croson Co. v. City of Richmond*, 822 F.2d 1355, 1358 (4th Cir. 1987) aff’d, 488 U.S. 469, 109 S. Ct. 706, 102 L. Ed. 2d 854 (1989).

<sup>28</sup> *Id.* at 1362.

<sup>29</sup> The thirty percent quota was chosen arbitrarily; it was not tied, for example, to a showing that thirty percent of Richmond subcontractors are minority-owned. The figure simply emerged from the mists. The combination \*1361 of a large set-aside and a small number of actual minority beneficiaries presents a special potential for abuse. As such, it imposes an overbroad competitive burden on non-minority businesses. *Id.* at 1360–61.

<sup>30</sup> *Id.* at 1361.

<sup>31</sup> “Today, for the first time, a majority of this Court has adopted strict scrutiny as its standard of Equal Protection Clause review of race-conscious remedial measures.” *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 551, 109 S. Ct. 706, 752, 102 L. Ed. 2d 854 (1989).

<sup>32</sup> *Id.* at 500.

<sup>33</sup> “As noted by the court below, it is almost impossible to assess whether the Richmond Plan is narrowly tailored to remedy prior discrimination since it is not linked to identified discrimination in any way.” *Id.* at 507.

<sup>34</sup> *Id.* at 507.

<sup>35</sup> *Id.* at 507.



also enacted with no sunset provision and, therefore, the program could have run indefinitely and outlasted any compelling government interest.

Justice Sandra Day O'Connor, in her conclusion, suggested that the "...proper statistical evaluation would compare the percentage of MBE's in the relevant market that are qualified to undertake city subcontracting work with the percentage of total city construction dollars that are presently awarded to minority subcontractors"<sup>36</sup> and, "If the statistical disparity between eligible MBE's and MBE membership were great enough, an inference of discriminatory exclusion could arise."<sup>37</sup> Anecdotal evidence could also be used to support a compelling government interest, however, this did not include quotes from city staff alone.

As a result, governmental entities with race-conscious contracting programs were now required to demonstrate that any such program had a compelling interest in righting past discrimination and accomplished this through narrowly tailored means. The *Croson* case spurred government agencies nationwide to commission disparity studies that would satisfy the new requirements detailed by the Supreme Court.

***Adarand Constructors, Inc. v. Pena ("Adarand I"), 515 U.S. 200 (1995)***

In *Adarand I*, the Supreme Court upheld *Croson* and reiterated that all racial classifications imposed by state or local governments must pass strict scrutiny in order to survive a constitutional challenge and added that review under strict scrutiny also applied to federal programs.<sup>38</sup>

In *Adarand*, the Supreme Court held that a program that creates a rebuttable presumption of social and economic disadvantage must have a "compelling government interest" that is "narrowly tailored."<sup>39</sup> At issue was the Subcontractor Compensation Clause that the Central Federal Lands Highway Division included in its contract with prime contractors which gave the contractor a financial incentive to hire qualified socially and economically disadvantaged individuals if their businesses met the definition of social or economic disadvantage as determined by the Small Business Administration.<sup>40</sup> Adarand was a subcontractor that was not presumptively socially or economically disadvantaged and was the apparent low bidder on a project in Colorado with prime contractor Mountain Gravel & Construction Company. However, Adarand was not awarded the contract; Mountain Gravel awarded the subcontract to a certified DBE firm in order to obtain the financial incentives under the Subcontractor Compensation Clause. Adarand sued arguing that it had a cause of action under the Fifth Amendment to the Constitution that guaranteed equal protection.<sup>41</sup>

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<sup>36</sup> *Id.* at 470–71.

<sup>37</sup> *Id.* at 503.

<sup>38</sup> *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 201, 115 S. Ct. 2097, 2100, 132 L. Ed. 2d 158 (1995).

<sup>39</sup> *Id.* at 237.

<sup>40</sup> *Id.* at 205.

<sup>41</sup> The Court later clarified, "Adarand's claim arises under the Fifth Amendment to the Constitution, which provides that "No person shall ... be deprived of life, liberty, or property, without due process of law." Although this Court has always understood that Clause to provide some measure of protection against *arbitrary* treatment by the Federal Government, it is not as explicit a guarantee of *equal* treatment as the Fourteenth Amendment, which provides that "No *State* shall ... deny to any person within its jurisdiction the equal protection of the laws" (emphasis added). Our

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The Supreme Court had not, up to that point, reviewed a federally implemented program that was only indirectly race-conscious. However, the Court determined that defining a rebuttable presumption of disadvantage to include black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities obligated the Court to review the matter under a strict scrutiny standard of review.<sup>42</sup>

In a tight five to four opinion, the majority held that the federal government is not immune from conducting a disparity study to determine the compelling interest based on a rebuttable presumption of disadvantage. Local and state agencies can then use the compelling government interest but need to demonstrate that the program is narrowly tailored based on the program.

Ultimately, the case was remanded to the trial court to determine whether a compelling government existed and if it was narrowly tailored.<sup>43</sup> The Court held that the program was unconstitutional because the program was not narrowly tailored and granted Adarand's motion for summary judgment, enjoining further use of the Subcontractor Compensation Clause.<sup>44</sup>

The government appealed from the district court decision and the Tenth Circuit Court of Appeals vacated the decision on the basis of mootness because Adarand became certified as a DBE.<sup>45</sup> Subsequently, the Tenth Circuit Court of Appeals denied Adarand's appeal. Adarand appealed to the U.S. Supreme Court. Then, in 2000, the U.S. Supreme Court vacated the Tenth Circuit ruling as to mootness and remanded the case back to the Tenth Circuit for the purpose of obtaining a ruling on the merits of the appeals of the trial court's decision.<sup>46</sup>

The *Adarand* progeny paused, however, when the Secretary of the Department of Transportation issued the Transportation Equity Act for the 21st Century (TEA-21) and effectively promulgated new regulations to jump-start the DBE program consistent with the Supreme Court's 1995 decision in *Adarand I*.<sup>47</sup>

The Tenth Circuit Court of Appeals again heard the case in 2000 and held that the DBE program satisfied a compelling government interest and was narrowly tailored but ruled that the Subcontractor Compensation Clause was not narrowly tailored.<sup>48</sup> The case ultimately went to the Supreme Court again on appeal but was not decided as the Court held that writ of certiorari was improvidently granted and did not rule on the merits.<sup>49</sup> Thus, the *Adarand* case finally came to a rest.

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cases have accorded varying degrees of significance to the difference in the language of those two Clauses.” *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 213, 115 S. Ct. 2097, 2105-06, 132 L. Ed. 2d 158 (1995).

<sup>42</sup> *Id* at 213.

<sup>43</sup> See *Adarand Constructors, Inc. v. Pena*, 965 F. Supp. 1556 (D. Colo. 1997).

<sup>44</sup> *Id* at 1584.

<sup>45</sup> *Adarand Constructors, Inc. v. Slater*, 169 F.3d 1292 (10th Cir. 1999).

<sup>46</sup> *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 120 S. Ct. 722, 145 L. Ed. 2d 650 (2000).

<sup>47</sup> See 49 C.F.R. Part 26 (1999).

<sup>48</sup> *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, at 1176-1187 (10th Cir. 2000). (*Adarand III*).

<sup>49</sup> *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103 (2001).

## II. Controlling Local Precedents: Third Circuit Appellate Decisions, Third Circuit Federal District Court Decisions, New Jersey Court Decision

### *Third Circuit Appellate Decisions*

*Contractors Association of Eastern Pennsylvania, Inc. v. City of Philadelphia*, 735 F. Supp. 1274 (E.D. Pa., April 5, 1990), 945 F.2d 1260 (3rd Cir. 1991), 6 F.3d 990 (3d Cir. 1993), 893 F. Supp. 419 *on remand* (E.D. Pa., Jan. 11, 1995), 91 F.3d 586 (3rd Cir. 1996), *cert. denied* 519 U.S. 1113 (1997).

The Plaintiffs consisted of eight construction trade associations that brought suit against the City of Philadelphia to enjoin enforcement of an ordinance designed to give preference to minority, women and handicapped businesses. After trial, the District Court granted summary judgment for the association and issued a permanent injunction against the enforcement of the ordinance based on the governments' inability to demonstrate a compelling government interest.<sup>50</sup> The court denied the city's motion for stay of injunctive relief and appeal was taken to the Third Circuit.

The government appealed and the Third Circuit Court of Appeals affirmed the decision of the trial court holding that the City failed to demonstrate race-based discrimination on the part of the general contractors or trade associations but that the trial court abused its discretion by withholding an opportunity for the city to pursue additional discovery to demonstrate the existence of discrimination in the local construction market.<sup>51</sup> The court then remanded the case for further discovery.

The District Court then heard the case for a second time and determined that the program was unconstitutional. The City appealed to the Third Circuit and the holding of the lower court was vacated and remanded for trial.

The District Court held the program unconstitutional and the defendants appealed,<sup>52</sup> the Third Circuit upheld the decision<sup>53</sup> citing the statistics that demonstrating discrimination against African American subcontractors by prime contractors and trade associations but that a set-aside program was clearly not narrowly tailored to address discrimination. The Supreme Court then denied the City's petition for certiorari,<sup>54</sup> ending the *Contractor* line of cases. The ordinance has since been amended and requires annual review.

### *Third Circuit Federal District Court Decisions*

*GEOD Corp. v. New Jersey Transit Corp.*, 678 F. Supp. 2d 276 (D.N.J. 2009)

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<sup>50</sup> *Contractors Association of Eastern Pennsylvania, Inc. v. City of Philadelphia*, 735 F. Supp. 1274 (E.D. Pa., April 5, 1990).

<sup>51</sup> *Contractors Ass'n of E. Pennsylvania, Inc. v. City of Philadelphia*, 945 F.2d 1260 (3d Cir. 1991).

<sup>52</sup> 893 F. Supp 419.

<sup>53</sup> 91 F.3d 586.

<sup>54</sup> 519 U.S.1113.

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In *GEOD Corp. v. New Jersey Transit Corp.*, 678 F. Supp. 2d 276 (D.N.J. 2009), both parties moved for summary judgment. Plaintiffs filed a Motion for Summary Judgment alleging that NJT's DBE program was unconstitutional; Defendants filed a Motion for Summary Judgment alleging, *inter alia*, that NJT's federally approved DBE program was constitutional.<sup>55</sup>

Plaintiffs challenged the constitutionality of NJT's DBE program for eight reasons: “(1) NJT cannot justify establishment of a program using race and sex based preferences; (2) NJT's Disparity Study does not provide a sufficient factual predicate to justify NJT's DBE program; (3) NJT's statistical evidence does not establish discrimination; (4) NJT does not have anecdotal data evidencing a “strong basis in evidence” of discrimination which justifies a race and sex-based program; (5) NJT's Program is not narrowly tailored; (6) NJT's DBE program is over-inclusive; (7) NJT cannot show an exceedingly persuasive justification for gender preferences; and (8) NJT's racially discriminatory program is not narrowly tailored because race neutral alternatives exist.”<sup>56</sup>

In opposition, and on Motion for Summary Judgment, Defendants asserted that its DBE program is narrowly tailored because it fully complies with the requirements of TEA–21.

The court held that NJT inherited federal government's compelling interest in enacting Transportation Equity Act for the 21st Century (TEA–21) and its implementing regulations and did not need to justify establishing its DBE program.<sup>57</sup>

Further, with regard to as-applied challenge to constitutionality of NJT's DBE program, the court held that fact issues existed as to whether reasonable jury might find that method used by NJT to determine its DBE goal was sufficiently narrowly tailored; fact issues existed as to whether NJT's adjustment to its DBE goal was sufficiently narrowly tailored; fact issue existed as to whether “unknown” group in disparity study which took into account effects of past discrimination in pre-qualification process of DBEs encompassed Iraqis. The court denied Plaintiffs' motion, granted Defendants' motion in part and denied in part, effectively setting the stage for trial to determine whether or not the method used by NJ Transit to determine its goals from 2003 to 2010 were in compliance with federal regulations and thus narrowly tailored. During trial, Defendants’ motion for a directed verdict was granted after Plaintiff’s case in chief and all claims from 2003 to 2010 were dismissed.

*GEOD Corp. v. New Jersey Transit Corp.*, 746 F. Supp. 2d 642 (D.N.J. 2010)

In *GEOD Corp. v. New Jersey Transit Corp.*, 746 F. Supp. 2d 642 (D.N.J. 2010), the court found in favor of the defendant New Jersey Transit, holding New Jersey’s implementation of the DBE program constitutional.

The court had already decided, in the course of summary judgment, that compelling interest was satisfied as New Jersey was entitled to adopt the federal government's compelling interest in enacting TEA–21 and its implementing regulations. *GEOD v. N.J. Transit Corp.*, 678 F.Supp.2d

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<sup>55</sup> *Id* at 281.

<sup>56</sup> *Id* at 282.

<sup>57</sup> *Id* at 282.

276, 282 (D.N.J.2009). Therefore, the discussion only addressed whether NJ Transit's DBE program is narrowly tailored to further that compelling interest in accordance with “its grant of authority under federal law.”

The parties’ arguments were based on a Circuit split. The Plaintiffs relied on *Western States Paving Co., Inc. v. Washington State Department of Transportation, et al.*, 407 F.3d 983 (9th Cir.2005) for the proposition that an as-applied challenge to the constitutionality of a particular DBE program requires a demonstration by the recipient that the program is narrowly tailored. Conversely, Defendants relied on *Northern Contracting Inc. v. State of Illinois, et al.*, 473 F.3d 715 (7th Cir.2007) for the proposition that if a DBE program complies with TEA–21, it is narrowly tailored. Although both parties assert a Circuit split, the court viewed the differing analyses as fact specific determinations which lead to the parties distinguishing cases without any substantive difference in the application of law. The court held that, in their view, each case actually made considerably the same analysis under different facts. *Id* at 282, 283. The court specifically endorsed the constitutional analysis contained in *Sherbrooke* and reconciled this analysis with other Circuits. *Sherbrooke Turf, Inc. v. Minnesota Dept. of Transp.*, 345 F.3d 964 (8th Cir. 2003).

The court ultimately agreed with the holding in *Northern Contracting, Inc. v. Illinois*, that “a challenge to a state's application of a federally mandated program must be limited to the question of whether the state exceeded its authority.” *Id* at 652–653.

Most of GEOD's arguments can be summarized as questioning whether NJ Transit presented “demonstrable evidence of the availability of ready, willing and able DBEs” as required by 49 C.F.R. § 26.45. Specifically, GEOD alleged the following: (1) NJ Transit's DBE Program is “over-inclusive” because it includes Asians, a group that has not suffered discrimination in NJ Transit's market; (2) NJ Transit has failed to implement program alternatives that are either race-neutral or less burdensome to non-minority contractors; (3) NJ Transit's DBE program is not narrowly tailored because race-neutral alternatives exist; (4) NJ Transit's expert has identified “societal discrimination”; (5) NJ Transit’s fiscal year 2010 DBE goals are not correctly calculated; (6) NJ Transit's DBE goals for fiscal year 2010 are not narrowly tailored because they do not reflect NJ Transit's market; (7) the baseline DBE availability as calculated by NJ Transit is inflated as Dr. Myers did not use appropriate methods for his calculations; (8) adjustments to the baseline DBE availability are incorrect because there is no evidence of “continuing effects of past discrimination”; (9) Dr. Myers’ regression analyses do not provide evidence of discrimination; (10) NJ Transit miscalculated race-neutral attainment; (11) Dr. Myers’ methodologies are not based on the realities of NJ Transit's market. (Pls.’ Proposed Findings of Fact at 47–76.) *Id* at 653–54.

The court did not find any of these arguments compelling. GEOD’s expert did not convince the court that NJT’s data was faulty, “Dr. Lunn’s testimony at trial did not persuade this Court that Dr. Myers's data or regression analyses were unreliable or that another methods would provide more accurate results.” *Id* at 654–655. The court held that “Simply testifying that other methods of analyses existed, is insufficient to invalidate those analyses relied upon by Dr. Myers.” *Id* at

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654-55 (D.N.J. 2010). Therefore, the court held that Defendant, NJ Transit, did not violate the Fourteenth Amendment through its implementation of TEA–21 and accompanying regulations.<sup>58</sup>

*Association for Fairness in Business, Inc. v. New Jersey*, 82 F.Supp.2d 353 (D. N.J. 2000)

In this case, the Court scrutinized the Casino Control Act that required that each casino licensee have a goal of fifteen percent of its contract dollars set aside for minority and women business enterprises. The Court found that the Casino Control Act violated the Constitution because the State did not undertake any sort of study of the discrimination that was to be remedied by the Act and instead relied on reports written after the Act was promulgated.<sup>59</sup>

The Court analyzed the regulation under strict scrutiny citing *Croson* and *Contractors I*.<sup>60</sup> In determining whether the set-aside was supported by a compelling government interest, the Court held that the State of New Jersey and the New Jersey Casino Control Commission failed to prove historical discriminatory treatment relied upon in the enactment of the regulation and, as such, the Association was likely to succeed that the regulation was unconstitutional. The Court held that the Act failed to rely on particularized findings in promulgating the set-aside program. For example, the program included businesses owned by Hawaiians or native Alaskans without first determining if such businesses existed and, second, if the business was discriminated against in casino contracting.<sup>61</sup> Therefore, the Court held, without a determination as to the measure of discrimination, it would be impossible to ascertain whether the program is narrowly tailored as required by *Croson*. Thus, the Court held the program unconstitutional and issued an injunction prohibiting enforcement of the program.<sup>62</sup>

### *New Jersey State Court Decisions*

Several state court decisions have revolved around similar analyses but are not instructive on disparity study methodology and do not review DBE programs under strict scrutiny.

*Feriozzi Co. v. City of Atl. City*, 266 N.J. Super. 124, 628 A.2d 821 (Ch. Div. 1993) The Plaintiff, a nonminority contractor challenged the constitutionality of the city's affirmative action program for minority participation in public contracts. The original ordinance had penalties for non-compliance with the 10% M/WBE participation, which was removed after an amendment. Citing *Croson*, the Plaintiff argued that the city had not conducted any studies, nor provided any sort of empirical data, to support a claim of past discrimination. The Superior Court agreed with the City's argument that 10% M/WBE participation was a goal, not a quota, that was used to stop future discrimination, as opposed to remedying past discrimination. The Court held that it was thus facially constitutional, but also noted that the application of a facially valid ordinance could render the ordinance unconstitutional if it were to be applied as a quota.

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<sup>58</sup> *Id* at 657.

<sup>59</sup> *Ass'n for Fairness in Bus., Inc. v. New Jersey*, 82 F. Supp. 2d 353, 364 (D.N.J. 2000).

<sup>60</sup> *Id* at 361.

<sup>61</sup> *Id* at 361.

<sup>62</sup> *Id* at 364.



## New Jersey State Law

New Jersey state law gives individuals who allege discrimination against private actors a cause of action. In 2004, then-governor James McGreevey signed into law the “New Jersey Civil Rights Act”, New Jersey Statute Title 10. This law created a cause of action for any citizen who believes that someone acting under the “color of law” (i.e., someone using power granted to them by the local, state or federal government) has either interfered with or deprived them of substantive due process or equal protection rights, privileges or immunities secured by either federal or state Constitutions or laws. The action can be brought by an individual (an employee) or by the attorney general, *sua sponte*. Notably, the law authorizes the Attorney General’s office to investigate and pursue a claim when the conduct is purely private.

However, recent case law has restricted the application of the Civil Rights Act to shield private individuals and businesses from lawsuits under the Act; the actor must be a governmental authority.<sup>63</sup> Nevertheless, the holdings do not restrict the Attorney General from pursuing claims against private entities.

The New Jersey Law Against Discrimination<sup>64</sup> makes it unlawful to discriminate based on race, creed, color, national origin, nationality, ancestry, age, sex (including pregnancy), familial status, marital status, domestic partnership or civil union status, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for military service, and mental or physical disability, perceived disability, and AIDS and HIV status. This applies to employment, housing, places of public accommodation, credit and business contracts.

### III. Standards of Review

#### *Race Conscious Program: Strict Scrutiny*

The DBE program and all race-conscious governmental (local, state or federal) programs are reviewed under the “strict scrutiny” standard of review. This a two-pronged analysis in which the governmental entity must establish its compelling government interest in remedying past discrimination through narrowly tailored means. *Croson* mandated a strong basis in evidence to demonstrate that the underrepresentation of minorities in government contracting is a product of past agency and/or private sector discrimination.<sup>65</sup>

#### *First Prong: Compelling Interest*

A government is required to have a strong basis in evidence of discrimination, that is to say, the government must have sufficient evidence that, viewed in the light most favorable to the government’s case, establishes all of the elements of discrimination.

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<sup>63</sup> *Perez v. Zagami, LLC*, 217 N.J. 502, — A.3d —, 2014.

<sup>64</sup> The New Jersey Law against Discrimination (N.J.S.A. 10:5-12) (LAD).

<sup>65</sup> *Croson*, 488 U.S. at 472.

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Passive discrimination is “a situation in which a government entity does business with firms in an industry that discriminates against people of a particular group(s). By virtue of supporting firms that may be engaging in discrimination, the government entity is indirectly or passively - participating in a discriminatory environment.”<sup>66</sup> Passive discrimination is sufficient to give rise to a compelling interest in remedying past conduct to address passive discrimination. In *Concrete Works I*, the evidence supporting past discrimination cited various studies that were conducted between 1977 and 1991. Each subsequent study throughout this time frame more narrowly examined the issue of M/WBE businesses in the construction field. One specific study conducted in 1990 cited that there was “evidence that nonminority contractors sometimes called WBEs the day before a bid was due, even though one day is not enough time to prepare a bid, or called a defunct WBE, and then cited the calls as evidence of good faith.”<sup>67</sup> The following year, the 1991 Denver Disparity Study noted that Denver’s Department of General Services, an agency that issued many of the city’s contracts, had a significantly lower number of M/WBE businesses awarded contracts than the city was able to award, considering the number of M/WBE businesses available to perform the work. The study also concluded that the revenues of M/WBE were substantially less than those of the non-M/WBE owned companies, and were smaller in size. The study thus concluded that these factors provided sufficient evidence to support a prima facie case that, at the very least, the city was a passive participant to M/WBE discrimination in contracting.

Agency discrimination can also be proven to satisfy a compelling government interest. As Sandra Day O’Connor suggested in *Croson*, if a significant statistical disparity between the availability of ready, willing, and able M/WBE firms seeking to obtain contracts with the government and the actual utilization of such M/WBE firms by the government, there may exist an inference of discrimination. In addition, anecdotal evidence may further support and explain disparity findings, and as will be discussed below, some courts have required anecdotal evidence in addition to statistical evidence to support claims of discrimination.

*Contractors II* opined that anecdotal evidence is insufficient to demonstrate discrimination but that combining statistical and anecdotal evidence may establish a *prima facie* case of discrimination. The Third Circuit has also recommended a combination of statistical and anecdotal evidence. Many cases have recognized that a statistical disparity alone does not signify the presence of discrimination.

For example, the Ninth Circuit in *Coral Construction v. King County* concluded that the combination of a proper statistical foundation and convincing anecdotal evidence was potent. The Court found that neither statistics, standing alone, nor anecdotal evidence, standing alone, is sufficient. The Court noted that statistical evidence often does not fully account for “the complex factors and motivations” that can affect market outcomes, many of which may be entirely race neutral. Similarly, although anecdotal evidence of specific instances of discrimination can bring cold numbers convincingly to life, such evidence cannot on its own establish that there is

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<sup>66</sup> Myers, Jr, S. L., & Rodgers III, W. M. (2005). Analysis of Essex County Procurement and Contracting: Final Report.

<sup>67</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 823 F.Supp. 821 (D. Co., February 26, 1993) at 834.

systemic discrimination. Thus, a combination of evidence of statistical disparities in the utilization of MBE/WBEs and particularized anecdotal accounts of discrimination is required.

Several cases have analyzed anecdotal evidence in turn. In *Associated General Contractors of California, Inc. v. Coalition for Economic Equity, et al.*, the Ninth Circuit commented that the “vast number of individual accounts of discrimination,” brings the “cold numbers convincingly to life.” The Court considered whether the City was required to make findings specific to bid practices but ultimately held that a statistical disparity was sufficient to satisfy *Croson*.

In *O’Donnell Construction Company v. District of Columbia*, the Court of Appeals commented on the District of Columbia’s quantitative and qualitative evidence, finding that the District did not produce sufficient evidence to support its program. However, in *Concrete Works I*, the Tenth Circuit opined that the anecdotal evidence was persuasive in light of the statistic but that anecdotal evidence alone was not.

In *Engineering Contractors Ass’n of South Florida Inc. v. Metropolitan Dade County*, the Eleventh Circuit held the following: In *Cone Corp.*, we held that anecdotal testimony “combined with the gross statistical disparities uncovered by the County studies, provides more than enough evidence on the question of prior discrimination and the need for racial classification to justify the denial of a motion for summary judgment” 908 F.2d at 916. Similarly, in *Ensley Branch*, we recognized that “[a]necdotal evidence may also be used to document discrimination, especially if buttressed by relevant statistical evidence,” 31 F.3d at 1565. In that case, we held that a city had a sufficient basis in evidence to support the existence of a gender-conscious affirmative action program when “[t]he record before us contains substantial anecdotal and statistical evidence of past discrimination against women.” *Id.* at 1581.

#### *Second Prong: Narrowly Tailored*

In addition, the remedy sought must be narrowly tailored. Court analyzing the second prong of the strict scrutiny standard will look at the limitations of the programs enacted. First, courts will often ensure that the remedies are limited to racial groups that discrimination has affected in the past; a program must fail for over inclusiveness. Second, courts ensure that the remedies are limited to the geographic area in which discrimination was detected. Third, courts will limit the remedy to address particular concerns.

Jurisdictions that include a multiplicity of racial groups run the risk of being over inclusive in efforts to remedy discrimination and courts find the programs unconstitutional. Limiting the preference to affected groups reduces the likelihood of the court finding the program unconstitutional. On point, the Federal District Court in *Association for Fairness in Business, Inc. v. New Jersey* held that the set-aside program was unconstitutional. Specifically, the program was not narrowly tailored because it included minorities for whom there was no evidence of discrimination. In *Associated General Contractors of California*, the Ninth Circuit commented that Asian or Hispanic firms did not receive a benefit from the program and that remedies only existed for groups that had a demonstrated disparity in participation. Conversely, the Court of Appeals in *O’Donnell* determined that the definition in the District of Columbia’

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Minority Contacting Act was overly inclusive and enjoined the program on narrowly tailored grounds.<sup>68</sup>

The definition of the market area serves multiple purposes; it defines the area in which to find ready, willing and able firms and also defines the impact that the program may have. *Croson* limited the global reach of a program; subsequent cases have interpreted the market area more broadly to include the area where the agency may conduct business.<sup>69</sup>

In *Coral Construction*, the Court found the King County's program failed the narrow tailoring requirement because the program included minority-owned firms that were outside of King County. Consequently, the Court concluded that the proper measure of discrimination was if the firm had attempted to do business with King County.<sup>70</sup> Other courts have held that the discrimination was limited to firms actively seeking opportunities within the boundaries of the jurisdiction.<sup>71</sup>

In order for the remedy to be narrowly tailored, it must address particular discrimination concerns. In *Concrete Works I* the court considered whether Denver's program remedied only identified discrimination and held that Denver need not prove specific acts but could rely on the presumption that discrimination affected members of a group.<sup>72</sup> Courts have held that discrimination in State contract awards cannot be used to demonstrate discrimination in the private conduct of casinos.<sup>73</sup> Likewise, a program to give preferential treatment to minorities and women in the issuance of certificates to conduct intrastate trucking operations was not narrowly tailored to the underutilization of existing MBE and WBE trucking firms, but more rationally related to the disparities between the number of MBE and WBE trucking firms in existence and the number licensed by the State.<sup>74</sup>

The *Adarand* court commented on the length of time that the program was in place and determined that remedial programs must contain sunset provisions of opportunities for periodic review so that no program outlasts its remedial nature. Other jurisdictions have had programs tossed out by the courts due to overinclusive programmatic timing.<sup>75</sup>

### ***Gender-Based Programs: Intermediate Scrutiny***<sup>76</sup>

While the analysis in *Croson* was limited to a review of MBE programs, governmental entities also often employ gender-based classification in contracting programs based on women-owned

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<sup>68</sup> *O'Donnell Construction Co. v. District of Columbia*, 762 F. Supp. 354 (D.D.C. 1991), *rev'd*, 963 F.2d 420 (D.C. App. 1992); *RGW Construction, Inc. v. San Francisco BART*, \_\_\_ F. Supp. \_\_\_ (Slip Op. N.D. Calif., Nov. 25, 1992)].

<sup>69</sup> *Contractors II*.

<sup>70</sup> *Coral Construction v. King County*, 941 F.2d 910 (9th Cir. 1991), cert. denied 112 S. Ct. 875 (1992).

<sup>71</sup> *RGW Construction, Inc. v. San Francisco BART*, \_\_\_ F. Supp. \_\_\_ (Slip Op. N.D. Calif., Nov. 25, 1999).

<sup>72</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 823 F.Supp. 821 (D. Co., February 26, 1993).

<sup>73</sup> *Ass'n for Fairness in Bus., Inc.*

<sup>74</sup> *Bilbo Freight Lines, Inc., et al. v. Dan Morales, et al*, C. A. No. H-93-3808 (S.D. TX, Feb. 3, 1994).

<sup>75</sup> *Concrete Works I*, *O'Donnell*, *Contractors Association of Eastern Pennsylvania*.

<sup>76</sup> For a more thorough analysis of gender-conscious programs, please read the 1991 New Jersey Transit Disparity Study.

business preferences (WBE). Generally, the Supreme Court has used intermediate scrutiny to assess whether the use of such programs is justified. This is a lower standard of review that requires the governmental entity to demonstrate an important governmental objective in creating such a program and that the program is directly and substantially related to achieving that objective.<sup>77</sup> Some federal courts characterize this test as a requirement that the program have an “exceedingly persuasive justification.”<sup>78</sup>

Courts have not determined how intermediate scrutiny differs vastly from strict scrutiny. Case law indicates that programs scrutinized under intermediate scrutiny are still required to present statistical and anecdotal evidence.<sup>79</sup> There have been cases in which the federal courts have reviewed WBE programs and found the program unconstitutional under the intermediate scrutiny analysis.<sup>80</sup> However, at least one jurisdiction has upheld the use of a WBE program.<sup>81</sup>

#### IV. Burden of Proof

The precedent established in *Croson* imposes the burden of initial production of proof of discrimination on the government to demonstrate that the challenged race-based program is supported by a strong factual predicate. *Croson* requires a “strong basis in evidence” in the government implementing a race-based contracting program.

However, the plaintiff in a lawsuit based on a facial challenge of the constitutionality of a race-based program has the ultimate burden of persuasion.<sup>82</sup> In *Contractors Association of Eastern Pennsylvania, Inc. v. City of Philadelphia*, the contractors argued that the underlying disparity study was flawed without conducting further analysis to support an alternative conclusion. The Court held that the program was not presumptively invalid based on the plaintiff’s arguments, placing the burden of proof squarely on the plaintiff. On remand, the court considered alternative arguments prepared by the plaintiff and ultimately found “neutral explanations” persuasive enough to enjoin the program. Other jurisdictions have also held that the plaintiff has the ultimate burden to prove by a preponderance of the evidence that the conclusions were incorrect or faulty.

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<sup>77</sup> *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982); *Craig v. Boren*, 429 U.S. 190, 211 (1976) (Powell, J, concurring).

<sup>78</sup> *United States v. Virginia Military Institute*, 116 S.Ct. 2264 (1996). *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982), *Associated General Contractors of California v. City and County of San Francisco*, 813 F. 2d. (9th Cir. 1987) and *Michigan Road Builders Ass’n., Inc. v. Milliken*, 834 F. 2d. 583 (6th Cir. 1987).

<sup>79</sup> *United States v. Virginia*, 116 S.Ct. 2264 (1996).

<sup>80</sup> *Engineering Contractors v. Dade County*, 943 F.Supp 1546, 1556 (SD Fla 1996), *Associated Utility Contractors v. Baltimore*, 83 F.Supp2d 613 (D Md 2000), *Scott v. City of Jackson*, 199 F.3d 206, 215, n. 9 (1999); *Arrow Supply v. Detroit*, 826 F. Supp. 1072 (ED Mich 1993).

<sup>81</sup> *Coral Construction v. King County*, 961 F.2d 910 (9th Cir 1991), cert. denied, 112 S. Ct. 875 (1992).

<sup>82</sup> Except in the 11th Circuit wherein the defendant has the burden of proof defending against a constitutional challenge to a race-based program. See *Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County*, 333 F. Supp.2d 1305 (S.D. Fla., Aug. 24, 2004) citing *Johnson v. Bd. of Regents of the University of Georgia*, 263 F.3d 1234 (11th Cir. 2001).

### V. Scope of Evidence

Government entities subject to federal DBE requirements must support their programs with strong evidentiary support to ensure that the program comports with the Fourteenth Amendment of the United States Constitution. Thus, there must be a strong basis in evidence in order to demonstrate that the race-conscious remedy is narrowly tailored pursuant to *Croson*.

#### *Study Period*

Case law has not settled the exact appropriate quantity or time frame for collection of data to support the constitutionality of a program except to criticize reports that rely on a small amount of data. Courts have looked at studies that had one year of data (*Associated General Contractors of California*), two years of aggregated data (*Phillips & Jordan v. Watts*) and three years of data (*Contractors Association of Eastern Pennsylvania*). Though not precedent in this jurisdiction, *Concrete Works I* found only a small portion of the contracting data persuasive in analyzing the effectiveness of a program.

More recently, in *Rothe v. D.O.D. VII*, the Federal Court of Appeals rejected the Plaintiff's argument that data more than five years old must be discarded. Rather, the court noted that while up to date information should be used, the Plaintiff did not provide any more recent, available data.<sup>83</sup> However, the court again failed to provide a bright line rule as to what data is "too stale" to be deemed relevant.

In *H.B. Rowe Co. v. Tippett*, the 4<sup>th</sup> Circuit upheld in part the North Carolina M/WBE program, citing in part the fact that North Carolina has taken it upon itself to conduct a disparity study at least every 5 years, to ensure that project-specific participation goals remain necessary.<sup>84</sup>

#### *Relevant Geographic Market*

The geographic scope has a large effect on a disparity study and plays a role on the availability, anecdotal evidence and other qualitative evidence required for a study. As a general rule, the determination of the relevant geographic market area determines the scope of evidence that may be relied upon to establish the factual predicate for an M/WBE program. The boundaries of a relevant geographic market are determined by market dynamics and are not necessarily limited by the political boundaries of the government agency. Courts have recognized that government organizations have a far-reaching effect and can host widespread geographic influence in its contracting programs.<sup>85</sup> However, there is a risk related to observing a large area; courts have recognized that a large area may lead to disparities where there may be none on a smaller scale.<sup>86</sup>

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<sup>83</sup> *Rothe Dev. Corp. V. U.S. Dept. of Defense*, 545 F.3d 1023 (Fed Cir. 2008) "Rothe VII".

<sup>84</sup> *H.B. Rowe Co. v. Tippett*, 615 F.3d 233 (4th Cir., 2010).

<sup>85</sup> See *Contractors II, Concrete Works*.

<sup>86</sup> *Associated General Contractors of California, Cone Corporation, Phillips & Jordan v. Watts*.



Under the landmark antitrust case, *Tampa Electric V. Nashville Coal*, the relevant geographic market is “where sellers operate *and* where purchasers can predictably turn for supplies.”<sup>87</sup> This is expanded upon by the Supreme Court in *Eastman Kodak*, where the Court found that the determination of “relevant geographic market is a fact-intensive exercise centered on the commercial realities of the market and competition.”<sup>88</sup> Numerous cases and the Antitrust Law Handbook have listed the following as commercial realities to be considered when defining relevant geographic market:

*[W]here the parties market their products; the size, cumbersomeness, and perishability of the products; regulatory requirements impeding the free flow of competing goods into or out of the area; shipping costs and limitations; the area within which the defendant and its competitors view themselves as competing; and other factors bearing upon where customers might realistically look to buy the product.*<sup>89</sup>

This can be translated into disparity studies by replacing the word “customer” with “governmental agency” or “Transit Authority,” however, courts have never explicitly adopted the antitrust definition of geographic marketplace as indicative of the geographic marketplace in the predicate supporting affirmative action programs.

## VI. Passive Participation in Private Sector Discrimination

In order to establish justification for the use of an MBE program, the governmental agency may, under certain circumstances, establish the requisite “compelling interest” by demonstrating that discrimination exists in the broader marketplace, even where that discrimination is not directly attributable to the governmental agency.<sup>90</sup> In instances where government tax dollars are awarded to contractors that have discriminated on the basis of race or gender in selection of subcontractors on private sector projects, the government becomes a passive participant in that private sector discrimination by virtue of its monetary support of subsidy for discriminatory actors. Passive participation in discrimination differs from active participation in discrimination in that the government has not directly engaged in different treatment of firms on the basis of the race or gender of their ownership.

In *Concrete Works II*, the Court decided the issue of whether private sector discrimination that did not directly involve federal government contract dollars could ever serve as the basis for establishing “passive participation” sufficiently to justify use of a race-based contracting program. The *Concrete Works* Court held that passive participation includes private sector discrimination and set out that the discrimination must be identifiable<sup>91</sup> and that the governmental entity must also have a “strong basis in evidence to conclude that remedial action was necessary.” The Court held that there was a sufficient nexus between the City’s actions in

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<sup>87</sup> *Nemours v. Kolon Indus.*, 637 F.3d 435 (4th Cir., 2011) (citing *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320, 81 S.Ct. 623, 5 L.Ed.2d 580 (1961)).

<sup>88</sup> *Id.* at 442.

<sup>89</sup> See, e.g., Antitrust Law Handbook § 3.4; *RCM Supply*, 686 F.2d at 1077; *Wampler v. Sw. Bell Tel. Co.*, 597 F.3d 741, 744–45 (5th Cir.2010); *L.A. Draper & Son v. Wheelabrator–Frye, Inc.*, 735 F.2d 414, 423 (11th Cir.1984).

<sup>90</sup> *Crososon*, 488 U.S. at 509.

<sup>91</sup> Quoting *Crososon*, 488 U.S. at 504.

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paying contract dollars to the prime contractors that discriminated against M/WBEs in subcontractors in private business to give the government a compelling interest in acting to avoid becoming a passive participant in such private sector discrimination.<sup>92</sup>

However, courts have also addressed whether the public sector can remedy private sector discrimination. In the case of *Builders Association of Greater Chicago v. City of Chicago*,<sup>93</sup> the court found discrimination in the private sector where minorities lacked access to credit and capital. However, the Court held that the MBE subcontracting goal was not an appropriate remedy because it was not narrowly tailored. Any passive discrimination must have a nexus to agency action (or inaction).

Thus, an examination of New Jersey Transit's contracting records and process will be undertaken to determine if there is active systemic agency discrimination. This study will also give MBE firms an opportunity to discuss what perceived barriers exist and compare the anecdotal evidence to contracting data. If there is a connection between the anecdotal evidence and the contracting data that creates barriers that exclude MBEs from contracting with the entity, an entity will be considered an active participant in discrimination. However, an entity that has merely contributed to an industry through tax dollars is not considered an active participant in private sector discrimination.<sup>94</sup> This study will also examine the effect of other agency's discrimination that may have an effect on the market in New Jersey, to examine the extent there is a sufficient nexus between the discrimination and New Jersey Transit.

### VII. Utilization

Essential to any disparity study is an examination of utilization. This is generally understood as the measure of how many minorities are involved with an agency or in its programs. *Croson* directed disparity studies to examine both prime and subcontracting data to analyze utilization. Utilization can be measured by the number/percentage of contracts or contract dollars. However, most cases utilize both the percentage of contracts awarded as well as the actual number of contract dollars received by M/WBE compared with all awarded contract dollars.<sup>95</sup> The Third Circuit generally recognizes utilization in terms of the percentage of contract dollars.<sup>96</sup>

### VIII. Availability

Courts have not provided a bright line rule establishing a method for determining the availability of minority owned firms. In keeping with *Croson* and *Concrete Works I*, courts may carefully examine whether there is data that shows that MBEs are ready, willing, and able to perform in the determined market area.

*Concrete Works I* construed ready, willing and able as the "capacity" of a firm. The Third Circuit Court of Appeals in *Philadelphia* recognized that if the analyst uses the number of firms that

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<sup>92</sup> *Concrete Works II*, 321 F.3d at 975–76.

<sup>93</sup> *Concrete Works II*, 321 F.3d at 975–76.

<sup>94</sup> *Croson*, 488 U.S. at 492.

<sup>95</sup> *Concrete Works*, Geod Corp., Northern Contracting.

<sup>96</sup> Contractors Association of Eastern Pennsylvania.

exist in the market and are licensed, as opposed to firms that have demonstrated a willingness to do business with the city and are ready and willing, there is the potential to have over-inclusive data that tends to show a greater amount of firms “available.”<sup>97</sup> This is also a potential identified flaw of defining “ready, willing and able” as “capacity.”

In *Geod Corp. v. N.J. Transit*, the court cited 49 C.F.R. §26.45, which describes the base figure for determining availability. It is calculated using a number of methods, which include, but are not limited to: use of DBE directories and Census Bureau data; use of a bidders list; use of data from a disparity study; use of goals of another DOT recipient; and/or alternative methods “based on demonstrable evidence of local market conditions and [ ] designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in [the recipient's] market.”<sup>98</sup>

After the base figure is determined, adjustments are made, which takes into account the following: (1) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years; (2) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and (3) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

In *Northern Contracting v. Illinois*, the Illinois Department of Transportation hired an economist to conduct a custom census. This involved first identifying the relevant geographic market (Illinois) and the relevant product market (transportation infrastructure construction). Next, he surveyed Dun & Bradstreet’s *Marketplace*, which is a comprehensive database of American businesses that identifies which businesses are minority or woman-owned. Wainwright supplemented this survey with IDOT’s list of DBEs in Illinois. After arriving at this beginning list of DBEs, he corrected for errors in the data by surveying a random sample from the group; this survey led him to conclude that 22.8% of the firms listed as minority or woman-owned were actually owned by white men. He then surveyed all of the firms listed as not being minority or woman-owned; this survey led him to conclude that 14.5% were actually owned by minorities or women. In light of these two surveys, he adjusted his calculation of DBE availability and arrived at an overall relative availability of 22.77%. He then ran a regression analysis of Census Bureau data on earnings and business formation, and concluded that in the absence of discrimination, relative DBE availability would be 27.5%.

The court held that this approach was consistent with the regulations put forth in 49 C.F.R. §26.45(a)(1), and thus was a proper approach for determining availability of DBEs and upheld the Illinois DBE program.<sup>99</sup>

Consistent with this approach, this study measures and defines availability using New Jersey Transit’s list of vendors that have done business with New Jersey Transit during the study period, New Jersey Transit’s bidder’s database of firms that have bid during the study period, New Jersey Transit’s UCP DBE list of DBE firms certified to do business with New Jersey

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<sup>97</sup> *Philadelphia*, 91 F.3d at 586.

<sup>98</sup> *Geod Corp. v. N.J. Transit Corp.*, 746 F.Supp.2d 642 (D.N.J., 2010) at 646.

<sup>99</sup> See also *Sherbrooke Turf v. Minnesota Dept. of Transp.*, 345 F.3d 964 (8<sup>th</sup> Cir., 2003)(holding that a similarly conducted NERA study that assessed DBE availability was constitutional both on its face and as applied).

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Transit and the firms New Jersey Transit has prequalified to do business on New Jersey Transit projects. The Third Circuit has recognized that the practicality of the approach should be weighed and has affirmed the use of a list of certified DBEs as a source of available firms.<sup>100</sup>

### IX. Disparity Analysis

A disparity happens when the utilization is compared to the availability of M/WBEs and returns a statistically significant value. A disparity index of 1 demonstrates full MBE and WBE participation, whereas the closer the index is to zero, the greater the MBE and WBE underutilization. In accordance with *Croson*, the disparity alone would amount to discrimination. However, there are many different factors that may influence a disparity between availability and utilization outside of discrimination.

The disparity ratio was calculated by dividing the DBE availability by DBE utilization with a ratio of one indicating no disparity. (Pls.' Ex. 1 at 26–27) The Study used several data sets and averaged the findings in order to calculate this ratio, including: (1) the New Jersey DBE vendor List; (2) a Survey of Minority-Owned Business Enterprises (SMOBE) and a Survey of Women-Owned Enterprises (SWOBE) as determined by the U.S. Census Bureau; and (3) detailed contract files for each racial group. (Pls.' Ex. 1 at 27).

A disparity can also be analyzed through dollar participation where the award of a contract is compared to available majority contractors and M/WBE contractors. The study of the disparity depends on what is being compared and whether the disparity is statistically significant. The analysis of the disparity index and its significance are judged per case. In *Engineering Contractors II*, the Eleventh Circuit found that a disparity indices of eighty percent or greater are not considered significant. This has been referred to as the “Rule of Thumb” or the “80 percent rule.” The plaintiff in any lawsuit challenging a disparity finding or indices may also offer a neutral explanation for the statistical disparities.

Courts have used the “two standard deviation” method for many years. By showing that there is at least two standard deviations between availability and utilization of W/MBEs, there is, at the least, an inference of discrimination. Most courts follow the conventions of social science which set 0.05 as the level of significance below which chance explanations become suspect. The existence of a 0.05 level of statistical significance indicates that it is fairly unlikely that an observed disparity is due to chance, and it can provide indirect support for the proposition that disparate results are intentional rather than random. By no means, however, is a five percent probability of chance (or approximately two standard deviations) considered an “exact legal threshold.”<sup>101</sup>

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<sup>100</sup> *Philadelphia*, 91 F.3d at 603.

<sup>101</sup> *Palmer v. Shultz*, 815 F.2d 84 at 92, See also *Ottaviani v. State University of New York at New Paltz*, 875 F.2d 365 (C.A.2 (N.Y.), 1989); *Waisome v. Port Authority of New York and New Jersey*, 948 F.2d 1370 (C.A.2 (N.Y.), 1991); *Peightal v. Metropolitan Dade County*, 26 F.3d 1545 (C.A.11 (Fla.), 1994); *Webster v. Fulton County, Ga.*, 51 F.Supp.2d 1354 (N.D. Ga., 1999); *Eng’g Contractors Ass’n*, 122 F.3d at 914, 917, 923. The Eleventh Circuit found that a disparity greater than two or three standard deviations has been held to be statistically significant and may create a presumption of discriminatory conduct.; and *Kadas v. MCI Systemhouse Corp.*, 255 F.3d 359 (7<sup>th</sup> Cir. 2001).

## X. Overconcentration

Per 49 C.F.R. 26.33, a recipient (governmental agency receiving FTA, FHWA or FAA funds) must take steps to address overconcentration if it is found in its program. The regulation, however, does not currently require recipients to actively assess overconcentration and therefore not many recipients have taken this step.

Currently, no calculation to define overconcentration exists at common law. At this point, there is limited case law analyzing overconcentration in DBE programs. At least one court has upheld the programs' constitutionality when considering overconcentration claims brought by the plaintiffs.<sup>102</sup> The current DBE program has never been overturned as unconstitutional using an overconcentration theory and, therefore, overconcentration has not been defined with any specificity.

In *Geyer Signal v. MnDOT*, the Plaintiff argued that in its area of work (traffic control and trucking) that there was a higher percentage of DBE businesses (two of the seven, or 28.6%) compared with other areas in the construction field. The Plaintiff also argued that 37% of the contract dollars and 23.6% of contracts in the traffic control market were awarded to DBEs, as opposed to the 20.9% of contracts awarded to DBEs in other areas. Finally, the Plaintiff argued that traffic control makes up 3.2% of MnDOT dollars, but 8.8% of total DBE dollars, which suggested overconcentration. The Minnesota Court of Appeals failed to address the issue of whether this actually constituted overcrowding, and instead found that there are measures that can be taken for recipients of federal dollars to shift DBEs from areas of overconcentration to other areas of work.

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<sup>102</sup> See *Sherbrooke Turf, Inc. v. Minnesota Dept. of Transp.*, 345 F.3d 964 (8th Cir. 2003), cert. denied 124 S. Ct. 2158 (2004); *Concrete Works of Colorado, Inc. v. City & County of Denver*, 321 F.3d 950 (10th Cir. 2003); *W. States Paving Co., Inc. v. Washington State Dept. of Transp.*, 407 F.3d 983, 1003 (9th Cir. 2005). In re *Sherbrooke Sodding Co.*, 17 F. Supp. 2d 1026, 1036 (D. Minn. 1998) the court contemplated the constitutionality of MnDOT's DBE program and found that an undue burden fell on the plaintiff, a specialty contractor engaged in non-capital intensive operations. Overconcentration was necessarily implied but was not specially defined by the court, nor was empirical support analyzed in the opinion. As a result of the findings, the court issued a permanent injunction and the DBE program was suspended in 1999. However, the DBE program was re-instituted in 2000 after Congress passed the Transportation Equity Act for the 21st Century ("TEA-21") Pub.L. No. 105-178, § 1101(b)(1), 112 Stat. 107, 113. DOT then promulgated the new implementing regulations in 49 C.F.R. pt. 26. See 64 Fed.Reg. 5096 (Feb. 2, 1999). Minnesota's current DBE program was upheld as constitutional under similar equal protection claims.

## ANECDOTAL EVIDENCE, EDITED BY TARA KALAR

Courts often look to people's accounts of discrimination as persuasive evidence to support race-conscious contracting. Other jurisdictions, however, rely on statistical evidence, casual evidence, and expert evidence to bolster justification for a race-conscious program. While statistical evidence is generally elicited from statistical information, anecdotal evidence is provided by experimental observation. This leaves room for personal interpretation. Over the years there have been many attempts to discredit the validity and credibility of anecdotal evidence.

Science literature characterizes anecdotal evidence as, "Controversies... can be said to reveal a tension between the scientific search for universal, generalizable knowledge, and more localized forms of understanding, which are rooted in individual experience. Anecdotes and anecdotal evidence are clearly individual, and thus lend themselves to reconstruction in terms of "subjective" versus "objective" modes of thought."<sup>103</sup> There is also a general theme in the science community that, "'anecdotal evidence' is a term whose meaning and jurisdiction has largely been defined in opposition to expertise...[anecdotal evidence] is used to define what science is, or rather what science is not. In other words, anecdotal evidence is not considered hard evidence in the scientific community but rather a story or explanation of a personal experience. Thus, anecdotal evidence does not serve as a generalization but rather anecdotes are case specific. Thus, anecdotal evidence is not seen by scientists as credible in the scientific community.

However, while anecdotal evidence is not considered the basis of a scientific argument, there is still a need for it in social science research, because anecdotes are still real life accounts of phenomenon, and can still be used to bolster the claims of other qualitative and quantitative research methods.

Over the past 40 years qualitative methods in social science research have reemerged, much of which can be attributed to the 1967 article "The Discovery of Grounded Theory" by Glaser & Strauss.<sup>104</sup> As a result of this publication, there has not only be an expansion of the use of qualitative methods but there has also been a creation of education surrounding the "correct way" to perform such research. Qualitative research is considered a broad-spectrum term in which there are numerous methods that can be used to collect this data. Creswell divided each on these methods into five distinct categories: "biography, phenomenology, grounded theory, ethnography, and case study."<sup>105</sup> These different approaches not only use different analytical tools they also answer different questions. Thus, the data that they collect varies as well. Consequently, the current range of methods have been shaped not only by different disciplines, but also by different ideas and different traditions.

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<sup>103</sup> Moore, A., & Stilgoe, J. (2009). Experts and Anecdotes: The Role of "Anecdotal Evidence" in Public Scientific Controversies. *Science, Technology & Human Values*, 654–677.

<sup>104</sup> Glaser, B. G., & Strauss, A. L. (2009). *The Discovery of Grounded Theory: Strategies for Qualitative Research*. New Brunswick and London: Transaction Publishers.

<sup>105</sup> Creswell, J. W., & Miller, D. L. (2000). Determining Validity in Qualitative Inquiry. *Theory into Practice*, 39(3), 124–130.



### Production of Evidence

The most popular forms of producing evidence for qualitative studies are interviews, observational data and other forms of documentation, such as visual aids. Interviews are the most common mode of gathering anecdotal evidence, for qualitative research; while they can be in the forms of focus groups, they are more often unstructured one-on-one or dyadic interviews. Some researchers such as Seidman<sup>106</sup> suggest that it is best to have a series of three interviews, rather than one, in order to gain the depth and richness required for qualitative work. “The purpose of interviews is to produce alternative perspectives on the experience under study,” thus, the researcher does not learn more about an experience when a participant’s account simply duplicates information that the researcher already knows.

The most useful accounts describe unexpected and unanticipated aspects of an experience. This includes observational data; the researcher observes and documents the behaviors and mannerisms of a participant. One source of observational data is in the form of facial expressions, tone, mannerisms, clothing, gestures and other non-verbal forms of communication. From these sources, a researcher can add meaning to a participant’s oral comments. Another source of observational data is in the environment that the interview takes place, such as a participant’s home, or place of work. From these sources, a researcher can make assumptions about a person’s experiences and their personality traits. The last form of producing evidence would be through documentary evidence and visual aids. Documentary evidence can consist of cultural artifacts, photographs, videos and written documents and are oftentimes utilized in the psychology field for counseling purposes. While these methods all support a qualitative study, often the question often dictates the technique used.

### Data

The main purpose of collecting data for qualitative and anecdotal research is to “provide evidence for the experience that it is investigating.” Generally, anecdotal evidence is gleaned in the form of written language. However, there are also limitations associated with gathering evidence that is solely based on the human experience. Human experiences are not necessarily observable but rather rely heavily on a person’s ability to recount events. In addition, “the way people interpret their own emotions depends, to some extent at least, on the lexical grid provided by their native language.”<sup>107</sup> Qualitative researchers must also pay special attention to the use of metaphors and ask for clarity in elaborating feelings.

### Participants

Where the purpose of statistical research is making a claim about a population based on a random sampling, the purpose of qualitative research is to gather anecdotal evidence explaining, clarifying and understanding a specific human experience. In other words, “participants and documents for a qualitative study are not selected because they fulfill the representative

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<sup>106</sup> Seidman, I. (1999). *Interviewing as Qualitative Research: A Guide for Researchers in Education and the Social Sciences*. New York: Teachers College Press. As quoted in Polkinghorne, D. E. (n.d.). *Language and Meaning: Data Collection in Qualitative Research*. *Journal of Counseling Psychology*, 52, 2, 137–145.

<sup>107</sup> Wierzbicka, A. (1999). *Emotions across Languages and Cultures: Diversity and Universals*. Cambridge: Cambridge University Press.

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requirements of statistical inference but because they can provide substantial contributions to filling out the structure and character of the experience under investigation.”<sup>108</sup> In contrast to random sampling, participants are purposefully selected based on their experiences, “To begin with, since you are not interested in ‘how much’ or ‘how often,’ random sampling makes little sense. Instead, since qualitative inquiry seeks to understand the meaning of a phenomenon from the perspectives of the participants, it is important to select a sample from which most can be learned. This is called a purposive or purposeful sample.”<sup>109</sup>

Depending on the intent of the study, there are also different strategies for selecting participants. One strategy is called the “maximum variation sampling.” This technique requires the researcher to select participants with the most opposing forms of the experience. One example of this would be a study focused on high school students. In this study, a researcher would select students from public schools and private schools from each grade (freshman, sophomore, junior, senior). The purpose of this study would be to exploring the differences between students as well as the common student experience. In contrast, there is another strategy called homogeneous sampling. This technique requires the researcher to select participants from the same group to further understand the shared experiences of a given subgroup. Another method that researchers often employ is “critical case” (or participant) sampling and criterion sampling. In critical case sampling, researchers select participants “whose experiences are particularly significant [due to] their intensity or irregularity.

While statistical evidence must be verified and presented in a scientific manner, anecdotal evidence provides “texture”<sup>110</sup> and brings the “cold numbers convincingly to life.”<sup>111</sup> Because anecdotal evidence is the witness’ narrative of incidents told from an individual perspective, which includes the witness’ thoughts, feelings, and perceptions, many Courts have stated that anecdotal evidence need not be verified.

In *Engineering Contractors*, the Eleventh Circuit found that “a fact finder could very well conclude that anecdotal evidence need not—indeed cannot—be verified because it ‘is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perception.”<sup>112</sup> Likewise, the Tenth Circuit held that “Denver was not required to present corroborating evidence and [plaintiff] was free to present its own witnesses to either refute the incidents described by Denver’s witnesses or to relate their own perceptions on discrimination in the Denver construction industry.”<sup>113</sup>

### Quantitative Data

According to Aliaga and Gunderson, authors of *Interactive Statistics*, quantitative research is “explaining phenomena by collecting numerical data that are analyzed using mathematically

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<sup>108</sup> Ibid.

<sup>109</sup> Merriam, S. B. (2002). I. Introduction to Qualitative Research, 1–17. In *Qualitative Research in Practice: Examples for Discussion and Analysis*. San Francisco, CA: Jossey-Bass.

<sup>110</sup> *Robinson v. Metro-North Commuter R.R.*, 267 F.3d 147, 168 (2nd Cir., 2001).

<sup>111</sup> *Int’l Brotherhood of Teamsters v. U.S.*, 431 U.S. 324, 399 (1977).

<sup>112</sup> *Engineering Contractors*, 122 F.3d at 249.

<sup>113</sup> *Concrete Works III*, 321 F.3d at 989.

based methods (in particular statistics).”<sup>114</sup> Quantitative research is best used when the research question demands a quantitative answer, when the research question is assessing numerical change, when we are explaining a phenomenon and when you are testing a hypothesis.

Quantitative researchers are often labeled, as being ‘realist’ or ‘positivist’, the goal of these ideologies is to objectively report the facts of the world. In order to achieve objectivity, the researchers, “[need] to be as detached from the research as possible, and use methods that maximize objectivity and minimize the involvement of the researcher in the research. Quantitative data may seem limiting because feelings or quality are not usually expressed in a numerical form. In order to control for this limitation, quantitative researchers developed numerical scales to quantify these variables.

After quantitative data is collected, researchers then express research in quantitative terms. This data is then entered into a software program such as STATA, SPSS or R. Causal relationships are then studied by manipulating independent variables thought to influence the phenomena of interest (the dependent variable) while controlling other variables relevant to the experimental outcomes. Researchers do this by running a multivariate regression model (a regression is “a statistical method interested in explaining a relationship between a dependent variable in terms of different independent variables) Because of this, regression analysis is commonly used to predict or to forecast trends. Quantitative research methods may include proxies as stand-ins for data that cannot be directly measured; one example of this might be innate ability.

### Persuasiveness

When conducting a study, a researcher must also consider which methodology (either qualitative or quantitative) will lend the most validity to the claim. Traditionally, researchers asserted that the strength of an argument rested on two key points, “the consequence’s desirability and the consequence's probability.”<sup>115</sup> However, several experiments have demonstrated that anecdotal evidence is more persuasive than quantitative evidence. “Baesler and Burgoon, from their 1994 study, found 19 experiments in which the persuasiveness of anecdotal and statistical evidence were directly compared. In 13 experiments, anecdotal evidence were proved to be more convincing than statistical evidence; in only 2 experiments, the opposite effect was obtained. (No differences between types of evidence were found in the remaining 4 experiments.)”<sup>116</sup> Baesler and Burgoon also claim that these results might be due to the confounding variable vividness, i.e. the vividness of the evidence.

Moreover, because of the nature of anecdotes, the average person tends to identify with anecdotes more than a statistical analysis. “Following this line of reasoning, anecdotal evidence would be more convincing than statistical evidence, not because it is based on a single instance, but because of its higher imagineability.”<sup>117</sup>

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<sup>114</sup> Aliaga, M., & Gunderson, B. (2003). *Interactive Statistics*. Upper Saddle River, NJ: Pearson Prentice Hall.

<sup>115</sup> Hoeken, H. (2001). Anecdotal, Statistical, and Causal Evidence: Their Perceived and Actual Persuasiveness. *Argumentation*, 15(4), 425–437.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

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A 2001 study conducted by Hans Hoken, attempted to measure the perceived strength of an argument as compared to its actual strength. Hoken presented an argument on the financial success of an imaginary cultural center, using various forms of evidence to back up his claims. The experiment demonstrated that when anecdotal and statistical evidence are equally vivid, statistical evidence is more convincing than anecdotal evidence. In addition, findings also showed that, “the higher the perceived argument quality, the more convinced people were and vice versa. For the statistical evidence, the relation proved to be more problematic. Although the argument was perceived as strong, it was not very convincing.”<sup>118</sup> This experiment also demonstrated that evidence containing “colorful language” was rated as more persuasive than evidence without such language.

**Table 1: Comparison of the Major Paradigms that Inform Social Research, Adapted from Neuman (1994) and Guba & Lincoln (1994)<sup>119</sup>**

Characteristic	Empirico-analytical	Paradigm Interpretive
1. Philosophical/ theoretical origins	Positivism, natural sciences	Hermeneutics, phenomenology, symbolic interactionism
2. Why conduct research?	To discover natural laws that enable prediction or control of events	To understand social life and describe how people construct social meaning
3. What is the nature of social reality?	Social reality contains stable pre-existing patterns or order that can be discovered	Fluid definitions of situations created by people through their social interactions with others
4. What is the nature of human beings?	Self- interested and rational individuals shaped by external forces	Social beings who create meaning and constantly engage in making sense of their worlds
5. Role of common sense	Clearly distinct from and less valid than science	Powerful everyday theories that guide daily life; necessary to understand people; and no less valid than science
6. What constitutes an explanation/theory of social reality?	A logical, deductive system of interconnected definitions, axioms and causal laws stated in probabilistic form	A description of how a group's meaning system is generated and sustained; contains detailed contextual information and limited abstraction
7. An explanation that is true	Is logically connected to causal laws and based on observed facts about social life	Resonates with or feels right to those who participated in the study
8. Whose voices are privileged?	Researcher(s)	Participant(s)
9. What does good evidence look like?	Based on precise observations that others can repeat	Embedded in the context of fluid social interactions, in which meanings are assigned
10. Where do social/ political values enter into science?	Science is value-free; values have no place, except when choosing a topic	Values are an integral part of social life; no group's values are presumed superior to others
11. What is the place of ethics in research?	Extrinsic; mechanisms guiding ethical conduct are <i>external</i> to the inquiry process itself	Intrinsic; participant values and personal nature of researcher–researched interactions are integral to the research process

<sup>118</sup> Ibid.

<sup>119</sup> Neuman (1994) and Guba & Lincoln (1994) quoted in Fossey, E., Harvey, C., McDermott, F., & Davidson, L. (2002). Understanding and Evaluating Qualitative Research. \* *Australian and New Zealand Journal of Psychiatry*, 36, 6, 717–732.

Ultimately, the persuasiveness of anecdotal evidence in case law depends on the nature of statistical evidence that is supported by the personal anecdotes, the strength and credibility of the witness and the relative strength of the case as a whole. As many courts have noted, anecdotal evidence alone will unlikely support a case in its entirety.<sup>120</sup>

### Selecting Study Methodology

Researchers must decide whether qualitative or quantitative methods are best for answering a certain question in a study. According to Bryman it is widely believed that the problem dictates the methodology used. This reasoning suggests that no technique is superior to another and there are certain contexts in which certain techniques are more advantageous than others.<sup>121</sup> Warwick and Lininger, have also stated that, “the sample survey is an appropriate and useful means of gathering information under three conditions; when the goals of the research call for quantitative data, when the information sought is reasonably specific and familiar to the respondents, and when the researcher himself has considerable prior knowledge of particular problems and the range of responses likely to emerge...Participant observation is usually more appropriate when the study requires an examination of complex social relationships or intricate patterns of interaction;...when the investigator desires first-hand behavioral information on certain social processes...when a major goal of the study is to construct a qualitative contextual picture of a certain situation or flow of events; and when it is necessary to infer latent value patterns or belief systems from [non-verbal cues].”<sup>122</sup>

Researchers use methodology often termed “Technique and Sensitivity” to select a study method. This method states that qualitative research techniques are far better at analyzing social science problems as compared to quantitative techniques. In other words, “if the research problem is one which directly emanates from a particular epistemological position then the question of the appropriateness of a research technique is significant, for the technique must properly reflect the epistemological framework in which the research is embedded.”<sup>123</sup>

Researchers also use another method that allows the substantive research to be informed by the qualitative research. This method implies that qualitative research is only useful in “supplying leads, hunches, or hypotheses”<sup>124</sup> rather than verification of claims.

### Triangulation

Triangulation is the combination of quantitative and qualitative methodologies. In the social sciences, triangulation can be traced back to 1959 with the work of Campbell and Fiske “who

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<sup>120</sup> See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1192, 1196-1198; *Eng’g Contractors Ass’n*, 122 F.3d at 925-26; *Concrete Works*, 36 F.3d at 1520; *Contractors Ass’n*, 6 F.3d at 1003; and *Coral Constr. Co. v. King County*, 941 F.2d 910, 919 (9th Cir. 1991).

<sup>121</sup> Bryman, A. (1984). The Debate about Quantitative and Qualitative Research: A Question of Method or Epistemology? *British Journal of Sociology*, 35, 1, 75-92.

<sup>122</sup> Warwick, D. P., & Lininger, C. A. (1975). *The Sample Survey: Theory and Practice*. New York: McGraw-Hill.

<sup>123</sup> Bryman, A. (1984). The Debate about Quantitative and Qualitative Research: A Question of Method or Epistemology? *British Journal of Sociology*, 35, 1, 75-92.

<sup>124</sup> *Ibid.*

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developed the idea of ‘multiple operationism.’<sup>125</sup> They argue that more than one method should be used in the validation process to ensure that the variance reflected that of the trait and not of the method. Thus, the convergence or agreement between two methods”...enhances our belief that the results are valid and not a methodological artifact.”<sup>126</sup>

Triangulation is not just limited to between methodologies, but also can be used within methodologies to check for internal reliability and consistency. For quantitative survey methods, this can take the form of adding indices or multiple scales in the same construct. In quantitative research, this may take the form of multiple comparison groups. Thus, the premise of the triangulation technique rests on the pretense that the weakness in one method will be compensated for through the strengths of another method.

In short, triangulation “can also capture a more complete holistic, and contextual portrayal of the unit(s) under study. That is, beyond the analysis of overlapping variance, the use of multiple measures may also uncover some unique variance which otherwise may have been neglected by single methods.”<sup>127</sup> However, one of the most glaring shortcomings of the triangulation method is the difficulty in replication. This is because, “replicating a mixed-methods package, including idiosyncratic techniques, is a nearly impossible task and not likely to become a popular exercise.”<sup>128</sup>

### **Proof of Discrimination (Labor Market, Contracting & Procurement)**

Anecdotal evidence is often collected to understand the potential environment or condition of the labor force. It is generally collected by surveying a group of people to get their feedback or thoughts on a certain topic or idea.

It is also important to understand the stance of conservative economist when it comes to discrimination in the labor market. The Becker model on detecting discrimination concludes that the market will dissolve any discriminatory practices, therefore it’s unnecessary to conduct such tests (anecdotal) or institute policies of affirmative action.

However, the use of Anecdotal evidence solely to proof discrimination in any sector is weak. For there to be any identified discrimination the “reasons for any such classification [must] be clearly identified and unquestionably legitimate.”<sup>129</sup> The failure to inspect anecdotal evidence and follow-up with statistical support could undermine the real accounts of descriptions of discriminatory practices.

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<sup>125</sup> Campbell, D., & Fiske, D. (n.d.). Convergent And Discriminant Validation by The Multitrait-Multimethod Matrix. *Psychological Bulletin*, 56, 2, 81–105.

<sup>126</sup> Bouchard, T. J. (1976). Unobtrusive Measures an Inventory of Uses. *Sociological Methods & Research*, 4, 3, 267–300.

<sup>127</sup> Jick, T. D. (1979). Mixing Qualitative and Quantitative Methods: Triangulation in Action. *Administrative Science Quarterly*, 24, 4, 602–602.

<sup>128</sup> Ibid.

<sup>129</sup> (88 Cornell L. Rev. 1433).



Based on the precedent set by the *City of Richmond vs. Croson*, proof of discrimination in government contracting and procurement must be statistically substantial and provide a “compelling interest” for an established government MBE/WBE programs.

*“In Croson, anecdotal evidence from one councilperson, see id. at 480, and from the city manager, see id. at 500, could not compensate for the fact that Richmond “[did] not even know how many MBE’s in the relevant market [were] qualified to undertake prime or subcontracting work in public construction projects.” Id. at 502. Nor could stronger anecdotal evidence suffice. When the Court rejected the 30 percent Richmond target because it could not “be said to be narrowly tailored to any goal,” id. at 507, it effectively required evidence of a statistical disparity to justify numerically-targeted affirmative action, because anecdotes alone cannot provide an independent basis for setting a goal. At least one lower court has missed this point. In dicta, the Third Circuit suggested that “anecdotal evidence alone may, in an exceptional case, be so dominant or pervasive that it passes muster under Croson.”*

This court held that Richmond’s MBE/WBE program was unconstitutional and violated the Equal Protection Clause. Subsequently, the court determined that anecdotal evidence demonstrating a disparity needs to be supported by statistical analysis.

After the ruling in the *Croson v Richmond* case Dr. Ian Ayers wrote an article entitled “When Does Private Discrimination Justify Public Affirmative Action.” In this article, Ayers states that,

*“[The] Third Circuit missed a crucial point: Anecdotal evidence of discrimination may be compelling, but it provides no basis for selecting a percentage target for a racial preference program; it cannot satisfy the narrow-tailoring requirement. Of course, this narrow-tailoring critique of anecdotal evidence does not apply to an already existing program that was enacted (or justified after enactment)”<sup>130</sup>*

In addition to Ayers also states that, “Affirmative action in federal procurement is not a means to make up for opportunities minority-owned firms may have lost in the private sector [and that]... Rejecting private discrimination as a rationale for public affirmative action has ramifications far beyond the provision of concert space. Limiting public affirmative action to remedying discrimination by the government itself may eviscerate affirmative action in federal contracting.” Ayers argued that the *Croson* ruling does not adequately define what types of discrimination the programs are intended to address. Ayers offers three explanations “for using evidence of private discrimination to narrowly tailor affirmative action in government procurement, which for convenience we label as the *causal, but -for,* and *single-market justifications.*”

The “Causal Justification” is based on the government's compelling interest in ensuring that its spending does not cause private discrimination. The causal justification was implicitly embraced by *Croson*’s “passive participant” discussion:

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<sup>130</sup> Ayres, I., & Vars, F. E. (1998). When does Private Discrimination Justify Public Affirmative Action? *Columbia Law Review*, 98, 1577–1641.

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*“[I]f the city could show that it had essentially become a "passive participant" in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the city could take affirmative steps to dismantle such a system. It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.”*

The casual justification gives the state the power to implement affirmative action on behalf of discriminatory subcontractors, bolstered by a history of passive discrimination.

The second justification outlined in the article is the “But- for” Justification. In essence, governments can participate in passive discrimination, “The government is a passive participant in private discrimination when it does not adjust its affirmative action goal to account for how private discrimination has reduced minority availability-i.e., reduced the number of minority firms that are ready, willing, and able to perform.” The "passive participant" theory suggests that the government would be justified in changing its procurement criteria so that it would purchase as much from minority firms as it would, but for private discrimination. In standard terms, this would mean making a ““but-for’ adjustment to increase the estimate of available minority firms to what it would be absent private discrimination.”<sup>100</sup>

Ayers also outlines the “single- market” justification. This justification states that, “the government can remedy shortfalls in private purchasing only when the firms disadvantaged by the government's affirmative action were likely beneficiaries of the private discrimination.” This principle implies that the government cannot use affirmative action in one market to remedy discrimination in another. When purchasing a particular product, the government should be able to remedy private discrimination against sellers of the same product. The but-for adjustment does just this to remedy shortfalls in government purchasing; the single-market justification expands the procurement remedy to correct for shortfalls in private purchasing.”

## DISPARITY STUDY CASE LAW DIGEST, BY TARA KALAR

Many lower courts have scrutinized race preference programs and have wrestled with the strict scrutiny standard that ultimately informs disparity study methodology. The cases are summarized below by jurisdiction and date. While only Supreme Court, Third Circuit and New Jersey cases are binding and mandatory authority, it is helpful to note the disparity between the other Circuits and the lack of clarity regarding whether the programs are narrowly tailored and/or whether the governmental interest is compelling. The cases represent highlights in the law but are not intended to be an exhaustive list.

### **Binding Authority**

#### **Supreme Court**

*United States v. Paradise*, 480 U.S. 149 (1987)

The NAACP filed suit challenging an Alabama Department of Public Safety program where a promotion was given to a qualified African American for every white candidate that was promoted. The Supreme Court held that the program was narrowly tailored and necessary to eliminate pervasive discrimination.

*Fullilove v. Klutznick*, 448 U.S. 448 (1980)

The Plaintiffs consisted of several associations of construction contractors and subcontractors who filed suit alleging economic injury due to the 1977 spending bill that required a 10% set-aside program for public work expenditures. The District Court upheld the constitutionality of the program and the Court of Appeals affirmed.

The Supreme Court held that the minority set-aside program was a legitimate exercise of congressional power, and that under the particular facts at issue, Congress could pursue the objectives of the minority business enterprise program under the Spending Power. The Court also noted that the program could be justified under the Commerce Clause.

*Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville*, 508 U.S. 656 (1993)

An association of general contractors sued the City of Jacksonville to enjoin a city ordinance that awarded preferential treatment to minority-owned businesses in city contracts. The United States District Court for the Middle District of Florida granted a preliminary injunction prohibiting enforcement of the ordinance and the association appealed. The Court of Appeals for the Eleventh Circuit reversed and remanded. (896 F.2d 1283). The District Court granted a permanent injunction on remand. The Court of Appeals vacated and remanded. (951 F.2d 1217).

The Supreme Court held that the association had standing to sue under the equal protection clause even if the association did not prove that the contractors could have been awarded a contract.

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*Grutter v. Bollinger*, 539 U.S. 306 (2003)

The Plaintiffs challenged the affirmative action policy of the University of Michigan Law School that favored underrepresented minority groups in admissions policies.

The Supreme Court found the policy to be constitutional because the admissions process also took into account many other individualized factors and was not a quota system.

*Fisher v. University of Texas*, 133 S.Ct. 2411 (2013)

The Plaintiff challenged an affirmative action policy that gave preferential treatment to racial minorities in admissions policies. The District Court for the West District of Texas held that the decision to consider race as one factor in the admissions process was supported by a compelling government interest and was narrowly tailored. (645 F.Supp.2d 587). The Fifth Circuit on appeal upheld the decision of the lower court finding that critical mass had not been reached in order to invalidate the policy. (631 F.3d 213). A petition for rehearing *en banc* was denied. (644 F.3d 301).

The Supreme Court granted certiorari and vacated and remanded the Fifth Circuit's ruling. (133 S.Ct.2411). The Court concluded that the Fifth Circuit failed to apply strict scrutiny in its decision and that the burden of production rests with the university to prove that its policy was narrowly tailored. Further, the Court held that the University must prove that race neutral alternatives to a race-conscious program did not suffice.

On remand, the Fifth Circuit upheld the decision in favor of the University. (758 F.3d 633). The Fifth Circuit denied rehearing *en banc*, (771 F.3d 274), and the plaintiff again petitioned for certiorari to the Supreme Court. Proponents of affirmative action worry that this case will overturn the legality of affirmative action policies.

### Third Circuit Court of Appeals

*Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990 (3rd Cir. 1993) (Philadelphia II).

An association of construction contractors filed suit challenging, on equal protection grounds, a city ordinance that established a set-aside program for “disadvantaged business enterprises” owned by minorities, women, and handicapped persons. The United States District Court for the Eastern District of Pennsylvania (735 F.Supp. 1274) granted summary judgment for the contractors (739 F.Supp. 227) and denied the city's motion to stay the injunctive relief. The City appealed. The Court of Appeals, (945 F.2d 1260) affirmed in part and vacated in part. On remand, the District Court again granted summary judgment for the contractors. The city appealed. The Court of Appeals held that: (1) the contractors had standing, but only to challenge the portions of the ordinance that applied to construction contracts; (2) the city presented sufficient evidence to withstand summary judgment with respect to the race and gender preferences; and (3) the preference for businesses owned by handicapped persons was rationally related to a legitimate government purpose and, thus, did not violate equal protection.

The Third Circuit affirmed in part, vacated in part, reversed in part and remanded, with the effect of an injunction on the program. In *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 91 F.3d 586 (3rd Cir. 1996) (Philadelphia III), the city appealed and the Court held

that there was no compelling government interest to justify a race-based program and that the program was not narrowly tailored to address past discrimination. The Supreme Court denied certiorari. (91 F.3d 586).

### **Persuasive Authority**

#### **Fourth Circuit Court of Appeals**

*H. B. Rowe, Inc. v. Tippett*, 615 F.3d 233 (2010)

H.B. Rowe Company challenged North Carolina's M/WBE program that established a non-mandatory, project-specific goal for the utilization of M/WBEs on state road construction projects. North Carolina waived the goal if the contractor was able to demonstrate good faith efforts. H.B. Rowe bid on a project but did not meet the project-specific goal and did not attempt to make a good faith effort. The District Court held that the M/WBE program was constitutional, (589 F.Supp.2d 587).

The Fourth Circuit then upheld the program as to its application to African American and Native American subcontractors but remanded as to women, Asian Americans and Hispanic subcontractors.

#### **Sixth Circuit Court of Appeals**

*Associated General Contractors of America, et al. v. City of Columbus, et al.*, 936 F.Supp. 1363 (S.D. Oh., August 26, 1996), *vacated* 172 F.3d 411 (6th Cir. 1999).

This case was originally brought by the Associated General Contractors of America for the Central Ohio Division in an earlier action. (936 F.Supp.1363 (S.D. Oh. (1996)) (*Columbus I*)). The plaintiffs alleged that the ordinance enacted by the City that awarded a percentage of the dollar amounts of subcontracts to minority and women owned firms was unconstitutional. In 1991, the City suspended the program and commissioned a study to determine a basis for a remedy. Based on that study, the City enacted a new ordinance that assisted minority and women owned firms in City contracting and petitioned the District Court to release the injunction allowing the new program to move forward. In response, the District Court held that the new ordinance did not have a compelling government interest and was not narrowly tailored.

The Sixth Circuit on appeal vacated the decision and remanded for dismissal because the ordinance had not yet taken effect.

#### **Seventh Circuit Court of Appeals**

*N. Contracting, Inc. v. Illinois*, 473 F.3d 715 (7th Cir. 2007)

Northern Contracting, Inc. brought suit against the state transportation agency alleging that the federal DBE program violated the Equal Protection Clause. The District Court held the program constitutional, (2005 WL 2230195 (N.D.Ill. 2005)), and the company appealed.

The Seventh Circuit held that the state did not exceed its authority in implementing the program, the program had a compelling government interest and was narrowly tailored. Notably, the court held that a state is insulated from a constitutional attack absent a showing that the state exceeded its federal authority.

### **Eighth Circuit Court of Appeals**

*Sherbrooke Turf, Inc. v. Minnesota Dep't of Transp.*, 345 F.3d 964 (8th Cir. 2003)

Sherbrooke Turf, Inc. brought suit against the state transportation agency alleging that the program violated the Equal Protection Clause. The District Court granted the state's motion for summary judgment and denied the plaintiff's cross-motion for a preliminary injunction and summary judgment. Sherbrooke appealed to the Eighth Circuit Court of Appeals. The Circuit Court consolidated this case with *GrossSeed Co. v. Nebraska Dept. of Roads*, 345 F.3d 964 (8th Cir. 2003), *cert. denied* 124 S.Ct.2158 (2004).

The Eighth Circuit affirmed the constitutionality of the DBE program and certiorari to the Supreme Court was denied. (124 S.Ct. 2158).

### **Ninth Circuit Court of Appeals**

*Associated General Contractors of California, Inc. v. Coalition for Economic Equity, et al.*,

950 F.2d 1401 (9th Cir. 1991), *cert. denied* 112 S. Ct. 1670 (1992). The plaintiffs challenged the San Francisco MBE ordinance on constitutional grounds. The plaintiffs moved for a preliminary injunction that was subsequently denied by the Court and the plaintiffs appealed.

The Ninth Circuit held that San Francisco's statistical analysis supported an inference that established a compelling governmental interest; the utilization relative to the availability of M/WBE firms demonstrated a large disparity and viewed in concert with anecdotal evidence supported a compelling government interest for the M/WBE program. The Supreme Court denied certiorari.

*Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991), *cert. denied*, 112 S. Ct.

875 (1992). Coral Construction Company sued King County to enjoin enforcement of the County's MBE program. The District Court found a compelling interest in the MBE program based on evidence of discrimination in the contracting marketplace and found the program to be narrowly tailored. Coral Construction appealed.

The Ninth Circuit Court of Appeals reversed and remanded to allow the disparity study to be scrutinized. The case then settled.

*W. States Paving Co. v. Washington State Dep't of Transp.*, 407 F.3d 983 (9th Cir. 2005)

The plaintiff was a non-minority subcontractor who brought an action against the state, county and city alleging discrimination violation of the Equal Protection Clause. The District Court granted summary judgment for the state and the plaintiff appealed.

The Ninth Circuit held that the program had a compelling government interest under the Transportation Equity Act (TEA) and that the program was narrowly tailored. Specifically, the Court looked to the durational limits placed on the program, the relationship of the proposed utilization to relative availability of minority firms to determine that the program was narrowly tailored. However, the Court held that complying with the TEA was not sufficient to meet the narrowly tailored requirement and further that general claims of societal discrimination cannot be used to justify race-conscious remedial measures. The Court further held that a state DBE



program can be subject to an as-applied constitutional challenge, despite the facial validity of the federal program. The Supreme Court denied certiorari, (407 F.3d 983). The District Court on remand upheld the program. (2006 WL 1734163).

### **Tenth Circuit Court of Appeals**

*Concrete Works of Colorado, Inc. v. City and County of Denver*, 823 F.Supp. 821 (D. Colo. 1993) (*Concrete Works I*); *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513 (10th Cir. 1994) (*Concrete Works II*); *Concrete Works of Colorado, Inc. v. City and County of Denver*, 86 F.Supp.2d 1042 (D. Colo. 2000) (*Concrete Works III*); *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950 (10th Cir. 2003) (*Concrete Works IV*), *cert. denied*, 540 U.S. 1027 (2003).

Concrete Works was a prime contractor that sued the City of Denver alleging that the M/WBE ordinance was unconstitutional. The contractor lost contracts with the City due to its failure to comply with the subcontracting goals set at 16 percent for MBE subcontractors and 12 percent for WBEs. The District Court granted the City's motion for summary judgment holding the ordinance constitutional under *Croson*. The Court accepted that the City's evidence that included federal studies, anecdotal evidence, city council minutes, census data and statistical analysis adequately satisfied strict scrutiny. The District Court denied the plaintiff's motion for summary judgment.

Concrete Works appealed to the Tenth Circuit Court of Appeals. The Court reversed and remanded, unconvinced that the evidence supported a disparity. On remand, the District Court held that the programs were not supported by a compelling governmental interest and that the City did not first utilize race neutral alternatives.

The City appealed and the Ninth Circuit reversed the District Court decision, finding that the ordinance was tailored to groups based on a valid statistical analysis of discrimination in the private sector. (*Concrete Works III*)

### **Eleventh Circuit Court of Appeals**

*Cone Corporation v. Hillsborough County*, 5 F.3d 1397 (11th Cir. 1993), 1994 WL 371 386 (M.D. Fla., July 8, 1994). This case was brought challenging the constitutionality of the County Resolution that granted race and gender preferences in construction contracts. The District Court granted a preliminary injunction against the M/WBE program, (723 F. Supp. 699) and the injunction was later made permanent (730 F. Supp. 1568).

The County appealed and the Eleventh Circuit reversed and remanded the case for the District Court to analyze the evidence underlying the program. (908 F.2d 908). The plaintiff petitioned for certiorari and the Supreme Court denied the petition. The County then filed a motion to dismiss and the District Court dismissed the lawsuit finding that future economic harm did not give the plaintiff standing (777 F. Supp.1558). The Eleventh Circuit Court of Appeals affirmed. (983 F.2d 784). There was further case law ultimately giving plaintiff's attorneys opportunities to amend the complaint; they were unsuccessful and faced Rule 11 sanctions (1994 WL 371386).

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

This case was brought by a group of construction trade associations to challenge Dade County's M/WBE program that gave preference to African American, Hispanic and women on construction contracts. The District Court found that the program violated the Equal Protection Clause because there was not a strong basis in evidence to establish a compelling government interest that was narrowly tailored. The Ninth Circuit affirmed the lower court's decision.

### **District of Columbia Circuit Court of Appeals**

*O'Donnell Construction Co. v. District of Columbia*, 762 F. Supp. 354 (D.D.C. 1991), *rev'd*, 295 U.S. App. D.C. 317, 963 F.2d 420 (D.C. Cir. 1992), *on remand*, 963 F. Supp. 420 (D.D.C., 1992).

The plaintiff sued challenging the constitutionality of the D.C. MBE and DBE programs. The District Court denied the plaintiff's motion for a preliminary injunction (762 F. Supp. 354) and the plaintiff appealed.

The D.C. Circuit Court of Appeals granted the injunction finding that the defendant was unlikely to succeed based on allegations of societal discrimination. On remand, the District Court upheld the decision ruling that the statistical evidence was insufficient to support a compelling government interest.

*DynaLantic Corp. v. U.S. Dep't of Def.*, 885 F. Supp. 2d 237 (D.D.C. 2012)

A small business brought suit against the Department of Defense alleging that the Small Business Administration program that permitted the federal government to limit contracts to socially and economically disadvantaged businesses was unconstitutional. The District Court held that the program was not enacted with a compelling government interest; there was no evidence of discrimination in small business contracting for military and defense contracting. The Court also looked at five elements of narrow tailoring: (1) the efficacy of alternative, race-neutral remedies, (2) flexibility, (3) over- or under-inclusiveness of the program, (4) duration, (5) the relationship between numerical goals and the relevant labor market, and (6) the impact of the remedy on third parties. The Court concluded that the program was constitutional on its face but enjoined the use of the program as it related to military simulators. The District of Columbia Circuit Court of Appeals then dismissed the appeal. 2013 WL 4711715.

### **Illinois District Court**

*Midwest Fence Corp. v. U.S. Dep't of Transp.*, 2011 WL 2551179 (N.D. Ill. 2011)

The plaintiffs brought suit against the U.S. DOT and Illinois DOT and others alleging that the DBE program was unconstitutional. The District Court upheld the program.

The plaintiff sued the defendants in another action. The District Court denied the plaintiff's motion to exclude the opinion of Jon Wainwright. (2014 WL 322059). On the merits of the case, the District Court held that the contractor had standing to challenge the program, that the contractor's expert was qualified to give statistical opinions and that the program had a narrowly tailored compelling interest. (2015 WL 1396376). An appeal was filed to the Seventh Circuit Court of Appeals; however, the case has yet to be heard.

### **Maryland District Court**

*Associated Utility Contractors v. City of Baltimore*, 83 F.Supp.2d 613 (D. Md., Feb. 16, 2000) and 218 F.Supp.2d 749 (D. Md., Sep.9, 2002)

The Baltimore City Ordinance establishing a set-aside of M/WBEs was challenged by a group of general contractor associations. The District Court granted partial summary judgment enjoining the ordinance. The Court did not resolve whether there was sufficient evidence to demonstrate a compelling government interest; the City filed an appeal to the Fourth Circuit challenging the District Court's opinion. The Court held that the City did not provide any evidence that a disparity study was conducted prior to enacting the ordinance. The City then conducted a disparity study and enacted a new ordinance. The contractors group again challenged the ordinance and the District Court denied the City's motion to dismiss, however, the parties later settled before the case was decided.

### **Minnesota District Court**

*Geyer Signal, Inc. v. Minnesota Dep't of Transp.*, 2014 WL 1309092 (D. Minn. 2014), *appeal dismissed* (8<sup>th</sup> Cir. June 2014)

The plaintiffs in Geyer alleged that the Minnesota Department of Transportation's DBE program was unconstitutional, specifically, that the traffic control industry was too over-concentrated and placed a burden on their company. The District Court held that the program had inherited a compelling government interest and that the state agency was implementing the program in a narrowly tailored manner. The overconcentration argument rested on the plaintiff's ability to show that the program was unconstitutional on its face and never had a utility; the Court held that the plaintiff had not met that burden. Ultimately, the DBE program was upheld as constitutional. The defendants appealed and the Eighth Circuit Court of Appeals dismissed the appeal.

*C.S. McCrossan Const., Inc. v. Minnesota Dep't of Transp.*, 946 F. Supp. 2d 851 (D. Minn. 2013)

The prime contractor filed action against Minnesota Department of Transportation, asserting that MnDOT had violated federal law and its constitutional rights by rejecting its proposal and selecting another bidder for partially federally funded highway construction project. MnDOT did not award the contract to McCrossan because it did not make good faith efforts to meet DBE goals for subcontractors. The District Court denied the plaintiff's motion for preliminary injunction.

### **Montana District Court**

*Mountain W. Holding Co. v. Montana*, 2014 WL 6686734 (D. Mont. 2014)

The prime contractor plaintiff brought suit seeking to enjoin the DBE program. The District Court held that consistent with Moving Ahead for Progress in the 21st Century Act ("MAP-21") the state had a compelling government interest in the DBE program that is narrowly tailored to only benefit those who have been the recipients of discrimination.

### Texas District Court

*Bilbo Freight Lines, et al. v. Dan Morales, et al.*, C.A. No. H-93-3808 (S.D. Tex., Feb. 3, 1994). The plaintiffs challenged a provision that gave preference to minorities and women to provide trucking services. The District Court found that women and minorities were underrepresented in the trucking industry but granted an injunction due to insufficient evidence that linked the underrepresentation to the remedy.

*Houston Contractors Association v. Metropolitan Transit Authority of Harris County*, Case No. H-93-3651 (S.D. Tex., November 13, 1997). Houston Contractors Association challenged the constitutionality of Metro's DBE program. In an outlier decision, the Court ruled that the government cannot enact such a measure and prohibited the governmental entity from collecting further statistics to support a program.

*Rothe Development Corporation v. U.S. DOD, et al.*, Civil Action No. SA-98-CV-1011-EP (W.D. Texas 1999).

The ordinance challenged in this case set a goal of five percent inclusion of economically and socially disadvantaged businesses in Department of Defense contracts. The District Court granted summary judgment to the Department finding the program to have a narrowly tailored compelling government interest.

# REVIEW OF POLICIES AND PROCEDURES, BY TARA KALAR

## REVIEW OF POLICIES AND PROCEDURES

This chapter focuses on New Jersey Transit policies and procedures that underlie the procurement of construction, goods and services in effect now and during the study period. This study examines the policies and procedure of the New Jersey Transit Capital Programs, New Jersey Transit Procurement Department, and the New Jersey Transit Office of Business Development. The purpose of this chapter is to provide a backdrop for the larger picture; the policies and procedures of New Jersey Transit should facilitate the inclusion of Disadvantaged Business Enterprise (DBE) participation, however, the policies or procedures may contribute to passive or active discrimination. *Coral Constr.*, 941 F.2d at 922 (citing *Croson*, 488 U.S. at 492).

## METHODOLOGY

First, the New Jersey Transit contracting and purchasing policies and procedures in effect for the study period were collected, reviewed, and summarized. The policies and procedures reviewed are described in the table below and limited to what New Jersey Transit provided. From a cursory review of the policies and procedures provided, a questionnaire was developed that inquired about the application of policies, discretionary use of policies, exceptions to written policies and procedures and the impact of policies on end users. Interviews with key New Jersey Transit staff and management were conducted and from there, the policies and procedures analyzed in depth below. The meeting minutes from the public meetings were reviewed and it was determined that this review remains unchanged in light of the comments.

### Policies Reviewed

Appendix A—Subcontractor Evaluation (General Provisions)  
Subcontractor Information Data Form  
Appendix B—Closeout Forms  
CP4 RFPs and IFPs  
CP4 Section 3: General Administration  
CP4 Section 13: Construction Procurements  
UPDTD NJT DBE PROG PLAN 09.27.12 FINAL  
NJUCP—Standard Operation Procedures  
Standard Operation Procedures for DBE Certification 2–27–14  
Chapter 72: New Jersey Transit Procurement Policies and Procedures  
New Jersey Transit Procurement Manual  
By-Laws of the New Jersey Transit Corporation 11–13–2002

### Office

Capital Planning  
Capital Planning  
Capital Planning  
Capital Planning  
Capital Planning  
Capital Planning  
Office of Business Development  
Office of Business Development  
Office of Business Development  
Procurement  
Procurement  
All

### INTRODUCTION

New Jersey Transit Corporation (NJT) is governed by the Board of Directors that consists of the Commissioner of Transportation, the State Treasurer and the Director of the Governor's Authorities Unit, who are members ex officio, and four unpaid public members appointed by the Governor. The Commissioner of Transportation serves as Chair of the Board.

The Board of Directors sets New Jersey Transit's budget and is required to approve the following procurement actions:

1. Contracts or purchase orders of \$1,000,000 and above if awarded pursuant to competitive bidding procedures and as required by Article VI, Section 3 of the New Jersey Transit By-Laws.
2. Contracts or purchase orders of \$250,000 and above if awarded pursuant to Board approved competitive procurement policies other than competitive bidding;
3. Contracts or purchase orders of \$250,000 and above if awarded pursuant to sole source procedures permissible under law and Board approved procurement policies.

Generally, New Jersey Transit's expenditures fall into two categories:

1. Operating—expenses associated with the daily running of buses and trains, maintenance and administration. Funding for operating expenses comes from three sources: fare box revenues, state appropriations, and other income generated from advertising, leases/permits, contract services and investment income.
2. Capital—expenses associated with the purchase of equipment, services, and construction or repair of facilities. Capital funding comes primarily through Grants from the Federal Transit Administration (FTA) and local grants from State and regional sources. The principal sources of local grants are State Bond funds, Transportation Trust funds, and Port Authority of New York and New Jersey funds. Funding is sometimes received from other Federal and State sources, including the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA) and Homeland Security Funds.

Request for Proposals (RFPs) are allowable if the services or items to be procured do not allow for the formulation of specifications upon which the basis for award can be strictly priced and the procurement is in excess of \$36,000. Emergency contracts may be awarded by the Board for contracts over \$500,000 as long as the Chairperson is consulted.

### **Capital Programs and Planning Policies and Procedures**

Capital Planning is responsible for developing and planning the construction projects before dispensing the project to New Jersey Transit's Procurement and Business Development offices before being let. Capital Programs is comprised of project managers, construction managers, and engineers. This office is also responsible for designating the funding source for a project; federal or state funding is generally available for New Jersey Transit projects.

Capital Programs is guided by the "CP4" manual that is an internal document written to comply with Federal Transit Administration (FTA) standards. It was originally drafted in 2002 and subject to frequent revisions. The CP4 document in whole was not provided for analysis in this



project; excerpts were provided regarding RFPs and IFBs, Section 3 regarding General Administration and Section 13 regarding Construction Procurements. The CP4 document is available on the New Jersey Transit intranet and can be edited by internal users without board approval.

### ***Capital Programs Planning Process***

The New Jersey Transit Board holds an annual meeting to adopt a final budget that includes appropriating funds for public transportation purposes. *Bylaws of the New Jersey Transit Corporation, Section 4*. Special and Emergency Meetings can also be held as needed to discuss construction projects, among other things. *Bylaws of the New Jersey Transit Corporation, Sections 5 and 6*. Further, the Capital Planning, Policy and Privatization Committee meets to review and monitor the status of capital projects in the five year capital program. *Bylaws of the New Jersey Transit Corporation, Section 11*. New Jersey Transit's contracting ability is established by the bylaws.

After the Board has met and determined construction projects for the fiscal year, the Capital Programs department will consider one of two methods for project delivery: 1) the design/bid method; or 2) the design/build method. The design/bid method is the "Traditional Project Delivery" for New Jersey Transit per NJT CP4 Section 13.05. In a design/bid project New Jersey Transit will design the project utilizing in-house engineers and release the project for prime contractors to bid on the construction of the project. This process may also provide for the unbundling of projects thereby providing greater potential access to such projects by DBEs for bidding and contract procurement purposes.

In a design/build project, the entire project will be released to a prime contractor capable of both designing and completing the build. See NJT CP4, Section 13.06. According to Capital Programs staff and management, federal spend deadlines will often dictate that the project be design/bid because the process is generally faster than design/build. The Capital Programs staff report that the decision between design/bid and design/build is almost always decided by time and not due to the availability of DBEs to perform the requested work.

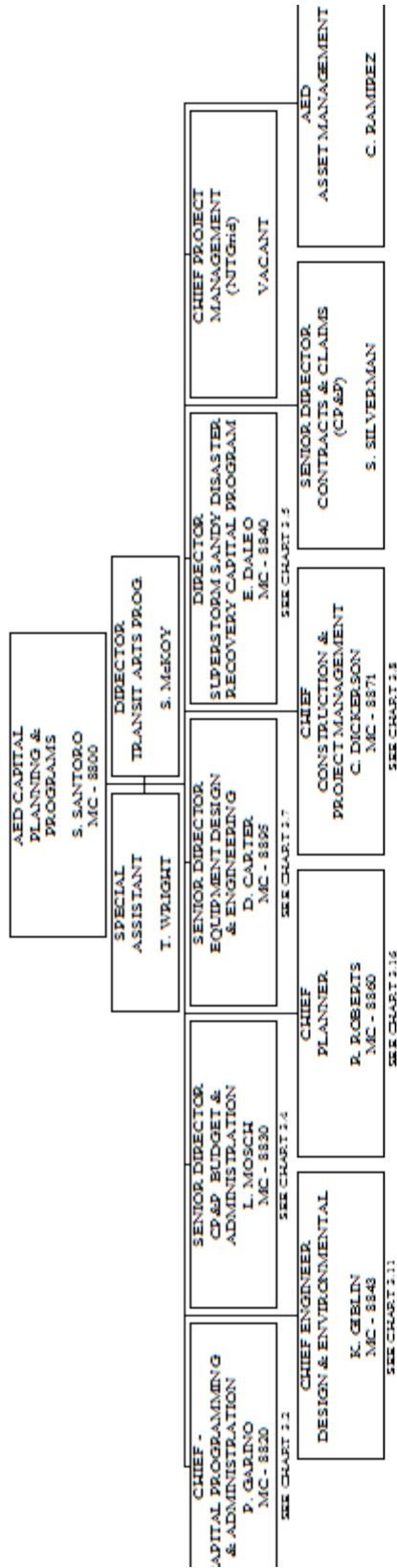
After it is determined whether the project is design/bid or design/build, the project manager will define the scope of work, project timelines (CP4 Section 3.05), determine insurance requirements (CP4 Section 3.06) and assemble the bid package including:

- A. Invitation for Bid, Pre-Award General Provisions;
- B. Bid Form or Bid Proposal Sheet;
- C. Special Provisions;
- D. General Provisions;
- E. Technical Provisions; and
- F. Construction Plans.

# NJ TRANSIT Disparity Study Final Report Appendix

Capital Programs is organized as follows:

**NJ TRANSIT**  
The Way to Go.  
**CAPITAL PLANNING & PROGRAMS**  
NOVEMBER 17, 2014



Per the CP4 manual, the project manager then asks Procurement if the bid will be electronically let. BidExpress was implemented by New Jersey Transit on November 30, 2009 in an effort to promote greater efficiency and standardization and applied to state contracts only, although bids on federally funded New Jersey Transit construction projects will follow. The BidExpress program applies to goods and services, BidEx applies to construction, and RFPs are accomplished in paper.

The project manager will also work with the Office of Business Development (OBD) prior to public advertisement to develop DBE and SBE goals. CP4 Section 3.07. OBD staff indicated that this procedure is not routinely followed. OBD reports that Capital Programs will provide a list of federal projects versus providing a full list of work that could include sole source, task orders or Procurement by Exception (PBE) that lend themselves to DBE participation. Further, the 2013 FTA Goals Report submitted by the University of Minnesota, Twin Cities, Roy Wilkins Center for Human Relations and Social Justice, in establishing the 2013–2015 NJT DBE Goals recommended unbundling contracts in order to foster increased DBE participation. OBD is generally tasked with identifying contracts that could be subject to unbundling. The policies and procedures dictate that the full landscape of contracts be provided to the Office of Business Development, including sole source contracts, task orders and PBEs, and with enough time for the Office of Business Development to participate in a meaningful way.

Capital Programs will work with contractors to prequalify for a project. CP4 Section 13.04. Prequalification of contractors for capital projects is based upon the character or amount of work or both for which they are allowed to bid. See New Jersey Transit Procurement Policies and Procedures, 16:72–2.4. In order to be prequalified, a contractor must meet the qualifications of a “Responsible contractor” as set forth below. Capital Programs along with the Procurement Office are the divisions within NJT that evaluate these factors in determining whether a firm is classified as prequalified. It is noteworthy that prequalification standards have not been amended since 1996. See 28 N.J.R. 1358(b), 28 N.J.R. 2566(b).

Under prequalification classification it is “Responsible Contractors” that are utilized. A “Responsible Contractor” as defined by New Jersey Transit Procurement Policies and Procedures, 16:72-1.5, is one who meets the following standards:

1. Has adequate financial resources, or the presently identifiable ability to obtain such resources as required during the performance of the contract, if adequate security is not otherwise furnished.
2. Is able to comply with the required or proposed delivery or performance schedule.
3. Has a satisfactory record of performance or the equivalent.
4. Has a satisfactory record or reputation of integrity.
5. Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
6. Has the necessary organization, experience, operational controls and technical skills, or the ability to obtain them.
7. Has the necessary production, construction and technical equipment facilities, or the ability to obtain them.

## **NJ TRANSIT Disparity Study Final Report Appendix**

If a contractor's application satisfies these factors, then it shall receive a Notice of Classification Letter that indicates its Prequalification Classification and Rating; a status that is valid for thirty-six months from receipt of the letter.

Bonding and capacity are not used to determine eligibility for pre-qualification. Capital programs uses the form Appendix A to collect Subcontractor information and weigh eligibility to prequalify. As stated above, prequalification is also the purview of the Procurement Office. As such, it is not readily apparent from the various policies and procedures reviewed who dictates who or when the prequalification determination is made.

### ***FTA Sub-recipient Projects***

The FTA awards New Jersey Transit funding for various projects that are completed by local governmental agencies and are essentially "pass-through" projects for New Jersey Transit. Capital Programs does not design or prepare bid packages for sub-recipient projects. However, the project manager is tasked with coordinating a DBE subcontracting goal for ALL sub-recipient projects prior to advertising to bidders with OBD. See CP4 Section 3.07.1.

### ***Buy America***

Because New Jersey Transit utilizes FTA federal funds in its projects, Capital Programs is also obligated to comply with the "Buy America" Program. "Buy America" requirements are set forth in Section 165 of the federal Surface Transportation Act of 1982, and the FTA regulations implementing Section 165 (49 C.F.R., Part 661). 49 C.F.R. § 661. The Buy America provisions were implemented to ensure that transportation infrastructure projects are built with American-made iron, steel, and manufactured products. 49 C.F.R. § 661.5. Prior to award of any USDOT-funded contract that does not meet Buy America requirements, New Jersey Transit must seek and receive a waiver of the requirements from the Secretary of Transportation. Waivers may be granted only in the following circumstances:

- a. The Buy America requirements would be inconsistent with the public interest (waivers are rarely granted on this basis);
- b. The steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality (typically demonstrated by the receipt of no Buy America-compliant bid);
- c. When procuring rolling stock (including train control, communication, and traction power equipment) under this chapter—
  - 1) The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the rolling stock; and
  - 2) Final assembly of the rolling stock has occurred in the United States; or
  - 3) Including domestic material will increase the cost of the overall project by more than 25 percent.

Capital Programs reports that the Buy America program is difficult to comply with and prevents New Jersey Transit from efficiently letting projects. For example, at the Bayhead substation, there was an issue where the products in place were not produced in America and needed to be replaced after Hurricane Sandy. The products were not made by any other company in the United States. New Jersey Transit applied for an exception and the exception was not granted, leaving New Jersey Transit between a rock and a hard place. Staff and management report that an exorbitant amount of time was taken trying to comply or find a solution surrounding the Buy America program. A cursory review of the Buy America waivers produced limited substantive material; and although the FTA has granted a waiver in at least one instance in this jurisdiction, that context is not readily applicable to this analysis.<sup>131</sup>

### **Office of Business Development Policies and Procedures**

The Office of Business Development (OBD) facilitates participation of Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) firms in New Jersey Transit projects. The OBD staff assists firms with the bidding process, DBE certification and support, contract compliance, and outreach. The Office of Business Development is comprised of an Outreach and Certification Unit and a Contract Compliance Unit.

The Office of Business Development is guided by 49 C.F.R. 26, the implementing New Jersey Transit Disadvantaged Business Enterprise Program Manual, updated on May 31, 2012, Standard Operating Procedures for DBE Certification dated February 27, 2014 and the Bylaws of the New Jersey Transit Corporation. The NJT DBE Program Manual is consistent with 49 C.F.R. 26 and is updated periodically when there are changes, additions, revisions, or comments to 49 C.F.R. 26 or programmatic changes within NJT.

### ***DBE Certification, Recertification and Decertification***

The Office of Business Development Certification and Outreach team certifies DBEs in accordance to 49 C.F.R. 26 Subpart E. OBD has also developed Standard Operating Procedures for the DBE Certification Program. In order to qualify as a DBE a contracting firm must: 1) Be at least fifty-one percent (51%) owned by one or more socially or economically disadvantaged individuals; 2) Be an independent business, and one or more of the socially disadvantaged owners must control its management and daily operations; 3) Be an existing “for-profit business”; and 4) Have owners’ whose Personal Net Worth does not exceed \$1.32 million with regulatory exclusions (does not include your primary residence and ownership interest in the applying DBE firm). See NJT OBD “DBE Certification.”

Additionally, a “presumption of disadvantage” is rebuttably presumed for citizens of the United States or lawfully admitted permanent residents who are women, Black Americans, Hispanic Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found

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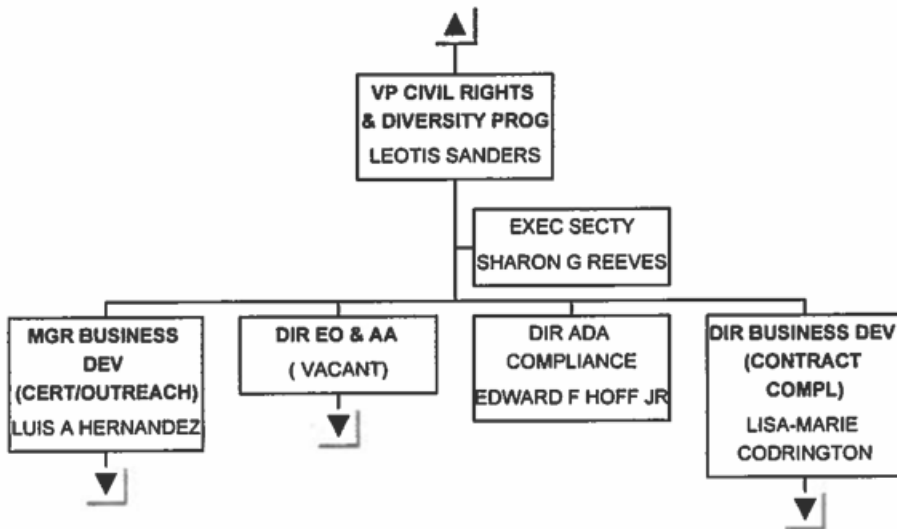
<sup>131</sup> The most relevant waiver referenced on USDOT, FTA, Waivers and Decision Letters, “Non-availability waiver for two prototype locomotives to be procured under a contract with Alstom Transportation Systems, Inc. NJT received two responsive and responsible offers to its Request for Proposals, both of which certified non-compliance with Buy America for the assembly of the prototype vehicles and compliance for the rest of the fleet.” Dated 09/19/2001, pre-dating the scope of this study and thus not examined in depth.

## NJ TRANSIT Disparity Study Final Report Appendix

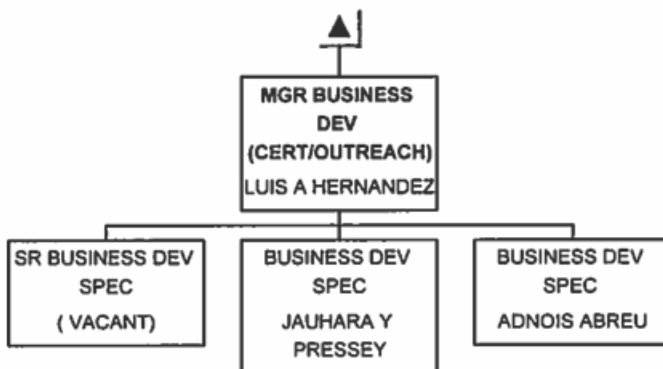
to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. See 29 C.F.R. §26.67(a) (1).

The Office of Business Development is organized as follows:

### VP CIVIL RIGHTS & DIVERSITY PROG

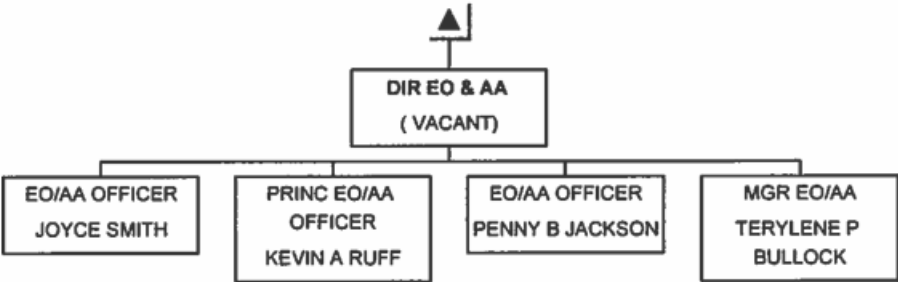


### MGR BUSINESS DEV (CERT/OUTREACH)

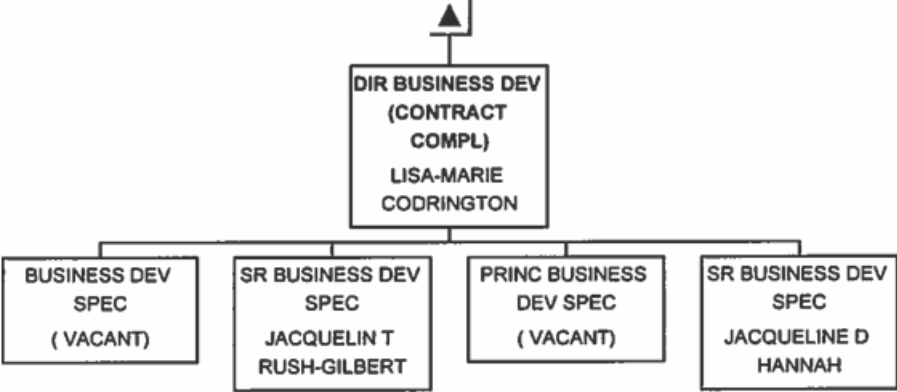




### DIR EO & AA



### DIR BUSINESS DEV (CONTRACT COMPL)



### *DBE Certification, Recertification and Decertification*

The Office of Business Development Certification and Outreach team certifies DBEs in accordance to 49 C.F.R. 26 Subpart E. OBD has also developed Standard Operating Procedures for the DBE Certification Program. In order to qualify as a DBE a contracting firm must: 1) Be at least fifty-one percent (51%) owned by one or more socially or economically disadvantaged individuals; 2) Be an independent business, and one or more of the socially disadvantaged owners must control its management and daily operations; 3) Be an existing “for-profit business”; and 4) Have owners’ whose Personal Net Worth does not exceed \$1.32 million with regulatory exclusions (does not include your primary residence and ownership interest in the applying DBE firm). See NJT OBD “DBE Certification”.

Additionally, a “presumption of disadvantage” is rebuttably presumed for citizens of the United States or lawfully admitted permanent residents who are women, Black Americans, Hispanic Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. See 29 C.F.R. §26.67(a) (1).

New Jersey Transit is one of three entities participating in the Unified Certification Program (UCP) that also includes the New Jersey Department of Transportation (NJDOT) and the Port Authority of New York and New Jersey (PANYNJ). Certification with any of the participating entities also qualifies the firm as a DBE with the other participating entities thereby providing reciprocity for the DBE amongst these three entities within their respective jurisdictions on a triennial basis. The UCP certification process is governed by the New Jersey Unified Certification Program Standard Operating Procedures which contain virtually identical certifying terms as New Jersey Transit’s Standard Operating Procedures; to comply with the UCP is to comply with NJT DBE certification processes and vice versa. The UCP maintains a database of certified DBEs.

The UCP partners also participate in interstate certification pursuant to 49 C.F.R 26.85(c). In order to be interstate certified in New Jersey, a firm must produce:

- A complete copy of the home state certification including all supporting documents;
- A copy of the current certification;
- Copies of the No Change Affidavits;
- Copies of correspondence or documents pertaining to interstate certification with other states than the home state, including de-certifications; and
- An affidavit of certification for out-of-state applicants.

The Certification and Outreach Unit handles initial application as well as annual reviews of DBE certification. In an initial application, the certification manager will determine the firm’s eligibility based on size, disadvantaged status and ownership and control criteria. Site visits are occasionally conducted. Each certified DBE firm is required to submit a “No Change” affidavit certifying that there is no effect on its ability to meet the size, disadvantaged status, ownership or control criteria of 49 C.F.R. 26. Appendix VI of New Jersey Transit’s DBE Program Manual provides an example of a “No Change” affidavit.

In the event that a firm grows too large to be eligible for DBE certification, OBD will deny recertification and/or address graduation from the program via written notification to the firm. However, the UCP has not developed a unified strategy for decertifying a firm. See NJT DBE Program Manual, Section 26.87.

OBD reports that there is currently a backlog of DBE certifications and that there is significant pressure to comply with the 90 day federal deadline to adjudicate applications. This backlog is consistent with the understaffing reported on the organization chart as many key positions are vacant.

### ***New Jersey Transit's DBE firm Development, Attraction and Attempted Retention***

Commencing in the fall of 2011, the NJT developed "DBE Certification Workshops": in an ongoing effort to attract further DBE participation in and procurement of NJT's federally funded contracts. These workshops are designed to provide information and support to small, minority and women-owned businesses seeking DBE certification. See NJT OBD "DBE Certification Workshops." These workshops are offered once a month at NJT headquarters and can be tailored to meet larger audiences and at different locations upon request provided sufficient notice. Firms interested in specially tailored presentations can contact NJT via email ([OBDDP@njtransit.com](mailto:OBDDP@njtransit.com); subject line: "Certification Workshops") to make such arrangements. *Id.*

Additionally, NJT has partnered with The Regional Alliance of Small Contractors of New York and New Jersey (RASC) to further this initiative in attracting DBE development. RASC is a non-profit that has over two decades of experience in small business support and development that works directly with NJT's OBD. A foundational mechanism of RASC is to provide comprehensive capacity building services to support utilization and participation of small, minority, women and disadvantaged businesses on NJT's projects. Furthermore, RASC offers training in software skills, bonding, project estimating, bookkeeping and marketing. Finally, RASC's are offered periodically throughout the year at NJT's headquarters.

Regarding NJT's efficacy in DBE retention, no specific data was available as to the quantitative retention of DBE's. Nonetheless, as provided for in Task 4 (see *infra*), NJT has expanded its stated objective to increasing the percentage of DBE procurement of NJT's federally funded projects for the period of October 1, 2013 (FFY 2014) through September 20, 2016 (FFY 2016).

### ***Eliminating Barriers to DBE Participation in NJT's Federally Funded Projects***

To date, NJT and its affiliates have provided limited specific protocols that facilitate the elimination of barriers to DBE participation in NJT's federally funded programs, NJT has stated publically that it is committed to the general goal of eliminating such barriers including but not limited to: a) slow payment cycles; b) discordant bid cycles; c) bonding requirements; and d) insurance. See NJT's "Disadvantaged Business Enterprise (DBE) Program Policy Statement" dated Oct. 1, 2014. Nevertheless, the NJT's Business Development Contract Compliance Units (BDCCU) has initiated as least some specific protocols whereby it routinely conducts unannounced site inspections to ensure that DBEs and SBEs are: 1) working on projects for they have been contracted; 2) Verifies prompt payment to DBEs and SBEs; and 3) Addresses other

## **NJ TRANSIT Disparity Study Final Report Appendix**

issues between prime contractors and DBE/SBE subcontractors. See NJT “Contract Support Services.”

### ***Establishing a DBE Goal***

New Jersey Transit must establish a DBE goal on a triennial basis on August 1<sup>st</sup>. See 49 C.F.R. 26.45. The Office of Business Development provides oversight in setting and complying with the goals. Section 26.38. The overall goal contains race-conscious and race neutral portions.

In order to maximize the race neutral portion of the overall DBE goal, the Office of Business Development must review capital projects forecast within a federal fiscal year to identify projects that lend themselves to small business set asides. These set-asides consist of prime construction or consulting projects below \$851 thousand dollars. Section 26.39. OBD will also review the Engineer’s Estimate to determine items that are typically subcontracted on similar prime construction or consulting contracts to establish race neutral small business set asides or contract goals for specific types of work. Section 26.39.

### ***DBE Compliance and Good Faith Efforts***

OBD verifies that the work being attributed to DBEs is in fact being performed by DBE firms. This is accomplished by Site Investigation Visits Section 26.37 and audits scheduled in coordination with the Auditor General. Payments to DBE subcontractors are captured in Form E Prime Contractor Monthly Payment Report by the seventh of each month. DBE subcontractors submit Form E2 DBE Subcontractor Monthly Payment Report by the seventh of each month. The two forms are reconciled in effect to determinate compliance with stated DBE participation on a qualifying construction project.

OBD is tasked with reviewing bids to determine if the bidder made a good faith effort to comply with DBE regulations. The bidder can demonstrate compliance by meeting the DBE goal or making good faith efforts as defined by 49 C.F.R. 26.53(a). Good faith efforts also apply when a DBE is replaced on a contract. 49 C.F.R. 26.53(f). OBD must approve of removal of a DBE prior to replacing the firm.

OBD reports that for a time, allowances were being utilized in contracts to count towards the DBE goal. However, contract allowances are not guaranteed work on a contract. For example, prime contractors would include asbestos removal as an allowance item. The use of a DBE asbestos removal company would necessarily turn on the prime contractor discovering asbestos in the course of the scope of work and requiring an allowance for asbestos removal. However, if no asbestos was uncovered, asbestos removal services would be unnecessary and there would be, in effect, no DBE participation on the contract. OBD reports that this issue has since been resolved and using DBEs as allowance items is no longer considered a good faith effort. The effect and extent of the impact on the DBE goal for the study period is unknown.

### **Procurement Department Policies and Procedures**

The Procurement Department oversees the contracting of services, vendors, purchase of supplies, equipment and materials for New Jersey Transit. The Procurement Department also handles

bidder prequalification. The Procurement Department consists of Contracting Officers, Procurement Representatives, Project Managers/Requestors/End Users and Business Development Representatives (also part of the Office of Business Development). The Procurement Department is responsible for taking any and all actions necessary to enable New Jersey Transit to enter into, and administer, procurement contracts. The Procurement Department's stated objectives are as follows:

1. To promote open, full, and free competition in the procurement of goods and services;
2. To procure quality goods and services in a reliable and timely manner at a reasonable cost;
3. To conduct NJ TRANSIT's business in a transparent manner with integrity, fairness and impartiality so as to maintain the trust and confidence of the public;
4. To make positive efforts to utilize small business enterprises (SBE's) and disadvantaged business enterprises (DBE's) as sources of supply and maximize their opportunity for participation in all contracts;
5. To require all contractors and subcontractors to take affirmative action in their employment and contracting practices to ensure that applicants and employees are not discriminated against based on race, color, religion, sex, sexual orientation or national origin and to comply with the Americans with Disabilities Act (ADA).

The New Jersey Transit Procurement policies and procedures are codified by a variety of authorities.<sup>132</sup> The New Jersey Transit Procurement Department relies on this authority as well as its own Procurement Manual. The Procurement Manual is available online and cannot be edited.

An organizational chart of staff was not provided for this study.

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<sup>132</sup> New Jersey Public Transportation Act of 1979, N.J.S.A. 27:25-1 et seq.; Section 11; New Jersey Public Law 1975, c. 127 (N.J.S.A. 10:5-31 et seq.) and Affirmative Action Regulations (N.J.A.C. 17:27); Set-Aside Act for Small Businesses, Public Law 1985, c. 384, N.J.S.A. 52:32-17 et seq; New Jersey Public Law 1999 c.440 (Amendment to Bidding Threshold, etc.); NJ TRANSIT Procurement Regulations, N.J.A.C. 16:72; New Jersey Public Law 1977, c.182 (Conflict of Interest Law); N.J.S.A. 34:11-56.25 et seq.(NJ Prevailing Wage Act); New Jersey Public Law 1997, c. 399 (Contracting for Professional Services); New Jersey Public Law 1999, c. 238 (Public Work Contractors Registration Act); New Jersey Public Law 2005, c. 271 (Disclosure of Political Contributions); New Jersey Public Law 2005, c. 336 (Communications with Bidders; Evaluation Committee Qualifications; Homeland Security Purchasing); New Jersey Public Law 2005, c. 379 (Prevailing Wages for State Building Service Contracts); New Jersey Public Law 2006, c. 96 (Prompt Payment Act); Executive Order No. 37 (2006) (Contracting Procedures and Sole Source Certification Requirements); New Jersey Public Law 2004, c. 57 (Business Registration); New Jersey Public Law 2005, c. 51 (Political Contributors Ineligible for Contracts) as extended by Executive Order No. 117 (2008); New Jersey Public Law 2005, c. 92 (Source Disclosure Certification)| Federal Transit Laws, 49 U.S.C. Chapter 53; 49 C.F.R. Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; 49 C.F.R. Part 26, —Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs; 49 C.F.R. Part 661, —Buy America Requirements; 49 C.F.R. Part 663, —Pre-Award and Post-Delivery Audits; 41 C.F.R. 60.1, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor —Obligations of Contractors and Subcontractors; FTA Master Grant Agreement; FTA Circular 4220.1F, Third Party Contracting Requirements, November 1, 2008, Revised April 14, 2009; FTA Best Practices Procurement Manual, as amended.

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Specifically, when a project is identified, Procurement will prepare the project for an Invitation For Bid (IFB) or Request for Proposal (Request for Proposal), depending on the circumstances. The Procurement Department is also involved in revenue contracts and p card purchases that do not generally involve DBE participation or compliance review.

### ***Bonding***

Procurement will also determine the level of bonding required on any project. Bonding is required of prime contractors only. Because the DBE program is generally a subcontracting program, bonding is not expressly required of DBEs although the prime contractor may require bond beyond stated requirements for the prime contractor.

### ***Insurance***

New Jersey Transit also requires that all contractors providing goods and services to New Jersey Transit carry sufficient insurance to protect NJ TRANSIT from third party lawsuits and property damage. The Procurement Department will determine the requirements for

- Comprehensive/General Liability Insurance
- 42 01/12
- Railroad Protective Liability Insurance
- Personal Injury Insurance
- Property Damage Insurance
- Professional Liability Insurance
- Builders Risk Insurance
- Workmen's Compensation and Disability Insurance
- Automobile Liability Insurance
- Excess Liability

### ***Bid Evaluation and Award***

When bids are received by New Jersey Transit in response to an IFB or RFP, the Procurement Department will evaluate the bids in a manner consistent with the Manual. Evaluating the bid generally entails tabulated the score associate with each required factor of the IFB or RFP. Bids can be accepted, rejected or subject to unique circumstances. In some instances, it would be appropriate for New Jersey Transit to let a contract where there was a single bidder. Where there is no responsive bid, New Jersey Transit could advertise the RFP or IFB. New Jersey Transit could also rejected all of this bids if certain criteria were not met and re-advertise. It is also possible for New Jersey Transit to reject an individual bid and award the contract to another contractor besides the low bidder. New Jersey Transit could also split the bid or award multiple contracts. All of these scenarios are governed by the Procurement Manual. If a contractor disputed the bid tabulation, the bidder can protest. Procurement responds to bid protests. When evaluating bids, Procurement will work with the Office of Business Development to determine good faith efforts in meeting the DBE goal and responsiveness to the IFB or RFP.



***Negotiating Contracts***

Procurement is also tasked with attaining the most favorable contract terms in the public interest. Therefore, the Procurement Manual details the criteria for negotiating terms and the terms that are not negotiable.

***Contract Administration, Modification and Disputes***

The Procurement Department is responsible for the life of the contract from negotiation through completion. This includes, but is not limited to, contract administration, modifying the contract when necessary, resolving disputes that arise out of contracts, determining compliance and completion, and directing payments.

# REVIEW OF RACE NEUTRAL PROGRAMS, BY TARA KALAR

## Consideration of Race Neutral Remedies

Courts have been increasingly trending towards requiring local governmental agencies or entities to consider race and gender neutral programs before requiring race conscious measures in order to be narrowly tailored. Race neutral approaches generally include programs such as:

1. Small Business Enterprise programs;
2. Local Business Enterprise programs;
3. Emerging Business programs;
4. Private sector loan assistance;
5. Increased access to centralized contracting systems such as bidder registration software;
6. Technical Assistance Referral Network;
7. Increased Outreach to Losing Bidders;
8. Bonding and Insurance Waivers or Assistance;
9. Procurement Process Reforms such as unbundling, elimination of prequalification requirements, prompt payment enforcement;
10. Commercial Non-Discrimination Policies With Enforcement Mechanisms; and
11. Outreach.

The District Court's decision in *Contractors Association of Eastern Pennsylvania*<sup>133</sup> interpreted distinguishing characteristics between race neutral and race conscious remedies. The City of Philadelphia had considered providing financial and technical assistance to minority contractors who needed assistance obtaining credit and a program that encouraged minority hiring. The City's position was that a "race-conscious" program necessarily selected one contractor over another and providing assistance to minorities was "race neutral." The Court interpreted *Croson* to view both of these programs as race-conscious and therefore subject to strict scrutiny.

Case law indicates that narrow tailoring includes a review of the effectiveness of race neutral measures. See *Contractors Association of Eastern Pennsylvania*. The District Court held that neutral measures that were not analyzed were, in reality, effective and recommended that the City employ race neutral measures including relaxing prequalification and bonding requirements for all subcontractors. The Third Circuit Court of Appeals upheld the use of race neutral measures finding that the program presented less obstacles to participation than the use of race conscious alternatives.

The Ninth Circuit in *Associated General Contractors of California*, held that race conscious measures should be instituted after, or in concert with, race-neutral measures. The Court examined San Francisco's review that found that race neutral measures were not feasible. The City had attempted to address discrimination through a past race-neutral ordinance. See

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<sup>133</sup> See Contractors II.

*Associated General Contractors of California, Inc. v. Coalition for Economic Equity, et. al*, 950 F.2d 1401 (9th Cir. 1991), *cert. denied* 112 S. Ct. 1670 (1992).

The Eleventh Circuit Court of Appeals in *Engineering Contractors Association of South Florida*, the Court held that the County had not seriously considered race and ethnicity-neutral alternatives. The Court looked at the County's own internal processes and in a scathing decision found that the County had taken no steps to "inform, educate, discipline, or penalize its own officials and employees responsible for the misconduct. The first measure every government ought to undertake to eradicate discrimination is to clean its own house and to ensure that its own operations are run on a strictly race and ethnicity-neutral basis." *Engineering Contractors Ass'n v. Metropolitan Dade County*, 943 F. Supp. 1546 (S. D. Fla., 1996), *aff'd*, 122 F.3d 895 (11th Cir. 1997)

### REVIEW OF NEW JERSEY TRANSIT RACE NEUTRAL PROGRAMS

#### Methodology

First, the New Jersey Transit race neutral program policies in effect for the study period were collected and reviewed. The Office of Business Development provided a document titled "UPDATED NJT DBE PROG PLAN 9 27 12"; the race neutral program reviewed is limited to what New Jersey Transit provided and information that is publically available. From a cursory review of the program plan provided, a discussion agenda was developed that inquired about the race neutral program and how it was accessed by diverse populations. Interviews with key New Jersey Transit Office of Business Development staff and management were conducted based on the discussion agenda and subsequently the program was analyzed in depth below.

#### New Jersey Transit's Race Neutral Program

New Jersey Transit is in the process of rolling out a race neutral Small Business Enterprise (SBE) program. As part of the DBE triennial goals submitted to and approved by the FTA, New Jersey Transit was required by FTA to develop a race neutral program by February 28, 2012. The FTA approved the program design in 2013 and implementation was slated to begin February 1, 2015. Per 26.39 of the NJT DBE Program, the Office of Civil Rights Business Development Outreach and Certification Unit is mandated to increase participation of SBE and DBE firms. The State of New Jersey's Small Business Set-Aside program has a 25% SBE goal.

New Jersey Transit will utilize Small Business Enterprises (SBE) that have been certified with the New Jersey State Small Business Set-Aside Program through the Division of Revenue. Section 26.39. Small Business Enterprises are defined as follows:

For **goods and services contracts**, small businesses with no more than 100 full-time employees in one of the following three categories:

- Small businesses whose gross revenues do not exceed \$500,000. (Category I SBEs).
- Small businesses whose gross revenues do not exceed \$5 million. (Category II SBEs).

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- Small businesses whose gross revenues do not exceed \$12 million or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher, as may be adjusted periodically. (Category III SBEs).

For **state construction contracts**, small businesses with no more than 100 full-time employees in one of the following three categories:

- Small business with gross revenues that do not exceed \$3 million. (Category IV SBEs).
- Small businesses with gross revenues that do not exceed 50 percent of the applicable annual revenue standards set forth in federal regulation at 13 CFR 121.201, and as may be adjusted periodically. (Category V SBEs).
- Small business with gross revenues that do not exceed the applicable annual revenue standards set forth in federal regulation at 13 CFR 121.201, as may be adjusted periodically. (Category VI SBEs).

The business must be independently owned and operated, with management being responsible for both its daily and long-term operation, as well as owning at least 51 percent interest in the business. Businesses must be incorporated or registered with the Division of Revenue & Enterprise Services to do business in the State and have its principal place of business in New Jersey, defined when:

- 51 percent or more of its employees work in New Jersey supported by paid New Jersey unemployment taxes or;
- 51 percent or more of its business operations/activities occur in New Jersey supported by income and/or business tax returns.
- The business must be a sole proprietorship, partnership, limited liability company or corporation with 100 or fewer employees in full-time positions, not including:
  - Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry and
  - Consultants employed under contracts for which the business wants to be eligible as a small business.

The Office of Business Development does not, independent of the Division of Revenue certify, recertify or decertify SBE firms. Additionally, because of the unique nature of the SBE program, a SBE will not necessarily qualify as a DBE and may not use the SBE certification for DBE purposes.

According to New Jersey Transit Board Meeting Minutes dated April 8, 2015, SBE Goal Attainment from July 1, 2014 through June 30, 2015 (FY 2015) is as follows:

Category I SBEs received \$188,131.47 or 0.47%  
Category II SBEs received \$772,682.95 or 1.95%  
Category III SBEs received \$1,428,343.00 or 3.60%  
Category IV SBEs received \$2,583,734.16 or 6.32%  
Category V SBEs received \$2,102,414.00 or 5.14%

Category VI SBEs received \$169,650.00 or 0.43%

### **Other Race Neutral Efforts**

To ensure that the maximum feasible portion of the overall DBE goal is met by using race neutral activities, New Jersey Transit establishes race neutral set-asides or contract goals on its federally funded contracts. Capital Programs will prepare a list of projects conducive to set asides and prime contractors will select areas of the scope of work to set aside. Prime contractors may use DBE firms and SBE Category I, II or IV firms certified through the State of New Jersey's Division of Revenue, to satisfy these goals, discussed in greater detail in Review of Policies and Procedures.

### ***Business Development Program***

Per Section 26.35 of the Office of Business Development (OBD) Handbook, New Jersey Transit is required to establish but has not established a formal Business Development Program. As mentioned above, the Office of Business Development has established a partnership with The Regional Alliance of Small Contractors of New York and New Jersey (RASC) to provide support services and business development training. Section 26.35. These trainings provide technical, financial, and marketing programs targeted to the growth of small firms such as trainings on Microsoft Word, Excel, and QuickBooks. These trainings are only available to DBE firms.

### ***Outreach***

In addition, the Office of Business Development in 2011 began hosting monthly certification workshops and DBE onboarding sessions to facilitate DBE participation in New Jersey Transit contracts. These workshops are designed to provide information and support to small, minority and women-owned businesses seeking DBE certification. See NJT OBD "DBE Certification Workshops." These workshops are offered once a month at NJT headquarters and can be tailored to meet larger audiences and at different locations upon request provided sufficient notice. Firms interested in specially tailored presentations can contact NJT via email ([OBDP@njtransit.com](mailto:OBDP@njtransit.com); subject line: "Certification Workshops") to make such arrangements. *Id.*

Additionally, NJT has partnered with RASC to further this initiative in attracting DBE development. RASC is a non-profit that has over two decades of experience in small business support and development that works directly with NJT's OBD. A foundational mechanism of RASC is to provide comprehensive capacity building services to support utilization and participation of small, minority, women and disadvantaged businesses on NJT's projects. Furthermore, RASC offers training in software skills, bonding, project estimating, bookkeeping and marketing. Finally, RASC's are offered periodically throughout the year at NJT's headquarters.

Historically, New Jersey Transit has facilitated a mentor program for newer DBEs, but that is currently on hold due to low staffing.

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The Outreach Unit indicated in the course of this study that outreach efforts are temporarily halted because the Unit is understaffed and certification that has a federally mandated response time is taking priority over outreach. However, the Outreach Unit reports increased communication with area Chambers of Commerce and establishing business relationships through the New Jersey Unified Certification Program (NJ UCP) database. The NJ UCP is a collective vendor directory shared by NJT, NJ DOT and the PANYNJ. Firms that are certified as DBEs are automatically included in the NJ UCP database. The primary objectives of the NJ UCP are to: 1) Provide and support a single uniform certification process; 2) List businesses in a centralized DBE directory; and 3) Simplify the process of staying DBE certified. Consequently, outreach efforts are expected to ramp up in the future when staffing in the Office of Business Development catches up with the workflow.

### ***NJDOT Race Neutral Methods***

The New Jersey Department of Transportation (NJDOT) has also established an Emerging Small Business Enterprise (ESBE) certification in order to meet the maximum feasible portion of its DBE goal through race-neutral means. To ensure that the maximum feasible portion of the overall DBE goal is met by using race-neutral means, NJDOT will establish ESBE goals on federally funded projects. Prime contractors may only use certified ESBEs in order to satisfy an ESBE goal. NJ DOT's certified ESBE list includes both DBE and non-DBE firms. To be eligible for ESBE certification, the firm must be a small business according to Small Business Administration (SBA) size standards and the owner's personal net worth does not exceed \$750,000. New Jersey Transit and the Department of Transportation do not routinely coordinate race neutral methods. Most state certified SBEs would be too large to qualify as a certified DBE or a certified NJDOT ESBE.

### **Recommendations**

Given that the SBE program is in its infancy, the effects of that program remain to be seen. It is obvious from the organization chart that is included in policies and procedures section and the staff anecdotes, that the Office of Business Development is critically understaffed to keep up with the requirements of the federally mandated DBE program and policies and procedures of New Jersey Transit. Thus, it is recommended to increase OBD staffing consistent with the workflow. In addition, other measures may be taken to increase DBE participation by race neutral means, such as:

- Review SBE program for effectiveness in a reasonable amount of time;
- Increasing outreach to DBEs and SBEs when OBD staffing returns to a manageable level;
- Allowing sufficient time for OBD to review the full landscape of New Jersey Transit contracting including sole source, Procurement by Exception (PBE) and contracts without federal funding;
- Consider unbundling contracts to allow small business engagement



## DATA METHODOLOGY

### A. Data Collection

#### *Contract File*

1. The Roy Wilkins Center used multiple files to create a “master dataset” with all the prime and subcontracts awarded from July 1, 2005 through Sept 30, 2013.
  - **Prime and subcontracts from July 1, 2005 – September 30, 2012.** The research team used the files produced to compute the FTA DBE Goals for FY 2010, FY2011 and FY2013-2015 to obtain prime and subcontract data from July 1, 2005 to September 30, 2012.
  - **Contracts from October 1, 2012 through September 30, 2012.** The research team obtained database from the Office of Business Diversity with prime and contracts.
  - **Subcontractors from October 1, 2009 through September 30, 2012.** The Office Development provided with hard copies of the A2 Non-SBE subcontractor utilization form and A2 Non-DBE subcontractor utilization forms.
  - **Prime contracts from July 1, 2005 – September 30, 2012.** The Office of Procurement provided a file with all the prime contracts awarded in the study period. This information was used to confirm that the research team has all the awarded contracts in the database.
2. The “master dataset” include the following variables: contract number, contract description, name of the firm, funding source, contract amount, year, address, city, state, zip, DBE status, NAICS, ethnicity, gender, data, and DBE goal. Table 1 below lists the name of the files used to create the master database.
3. The “master dataset” was modified with the following:
  - NAICS and address. The research team used Dun & Bradstreet Data to include NAICS and zip codes that were not in the original databases.
  - Race, Ethnicity, and Gender. The research team used the NJ UCP files from 2009, 2010 and 2013 to include the race, ethnicity, and gender.
  - Create two new variables “Sometimes a DBE” and “Never a DBE”. If the firm was a DBE in any of the NJ UCP 2009, 2010 and 2013 files, the firm was listed as “Sometimes a DBE;” if the firm was never listed in the NJ UCP 2009, 2010 and 2013, the firm was listed as a “Never a DBE.”
  - Deleting contracts that were not awarded. This list was provided by the Office of Business Development (contracts to verify.xls)
  - Deleting contracts related to Transit Vehicle Manufacturing and Track Materials. Office of Procurement gave a list of the terms related to transport vehicle manufacturing and track materials.
  - Deleting contracts related to diesel and fuel, in particular firms with NAICS 424720 (Petroleum) and 221210 (Natural Gas).
  - Replacing task order contract amount by taking the maximum amount of money

the contract received and dividing that across all of the Primes equally, and then taking the percentage goal of the contract and dividing equally across the DBE firms as well.

Replacing the contract amounts with zero amount that were not task order contracts with the mean of the contract amount of similar project.

**Table 1. “List of Files Used to Create Master Contract File”**

Name of the files	Source of the Files	Dates	Data obtained
NJT2009.dta	File produced by the Roy Wilkins Center using information from the	2005–2009	Name of the firm, address, DBE status, NAICS, gender, race/ethnicity
	BizTrak – Office of Business Development		Contract amount, contract number, contract description, date awarded, DBE goal, funding source.
Fyprime11.xls; fysubprime11.xls	File produced by the Roy Wilkins Center using information from the BizTrak – Office of Business Development and NJT Procurement Office.	2009–2010	Name of the firm, address, DBE status, NAICS, gender, race/ethnicity, contract amount, contract number, contract description, date awarded, DBE goal, funding source.
Contract File 5- 22-2013.xls. NJT Prime Contracts.xml	File produced by the Roy Wilkins Center using information from the BizTrak – Office of Business Development and NJT Procurement Office.	2010–2012	Name of the firm, address, DBE status, NAICS, gender, race/ethnicity, contract amount, contract number, contract description, date awarded, DBE goal, funding source.
2ndUpdtd Master Data- Proc.Awards BT Prime.BT Subs –10.1.2012–9.30.2013.xlsx 2.14.14 updtdMar28.14	Information from the NJT Office of Business Development	Oct. 1, 2012–Sept. 30, 2013	Name of the firm, address, DBE status, NAICS, gender, race/ethnicity, contract amount, contract number, contract description, date awarded, DBE goal, funding source.
Dr. Myers – DBE Goals 2014 – Awarded 7.1.2005 thru 9.30.2013.xlsx	NJT Procurement Office	July 1, 2005 – Sept. 30, 2013.	Name of the firm, address, contract amount, number, contract description, date awarded, DBE goal, funding source.
A2 Non-SBE subcontractor utilization form and A2 Non DBE subcontractor utilization form from	NJT Office of Business Development	Oct. 2009-Sept. 30, 2013	Name of subcontractor, subcontractor amount, address.

## UTILIZATION ANALYSIS

The first step in this analysis (Table 1) was understanding how many contracts and contract dollars were awarded as a prime or a subcontract. Total contract dollars amount was \$3.69 billion including both prime and subcontracts during the time period. Of the contracts awarded to the prime contractors, only 1.2 percent were awarded to DBE firms while 55.9 percent of subcontract dollars were awarded to DBE firms. Overall, 5.8 percent of total contract dollars were awarded to DBE firms. In terms of the number of contracts, however, 28.9 percent of the total contracts were awarded to DBE firms. The DBE share of award dollars was 11.3 percent if we considered federally-funded contracts only.

Tables 2.1 and 2.2 break down the utilization by different population groups, such as Asian Indian Americans, Asian-Pacific Americans, Black Americans, Hispanic Americans, and white-female Americans. 7.7 percent of total dollars were awarded to white-female firms while it was only 4.7 percent when we consider federally-funded contracts only. All racial groups were awarded a very small percentage of the total number of contracts and dollars. Black-owned firms were awarded 4.0 percent of contracts and 1.3 percent of total dollars, or 5.5 percent of contracts and 2.5 percent of total dollars if only federally-funded contracts were considered. Other racial groups, Asian Indian, Asian Pacific, and Hispanics, were awarded 1.8 percent, 0.6 percent, and 2.2 percent of total federally-funded award dollars, respectively.

Tables 3.1 and 3.2 show the contracts and dollars awarded to DBE firms by federal fiscal year, which varied year by year from 7.8 percent in FY 08-09 to 16.1 percent in FY 12-13 of total federally-funded award dollars.

We also compared the DBE utilization rates by three different recession stages, such as pre-recession (before December 2007), in recession (December 2007 through June 2009), and post-recession (after June 2009). During both pre- and in-recession periods, the DBE utilization rates were 13.5 percent and 13.9 percent, shown in Table 4.2, of total federally-funded award dollars while it was only 9.6 percent during the post-recession period.

Tables 5 through 7 show the DBE utilization rates by (1) Superstorm Sandy contracts, (2) American Recovery and Reinvestment Act (ARRA) contracts, and (3) Tunnel contracts. None of contracts were state funded. The DBE utilization rates were 17.1 percent, 14.7 percent, and 5.4 percent of total award dollars, respectively.

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**Table 1. DBE Utilization Rate by Type of Contract**

	Total		DBE		Non-DBE		DBE Share	
	N	Amount	N	Amount	N	Amount	N	Amount
<b>For both federal and state contracts</b>								
Prime	1023	\$3,378,011,399	80	\$39,296,780	943	\$3,338,714,618	7.8%	1.2%
Sub	936	\$313,608,199	487	\$175,311,112	449	\$138,297,087	52.0%	55.9%
Prime and Sub	1959	\$3,691,619,598	567	\$214,607,893	1392	\$3,477,011,705	28.9%	5.8%
<b>Federal contracts only</b>								
Prime	237	\$1,196,490,062	9	\$8,199,920	228	\$1,188,290,142	3.8%	0.7%
Sub	673	\$218,839,657	410	\$151,509,865	263	\$67,329,793	60.9%	69.2%
Prime and Sub	910	\$1,415,329,719	419	\$159,709,785	491	\$1,255,619,934	46.0%	11.3%

Source: NJT prime and subcontracts

Table 2.1. Utilization Rate by Race

	Contract		Utilization Rate	
	N	Amount	N	Amount
<b>Prime contracts</b>				
Asian Indian	23	\$22,460,411	2.2%	0.7%
Asian Pacific	15	\$8,148,611	1.5%	0.2%
Black	21	\$8,990,381	2.1%	0.3%
Hispanic	28	\$13,443,689	2.7%	0.4%
White Female	77	\$207,683,504	7.5%	6.1%
Unknown	65	\$37,218,868	6.4%	1.1%
Grand Total	1023	\$3,378,011,399		
<b>Subcontracts</b>				
Asian Indian	129	\$26,437,798	13.8%	8.4%
Asian Pacific	43	\$9,243,416	4.6%	2.9%
Black	58	\$38,620,753	6.2%	12.3%
Hispanic	84	\$39,110,801	9.0%	12.5%
White Female	247	\$75,047,930	26.4%	23.9%
Unknown	76	\$40,970,942	8.1%	13.1%
Grand Total	936	\$313,608,199		
<b>Both prime and subcontracts</b>				
Asian Indian	152	\$48,898,210	7.8%	1.3%
Asian Pacific	58	\$17,392,026	3.0%	0.5%
Black	79	\$47,611,133	4.0%	1.3%
Hispanic	112	\$52,554,489	5.7%	1.4%
White Female	324	\$282,731,434	16.5%	7.7%
Unknown	141	\$78,189,810	7.2%	2.1%
Grand Total	1959	\$3,691,619,598		

Source: NJT prime and subcontracts

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**Table 2.2. Utilization Rate by Race - Federal Only**

	Contract		Utilization Rate	
	N	Amount	N	Amount
<b>Prime contracts</b>				
Asian Indian	5	\$5,158,950	2.1%	0.4%
Asian Pacific	0	\$0	0.0%	0.0%
Black	0	\$0	0.0%	0.0%
Hispanic	3	\$4,164,842	1.3%	0.3%
White Female	10	\$4,454,125	4.2%	0.4%
Unknown	4	\$16,162,525	1.7%	1.4%
Grand Total	237	\$1,196,490,062		
<b>Subcontracts</b>				
Asian Indian	109	\$19,995,864	16.2%	9.1%
Asian Pacific	37	\$8,546,037	5.5%	3.9%
Black	50	\$35,873,667	7.4%	16.4%
Hispanic	55	\$27,451,762	8.2%	12.5%
White Female	184	\$62,456,361	27.3%	28.5%
Unknown	45	\$17,403,955	6.7%	8.0%
Grand Total	673	\$218,839,657		
<b>Both prime and subcontracts</b>				
Asian Indian	114	\$25,154,814	12.5%	1.8%
Asian Pacific	37	\$8,546,037	4.1%	0.6%
Black	50	\$35,873,667	5.5%	2.5%
Hispanic	58	\$31,616,604	6.4%	2.2%
White Female	194	\$66,910,486	21.3%	4.7%
Unknown	49	\$33,566,480	5.4%	2.4%
Grand Total	910	\$1,415,329,719		

Source: NJT prime and subcontracts



**Table 3. DBE Utilization Rate by Fiscal Year**

	Total		DBE		Non-DBE		DBE Share	
	N	Amount	N	Amount	N	Amount	N	Amount
<b>Prime contracts</b>								
FFY04-05	49	\$76,614,936	6	\$1,426,413	43	\$75,188,522	12.2%	1.9%
FFY05-06	138	\$531,442,175	10	\$4,495,907	128	\$526,946,268	7.2%	0.8%
FFY06-07	147	\$283,760,976	16	\$5,742,589	131	\$278,018,387	10.9%	2.0%
FFY07-08	133	\$424,211,757	8	\$3,766,114	125	\$420,445,643	6.0%	0.9%
FFY08-09	127	\$313,144,728	8	\$4,951,765	119	\$308,192,963	6.3%	1.6%
FFY09-10	161	\$558,312,365	11	\$7,819,771	150	\$550,492,595	6.8%	1.4%
FFY10-11	90	\$215,600,340	12	\$5,355,058	78	\$210,245,281	13.3%	2.5%
FFY11-12	73	\$808,899,375	2	\$2,323,417	71	\$806,575,958	2.7%	0.3%
FFY12-13	101	\$162,564,227	6	\$2,485,747	95	\$160,078,480	5.9%	1.5%
Unknown	4	\$3,460,521	1	\$930,000	3	\$2,530,521	25.0%	26.9%
<b>Total</b>	<b>1023</b>	<b>\$3,378,011,399</b>	<b>80</b>	<b>\$39,296,780</b>	<b>943</b>	<b>\$3,338,714,618</b>	<b>7.8%</b>	<b>1.2%</b>
<b>Subcontracts</b>								
FFY04-05	15	\$19,762,401	6	\$3,334,715	9	\$16,427,686	40.0%	16.9%
FFY05-06	78	\$57,805,120	64	\$54,532,395	14	\$3,272,725	82.1%	94.3%
FFY06-07	82	\$12,476,873	53	\$7,521,471	29	\$4,955,403	64.6%	60.3%
FFY07-08	87	\$45,299,733	50	\$33,131,184	37	\$12,168,549	57.5%	73.1%
FFY08-09	36	\$12,209,894	19	\$4,222,559	17	\$7,987,335	52.8%	34.6%
FFY09-10	116	\$59,135,768	66	\$37,155,431	50	\$21,980,337	56.9%	62.8%
FFY10-11	55	\$51,990,513	16	\$19,833,412	39	\$32,157,101	29.1%	38.1%
FFY11-12	68	\$12,868,314	22	\$3,848,672	46	\$9,019,642	32.4%	29.9%
FFY12-13	399	\$42,059,584	191	\$11,731,274	208	\$30,328,310	47.9%	27.9%
<b>Total</b>	<b>936</b>	<b>\$313,608,199</b>	<b>487</b>	<b>\$175,311,112</b>	<b>449</b>	<b>\$138,297,087</b>	<b>52.0%</b>	<b>55.9%</b>
<b>Both prime and subcontracts</b>								
FFY04-05	64	\$96,377,336	12	\$4,761,128	52	\$91,616,209	18.8%	4.9%
FFY05-06	216	\$589,247,295	74	\$59,028,302	142	\$530,218,993	34.3%	10.0%
FFY06-07	229	\$296,237,849	69	\$13,264,059	160	\$282,973,790	30.1%	4.5%
FFY07-08	220	\$469,511,490	58	\$36,897,298	162	\$432,614,192	26.4%	7.9%
FFY08-09	163	\$325,354,622	27	\$9,174,324	136	\$316,180,298	16.6%	2.8%
FFY09-10	277	\$617,448,134	77	\$44,975,202	200	\$572,472,932	27.8%	7.3%
FFY10-11	145	\$267,590,852	28	\$25,188,470	117	\$242,402,382	19.3%	9.4%
FFY11-12	141	\$821,767,689	24	\$6,172,089	117	\$815,595,600	17.0%	0.8%
FFY12-13	500	\$204,623,811	197	\$14,217,021	303	\$190,406,790	39.4%	6.9%
Unknown	4	\$3,460,521	1	\$930,000	3	\$2,530,521	25.0%	26.9%
<b>Total</b>	<b>1959</b>	<b>\$3,691,619,598</b>	<b>567</b>	<b>\$214,607,893</b>	<b>1392</b>	<b>\$3,477,011,705</b>	<b>28.9%</b>	<b>5.8%</b>

Source: NJT prime and subcontracts

## NJ TRANSIT Disparity Study Final Report Appendix

**Table 3.2. DBE Utilization Rate by Fiscal Year - Federal Only**

	Total		DBE		Non-DBE		DBE Share	
	N	Amount	N	Amount	N	Amount	N	Amount
<b>Prime Contracts</b>								
FFY04-05	5	\$5,724,381			5	\$5,724,381	0.0%	0.0%
FFY05-06	21	\$250,905,247	1	\$64,528	20	\$250,840,719	4.8%	0.0%
FFY06-07	30	\$77,419,741	1	\$1,250,000	29	\$76,169,741	3.3%	1.6%
FFY07-08	17	\$132,250,557			17	\$132,250,557	0.0%	0.0%
FFY08-09	32	\$59,264,262	1	\$988,000	31	\$58,276,262	3.1%	1.7%
FFY09-10	55	\$395,057,105	4	\$3,811,600	51	\$391,245,505	7.3%	1.0%
FFY10-11	15	\$177,106,013	1	\$1,926,842	14	\$175,179,171	6.7%	1.1%
FFY11-12	12	\$42,318,889			12	\$42,318,889	0.0%	0.0%
FFY12-13	48	\$53,943,865	1	\$158,950	47	\$53,784,915	2.1%	0.3%
Unknown	2	\$2,500,000			2	\$2,500,000	0.0%	0.0%
<b>Total</b>	<b>237</b>	<b>\$1,196,490,062</b>	<b>9</b>	<b>\$8,199,920</b>	<b>228</b>	<b>\$1,188,290,142</b>	<b>3.8%</b>	<b>0.7%</b>
<b>Subcontracts</b>								
FFY04-05	1	\$621,156	1	\$621,156			100.0%	100.0%
FFY05-06	53	\$45,746,497	47	\$44,354,181	6	\$1,392,316	88.7%	97.0%
FFY06-07	56	\$7,989,687	46	\$6,293,863	10	\$1,695,824	82.1%	78.8%
FFY07-08	37	\$28,629,154	33	\$27,199,700	4	\$1,429,454	89.2%	95.0%
FFY08-09	22	\$5,291,281	17	\$4,029,559	5	\$1,261,722	77.3%	76.2%
FFY09-10	88	\$55,237,866	51	\$35,101,589	37	\$20,136,277	58.0%	63.5%
FFY10-11	51	\$51,518,065	16	\$19,833,412	35	\$31,684,653	31.4%	38.5%
FFY11-12	37	\$8,198,849	17	\$3,008,208	20	\$5,190,641	45.9%	36.7%
FFY12-13	328	\$15,607,102	182	\$11,068,197	146	\$4,538,905	55.5%	70.9%
<b>Total</b>	<b>673</b>	<b>\$218,839,657</b>	<b>410</b>	<b>\$151,509,865</b>	<b>263</b>	<b>\$67,329,793</b>	<b>60.9%</b>	<b>69.2%</b>
<b>Both prime and subcontracts</b>								
FFY04-05	6	\$6,345,537	1	\$621,156	5	\$5,724,381	16.7%	9.8%
FFY05-06	74	\$296,651,744	48	\$44,418,709	26	\$252,233,035	64.9%	15.0%
FFY06-07	86	\$85,409,428	47	\$7,543,863	39	\$77,865,566	54.7%	8.8%
FFY07-08	54	\$160,879,711	33	\$27,199,700	21	\$133,680,011	61.1%	16.9%
FFY08-09	54	\$64,555,544	18	\$5,017,559	36	\$59,537,985	33.3%	7.8%
FFY09-10	143	\$450,294,971	55	\$38,913,189	88	\$411,381,782	38.5%	8.6%
FFY10-11	66	\$228,624,078	17	\$21,760,254	49	\$206,863,824	25.8%	9.5%
FFY11-12	49	\$50,517,738	17	\$3,008,208	32	\$47,509,530	34.7%	6.0%
FFY12-13	376	\$69,550,967	183	\$11,227,147	193	\$58,323,820	48.7%	16.1%
Unknown	2	\$2,500,000	0	\$0	2	\$2,500,000	0.0%	0.0%
<b>Total</b>	<b>910</b>	<b>\$1,415,329,719</b>	<b>419</b>	<b>\$159,709,785</b>	<b>491</b>	<b>\$1,255,619,934</b>	<b>46.0%</b>	<b>11.3%</b>

Source: NJT prime and subcontracts

**Table 4.1. DBE Utilization Rate by Recession Period**

	Total		DBE		Non-DBE		DBE Share	
	N	Amount	N	Amount	N	Amount	N	Amount
<b>Prime contracts</b>								
Pre-Recession	364	\$985,922,644	36	\$13,249,163	328	\$972,673,481	9.9%	1.3%
Recession	194	\$534,233,926	11	\$6,855,862	183	\$527,378,064	5.7%	1.3%
Post-Recession	462	\$1,855,324,307	33	\$19,191,755	429	\$1,836,132,552	7.1%	1.0%
Unknown	3	\$2,530,521			3	\$2,530,521	0.0%	0.0%
<b>Total</b>	<b>1023</b>	<b>\$3,378,011,399</b>	<b>80</b>	<b>\$39,296,780</b>	<b>943</b>	<b>\$3,338,714,618</b>	<b>7.8%</b>	<b>1.2%</b>
<b>Subcontracts</b>								
Pre-Recession	194	\$94,313,762	130	\$67,904,036	64	\$26,409,726	67.0%	72.0%
Recession	93	\$49,170,316	57	\$32,785,287	36	\$16,385,029	61.3%	66.7%
Post-Recession	649	\$170,124,122	300	\$74,621,789	349	\$95,502,333	46.2%	43.9%
<b>Total</b>	<b>936</b>	<b>\$313,608,199</b>	<b>487</b>	<b>\$175,311,112</b>	<b>449</b>	<b>\$138,297,087</b>	<b>52.0%</b>	<b>55.9%</b>
<b>Both prime and subcontracts</b>								
Pre-Recession	558	\$1,080,236,406	166	\$81,153,200	392	\$999,083,207	29.7%	7.5%
Recession	287	\$583,404,242	68	\$39,641,149	219	\$543,763,093	23.7%	6.8%
Post-Recession	1111	\$2,025,448,429	333	\$93,813,544	778	\$1,931,634,885	30.0%	4.6%
Unknown	3	\$2,530,521	0	\$0	3	\$2,530,521	0.0%	0.0%
<b>Total</b>	<b>1959</b>	<b>\$3,691,619,598</b>	<b>567</b>	<b>\$214,607,893</b>	<b>1392</b>	<b>\$3,477,011,705</b>	<b>28.9%</b>	<b>5.8%</b>

Source: NJT prime and subcontracts

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**Table 4.2. DBE Utilization Rate by Recession Period - Federal Only**

	Total		DBE		Non-DBE		DBE Share	
	N	Amount	N	Amount	N	Amount	N	Amount
<b>Prime contracts</b>								
Pre-Recession	59	\$335,042,886	2	\$1,314,528	57	\$333,728,358	3.4%	0.4%
Recession	36	\$178,781,530			36	\$178,781,530	0.0%	0.0%
Post-Recession	140	\$680,165,645	7	\$6,885,392	133	\$673,280,253	5.0%	1.0%
Unknown	2	\$2,500,000			2	\$2,500,000	0.0%	0.0%
<b>Total</b>	<b>237</b>	<b>\$1,196,490,062</b>	<b>9</b>	<b>\$8,199,920</b>	<b>228</b>	<b>\$1,188,290,142</b>	<b>3.8%</b>	<b>0.7%</b>
<b>Subcontracts</b>								
Pre-Recession	110	\$54,357,340	94	\$51,269,200	16	\$3,088,140	85.5%	94.3%
Recession	56	\$32,060,435	47	\$29,369,259	9	\$2,691,176	83.9%	91.6%
Post-Recession	507	\$132,421,882	269	\$70,871,406	238	\$61,550,476	53.1%	53.5%
<b>Total</b>	<b>673</b>	<b>\$218,839,657</b>	<b>410</b>	<b>\$151,509,865</b>	<b>263</b>	<b>\$67,329,793</b>	<b>60.9%</b>	<b>69.2%</b>
<b>Both prime and subcontracts</b>								
Pre-Recession	169	\$389,400,226	96	\$52,583,728	73	\$336,816,498	56.8%	13.5%
Recession	92	\$210,841,965	47	\$29,369,259	45	\$181,472,706	51.1%	13.9%
Post-Recession	647	\$812,587,527	276	\$77,756,798	371	\$734,830,729	42.7%	9.6%
Unknown	2	\$2,500,000	0	\$0	2	\$2,500,000	0.0%	0.0%
<b>Total</b>	<b>910</b>	<b>\$1,415,329,719</b>	<b>419</b>	<b>\$159,709,785</b>	<b>491</b>	<b>\$1,255,619,934</b>	<b>46.0%</b>	<b>11.3%</b>

Source: NJT prime and subcontracts

**Table 5. DBE Utilization Rate - Superstorm Sandy Only**

	Total		DBE		Non-DBE		DBE Share	
	N	Amount	N	Amount	N	Amount	N	Amount
<b>Overall</b>								
Prime	10	\$21,500,000			10	\$21,500,000	0.0%	0.0%
Sub	76	\$7,531,461	44	\$4,972,900	32	\$2,558,561	57.9%	66.0%
Prime and Sub	86	\$29,031,461	44	\$4,972,900	42	\$24,058,561	51.2%	17.1%
<b>Federal contracts only</b>								
Prime	10	\$21,500,000			10	\$21,500,000	0.0%	0.0%
Sub	76	\$7,531,461	44	\$4,972,900	32	\$2,558,561	57.9%	66.0%
Prime and Sub	86	\$29,031,461	44	\$4,972,900	42	\$24,058,561	51.2%	17.1%

Source: NJT prime and subcontracts

**Table 6. DBE Utilization Rate - ARRA Only**

	Total		DBE		Non-DBE		DBE Share	
	N	Amount	N	Amount	N	Amount	N	Amount
<b>Overall</b>								
Prime	3	\$14,031,390			3	\$14,031,390	0.0%	0.0%
Sub	37	\$8,928,421	5	\$3,364,902	32	\$5,563,519	13.5%	37.7%
Prime and Sub	40	\$22,959,811	5	\$3,364,902	35	\$19,594,909	12.5%	14.7%
<b>Federal contracts only</b>								
Prime	3	\$14,031,390			3	\$14,031,390	0.0%	0.0%
Sub	37	\$8,928,421	5	\$3,364,902	32	\$5,563,519	13.5%	37.7%
Prime and Sub	40	\$22,959,811	5	\$3,364,902	35	\$19,594,909	12.5%	14.7%

Source: NJT prime and subcontracts

**Table 7. DBE Utilization Rate - Tunnel Only**

	Total		DBE		Non-DBE		DBE Share	
	N	Amount	N	Amount	N	Amount	N	Amount
<b>Overall</b>								
Prime	16	\$384,250,128			16	\$384,250,128	0.0%	0.0%
Sub	21	\$38,273,797	15	\$22,644,059	6	\$15,629,738	71.4%	59.2%
Prime and Sub	37	\$422,523,925	15	\$22,644,059	22	\$399,879,866	40.5%	5.4%
<b>Federal contracts only</b>								
Prime	16	\$384,250,128			16	\$384,250,128	0.0%	0.0%
Sub	21	\$38,273,797	15	\$22,644,059	6	\$15,629,738	71.4%	59.2%
Prime and Sub	37	\$422,523,925	15	\$22,644,059	22	\$399,879,866	40.5%	5.4%

Source: NJT prime and subcontracts

## GEOGRAPHIC MARKET AREA

### Defining the Geographic Market Areas

In order to conduct the availability and utilization analyses, the geographic marketplace for the analyses must be established *a priori*. The geographic market area (GMA) appropriately establishes the area from which the state of New Jersey pulls the bulk of its vendors. Additionally, for the NJT disparity study to satisfy the requirements set forth in the United States Department of Transportation (USDOT) regulations, as well as comply with the Supreme Court's narrowly-tailored standard, the availability and utilization analyses must be based on a narrowly-defined geographic market.

Unless the geographic market area is otherwise defined by statute, the practice in the profession is to define the market by the predominance of purchases or contract awards in the prior years—2005 and 2013 in this study. Through case law and federal advisories, “predominance” has come to mean a threshold of 75 percent or more of total dollars expended or payments made by location. The standard 75 percent threshold for evaluating procurement disparities,<sup>134</sup> can be applied to counties, cities, states (political jurisdictions) or to zip codes (virtual jurisdictions).

We used two broad methods to narrowly define the geographic market for this study: a political jurisdictional method (PJM) and a virtual jurisdictional method (VJM), which was based on the location of contracts and/or contractors in the NJT's contract database. These methods yield different estimates of the number of firms within each industry NAICS code and, accordingly, yield differing estimates of contractor availability.

### *Political Jurisdictional Method*

Using the Political Jurisdictional Method (JPM), we ranked counties by total contract awards (dollars), including all counties in the U.S. in which NJT contracted with a vendor. This ranking resulted in a distribution of awards across counties from the largest share to the smallest share. The cumulative distribution resulting in at least 75 percent of total contract awards defined the counties that comprise the GMA using this method. We then identified the share of total award dollars for each county. The three PJMSs we measured are as follows:

- PJM-1** Ranked Counties in NJ, NY, and PA that account for at least 75 percent of the subcontract award dollars, and the cumulative distribution results in at least 75 percent of total contract award dollars
- PJM-2** Ranked Counties in NJ, NY, and PA that account for at least 75 percent of the prime contract award dollars, and the cumulative distribution results in at least 75 percent of total contract award dollars
- PJM-3** Ranked Counties in the United States that account for at least 75 percent of the prime contract award dollars, included additional ranked counties until the last county added contributed less than one percent to the total prime contract award dollars, and the cumulative distribution results in at least 75 percent of total contract award dollars

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<sup>134</sup> Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program, NCHRP PROGRAM REPORT 644, Transportation Research Board, 2010.

*Virtual Jurisdictional Method*

The virtual jurisdictional method uses data obtained at the zip code level, for example, from the subcontract award dollars (VJM-1). We rank the zip codes from the largest to the smallest contract award amounts and compute the cumulative frequency distribution for the ranked zip codes. The threshold representing 75 percent of cumulative dollars would define one valid virtual jurisdiction. Similarly, the other two methods – VJM-2 and VJM-3 – are based on the vendors list, and both prime and subcontract dollars awarded in New Jersey, New York and Pennsylvania, respectively.

The three VJMSs we measured are as follows:

- VJM-1** All zip codes for subcontractors, included ranked zip codes for prime contractors, and the cumulative distribution results in at least 75 percent of total contract award dollars
- VJM-2** All zip codes of NJ, NY, or PA-based firms on the NJT Vendors List, and the cumulative distribution results in at least 75 percent of total contract award dollars
- VJM-3** All zip codes where contracts were awarded in NJ, NY, or, and the cumulative distribution results in at least 75 percent of total contract award dollars

Note that the rankings can be done on prime contracts, or on subcontracts, depending on the definition of GMA. These methods yield different estimates of the number of firms within each industry code and, accordingly, yield different estimates of contractor availability. Nonetheless, as shown in the table below, the market areas should account for at least 75 percent of total contract award dollars. The State of New Jersey alone is not considered as a GMA because it accounts for only 67.3 percent of total contract award dollars.

**Table 1. Share of Contract Amount by Geographic Market Area**

<b>GMA</b>	<b>Share of Prime Dollars</b>	<b>Share of Sub Dollars</b>	<b>Share of both Prime and Sub Dollars</b>
PJM-1	74.8%	84.9%	75.7%
PJM-2	76.5%	59.3%	75.0%
PJM-3	91.2%	68.3%	89.2%
VJM-1	74.6%	100.0%	76.8%
VJM-2	88.2%	81.1%	87.6%
VJM-3	89.2%	89.9%	89.3%
NJ Only*	66.4%	76.9%	67.3%

\* not included in GMA



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As shown in Table 2, for each GMA, there is a list of either counties or zip codes that we used to compute the availability rates using different methods described in the Availability section.

**Table 2. Geographic Market Area Definition**

GMA	Definition
PJM-1	Ranked Counties in NJ, NY, and PA that account for at least 75 percent of the subcontract award dollars, and the cumulative distribution results in at least 75 percent of total contract award dollars
PJM-2	Ranked Counties in NJ, NY, and PA that account for at least 75 percent of the prime contract award dollars, and the cumulative distribution results in at least 75 percent of total contract award dollars
PJM-3	Ranked Counties in the United States that account for at least 75 percent of the prime contract award dollars, included additional ranked counties until the last county added contributed less than one percent to the total prime contract award dollars, and the cumulative distribution results in at least 75 percent of total contract award dollars
NJ Only*	State of NJ
VJM-1	All zip codes for subcontractors, included ranked zip codes for prime contractors, and the cumulative distribution results in at least 75% of total contract award dollars
VJM-2	All zip codes of NJ, NY, or PA-based firms on the NJT Vendors List, and the cumulative distribution results in at least 75 percent of total contract award dollars
VJM-3	All zip codes where contracts were awarded in NJ, NY, or PA, and the cumulative distribution results in at least 75 percent of total contract award dollars

## **AVAILABILITY METHOD: BIDDERS LIST**

Name of final file #1: Bidders Method Results 8–22–15.xlsx, Bidders Method Subgroup Analysis 9–19–15.xlsx

Final file #1 description: This file contains eleven different worksheets—one summary worksheet and ten worksheets displaying the results of each availability analysis in greater detail.

Name of final file #2: Bidders Method Subgroup Analysis 9–19–15.xlsx

Final file #2 description: This file contains eleven different worksheets—one summary worksheet and ten worksheets displaying the results of each gender, race, and ethnicity availability analysis in greater detail.

### **Appendix . . . Detailed illustration of methodology & steps**

1. Date task was completed: September 19, 2015
2. Description of task assigned: Using the bidders method, I calculated the following availability rates for prime contractors only<sup>135</sup>:
  - DBE vs. Non-DBE, primary NAICS, overall
  - Female-owned vs. Non-DBE, primary NAICS, overall
  - Black-owned vs. Non-DBE, primary NAICS, overall
  - Hispanic-owned vs. Non-DBE, primary NAICS, overall
  - Asian-owned vs. Non-DBE, primary NAICS, overall
  - DBE vs. Non-DBE, primary NAICS, by procurement type
  - DBE vs. Non-DBE, all NAICS, overall
  - DBE vs. Non-DBE, all NAICS, overall
  - Female-owned vs. Non-DBE, all NAICS, overall
  - Black-owned vs. Non-DBE, all NAICS, overall
  - Hispanic-owned vs. Non-DBE, all NAICS, overall
  - Asian-owned vs. Non-DBE, all NAICS, overall
  - DBE vs. Non-DBE, all NAICS, by procurement type

The primary NAICS code is used to classify a firm’s primary business activity, or the business activity that generates the greatest amount of revenue for the firm. A firm may have additional, or secondary, NAICS codes to classify its remaining business activities. All NAICS codes refer to all of the NAICS codes associated with a particular firm.

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<sup>135</sup> The availability rates were only calculated from prime contractors. Subcontractors do not bid on contracts. Prime contractors list them on their bids.

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The availability rates were calculated separately for the following procurement types: invitation for bids, expression of interest, and request for proposals. An invitation to bid occurs when New Jersey Transit invites contractors to submit a proposal, or bid, to work on a specific project. An expression of interest occurs when New Jersey Transit wants to find out which firms have the skills and capacity needed to undertake a specific task. New Jersey Transit advertises the proposed project and asks firms who are interested in the project to let them know of their interest. A request for proposals refers to a formalized process of soliciting proposals for the provision of a commodity or service.

### 3. Name of file(s) received:

- All Bidders Jul7 29.xls
- D&B 2006.xlsx
- D&B 2010.xlsx
- D&B 2013.xlsx
- UCP DBE PA NJ NY 2008.xlsx
- Three State DBE List 7-25-10.xlsx
- UCP DBE PA-NY (added to NJ) 2009.xls
- DBE Master MWSDBE.xls
- NYNJPA UCP DBE cleaned 2013.dta

The numerator of the availability rate is the number of certified DBEs in the specified geographic market area (GMA). There are six GMAs, referred to as PJM-1, PJM-2, PJM-3, VJM-1, VJM-2, and VJM-3. The denominator of the availability rate is the number of firms, both DBE and non-DBE, in the specified GMA. The number of observations used to calculate the numerator and denominator for each of the availability rate is as follows:

	Primary NAICS			All NAICS		
	DBE	Non-DBE	Total	DBE	Non-DBE	Total
<b>PJM-1</b>						
Overall	54	324	378	83	507	590
Invitation for Bids	43	254	297	65	437	502
Expression of Interest	4	13	17	4	17	21
Request for Proposals	18	108	126	30	152	182
<b>PJM-2</b>						
Overall	52	282	334	81	443	524
Invitation for Bids	42	219	261	64	373	437
Expression of Interest	4	10	14	4	13	17
Request for Proposals	17	99	116	29	143	172
<b>PJM-3</b>						
Overall	54	300	354	83	476	559
Invitation for Bids	44	234	278	66	405	471
Expression of Interest	4	11	15	4	14	18

	Primary NAICS			All NAICS		
	DBE	Non-DBE	Total	DBE	Non-DBE	Total
Interest Request for Proposals	18	107	125	30	153	183
<b>VJM-1</b>						
Overall	35	132	167	55	187	242
Invitation for Bids	27	90	117	42	141	183
Expression of Interest Request for Proposals	3	7	10	3	9	12
<b>VJM-2</b>						
Overall	89	1381	1470	124	1085	1209
Invitation for Bids	60	468	528	87	796	883
Expression of Interest Request for Proposals	5	43	48	5	57	62
<b>VJM-3</b>						
Overall	63	432	495	95	650	745
Invitation for Bids	45	294	339	67	481	548
Expression of Interest Request for Proposals	5	27	32	5	36	41
	24	173	197	41	246	287

The analysis was conducted at both the bid and bidder (i.e., firm) level for the years 2007-2013, inclusive. The unit of observation is the bidder for the overall availability rate for each of the GMAs. In contrast, the unit of observation is the bid for the procurement type subgroup analysis for each of the GMAs.

**Step 1:** Firms' DBE status was ascertained. Firms were considered DBEs sometimes if they were listed one, two, three, or four times on the certified DBE lists maintained by New Jersey Transit or the Port Authority of New York and New Jersey. Firms were considered always DBEs if they appeared on all five DBE lists—UCP DBE PA NJ NY 2008.xlsx, Three State DBE List 7-25-10.xlsx, UCP DBE PA-NY (added to NJ) 2009.xls, DBE Master MWSDBE.xls, and NYNJPA UCP DBE cleaned 2013.dta. Since there were no firms listed in all five databases, all DBEs were considered DBEs sometimes for analytical purposes.

**Step 2:** Since many firms in the initial bidders' file provided by New Jersey Transit had missing information for county, state, zip code, and NAICS codes, data files from Dun and Bradstreet for 2006, 2010, and 2013 were used to fill in as much missing information as possible. Dunn and Bradstreet files for other years were not used either because they were unavailable or the firms listed in the bidders' file could not be matched with the firms listed in it. The Zip Code Database,

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available from the U.S. Postal Service website (<http://www.unitedstateszipcodes.org/zip-code-database/>), was also used to fill in missing county and state information.

***Step 3:*** The unweighted availability rate for DBEs was calculated separately for each GMA. The numerator was obtained by summing the number of DBEs across all NAICS codes of interest separately for each GMA. The denominator was obtained by summing the total number of bidders across all NAICS codes of interest separately for each GMA. The unit of analysis was the bidder; therefore, duplicate bidders were dropped from the analysis.

***Step 4:*** The unweighted availability rate for DBEs was calculated separately by procurement type—invitation for bids, expression of interest, and request for proposals—for each GMA. The unit of analysis is the bid. Since the dataset spans multiple years, some firms may have submitted multiple types of bids (i.e., requests for proposals, invitations for bids, etc.). As a result, a firm maybe included in the analysis more than once if it submitted different types of bids.

***Step 5:*** For each NAICS code within a given GMA, the ratio of DBEs to total firms was multiplied by the weight. These values were summed, and then multiplied by 100 to obtain the weighted availability rate for each GMA.

***Step 6:*** The unweighted availability rate for females vs. non-DBEs, blacks vs. non-DBEs, Hispanics vs. non-DBEs, and Asians vs. non-DBEs was calculated for each GMA. For the female vs. non-DBE analysis, the numerator was obtained by summing the number of female-owned firms across all NAICS codes of interest separately for each GMA. The denominator was obtained by summing the number of non-DBE firms across all NAICS codes of interest separately for each GMA. For each NAICS code within a given GMA, the ratio of female-owned firms to non-DBE firms was multiplied by the weight. These values were summed, and then multiplied by 100 to obtain the weighted availability rate for each GMA. A similar calculation was performed separately for blacks, Hispanics, and Asians.

*Table 1* displays the results of the unweighted and weighted availability rates computed using the Bidders Method. For primary NAICS codes, the overall weighted availability rate for DBEs ranged from 9.11% in VJM-1 to 11.07% in VJM-2. The weighted availability rate for invitations to bid ranged from 5.84% in VJM-1 to 9.16% in VJM-2, which is slightly lower than the overall rate. In contrast, the weighted availability rate for expressions of interest was larger than the overall rate in each of the GMAs. It ranged from 19.28% in VJM-2 to 21.72% in PJM-2 and PJM-3. Across all GMAs, request for proposals had the smallest weighted availability rates. They ranged from 2.60% in VJM-3 to 7.49% in PJM-2.

**Table 1. Unweighted and Weighted Availability Rates—Bidders Method**

		Primary NAICS		ALL NAICS	
		Unweighted (%)	Weighted (%)	Unweighted (%)	Weighted (%)
<b>Total</b>					
	Overall	10.7280	11.1165	10.4218	8.1191
	Invitation for Bids	11.3636	9.1601	9.8528	8.0681
	Expression of Interest	10.4167	19.2771	8.0645	19.1594
	Request for Proposals	10.8911	4.8047	12.1839	3.7582
<b>PJM-1</b>					
	Overall	14.2857	10.1639	14.0678	8.8057
	Invitation for Bids	14.4781	7.6551	12.9482	7.6158
	Expression of Interest	23.5294	21.1152	19.0476	20.6496
	Request for Proposals	14.2857	2.8086	16.4835	3.1317
<b>PJM-2</b>					
	Overall	15.5689	10.1307	15.4580	9.0045
	Invitation for Bids	16.0920	7.8412	14.6453	8.3610
	Expression of Interest	28.5714	21.7139	23.5294	21.1152
	Request for Proposals	14.6552	7.4899	16.8605	5.3951
<b>PJM-3</b>					
	Overall	15.2542	9.9637	14.8479	8.6264
	Invitation for Bids	15.8273	6.8912	14.0127	7.6108
	Expression of Interest	26.6667	21.7139	22.2222	21.1152
	Request for Proposals	14.4000	7.3137	16.3934	5.2225
<b>VJM-1</b>					
	Overall	20.9581	9.1064	22.7273	10.7934
	Invitation for Bids	23.0769	5.8422	22.9508	12.7596
	Expression of Interest	30.0000	20.6496	25.0000	20.6496
	Request for Proposals	18.7500	2.7431	24.7312	3.4841
<b>VJM-2</b>					
	Overall	6.0544	11.0725	10.2564	7.8443
	Invitation for Bids	11.3636	9.1601	9.8528	8.0681
	Expression of Interest	10.4167	19.2771	8.0645	19.1594
	Request for Proposals	10.8553	4.8047	12.1839	5.3769
<b>VJM-3</b>					
	Overall	12.7273	10.0761	12.7517	8.9711
	Invitation for Bids	13.2743	7.2180	12.2263	6.8141
	Expression of Interest	15.6250	19.5539	12.1951	19.4078
	Request for Proposals	12.1827	2.6032	14.2857	3.1704

Table 2 displays the final weighted, composite availability rates for the overall and procurement type subgroup analyses. For each type of analysis, the composite rates are similar, regardless of the contract dollars used to compute the weights. Requests for proposals had a composite availability rate of about 5%, the smallest rate across all analyses. In contrast, expressions of interest had the largest composite availability rate. At both the primary and all NAICS-levels, the rate was approximately 20%.

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**Table 2. Composite Availability Rates—Bidders Method**

	Composite Rate (Prime Contracts)	Composite Rate (Sub Contracts)
<b>Primary NAICS</b>		
Overall	10.2126	10.0810
Procurement Type		
Invitation for Bids	7.6258	7.4229
Expression of Interest	20.6495	20.5908
Request for Proposals	4.9452	4.4304
<b>All NAICS</b>		
Overall	8.7667	9.0292
Procurement Type		
Invitation for Bids	7.9712	8.5724
Expression of Interest	20.2910	20.2911
Request for Proposals	4.4442	4.2202

Table 3 displays the unweighted and weighted availability rates for the gender, race, and ethnicity subgroup analyses.

**Table 3: Unweighted and Weighted Availability Rates—Gender, Race, and Ethnicity**

	Primary NAICS		ALL NAICS	
	Unweighted (%)	Weighted (%)	Unweighted (%)	Weighted (%)
<b>PJM-1</b>				
Female vs. Non-DBE	8.6567	4.2233	9.7015	5.3284
Blacks vs. Non-DBE	2.4316	2.4700	1.5595	0.9122
Hispanics vs. Non-DBE	3.5821	1.2555	3.2505	1.5871
Asians vs. Non-DBE	6.1047	5.3748	5.2632	4.7740
Missing gender vs. Non-DBE	0.0000	0.0000	0.0000	0.0000
Missing race/ethnicity vs. Non-DBE	15.7895	2.5089	22.2222	11.5636
<b>PJM-2</b>				
Female vs. Non-DBE	8.5324	3.6494	9.9576	4.7728
Blacks vs. Non-DBE	2.7778	2.7818	1.7817	1.1692
Hispanics vs. Non-DBE	4.4369	1.6236	3.9130	1.9232
Asians vs. Non-DBE	6.6445	5.4486	5.7816	4.8616
Missing gender vs. Non-DBE	0.0000	0.0000	0.0000	0.0000
Missing race/ethnicity vs. Non-DBE	18.7500	2.5089	28.5714	9.7009
<b>PJM-3</b>				
Female vs. Non-DBE	8.5987	3.4342	9.6838	4.4512
Blacks vs. Non-DBE	2.9126	2.6635	1.8634	1.0825
Hispanics vs. Non-DBE	4.1401	1.5772	3.6511	1.8305
Asians vs. Non-DBE	6.2305	5.1796	5.4000	4.0582
Missing gender vs. Non-DBE	0.0000	0.0000	0.0000	0.0000
Missing race/ethnicity vs. Non-DBE	21.0526	2.6256	29.7297	9.8176
<b>VJM-1</b>				



**Availability Method: Bidders List**

Female vs. Non-DBE	11.1888	3.3376	13.3971	5.1489
Blacks vs. Non-DBE	2.2222	0.1878	1.5789	0.1878
Hispanics vs. Non-DBE	5.0725	1.5284	6.5990	3.7573
Asians vs. Non-DBE	11.0345	7.7251	11.6505	7.1159
Missing gender vs. Non-DBE	2.5641	1.4856	1.8182	1.4856
Missing race/ethnicity vs. Non-DBE	33.3333	4.9686	44.0000	11.8594
<b>VJM-2</b>				
Female vs. Non-DBE	7.5104	7.3182	7.3192	5.6546
Blacks vs. Non-DBE	1.8336	2.2644	1.1872	0.6825
Hispanics vs. Non-DBE	2.3810	1.8193	2.1719	2.0275
Asians vs. Non-DBE	3.8674	3.9451	3.4946	3.9832
Missing gender vs. Non-DBE	1.5695	0.8806	1.4184	0.8406
Missing race/ethnicity vs. Non-DBE	28.2051	5.3601	27.6316	12.2602
<b>VJM-3</b>				
Female vs. Non-DBE	7.9823	5.9626	8.6006	6.3365
Blacks vs. Non-DBE	2.0642	2.2574	1.3699	1.0572
Hispanics vs. Non-DBE	2.7211	2.1747	2.8571	2.7289
Asians vs. Non-DBE	5.7269	5.4272	5.4492	5.3002
Missing gender vs. Non-DBE	1.7544	0.9696	1.3575	0.9271
Missing race/ethnicity vs. Non-DBE	28.0000	5.8213	29.4118	12.8164

**Table 4: Composite Availability Rates—Gender, Race, and Ethnicity**

	Composite Rate (Prime Contracts)	Composite Rate (Sub Contracts)
<b>Primary NAICS</b>		
Female vs. Non-DBE	4.8547	4.7324
Blacks vs. Non-DBE	2.3525	2.0570
Hispanics vs. Non-DBE	1.7018	1.6754
Asians vs. Non-DBE	5.2172	5.5407
Missing gender vs. Non-DBE	0.4534	0.6026
Missing race/ethnicity vs. Non-DBE	3.9010	4.0877
<b>All NAICS</b>		
Female vs. Non-DBE	5.3013	5.3356
Blacks vs. Non-DBE	0.9380	0.8311
Hispanics vs. Non-DBE	2.1421	2.3523
Asians vs. Non-DBE	4.7291	5.0645
Missing gender vs. Non-DBE	0.4370	0.5877
Missing race/ethnicity vs. Non-DBE	11.2654	11.4533

## AVAILABILITY METHOD: VENDORS LIST

### Description and construction of data

The original vendors' list was obtained from New Jersey Transit. It had 143,189 observations. This was the total number of contracts received by vendors from 2005 to 2013. By collapsing at the firm level, we obtained 3,728 unique firms. In order to do the DBE availability analysis, we excluded some observations from the original list using the steps described below.

#### Step 1:

Used D&B 2006, 2008, 2010, and 2013 data (those were the ones with which I was provided) and the contract files (prime and subcontractors) to get the NAICS codes of the firms using the listing of unique firms. Matched rate around 21%. Therefore, about 79% unmatched firms—which means 2,939 out of 3,728 firms—had no NAICS code.

#### Step 2:

Used the same list of unique firms to determine the DBE statuses of the firms. Created a variable DBE star to report DBE status in the data set. Used 5 different files to determine the DBE status and the same files were used to determine race/ethnicity and gender.

- 2008 Merged NJ NY PA list
- 2009 Merged NJ NY PA list
- 2010 Merged NJ NY PA list
- 2013 Merged NJ NY PA list
- NJNY Port Authority Minority, Women, Small, DBE

#### Step 3:

From the original vendors' list, excluded all the contracts that are less than \$36,000. These are contracts that are below the small business purchase threshold. I ended up with 7,443 observations (or contracts) out of 143,189. These are not unique firms, as we use contract level data to do this exclusion.

#### Step 4:

From step 3, deleted any observations with NAICS (below) resulting in contracts in MANUFACTURING, VEHICLE, RAIL, TRAIN, TRUCK, PLANE, BUS, or AUTOMOBILE purchases. Then, I collapsed the observations to obtain unique firms.

336510, 221210, 336111, 336112, 336120, 336211, 423110, 441110 and all that begin with 92. This leaves us with 1,055 unique firms (where 602 firms had no NAICS CODE).

## **DBE Availability Analysis: Methodology**

### **Step 1:**

The number of DBEs was counted using the vendors list that was created from the previous steps. The DBEs were identified from the certification lists provided by NJT. There were six GMAs (geographical market area) used in the analysis. Given the NAICS code, the counted (total) DBEs are used as the numerator in the availability analysis. We examined all the NAICS code in the given GMA.

### **Step 2:**

The denominator of the availability rate is calculated by using the NAICS code in the vendors list. With the NAICS code information, calculated the total number of vendors operating in the GMA. This number comprises the denominator in the availability analysis.

### **Step 3:**

For each geographical area, calculated the un-weighted availability rate of DBEs according to the prescribed availability formula (total number of DBEs divided by total number of vendors in a given GMA).

### **Step 4:**

For each geographical area, calculated the weighted availability rate of DBEs according to the prescribed availability formula (multiplying the unweighted by the given weight, specific to each NAICS code in a given GMA). I am assuming that the reason for using the weight is to account for the type of firms or jobs with which each NAICS code is associated.

### **Step 5:**

Calculated the final composite ratio using the prime weight and the subprime weight. I calculated the sum across the GMAs of weighted availability rates using the prime or the subprime weight accordingly.

### **Step 6**

Redo step 1 to 5 using All NAICS

**Table 1. Availability Analysis–VENDORS Method: Summary of Results**

	PJM-1		PJM-2		PJM-3		VJM-1		VJM-2		VJM-3	
	Unweight ed	Weight ed	Unweight ed	Weight ed	Unweight ed	Weight ed	Unweight ed	Weight ed	Unweight ed	Weight ed	Unweight ed	Weight ed
<b>Primary NAICS</b>	16.54%	8.50%	17.77%	9.09%	17.87%	9.23%	24.10%	7.34%	13.93%	8.08%	16.21%	7.60%
<b>All NAICS</b>	14.07%	10.89%	14.56%	11.71%	14.67%	11.58%	23.42%	16.39%	11.02%	9.97%	13.62%	11.20%

**Table 2. Final Composite Ratios**

	<b>Final Composite Ratio using Prime Weight (1)</b>	<b>Final Composite Ratio using Sub Weight (2)</b>
<b>Primary NAICS</b>	8.43%	8.24%
<b>All NAICS</b>	11.39%	11.99%

**Table 3. Overall Percentage of DBEs in the Geographical Market Areas. Observations include Firms without NAICS Code**

	<b>PMJ-1</b>	<b>PMJ-2</b>	<b>PMJ-3</b>	<b>PMJ-4</b>	<b>PMJ-5</b>	<b>PMJ-6</b>	<b>Overall</b>
<b>Percentage DBE</b>	4.54%	4.40%	4.74%	2.10%	5.97%	5.02%	5.97%

**Table 4. Overall Percentage of DBEs in the Geographical Market Areas. Observations exclude Firms without NAICS Code**

	<b>PMJ-1</b>	<b>PMJ-2</b>	<b>PMJ-3</b>	<b>VMJ-1</b>	<b>VMJ-2</b>	<b>VMJ-3</b>	<b>overall</b>
<b>Percentage DBE</b>	9.93%	9.71%	10.40%	4.63%	11.92%	10.60%	11.92%

## AVAILABILITY METHOD: PREQUALIFICATION LIST

### *DBE Availability*

Step 1: Obtained a copy from New Jersey Transit of the list of firms, from January 2005 to September 2013, of those that have pre-qualified (625 firms) to bid on a construction contract from New Jersey Transit. This dataset was used to calculate both the numerator and denominator of the availability rate. We then reduced the number of firms to unique level (310 firms), even though some firms were qualified to bid on more than one contract, the list only contained one record of this company.

Step 2: Merged the pre-qualified list with the consolidated DBE list (including NJ, NY, and PA) in order to identify the DBE firms. If a firm both showed in the pre-qualified list and DBE list, this firm was defined as DBE firm; otherwise this firm was not defined as a DBE firm. Particularly, if a firm was listed as a DBE in one year, but the same firm was not listed as a DBE in another year, this firm was counted as a DBE in the analysis.

Step 3: Matched missing NAICS codes in the pre-qualified list using information from Dun & Bradstreet in order to reduce to a minimum level the number of firms dropped from any of the calculations. Before matching with D&B list, 119 firms did not have NAICS codes; after matching 51 firms, we were still unable to get 6-digit NAICS codes.

Step 4: The availability rate is the weighted share of DBEs within each NAICS code for a given geographic market area. The numerator is the number of DBE prequalified firms and the denominator is the total number of prequalified firms.

Step 5: Transformed the list of prequalified firms into two separate databases. First, the NAICS codes of each firm are the unit of observation. Each firm has a separate entry in the database for each NAICS code associated with the firm. Second, a prequalification database was created where the firm is the unit of observation and each firm has only its primary NAICS code listed. The primary NAICS code is the first NAICS code for this firm to appear. Each firm is listed only once with only its primary, or most frequently cited, NAICS code.

Step 6: Determined the number of DBE firms in the six narrowly-defined geographic market area, for each of the two databases for each of the databases.

Step 7: Determined the total number of firms in the narrowly-defined geographic market area for each of the two databases.

Step 8: Calculated the numerator of the pre-qualified availability measure by summing the number of DBE firms in each separate NAICS code in each uniquely defined geographic market areas, for each of the databases.

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Step 9: Calculated the denominator of the pre-qualified availability measure by summing the number of total firms in each separate NAICS code in each uniquely defined geographic market areas, for each of the databases.

Step 10: Calculated the unweighted availability, of DBE firms, which is the ratio of DBE firms to total firms in a given relevant industry and narrowly-tailored geographic market, for each of the databases.

Step 11: Calculated the pre-qualification weights according to the distribution of prequalification bids (construction contracts). The prequalification weights were calculated based on the share of construction pre-qualification bids relative to all bids. There were two pre-qualification weights, the first weight is for all the NAICS codes; the second weight is for the primary NAICS code. The prequalification weights were calculated for and used when calculating the prequalification availability rate for each GMA. If a NAICS code had both zero counts in total firms and DBE firms, this code would be excluded from the prequalification weights, which denoted that for this contract there were no prequalified firms. This rule was applied to both primary NAICS code weight and all NAICS codes weight.

Step 12: Calculated the weighted availability measure by multiplying the weights by the share of DBE firms for each of NAICS code in each GMA, for each of the databases.

Step 13: Summed the weighted availability rate for each NAICS code in each GMA, for each of the two databases, to obtain the final availability rate for each geographic market area.

Step 14: Calculated the final two composite average availability rates by using the share of all prime contract dollars accounted for by each of the geographic market area and the share of all subcontract dollars accounted for by each of the geographic market area. First, I multiplied the initial weighted availability rate in each geographic market area with its prime contract dollars' weight; second, summed these products to obtain the final composite ratio for the prime contract dollars average availability rate. Applied same calculations to subcontract dollars weight to obtain the final composite ratio for sub-contract dollars average availability rate. Final composite ratios were calculated for both primary NAICS codes and all NAICS codes.

Step 15: Narrowed the database down to only include the firms located in New Jersey, and calculated the DBE availability using the same rules. The results are under the column named NJ Only.

**Table 1. Availability Analysis-Prequalification Method: Summary of Results**

		Primary NAICS	All NAICS
<b>PJM-1</b>	Unweighted	0.1915	0.1953
	Weighted	0.0628	0.1255
<b>PJM-2</b>	Unweighted	0.0882	0.1286
	Weighted	0.0508	0.0679
<b>PJM-3</b>	Unweighted	0.0714	0.0933
	Weighted	0.0435	0.0591
<b>VJM-1</b>	Unweighted	0.1455	0.2500
	Weighted	0.0533	0.1263
<b>VJM-2</b>	Unweighted	0.0930	0.1381
	Weighted	0.0655	0.0867
<b>VJM-3</b>	Unweighted	0.0829	0.1212
	Weighted	0.0475	0.0721
<b>Final Composite Ratio using Prime Weight</b>		0.0534	0.0828
<b>Final Composite Ratio using Sub Weight</b>		0.0541	0.0909

All calculations are provided in the appended sheets.



## AVAILABILITY METHOD: DBE LIST

### A. Description and construction of data

DBE availability analysis is conducted for years 2009, 2010 and 2013 using the UCP data that encompasses DBE list for three states including NJ, NY and PA. These four files contain all the certified DBEs for the combined states by each year. For each of the original UCP data, County Fips code (only zipcode is available) is not available for any of the four files which is required for PJM definition, an additional file that contain county FIPS code information named “2013ZIPCODES” is used to find FIPS codes for corresponding zipcodes. County business pattern data and zipcode business pattern data for each corresponding years from census are used to derive total number of total firms in the GMAs.

### B. Methodology

#### Step 1:

Numerator for the DBE availability ratio is calculated using the number of DBEs counted from UCP DBE files. The numerator is also calculated by 6 mutually exclusive race/ethnicity category (1. White, 2. Black, 3. Hispanic, 4. Asian, 5. Other, 6. Missing) and 4 mutually exclusive gender category (1. Female, 2. Male, 3. Other, 4. Missing).

#### Step 2:

Denominator for the DBE availability ratio is the total number of firms derived from CBP, ZBP data.

#### Step 3:

There are six GMAs and un-weighted availability rate was calculated for each of the GMAs by averaging the un-weighted availability rate of each NAICS codes.

#### Step 4:

For each geographical area, the weighted availability rate of DBEs according to the prescribed availability formula:

1. Multiply the unweighted by the given weight from utilization analysis, specific to each NAICS code in a given GMA to account for the future expenditure projection.
2. Sum all the weighted rates of each NAICS code to come up with a final weighted availability rate by each of the six GMAs.

Step 5:

Because the DBE availability analysis is conducted by year, I used total number of DBEs for each year as weight to weight average the availability rate across 3 years by 6 GMAs. This gives unified rates for each of the 6 GMAs shown in the 3-year Averaged DBE availability Summary Table.

Step 5:

The composite rate that weight averages all the GMAs are calculated using the weights from the utilization analysis (using 1. Prime weight 2. Subprime weight).

C. Results

Table. Final Composite Rate

	PJM-										VJM-				MAIN NAICS: Final Composite Ratio Using		ALL NAICS: Final Composite Ratio Using		
	1 MAIN	1 ALL	2 MAIN	2 ALL	3 MAIN	3 ALL	4 MAIN	4 ALL	1 MAIN	1 ALL	2 MAIN	2 ALL	3 MAIN	3 ALL	Prime Weight (1)	Sub Weight (2)	Prime Weight (1)	Sub Weight (2)	
	4.51%	11.64%	3.60%	9.82%	3.59%	9.79%	3.89%	10.29%	4.36%	13.27%	4.37%	10.76%	5.38%	12.68%	4.29%	4.36%	11.06%	11.45%	
	1.00%	2.65%	0.96%	2.24%	0.90%	2.05%	0.90%	1.86%	1.16%	4.59%	0.68%	1.85%	0.82%	2.54%	0.88%	0.92%	2.38%	2.69%	
	0.94%	2.19%	0.72%	1.54%	1.28%	1.46%	0.88%	1.73%	1.03%	2.10%	0.47%	1.22%	0.75%	1.79%	0.85%	0.86%	1.65%	1.73%	
	1.14%	2.57%	0.63%	1.73%	0.91%	1.43%	1.07%	2.39%	0.62%	1.11%	0.71%	1.60%	0.73%	1.49%	0.80%	0.79%	1.68%	1.65%	
	0.74%	1.78%	0.76%	1.75%	1.05%	1.51%	0.71%	1.66%	0.44%	1.38%	0.54%	1.24%	0.76%	1.66%	0.76%	0.70%	1.57%	1.55%	
	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%	0.02%	0.03%	0.07%	0.08%	0.01%	0.01%	0.02%	0.02%	0.02%	0.02%	
	0.59%	2.38%	0.44%	1.79%	1.05%	2.37%	0.53%	1.80%	1.00%	4.19%	2.02%	4.98%	2.25%	5.24%	1.30%	1.27%	3.46%	3.61%	
	1.51%	3.06%	0.93%	2.31%	1.53%	2.19%	1.44%	2.60%	1.06%	2.21%	1.11%	2.30%	1.51%	2.88%	1.31%	1.28%	2.51%	2.51%	
	1.85%	4.38%	1.73%	3.77%	2.15%	3.67%	1.67%	3.34%	1.88%	6.08%	1.20%	2.97%	1.53%	3.97%	1.70%	1.71%	3.86%	4.17%	
	0.57%	2.02%	0.56%	1.77%	0.78%	1.35%	0.56%	1.91%	0.41%	1.28%	0.40%	1.35%	0.43%	1.34%	0.54%	0.51%	1.52%	1.51%	
	0.55%	2.19%	0.37%	1.36%	0.87%	1.80%	0.48%	1.67%	0.96%	3.85%	1.81%	4.38%	1.92%	4.59%	1.13%	1.12%	2.97%	3.15%	
By Race/ Ethnicity																			
By Gender																			

#### D. Tables

There are four availability tables that show how the calculation was performed for each year.

1. DBE\_Availability\_2009.xlsx
2. DBE\_Availability\_2010.xlsx
3. DBE\_Availability\_2013.xlsx

One summary table that shows availability rate by year and by GMAs and final availability that average 3 years.

1. DBE\_Availability\_summary\_table

#### D. Conclusion

As shown in the Summary table, the availability rate using the ALL NAICS counts as a numerator is always higher than the availability rate using the MAIN NAICS counts as a numerator. This stems from the fact that ALL NAICS method counts the all the NAICS codes assigned to a DBE firm as a distinct independent firms, where MAIN NAICS method only counts the primary NAIC code of a DBE firm when calculating the total number of DBE firms that is used in the ratio. It is observed that the ratio from ALL NAICS method is approximately twice as large as the ratio from MAIN NAICS. The final composite ratio ranges from approximately 4% and 11% for MAIN and ALL NAICS methods, respectively. The ratio does not vary significantly as we change the weighting scheme from Prime and Subprime weights.

From the ratio by GMAs, one can see that number of available DBE firms differ by the GMAs, for example, the availability rate is as low as 3.6% for PJM-2 and high as 5.38% for VJM-3 using the MAIN NAICS method, and as low as 9.79% for PJM-3 and high as 13.27% for VJM-1. It should be noted that VJM GMAs have higher rate of available DBE firms than the PJM GMAs.

## AVAILABILITY METHOD: SBO METHOD

- Step 1. Obtained 2002 special tabulations of the Survey of Business Owners (SBO) from the U.S. Census Bureau. The special tabulation included a list of all firms and minority or female-owned businesses at the county level in New Jersey, New York, and Pennsylvania. This dataset was used to calculate both the numerator and denominator of the availability rate.
- Step 2: Narrowly defined the geographic market areas as PJM-1, PJM-2 and PJM-3 and PJM-4.<sup>136</sup>
- Step 3: Determined the number of minority or female-owned firms in each of the primary industries within the geographic market.
- Step 4: Determined the total number of firms in each of the primary industries within the geographic market.
- Step 5: Calculated the numerator of the SBO availability measure by summing the number of minority or female-owned firms in each of the primary industries and the defined geographic markets.
- Step 6: Calculated the denominator of the SBO availability measure by summing the number of total firms in each of the primary industries and the defined geographic markets.
- Step 7: Adjusted the number of minority or female-owned firms to account for the fact that the two-digit NAICS code is extremely broad.
- Step 8: Adjusted the total number of firms to account for the fact that the two-digit NAICS code is extremely broad.
- Step 9: Calculated the share, or the unweighted availability, of minority or female-owned firms, which is the ratio of the adjusted number of minority or female-owned firms to the adjusted number of total firms in the designated industry and narrowly tailored geographic market.
- Step 10: Computed the weighted availability measure by multiplying the weights by the share of minority or female-owned firms.
- Step 11: Calculated the overall weighted availability rate for minority or female-owned firms by summing the weighted availability measures for each NAICS code.

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<sup>136</sup> Defined only for those geographic areas related to the state of NJ, and the counties of NJ, NY, and PA.

Adjustment to SBO Method

The ratio was adjusted using ACS information on self-employment to compute the mutually exclusive categories within each county and then compute the correction to the SBO under the assumption that the correction to the SBO is the same as the correction to the ACS.

To do this, we obtained the Self-Employment count for each county  $j = S(j)$

Then we obtained the breakdowns of the self-employment counts from the ACS for county  $j$  for women, minorities and the intersection between women and minorities:

$$S(j, DBE) = S(j, M) + S(j, W) - S(j, MW)$$

$$= [S(j, M) + S(j, W)] * \text{Alpha}(j)$$

$$\text{Solving for Alpha}(j) = [S(j, M) + S(j, W) - S(j, MW)] / [S(j, M) + S(j, W)]$$

Then we applied the adjustment  $\text{Alpha}(j)$  to each of the counties for the sum of women and minority businesses from the SBO.

**Table 1. SBO Results**

PJM1	White	Black	American Indian	Asian	Pacific Islander	Hispanic	Minority	Female	Min + Female Adjusted ***	Other
<u>Unweighted</u>	74.88%	8.14%	0.38%	9.88%	0.06%	10.62%	28.31%	33.11%	51.38%	4.24%
Weighted	76.07%	5.05%	0.31%	7.20%	0.04%	11.51%	24.68%	19.49%	36.64%	4.43%
<b>PJM2</b>										
<u>Unweighted</u>	66.01%	9.20%	0.50%	16.31%	0.10%	14.92%	39.76%	34.91%	60.43%	10.13%
Weighted	64.63%	6.37%	0.38%	15.20%	0.06%	15.75%	38.44%	23.14%	49.58%	0.00%
<b>PJM3</b>										
<u>Unweighted</u>	70.01%	8.43%	0.46%	13.84%	0.08%	13.02%	34.84%	33.66%	58.57%	5.68%
Weighted	68.38%	5.79%	0.37%	12.26%	0.05%	13.66%	32.69%	21.13%	45.36%	5.55%

## AVAILABILITY ANALYSIS: D&B METHOD

- Step 1: Obtained a license from Dun & Bradstreet (D&B) to perform electronic searches on its Selectory database for New Jersey, New York, and Pennsylvania.
- Step 2: Queried the Selectory database to obtain a list of all the firms, minority-owned firms, and women-owned firms from the 11 NAICS codes where NJT subcontract the most. This dataset was used to calculate both the numerator and denominator of the availability rate.
- Step 3: Narrowly defined the geographic market areas as PJM-1, PJM-2, PJM-3, VM-1, VM-2, VM-3 and VM3.
- Step 4: Transformed the list where the unit of observation is the NAICS. In other words, an entry was made for each NAICS associated with each firm. Thus, each firm had as many entries as the number of NAICS codes with which it was associated. Second, a D&B list database where the firm is the unit of observation and each firm is listed with only its primary NAICS code – one entry per firm.
- Step 5: Determined the number of minority-owned businesses (MBE) or women-owned businesses (WBE) in the narrowly-defined geographic market within each of the relevant industries,
- Step 6: Determined the total number of firms in the narrowly-defined geographic market for each of the relevant industries.
- Step 7: Calculated the numerator of the D&B availability measure by summing the number of minority-owned business or women-owned enterprises in each of the primary industries and the defined geographic markets.
- Step 8: Calculated the denominator of the D&B availability measure by summing the number of total firms in each of the primary industries and the defined geographic markets.
- Step 9: Calculated the share, or the unweighted availability, of women-owned enterprises or minority-owned businesses, which is the ratio of WBE or MBE total firms to total firms in a given relevant industry and narrowly-tailored geographic market.
- Step 10: Calculated the weighted availability measure by multiplying the weights using subcontracts only by the share of WBE or MBE firms.
- Step 11: Summed the weighted availability rate for each NAICS code.
- Step 12: Averaged results calculated through the NAICS level database, in order to obtain the final availability rate for each geographic market.



Step 13: Adjust the ratios to obtain the ratio for the total number of NAICS. Used ratios from pre-qualification and vendor method to average GMA<sub>j</sub>/PJM4 ratio, and imputed non-PJM4 GMA rates for D&B method.

Table 1.

NAICS	Subs only	Minority or Women Owned	Total	Unweighted	Weighted
238210	14.2111%	320	4529	0.070656	0.010041
237310	11.2855%	90	817	0.110159	0.012432
541330	10.5642%	361	2458	0.146867	0.015515
517210	8.8452%	28	497	0.056338	0.004983
237990	7.1539%	29	228	0.127193	0.009099
541611	5.0590%	880	6123	0.14372	0.007271
238120	4.9989%	21	78	0.269231	0.013459
236210	3.7555%	19	158	0.120253	0.004516
238110	2.7279%	59	548	0.107664	0.002937
236220	2.6300%	287	1656	0.173309	0.004558
541310	2.3146%	168	1372	0.122449	0.002834
<b>Total</b>	<b>73.5457%</b>	<b>2262</b>	<b>18464</b>	<b>0.122509</b>	<b>8.76%</b>

## UTILIZATION VS AVAILABILITY ANALYSIS

Description and construction of data

Six availability rates and utilization rates that corresponds to the domain of each availability rates is used for the computation of disparity ratio and statistical test.

Six availability analysis includes:

1. DBE list method
2. Bidders list method
3. Vendors list method
4. Survey of Business Owners method
5. Prequalification list method
6. Dun and Bradstreet method

Methodology

Step 1:

Disparity ratio is calculating using the following formula:

$$\text{Disparity ratio}_{ij} = \frac{\text{Utilization rate}_{ij}}{\text{Availability rate}_{ij}}$$

For each availability method *i* and each geographic market area *j* (There are six availability methods and 7 GMA definition).

The utilization rate is calculated using overall sample as well as the federal only sample and using contract amount and number.

Step 2:

The difference in average utilization and availability rate is tested using contract amount variation –adjusted binomial test of the following formula<sup>137</sup>:

$$\text{Biomial test} = \frac{u - a}{\sqrt{\frac{a * (1 - a) * \sum c_i^2}{(\sum c_i)^2}}}$$

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<sup>137</sup> Binomial test based on the suggestions from TRB report. “Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program” NCHRP REPORT 644, 2010

Step 3:

Composite rates and disparity ratio are calculated using composite utilization and availability rates that aggregate over various GMAs.

Conclusion

The disparity ratio is calculated by taking the ratio of DBE utilization to DBE availability. If there is no disparity between the utilization of DBEs and the availability, then the disparity ratio equals 1. All disparity ratios are significantly less than 1, regardless of the weights used for the composite rates. The t-test results for the mean difference in composite availability and utilization rates shows that there exists statistically significant under-utilization of the DBE firms.

## AGENCY DISCRIMINATION

**Table 1. Likelihood of a Being Prequalified on Contract Amount Equal or Larger than \$4 Million**

Dependent Variable	Logit 1	Logit 2	Logit 3	Logit 4	Logit 5	Logit 6
	Whether the assigned amount is equal or larger than \$4m					
	$\beta$ (SE)	$\beta$ (SE)	$\beta$ (SE)	$\beta$ (SE)	$\beta$ (SE)	$\beta$ (SE)
Independent Variable	Z-score	Z-score	Z-score	Z-score	Z-score	Z-score
dbedummy	-1.8717*** (0.3545)	-1.8524*** (0.3926)	-2.1290*** (0.4179)	-1.8916*** (0.3795)	-2.0464*** (0.4733)	-2.1259*** (0.4172)
	-5.2802	-4.7179	-5.0940	-4.9849	-4.3233	-5.0955
year2005-08	-0.8205*** (0.3147)	-1.0964*** (0.3406)	-13.0618 (683.7607)	-16.1771 (1,362.1935)	-14.4757*** (1.1420)	-13.4908 (823.5793)
	-2.6074	-3.2192	-0.0191	-0.0119	-12.6761	-0.0164
year2008-09	-0.8178*** (0.3128)	-1.0234*** (0.3452)	-0.9189** (0.3700)	-1.1469*** (0.3895)	-1.3274*** (0.3952)	-0.9302** (0.3710)
	-2.6142	-2.9651	-2.4833	-2.9446	-3.3587	-2.5073
year2009-12	-0.3912 (0.3435)	-0.7883** (0.3678)	-0.7177* (0.3971)	-0.8570** (0.4096)	-1.1242*** (0.4320)	-0.7156* (0.3966)
	-1.1391	-2.1436	-1.8074	-2.0920	-2.6021	-1.8044
njstate	-0.7523*** (0.2469)	-0.9165*** (0.2609)	-0.8446*** (0.2784)	-0.9365*** (0.2794)	-0.9129*** (0.2753)	-0.8348*** (0.2790)
	-3.0466	-3.5129	-3.0341	-3.3515	-3.3155	-2.9924
largefirm		1.1799*** (0.2334)	1.0333*** (0.2412)	1.1867*** (0.2321)	1.0691*** (0.2407)	1.0284*** (0.2434)
		5.0550	4.2832	5.1123	4.4409	4.2249
tenureyear		0.0210*** (0.0057)	0.0229*** (0.0059)	0.0204*** (0.0057)	0.0232*** (0.0064)	0.0228*** (0.0059)
		3.6950	3.8987	3.5948	3.6409	3.8833
tenuremiss		-0.5811 (0.3596)	-0.3816 (0.3646)	-0.5333 (0.3552)	-0.2634 (0.3589)	-0.3838 (0.3648)
		-1.6162	-1.0465	-1.5012	-0.7339	-1.0522
Credir_Low Risk		-0.1408 (0.2380)	-0.2268 (0.2525)		-0.2359 (0.2474)	-0.2311 (0.2529)
		-0.5917	-0.8982		-0.9536	-0.9139
Credir_Medium Risk		1.5970*** (0.3441)	1.7727*** (0.3661)		1.8126*** (0.4275)	1.7483*** (0.3674)
		4.6416	4.8414		4.2397	4.7583
Credir_High Risk		0.6619	0.5678		0.5299	0.5587

## Agency Discrimination

		(0.4105)	(0.4274)		(0.3994)	(0.4273)
		1.6121	1.3286		1.3266	1.3076
classBC			0.4235	0.2048	0.4528	0.4032
			(1.0031)	(0.9837)	(1.0408)	(1.0042)
classBR			0.4222	0.2082	0.4351	0.4015
			-0.4201	-0.3302	-0.3546	-0.4213
			(1.1231)	(1.0972)	(1.1108)	(1.1220)
classES			-0.3741	-0.3010	-0.3193	-0.3755
			-0.8277	-1.1886	-0.8903	-0.8688
			(1.1703)	(1.1523)	(1.1702)	(1.1776)
classHC			-0.7072	-1.0315	-0.7609	-0.7378
			1.6188	1.3239	1.6243	1.5919
			(0.9951)	(0.9755)	(1.0372)	(0.9979)
classHR			1.6268	1.3572	1.5661	1.5952
			1.1446	0.9408	1.3562	1.1239
			(1.0364)	(1.0158)	(1.0895)	(1.0372)
classMC			1.1043	0.9262	1.2448	1.0835
			1.7535	1.4194	1.8215	1.7128
			(1.1557)	(1.1352)	(1.2130)	(1.1611)
classMG			1.5172	1.2504	1.5016	1.4752
			0.9437	1.2185	1.7790	0.9514
			(1.2439)	(1.2680)	(1.2282)	(1.2436)
classmissing			0.7587	0.9610	1.4485	0.7651
			12.9990	15.7508	14.1216***	13.3982
			(683.7612)	(1,362.1937)	(1.4721)	(823.5797)
			0.0190	0.0116	9.5928	0.0163
Request reviewed by one of 8 officers					0.7763***	0.8888***
					(0.2938)	(0.2982)
					2.6427	2.9804
No longer woking for NJT						0.0577
						(0.2059)
						0.2804
Constant	1.3239***	0.7529*	-0.3420	-0.3568	-0.7978	-0.3418
	(0.3582)	(0.4234)	(1.0880)	(1.0827)	(1.1421)	(1.0876)
	3.6962	1.7783	-0.3143	-0.3295	-0.6986	-0.3143
Observations	625	625	625	625	625	622
Wald Chi 2	58.83	157.1	197.2	172.8	316.7	194.9
Prob > Chi	0	0	0	0	0	0
Pseudo R	0.0682	0.182	0.229	0.200	0.233	0.227

Standard errors in parentheses  
 \*\*\* p<0.01, \*\* p<0.05, \* p<0.1

**Table 2. Likelihood of a Being Prequalified on Contract Amount Equal or Larger than \$4 Million, by Race and Ethnicity**

Dependent Variable	Subcontinental		
	Asian DBE	Asian DBE	Hispanic DBE
Independent Variable	Whether the assigned amount is equal or larger than \$4m		
	$\beta$ (SE)	$\beta$ (SE)	$\beta$ (SE)
	Z-score	Z-score	Z-score
Source0508	-12.7253*** (1.1671)	-12.6919*** (1.1650)	-12.7005*** (1.1498)
source0809	-10.9030 -1.3309*** (0.4128)	-10.8946 -1.2735*** (0.4025)	-11.0460 -1.2738*** (0.4003)
source0912	-3.2240 -1.2294*** (0.4549)	-3.1638 -1.1911*** (0.4423)	-3.1822 -1.1087** (0.4367)
njstate	-2.7026 -1.0928*** (0.2986)	-2.6933 -1.0834*** (0.2964)	-2.5389 -0.9456*** (0.2860)
largefirm	-3.6603 1.1313*** (0.2470)	-3.6553 1.1558*** (0.2481)	-3.3061 1.0180*** (0.2385)
tenureyear	4.5807 0.0210*** (0.0064)	4.6586 0.0207*** (0.0063)	4.2685 0.0231*** (0.0064)
tenuremiss	3.2867 -0.3270 (0.3678)	3.2550 -0.3418 (0.3682)	3.6085 -0.1859 (0.3558)
risklow	-0.8891 -0.2485 (0.2509)	-0.9283 -0.2020 (0.2481)	-0.5224 -0.1820 (0.2507)
midrisk	-0.9903 1.9434*** (0.4959)	-0.8145 1.9349*** (0.4945)	-0.7260 1.8715*** (0.4539)
highrisk	3.9187 0.6163 (0.4115)	3.9128 0.6363 (0.4093)	4.1230 0.5711 (0.4066)
classBC	1.4977 0.3438 (1.0560)	1.5546 0.3624 (1.0582)	1.4047 0.3960 (1.0416)
classBR	0.3256 -0.4179 (1.1173)	0.3424 -0.4338 (1.1195)	0.3801 -0.3750 (1.1098)
	-0.3740	-0.3875	-0.3379

	<b>Subcontinental Asian DBE</b>	<b>Asian DBE</b>	<b>Hispanic DBE</b>
classES	-1.0248 (1.1817)	-1.0123 (1.1844)	-0.9357 (1.1715)
	-0.8672	-0.8546	-0.7987
classHC	1.6743 (1.0527)	1.6150 (1.0539)	1.6359 (1.0393)
	1.5906	1.5325	1.5740
classHR	1.2391 (1.1004)	1.2079 (1.1024)	1.3497 (1.0879)
	1.1261	1.0957	1.2407
classMC	1.7328 (1.2331)	1.7133 (1.2367)	1.7937 (1.2076)
	1.4052	1.3854	1.4853
classMG	1.7300 (1.2432)	1.6806 (1.2438)	1.8178 (1.2268)
	1.3916	1.3512	1.4817
classmissing	12.2545*** (1.4934)	12.2554*** (1.4943)	12.3778*** (1.4784)
	8.2057	8.2017	8.3722
officer8	1.0087*** (0.3099)	0.9639*** (0.3060)	0.9604*** (0.2992)
	3.2546	3.1502	3.2104
Subcontinental Asian DBE	0.2256 (0.7558)		
	0.2984		
Asian DBE		-1.1260 (0.9035)	
		-1.2462	
Hispanic DBE			-1.3540** (0.6723)
			-2.0140
Constant	-0.6294 (1.1581)	-0.6316 (1.1591)	-0.8652 (1.1393)
	-0.5435	-0.5450	-0.7594
Observations	563	568	581
Prob > chi2	257.3	258.9	257.6
R-square	0.211	0.212	0.205

Robust standard errors in parentheses  
 \*\*\* p<0.01, \*\* p<0.05, \* p<0.1



**Table 3. Linear Probability Estimates of Coefficients in Mean Bid Success Rate**

Dependent Variable	DBE vs Non-DBE	White Female DBE vs. Non-DBE	Asian DBE vs. Non-DBE	Hispanic DBE vs. Non-DBE	Race Missing DBE vs. Non-DBE
	Mean Bid Success Rate				
Independent Variable	$\beta$ (SE)	$\beta$ (SE)	$\beta$ (SE)	$\beta$ (SE)	$\beta$ (SE)
	t-score	t-score	t-score	t-score	t-score
sometimedbe	-0.3540*** (0.0976) -3.6255				
medium_risk	0.1075 (0.1227) 0.8756	0.0871 (0.1225) 0.7108	0.0936 (0.1224) 0.7644	0.0989 (0.1236) 0.8000	0.0859 (0.1222) 0.7027
high_risk	0.0600 (0.0783) 0.7667	0.0494 (0.0783) 0.6302	0.0528 (0.0783) 0.6744	0.0572 (0.0786) 0.7285	0.0485 (0.0783) 0.6194
credit_missing	-0.7954*** (0.0590) -13.4740	-0.8338*** (0.0609) -13.6951	-0.8233*** (0.0600) -13.7126	-0.8249*** (0.0597) -13.8196	-0.8328*** (0.0605) -13.7616
Construction	0.0977 (0.0728) 1.3428	0.0787 (0.0664) 1.1847	0.0860 (0.0677) 1.2709	0.0830 (0.0686) 1.2093	0.0790 (0.0670) 1.1791
Waste Management	0.2378* (0.1227) 1.9381	0.3275** (0.1264) 2.5915	0.3355*** (0.1289) 2.6034	0.2741** (0.1296) 2.1148	0.2868** (0.1243) 2.3077
industries missing	-0.0428 (0.0623) -0.6874	-0.0500 (0.0522) -0.9570	-0.0556 (0.0542) -1.0256	-0.0405 (0.0557) -0.7273	-0.0380 (0.0537) -0.7072
NJ	-0.0280 (0.0510) -0.5494	-0.0388 (0.0516) -0.7528	-0.0341 (0.0516) -0.6612	-0.0359 (0.0513) -0.6996	-0.0376 (0.0513) -0.7317
state_missing	-0.0123 (0.0491) -0.2496	-0.0143 (0.0478) -0.2996	-0.0112 (0.0476) -0.2350	-0.0153 (0.0482) -0.3178	-0.0184 (0.0482) -0.3814
tenure	0.0011 (0.0023) 0.4789	0.0009 (0.0024) 0.3962	0.0010 (0.0024) 0.4348	0.0013 (0.0024) 0.5508	0.0008 (0.0024) 0.3465
tenure_missing	0.4743*** (0.0918) 5.1670	0.4679*** (0.0938) 4.9903	0.4765*** (0.0929) 5.1270	0.4779*** (0.0935) 5.1112	0.4677*** (0.0937) 4.9911

## Agency Discrimination

	<b>DBE vs Non-DBE</b>	<b>White Female DBE vs. Non-DBE</b>	<b>Asian DBE vs. Non-DBE</b>	<b>Hispanic DBE vs. Non-DBE</b>	<b>Race Missing DBE vs. Non-DBE</b>
large_size_firm	0.1886 (0.1322)	0.2013 (0.1382)	0.2073 (0.1381)	0.1623 (0.1359)	0.2072 (0.1381)
predicted probability of pre-qualification bidding over \$4m	1.4268 0.0933 (0.0800)	1.4561 0.1108 (0.0802)	1.5014 0.0988 (0.0797)	1.1944 0.1198 (0.0804)	1.5000 0.1131 (0.0802)
white female bbe		-0.6020*** (0.2123)		1.4906	1.4108
asian dbe		-2.8359	-0.3306*** (0.1171)		
hispanic dbe				-0.3210 (0.2283)	
racemissing dbe				-1.4062	-0.3485 (0.2681)
Constant	2.8374 0.3955*** (0.1394)	3.0852 0.4273*** (0.1385)	2.9822 0.4121*** (0.1382)	2.9317 0.4072*** (0.1389)	3.0786 0.4265*** (0.1385)
Observations	278	268	267	266	265
Prob > F	0	0	0	0	0
Adjusted R-square	0.545	0.542	0.551	0.543	0.544

Robust standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

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**Table 4. Linear Estimates of Coefficients in Mean Prime Contract Awarded Amount (Federal Contracts)**

Dependent Variable	DBE vs Non-DBE	White Female DBE vs. Non-DBE	Asian DBE vs. Non-DBE	Subcontinent Asian DBE vs. Non-DBE	Hispanic DBE vs. Non-DBE
	Contract Amount in million dollars				
Independent Variable	coeff (SE)	coeff (SE)	coeff (SE)	coeff (SE)	coeff (SE)
	t-score	t-score	t-score	t-score	t-score
white female DBE		-1.0076* (0.5285)			
		-1.9067			
pr_mediumrisk	0.2399 (0.4305)	0.3477 (0.3936)	0.3118 (0.3991)	0.3118 (0.3991)	0.3472 (0.3920)
	0.5572	0.8834	0.7812	0.7812	0.8859
pr_highrisk	0.3445 (0.2986)	0.3045 (0.3788)	0.2710 (0.3784)	0.2710 (0.3784)	0.3044 (0.3717)
	1.1540	0.8038	0.7161	0.7161	0.8189
pr_missing_risk	0.2051 (0.3241)	0.0539 (0.3514)	0.0687 (0.3413)	0.0687 (0.3413)	0.0543 (0.3512)
	0.6329	0.1535	0.2014	0.2014	0.1545
pr_NAICS not missing		-0.0000* (0.0000)	-0.0000 (0.0000)	-0.0000 (0.0000)	-0.0000* (0.0000)
		-1.6793	-1.6466	-1.6466	-1.6800
pr_NJ	-0.6067** (0.2463)	-0.6935*** (0.2607)	-0.6475** (0.2625)	-0.6475** (0.2625)	-0.6937*** (0.2603)
	-2.4636	-2.6604	-2.4666	-2.4666	-2.6648
pr_firmage	0.0071 (0.0043)	0.0052 (0.0044)	0.0058 (0.0044)	0.0058 (0.0044)	0.0052 (0.0044)
	1.6420	1.1931	1.3216	1.3216	1.1904
pr_firmagemissing	0.8847*** (0.2912)	0.6251** (0.3093)	0.6163** (0.3084)	0.6163** (0.3084)	0.6247** (0.3094)
	3.0381	2.0209	1.9981	1.9981	2.0187
pr_FY07		0.5815 (0.4222)	0.5820 (0.4254)	0.5820 (0.4254)	0.5878 (0.4291)
		1.3771	1.3682	1.3682	1.3698
pr_FY08		-0.1075 (0.6588)	-0.1051 (0.6602)	-0.1051 (0.6602)	-0.1017 (0.6624)
		-0.1632	-0.1592	-0.1592	-0.1535
pr_FY09		-1.3440** (0.5271)	-1.3696** (0.5373)	-1.3696** (0.5373)	-1.3377** (0.5326)
		-2.5495	-2.5489	-2.5489	-2.5117
pr_FY10		-0.3935	-0.3552	-0.3552	-0.3850

## Agency Discrimination

	<b>DBE vs Non-DBE</b>	<b>White Female DBE vs. Non- DBE</b>	<b>Asian DBE vs. Non-DBE</b>	<b>Subcontinent Asian DBE vs. Non-DBE</b>	<b>Hispanic DBE vs. Non-DBE</b>
		(0.7381)	(0.7514)	(0.7514)	(0.7321)
		-0.5332	-0.4727	-0.4727	-0.5259
pr_FY11		-1.0491	-1.0526	-1.0526	-1.0449
		(0.8571)	(0.8683)	(0.8683)	(0.8077)
		-1.2240	-1.2123	-1.2123	-1.2938
pr_FY12		-1.6864*	-1.6485*	-1.6485*	-1.6811*
		(0.9283)	(0.9322)	(0.9322)	(0.9199)
		-1.8166	-1.7684	-1.7684	-1.8275
pr_FY13		-0.3554	-0.4626	-0.4626	-0.3498
		(0.7481)	(0.7602)	(0.7602)	(0.7341)
		-0.4751	-0.6085	-0.6085	-0.4765
pr_postrecession	0.1063	0.6469	0.6497	0.6497	0.6477
	(0.2290)	(0.5801)	(0.5862)	(0.5862)	(0.5628)
	0.4642	1.1152	1.1084	1.1084	1.1507
pr_construction	2.5986***	2.9388***	2.8219***	2.8219***	2.9387***
	(0.4332)	(0.4539)	(0.4597)	(0.4597)	(0.4543)
	5.9988	6.4748	6.1381	6.1381	6.4687
pr_profservices	-0.1876	0.9269***	0.9527***	0.9527***	0.9257***
	(0.5322)	(0.3343)	(0.3373)	(0.3373)	(0.3344)
	-0.3526	2.7723	2.8247	2.8247	2.7682
pr_CCGS	-0.9401**	-0.1645	-0.1685	-0.1685	-0.1624
	(0.3878)	(0.5118)	(0.5129)	(0.5129)	(0.5113)
	-2.4242	-0.3214	-0.3286	-0.3286	-0.3177
pr_DBEstatus	-0.3043				
	-0.5572				
	-0.5461				
IFB	-0.1612				
	(1.5846)				
	-0.1018				
PBE	-0.5448				
	(1.6352)				
	-0.3331				
RFP	0.8507				
	(1.5884)				
	0.5356				
RFQ	-2.4807				
	(1.5988)				
	-1.5516				
Asian DBE			0.0872		
			(0.8201)		
			0.1063		
Subcontinental				0.0872	

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	<b>DBE vs Non-DBE</b>	<b>White Female DBE vs. Non- DBE</b>	<b>Asian DBE vs. Non-DBE</b>	<b>Subcontinent Asian DBE vs. Non-DBE</b>	<b>Hispanic DBE vs. Non-DBE</b>
DBE				(0.8201) 0.1063	
Hispanic DBE					-0.7572 (0.5031) -1.5049
Constant	12.6349*** (1.6155) 7.8211	13.1540*** (0.5318) 24.7362	13.1275*** (0.5323) 24.6627	13.1275*** (0.5323) 24.6627	13.1489*** (0.5344) 24.6045
Observations	237	230	233	233	230
R-square	0.305	0.363	0.337	0.337	0.354

Robust standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

Note: column B is the one used in the summary table

The race/gender missing DBE had 0 prime contract. It is omitted from underlying regressions.

**Table 5. Log Linear Estimates of Coefficients in Mean Sub Contract Awarded Amount (Federal Contracts)**

Dependent variable	Ln (contract amount)	<b>DBE vs non-DBE</b>	<b>White Female DBE vs. Non-DBE</b>	<b>Asian DBE vs. Non-DBE</b>	<b>Pacific Asian DBE vs. Non-DBE</b>	<b>Subcontinent Asian DBE vs. Non-DBE</b>	<b>Hispanic DBE vs. Non-DBE</b>	<b>Missing Race DBE vs. Non-DBE</b>
		coeff (SE)	coeff (SE)	coeff (SE)	coeff (SE)	coeff (SE)	coeff (SE)	coeff (SE)
Independent Variable		t-score	t-score	t-score	t-score	t-score	t-score	t-score
sub_DBEstatus		1.1136*** (0.1554) 7.1674	/	/	/	/	/	/
sub_highrisk		-0.1218 (0.2750)	-0.2883 (0.3798)	-0.1766 (0.3353)	-0.0640 (0.4227)	-0.2292 (0.3718)	-0.2829 (0.4047)	-0.1422 (0.4774)
sub_missing_risk		-0.4428 (0.2178)	-0.7592 (0.2294)	-0.5267 (0.2468)	-0.1514 (0.2468)	-0.6166 (0.2571)	-0.6992 (0.2520)	-0.2980 (0.2568)
		-0.2949	-0.6210	-0.6624	-0.4393	-0.9149	-0.3579	-0.7058
sub_NJ		-0.3708** (0.1603) -2.3134	0.5075*** (0.1863) -2.7244	0.5791*** (0.2186) -2.6487	0.6829*** (0.2350) -2.9065	-0.6591*** (0.2457) -2.6831	0.6721*** (0.2520) -2.6671	0.7399*** (0.2570) -2.8789

**Agency Discrimination**

	<b>DBE vs non-DBE</b>	<b>White Female DBE vs. Non- DBE</b>	<b>Asian DBE vs. Non- DBE</b>	<b>Pacific Asian DBE vs. Non- DBE</b>	<b>Subcontine nt Asian DBE vs. Non-DBE</b>	<b>Hispani c DBE vs. Non- DBE</b>	<b>Missing Race DBE vs. Non- DBE</b>
sub_firmage	0.0016 (0.0071)	0.0067 (0.0078)	0.0079 (0.0079)	0.0082 (0.0083)	0.0080 (0.0080)	0.0053 (0.0082)	0.0081 (0.0084)
agemissing	0.2306 0.3771 (0.3048)	0.8632 0.6721** (0.3397)	1.0015 0.5459* (0.3272)	0.9808 0.5905* (0.3348)	1.0020 0.7361** (0.3461)	0.6407 0.6249* (0.3494)	0.9663 0.7641** (0.3538)
IFB	1.2372 -2.6878*** (0.9035)	1.9787 -2.8958** (1.2097)	1.6683 -0.1482 (1.0560)	1.7638 / (1.0560)	2.1268 / (1.0560)	1.7885 / (1.0560)	2.1596 / (1.0560)
PBE	-2.9749 - -	-2.3937 2.4608** (1.2127)	-0.1403 2.9190** (1.1932)	0.1856 0.1856 (1.2285)	0.1511 / (1.2285)	0.2853 0.2853 (1.2844)	0.2221 / (1.2844)
RFQ	- -1.7611** (0.8546)	0.5330* 0.5330* (0.3031)	1.1031*** 1.1031*** (0.3468)	1.6471*** 1.6471*** (0.5238)	-1.7790 -1.7790 (1.1541)	1.5954*** 1.5954*** (0.5248)	-1.7927** -1.7927** (0.9073)
sub_construction	-2.0607 0.4175 (0.4025)	1.7585 0.4803 (0.4383)	3.1808 0.1879 (0.5256)	-3.1447 0.2730 (0.5391)	-1.5414 0.1314 (0.5348)	-3.0401 0.3258 (0.5409)	-1.9759 0.2158 (0.5474)
sub_profsvcs	1.0373 -2.0695*** (0.4576)	- 1.8050*** (0.4935)	- 2.6228*** (0.6038)	- 2.6528*** (0.6138)	0.2457 / (0.6138)	0.6023 / (0.6138)	0.3942 / (0.6138)
whitefemale dbe	-4.5223 / -	-3.6575 1.0912*** (0.1807)	-4.3440 / -	-4.3219 / -	6.0378 / -	6.0378 / -	6.0378 / -
asian dbe	6.0378 / -	6.0378 / -	6.0378 1.4534*** (0.2013)	6.0378 / -	6.0378 / -	6.0378 / -	6.0378 / -
pacific asiandbe	7.2211 / -	7.2211 / -	7.2211 / -	1.3291*** (0.2485)	5.3484 / -	5.3484 / -	5.3484 / -
subcontinental asian dbe	5.3484 / -	5.3484 / -	5.3484 / -	5.3484 / -	1.5322*** (0.2320)	6.6040 / -	6.6040 / -
hispanic dbe	6.6040 / -	6.6040 / -	6.6040 / -	6.6040 / -	6.6040 / -	1.1748*** (0.3183)	3.6912 / -
racemissing dbe	3.6912 / -	3.6912 / -	3.6912 / -	3.6912 / -	3.6912 / -	3.6912 / -	0.9881** (0.3916) 2.5230

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	<b>DBE vs non-DBE</b>	<b>White Female DBE vs. Non-DBE</b>	<b>Asian DBE vs. Non-DBE</b>	<b>Pacific Asian DBE vs. Non-DBE</b>	<b>Subcontinent Asian DBE vs. Non-DBE</b>	<b>Hispanic DBE vs. Non-DBE</b>	<b>Missing Race DBE vs. Non-DBE</b>
Constant	13.5099*** (0.9583)	10.8282** *	11.1397** *	11.2105** *	14.1056*** (1.2784)	11.2100** *	11.4106** *
	14.0981	23.0594	19.6694	19.1977	11.0341	18.9432	12.9615
Observations	488	345	311	245	292	254	231
Prob>F	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Adjusted R-square	0.265	0.266	0.269	0.272	0.264	0.292	0.264

**Table 6. List of Variables used for Agency Discrimination Report**

<b>Variable</b>	<b>Description</b>	<b>How the variable was created</b>
dbedumy/sometimedbe	DBE status for any give years from 2005 to 2013	= 1 if dbe = 1 in any 2005-2013 NJ_NY_PA UCP DBE database; = 0 otherwise
NJ/njstate	Dummy variable: New Jersey	= 1 if state_all = 'NJ'; = 0 otherwise
source0508	Dummy variable: Fiscal year 2005 to 2008	= 1 if Fiscal year = '2005, 2006, 2007 or 2008'; = 0 otherwise
source0809	Dummy variable: Fiscal year 2008 to 2009	= 1 if Fiscal year = '2009'; = 0 otherwise
source0912	Dummy variable: Fiscal year 2009 to 2012	= 1 if Fiscal year = '2010,2011 or 2012'; = 0 otherwise
largefirm/large_size_firm	Size of firm: large	=1 if Number of employees > 100 & sales > \$1 million
tenureyear	Length of Business in years	= 2013-yearoffounding
tenuremiss	Dummy variable: tenure year is missing	= 1 if tenuremissing = 'missing'; = 0 otherwise
risklow	D&B Prescreen Score: Low Risk	= 1 if dbprescreenscore = 'Low Risk'; = 0 otherwise
midrisk	D&B Prescreen Score: Medium Risk	= 1 if dbprescreenscore = 'Medium Risk'; = 0 otherwise
highrisk	D&B Prescreen Score: High Risk	= 1 if dbprescreenscore = 'High Risk'; = 0 otherwise
classBC	Dummy variable: pre-qualified bidding category is Buliding Construction	= 1 if class1 = 'BC'; = 0 otherwise



## Agency Discrimination

classBR	Dummy variable: pre-qualified bidding category is Buliding Construction-Rail	= 1 if class1 = 'BR'; = 0 otherwise
classES	Dummy variable: pre-qualified bidding category is Environmental Services	= 1 if class1 = 'ES'; = 0 otherwise
classHC	Dummy variable: pre-qualified bidding category is Heavey Construction	= 1 if class1 = 'HC'; = 0 otherwise
classHR	Dummy variable: pre-qualified bidding category is Heavey Construction-Rail	= 1 if class1 = 'HR'; = 0 otherwise
classMC	Dummy variable: pre-qualified bidding category is Marine Construction-Rail	= 1 if class1 = 'MC'; = 0 otherwise
classMG	Dummy variable: pre-qualified bidding category is Manufacturing	= 1 if class1 = 'MG'; = 0 otherwise
classmissing	Dummy variable: pre-qualified bidding category is missing	= 1 if class1 = 'missing'; = 0 otherwise
officer8	Dummy variable: the pre-qualification request was reviewed by one of eight offices who had reviewed most requests	= 1 if assigned = 'top 8'; = 0 otherwise
No longer woking for NJT	Dummy variable: working status for procuremnet officers	= 1 if no longer working for NJT = 'yes'; = 0 otherwise
Other Industries except for construction, professional services and waste management	Industry: Other than Construction, professional services and construction	=1 if naics_all ≠'54' &≠'56' &≠'32'; = 0 otherwise
Waste management and remediation services	Industry: Waste management and remediation services	= 1 if naics_all = '56'; = 0 otherwise
Procurement Method-IFB	Procurement Method: IFB	= 1 if procurementmethod = 'IFB'; = 0 otherwise
Procurement Method-PBE	Procurement Method: PBE	= 1 if procurementmethod = 'PBE'; = 0 otherwise
Procurement Method-RFP	Procurement Method: RFP	= 1 if procurementmethod = 'RFP'; = 0 otherwise
Procurement Method-RFQ	Procurement Method: RFQ	= 1 if procurementmethod = 'RFQ'; = 0 otherwise

**Table 7.1 Discrimination Analysis-Bidders Method, 2007–2013, Bid-level**

Variables	Model 1			Model 2			Model 3			Model 4		
	Coefficient	Robust SE	P-value	Coefficient	Robust SE	P-value	Marginal Effects	Standard Error	P-value	Marginal Effects	Standard Error	P-value
DBE	0.0156	0.0278	0.574	0.0243	0.0375	0.517	0.0153	0.0265	0.5640	0.0239	0.0296	0.4180
Credit risk												
Low	reference group			reference group			reference group			reference group		
Medium	0.0556	0.0475	0.242	0.5170	0.0481	0.221	0.0448	0.0646	0.4880	0.0482	0.0647	0.4560
High	0.0096	0.0225	0.670	0.0110	0.0226	0.628	0.0152	0.0331	0.6460	0.0152	0.0331	0.6470
Credit missing	-0.5473	0.0559	0.000	-0.5472	0.0562	0.000	-0.7911	0.0573	0.0000	-0.7875	0.0562	0.0000
NAICS codes												
23	-0.0560	0.0787	0.4770	-0.0593	0.0796	0.456	-0.0412	0.0568	0.4690	-0.0437	0.0583	0.4540
54	reference group			reference group			reference group			reference group		
56	-0.1100	0.0929	0.236	-0.1066	0.0946	0.260	-0.0813	0.0673	0.2270	-0.0767	0.0708	0.2790
Other NAICS	-0.2130	0.0988	0.0310	-0.2083	0.1008	0.0390	-0.1440	0.0669	0.0310	-0.1356	0.0686	0.0480
NAICS missing	-0.5103	0.0918	0.0918	-0.5068	0.0918	0.0000	dropped from model			dropped from model		
NJ	0.0078	0.0301	0.795	0.0047	0.0309	0.878	0.0010	0.0311	0.9740	0.0005	0.0314	0.9870
State missing	0.0032	0.0279	0.908	0.0055	0.0286	0.848	dropped from model			dropped from model		
Tenure	-0.0001	0.0010	0.949	-0.0001	0.0010	0.943	0.0000	0.0007	0.9540	-0.0001	0.0007	0.9200
Tenure missing	-0.1488	0.0868	0.087	-0.1491	0.0874	0.088	-0.0684	0.0554	0.2170	-0.0668	0.0568	0.2390
Large firm	0.0341	0.0620	0.582	0.0264	0.0638	0.679	0.0231	0.0431	0.5920	0.0150	0.0443	0.7360
Size missing	0.2736	0.0743	0.000	0.2754	0.0751	0.000	0.6926	0.0766	0.0000	0.6904	0.0771	0.0000
Pre-qual > \$4,000,000				0.0203	0.0343	0.554				0.0227	0.0268	0.398
Prequalification missing				0.0018	0.0338	0.958				-0.0015	0.0290	0.958
No. of observations	847			847			815			815		
R-squared/Pseudo R-squared	0.4219			0.4225			0.3261			0.3280		

Notes:

Source: Prime Contract Bidders Analysis

Model 1: OLS dummy variable regression; pre-qualification variable omitted

Model 2: OLS dummy variable regression; pre-qualification variable included

Model 3: Probit dummy variable regression; pre-qualification variable omitted

Model 4: Probit dummy variable regression; pre-qualification variable included

NAICS codes 22, 33, 48, 49, 51, 53, 55, & 81 were recoded as other NAICS due to having only 1 to 7 observations in each category

**Table 7.2. Discrimination Analysis-Bidders Method, DBE-Prequalification Interaction Term, 2007-2013, Bid-level**

Variables	Model 1			Model 2		
	Coefficient	Robust SE	P-value	Coefficient	Robust SE	P-value
Credit risk						
Low		reference group			reference group	
Medium	0.0596	0.0481	0.215	0.0492	0.0647	0.447
High	0.0079	0.0231	0.734	0.0115	0.0337	0.734
Credit missing	-0.5473	0.0562	0.000	-0.7894	0.0563	0.000
NAICS codes						
23	-0.0599	0.0798	0.453	-0.0444	0.0587	0.450
54		reference group			reference group	
56	-0.1085	0.0949	0.253	-0.0786	0.0714	0.271
Other NAICS	-0.2103	0.1012	0.038	-0.1376	0.0693	0.047
NAICS missing	-0.5083	0.0922	0.000	dropped due to multicollinearity		
NJ	0.0052	0.0309	0.867	0.0007	0.0314	0.982
State missing	0.0060	0.0286	0.835	dropped due to multicollinearity		
Tenure	-0.0001	0.0010	0.893	-0.0001	0.0007	0.870
Tenure missing	-0.1549	0.0887	0.081	-0.0731	0.0583	0.211
Large firm	0.0305	0.0653	0.640	0.0177	0.0451	0.694
Size missing	0.2803	0.0760	0.000	0.6972	0.0781	0.000
DBE	0.0205	0.0391	0.601	0.0211	0.0305	0.489
Pre-qual > \$4,000,000	0.0174	0.0355	0.624	0.0209	0.0275	0.448
DBE-Prequalification Interaction	0.0913	0.0587	0.120	dropped due to multicollinearity		
Prequalification missing	0.0000	0.0344	0.999	-0.0025	0.0292	0.932
No. of observations		847			812	
R-squared/Pseudo R-squared		0.4227			0.3279	

Notes:

Source: Prime Contract Bidders Analysis

Model 1: OLS regression w/ DBE-Prequalification interaction term

Model 2: Probit regression w/ DBE-Prequalification interaction term

NAICS codes 22, 33, 48, 49, 51, 53, 55, & 81 were recoded as other NAICS due to having only 1 to 7 observations in each category

**Table 8.1: Discrimination Analysis-Bidders Method, 2007–2013**

Variables	Model 1			Model 2		
	Coefficient	Robust SE	P-value	Coefficient	Robust SE	P-value
DBE	-0.0428	0.0585	0.465	-0.0496	0.0663	0.454
Credit risk						
Low		reference group			reference group	
Medium	0.1220	0.0497	0.015	0.1228	0.0501	0.015
High	0.0676	0.0298	0.024	0.0661	0.0299	0.028
Credit missing	-0.3593	0.0591	0.000	-0.3656	0.0621	0.000
NAICS codes						
23	0.2975	0.0861	0.001	0.2893	0.0894	0.001
54		reference group			reference group	
56	0.1254	0.1363	0.359	0.1267	0.1350	0.349
Other NAICS	0.0727	0.1086	0.504	0.0679	0.1108	0.541
NAICS missing	-0.2669	0.0931	0.0050	-0.2527	0.0973	0.0100
NJ	0.0018	0.0433	0.968	-0.0033	0.0443	0.940
State missing	-0.0429	0.0447	0.338	-0.0380	0.0466	0.416
Tenure	-0.0002	0.0016	0.909	-0.0003	0.0016	0.867
Tenure missing	-0.1595	0.1196	0.184	-0.1219	0.1124	0.279
Large firm	-0.0407	0.1103	0.713	-0.0428	0.1205	0.723
Size missing	0.2494	0.1053	0.019	0.2354	0.0998	0.019
Pre-qual > \$4,000,000				0.0045	0.0558	0.936
Prequalification missing				-0.0545	0.0513	0.289
No. of observations		248			248	
R-squared		0.4598			0.5798	

Notes:

Source: Prime Contract Bidders Analysis

Model 1: OLS Regression, excluding pre-qualification

Model 2: OLS Regression, including pre-qualification

NAICS codes 22, 33, 48, 49, 51, 53, 55, &amp; 81 were recoded as other NAICS due to having only 1 to 6 observations in each category

**Table 8.2. Discrimination Analysis-Bidders Method, DBE-Prequalification Interaction, 2007–2013**

Model 1				
Variables		Coefficient t	Robust SE	P-value
Credit risk				
	Low		reference group	
	Medium	0.1226	0.0502	0.015
	High	0.0648	0.0301	0.032
	Credit missing	-0.3648	0.0626	0.000
NAICS codes				
	23	0.2898	0.0898	0.001
	54		reference group	
	56	0.1268	0.1352	0.349
	Other NAICS	0.0672	0.1111	0.546
	NAICS missing	-0.2537	0.0976	0.010
	NJ	-0.0033	0.0443	0.942
	State missing	-0.0381	0.0466	0.415
	Tenure	-0.0003	0.0016	0.850
	Tenure missing	-0.1253	0.1146	0.275
	Large firm	-0.0403	0.1228	0.743
	Size missing	0.2381	0.1010	0.019
	DBE	-0.0529	0.0701	0.451
	Pre-qual > \$4,000,000	0.0019	0.0587	0.974
	DBE*Prequal Interaction	0.0650	0.0981	0.5090
	Prequalification missing	-0.0554	0.0523	0.2900
	No. of observations		248	
	R-squared		0.5799	

Notes:

Source: Prime Contract Bidders Analysis

Model 1: OLS regression with DBE-prequalification interaction term

## PRE-MARKET AND PASSIVE DISCRIMINATION

Mónica García-Pérez, PhD

For this analysis we use American Community Survey 5-year sample 2008-2012, to compute business ownership/occupation representation ratios in each industry by race/ethnicity and gender. The average expected wage and income reported in Table 1 indicate that white males have higher expected wages than all other demographic groups in New Jersey. The differences in expected wages range between 60 to 70 percent.

*Table 1* and *Table 2* show summary statistics for Males and Females by race/ethnicity and nativity. In the case of males, the tables show that White male immigrants have the highest self-employment rate followed by their native counterpart and then by Asian and Other Race immigrants. White immigrant women also have the highest self-employment rate among all women groups. Overall, as the literature has found immigrants have higher self-employment rates than natives in each race/ethnicity group, except for Hispanic Women. Native White women have lower self-employment rates than Asian immigrant women. These tables demonstrate that self-employment rates and occupation/industry distributions varies by race/ethnicity and nativity, showing differences also within racial/ethnic groups. There are also differences across demographics characteristics with immigrants being concentrated at working age groups and a large proportion not being citizen (except for black immigrants). The majority of Hispanic immigrants, males and females, are non-citizens. Asian immigrants, males and females, have higher attainment education levels than any other group. From these average results, we can see evidence of racial/ethnic, gender, and nativity differences in the state of New Jersey. To what extent the differences in self-employment rates and occupational distribution respond to differences in educational attainment, experience, marital status, language skills, industry distribution, and citizen status? Our goal is to answer this question through analyzing the differences across groups and comparing them to white native males' outcomes.

### Methodology

To measure the differences among groups we would take an approach that will estimate these gaps but it would also take into consideration the distribution of that particular racial/ethnic/nativity group in the state. We then estimate industry and occupation employment representation ratios. We estimate it by looking at the ratio of the share of individuals of group  $k$  in occupation/industry  $j$  divided by the share of individuals of group  $k$  in the population.<sup>138</sup> We translate the same equation into the computation of self-employment representation ratios. Then, we estimate logit models of self-employment rates and occupational distribution to compute the portion of the gap explained by the differences across socio-economic, demographic, and nativity differences.<sup>139</sup>

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<sup>138</sup> Another way to get the same estimates consist on estimating the probability of a member of group  $k$  is in an occupation  $j$  divided by the probability of any individual working in occupation  $j$ .

<sup>139</sup> We use a largely common technique called Oaxaca-Blinder Decomposition to compute this contributions.

$$\delta = \frac{\Pr(j)^k}{\Pr(j)} = \frac{share(k, j)}{share(k)}$$

$\Pr(j)^k$  = kth group's probability of self - employed (occupation)

$\Pr(j)$  = overall probability of self - employed (occupation)

If  $\delta > 1$  then there is evidence of disproportionality.

On the aggregate analysis, we first identify the occupations and sectors at 2-digits NAICS codes most likely candidates to have been connected with New Jersey Transit and evaluate the concentration of particular groups in the identified categories. For groups are created: Construction, Transportation, Architecture, Others. We looked at groups of individuals by sex and race/ethnicity: Male White No-Hispanic, Female White No-Hispanic, Male Black No-Hispanic, Female Black No-Hispanic, Male Hispanic, Female Hispanic, Male Asian No-Hispanic, Female Asian and other OPI No-Hispanic, Male Asian and other OPI No-Hispanic, Male American Indian or Alaska Native No-Hispanic, Female American Indian or Alaska Native No-Hispanic, and all others Male and Female No-Hispanic. Then, to be able to go forward with the analysis on representation gaps and explained differences we use actual information on NJT awarded bids (prime and subprime contracts), and compute the most awarded sectors (2-digits and 6-digits depending on availability)<sup>140</sup> to find the most likely occupations that are avenues to become a DBE and participate in NJT bidding processes. Because the distribution of these occupation will be affected by the number of individuals employed in that particular sector and occupation in the state, we decided to further look at those that are most likely connected to self-employment.

To perform the decomposition, we estimate the log-odds of being self-employed (employed in particular occupation) separately for White, Hispanic, Black, and Asian groups.<sup>141</sup> We use the estimated values to do the decomposition analysis. We use the following logistic regression model to estimate the equal treatment value for, for instance, Hispanic:

$$\ln\left(\frac{p(j)^H}{1 - p(j)^H}\right) = \sum \beta_i^W x_i^H$$

The equal treatment value represents the log-odds that Hispanics are self-employed in when they are treated like whites. Then, we compute the White-Hispanic gap in the log-odds of being self-employed (occupation). For instance, for Hispanic and White, the gap is equal to  $\ln\left(\frac{p(j)^W}{1 - p(j)^W}\right) - \ln\left(\frac{p^H}{1 - p(j)^H}\right)$ .

<sup>140</sup> See list in Appendix Tables A.25–A.26

<sup>141</sup> Because of sample size limitations, we omit “Other Race” groups.



Afterwards, we decompose the White-Hispanic gap into the portion that is explained by the model. The explained gap is equal to  $\ln\left(\frac{p(j)^W}{1-p(j)^W}\right) - \ln\left(\frac{\overline{p(j)}^H}{1-\overline{p(j)}^H}\right) = \sum \beta_i^W (x_i^W - x_i^H)$ . It is the portion of the gap that is explained by differences in the characteristics of White and Hispanic groups. Additionally, we estimate the level of the explained gap that can be attributed to individual characteristics and industry distribution:

$$\frac{\beta_R^W (x_R^W - x_R^H)}{\sum \beta_i^W (x_i^W - x_i^H)}$$

The numerator is the portion of the gap that can be attributed to representation in self-employment. The denominator is equal to the total explained gap.

## Results

### Representation Ratios

Tables 3 to 4 report the Industry and Occupation specific representation ratios by race/ethnicity, sex, and nativity at 2-digits NAICS and SOC codes. Black and Hispanic, natives and immigrants, are disproportionately represented in Construction and Transportation and Warehousing industries, while underrepresented in the Professional, Scientific and Management industry. This trend is mimic in the occupational representation ratios, with some ratios reaching levels higher than 2 for Hispanics and blacks in Transportation related occupations. Apart from white native males, Asian native and immigrants, males and females, are the other groups that are overrepresented in Professional industry and Architecture and Engineering occupations. These estimates show evidence of disparities in the representation of minority groups in occupations and industries that are likely connected to NJT activities.

*Tables 5 and 6* show that the same groups are overrepresented in the same industries and occupations. However, we see that in some cases the representation ratio are larger than in the aggregated estimates. White native males are overrepresented in Construction and Architecture occupations which tend to be likely occupational avenues for business creation.

### Self-Employment differences in the geographic market

*Tables 7 to 9* report the differences in self-employment rates relative to white native males by 2-digits NAICS code industries. Construction shows the highest rates of self-employment overall. For males, Black and Hispanic natives show the lowest self-employment ratios, only with Hispanic natives almost compensating for some of this difference in Transportation industry. Immigrant blacks have higher self-employment rates in Professional sector in New Jersey. For women, white natives have lower self-employment rates than other minority groups. But these differences vary by industry. On average, Hispanic, black, and Asian women have lower self-employment rates in Construction.

*Table 10* has two panels that show the results of regression self-employment outcome on race, gender and nativity differences. We then add to this regression the following variables: age,

educational attainment, language skill, immigration status, industry, and expected wages<sup>142</sup>. The coefficients on the racial gender/immigrant dummy variables show a raw measure of unexplained gaps. There are sometimes interpreted as measuring discrimination and/or omitted variables that are connected to race/ethnicity and immigration and self-employment. On the unadjusted results, only white male immigrants have higher self-employment rates than white native males (5.2 percentage points above white native males). Although, immigrants from other groups have lower self-employment than white natives, they have higher rates than their native counterparts. To see this the reader needs to combine the estimates for white males and add to it immigrant, and then look at each specific group. For Hispanic immigrants, for example, self-employment rate is 5.1 percentage points below white native males, compared to 7.6 percentage points difference for Hispanic natives. The adjusted model shows that these differences are consistent even after accounting for the difference distribution in characteristics. Blacks and Hispanics have the lowest self-employment rates, natives and immigrants. However, we notice that Asian native males have higher self-employment rates. This could account for the higher end distribution in education attainment for this particular group and concentration in the professional, management sector.

*Tables 11 to 14* decompose the self-employment rate differences between other groups and white native males. The first two tables (*Table 11 and 12*) show the decomposition of the aggregate group of industries at 2-digit NAICS code (large 4 groups). These tables report that there still exist a portion that is unexplained in these differences and that can account for discrimination for all groups analyzed, and that it is significant at 1 percent level of significance. The lowest proportion of explained gaps are for black males and females, followed by Hispanic (women) and then Asian. Expected wages, educational attainment and industry distribution are relevant to explain gaps, however, they are not enough.

When we repeat the previous analysis, but now only considering those industries that are related to NJT most-awarded industries, we find that still gaps have a large unexplained component, however the explained part improves for some groups such as Hispanics (see main content for the discussion on those results). The overall results is that there is still evidence that, when looking at the industries most related to NJT activities, passive discrimination exist. Most of the self-employment gaps between white native males and minority groups cannot be explained by the differences in demographics, education, potential experience, industry segregation.

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<sup>142</sup> In ACS public access, the variable INCBUS00 “reports each respondent's net pre-income-tax self-employment income from a business, professional practice, or farm, for the previous calendar year. The 2000 census collected information on income received from these sources during the previous calendar year; for the ACS and the PRCS, the reference period was the past 12 months. The figure is the amount earned after subtracting business expenses from gross receipts. It includes any money earned working for one's own concern(s). No distinction was made between incorporated and unincorporated businesses.”

The INCBUS00 variable reports the pre-tax income from self-employment of a business or farm; this variable is the sole measure for self-employed income for non-incorporated firms. However, an individual who reports self-employment but is involved with an incorporated firm will earn wages as well as returns from a business due to the tax structure for corporations. Therefore, for individuals reporting that their business is incorporated, self-employed income is measured as the sum of income from wages<sup>19</sup> and income from the business. Further, \$15,000 is added to the self-employed income for each individual because self-employed individuals hide the true amount of their income to avoid additional taxes (Ruggles et al. 2008).

### Subcontinental Asians

Given the significant presence of Subcontinental Asians in the state of New Jersey, we considered pertinent to include this group separately. *Tables 13 to 15* report the analysis on this group. On average, this group is largely immigrant, with self-employment rates similar to other Asian groups. They are heavily concentrated in working age individuals with educational attainment of college degree or higher. More than half of Subcontinental Asian males are non-citizen compared to only 34% for women. Because of English being their first language in many of these countries, a very small proportion doesn't speak English well. The young population (younger than 25) is native, so it infers that this is second generation immigrants who were born in the US. Subcontinental Asians are not present in Construction, and have a small representation in Transportation. Table 18 shows the aggregated industries and occupation representation ratios for this group. We only see numbers of representation ratios close to one to the sector/occupation "Others", for natives and immigrants respectively.

*Table 15* shows the decomposition results. We can see that most of the white-subcontinental difference is explained for males, native and immigrant separately, and the differences is largely explained by demographics and immigration related differences (citizenship and/or immigration status). Meanwhile for women a smaller proportion of the differences is explained, and in the case of native subcontinental Asian women the difference in self-employment is not explained at all. The lack of the explanation shows evidence of discrimination for the case of subcontinental native males and women.

TABLES

**Table 1. Summary Statistics (Males)**

Males	White			Hispanic			Black			Asian			Other Race		
	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All
<b>Outcome Variables</b>															
Self-employment Rate	12.5%	17.7%	12.3%	4.5%	7.3%	5.5%	5.5%	6.8%	4.1%	5.5%	10.3%	8.6%	5.5%	10.2%	4.0%
<b>Industry</b>															
Construction	10.6%	17.4%	11.4%	7.3%	16.4%	13.4%	5.4%	5.1%	5.3%	0.9%	1.7%	1.6%	4.1%	2.6%	2.8%
Transportation	5.0%	7.4%	5.3%	9.4%	9.6%	9.5%	11.2%	14.8%	12.2%	2.3%	3.2%	3.1%	4.4%	5.3%	5.1%
Professional	10.1%	2.1%	10.0%	5.0%	9.6%	3.1%	4.6%	5.8%	4.9%	20.0%	15.0%	15.8%	11.4%	19.0%	17.8%
Others	74.3%	73.0%	73.3%	78.3%	64.4%	74.0%	78.8%	74.3%	77.6%	76.8%	80.1%	79.5%	80.0%	73.2%	74.2%
<b>Occupation</b>															
Construction	14.2%	19.5%	14.8%	12.3%	20.3%	17.7%	9.7%	10.0%	9.7%	0.9%	1.0%	1.0%	9.0%	8.7%	8.8%
Transportation	6.4%	8.9%	6.7%	13.9%	18.6%	17.0%	0.7%	16.3%	16.2%	0.7%	3.6%	3.2%	7.7%	8.8%	8.6%
Architecture/Professional	8.6%	3.5%	3.0%	1.7%	0.9%	1.2%	1.2%	2.0%	1.4%	5.2%	5.7%	5.7%	4.3%	10.2%	9.0%
<b>Percentage (intra-group)</b>	<b>82.3%</b>	<b>25.3%</b>	<b>66.5%</b>	<b>7.4%</b>	<b>33.7%</b>	<b>14.7%</b>	<b>7.8%</b>	<b>7.8%</b>	<b>7.7%</b>	<b>1.5%</b>	<b>31.1%</b>	<b>9.7%</b>	<b>1.0%</b>	<b>2.3%</b>	<b>1.4%</b>
<b>Predictor Variables</b>															
<b>Age</b>															
16-25	16.3%	7.0%	15.3%	30.0%	15.9%	21.0%	23.0%	10.5%	20.0%	18.8%	4.5%	7.0%	33.4%	6.1%	10.4%
26-55	67.9%	73.7%	68.6%	63.1%	75.1%	70.7%	67.8%	74.5%	69.4%	67.6%	80.0%	79.2%	63.8%	81.2%	78.5%
56+	15.7%	19.3%	16.1%	6.9%	9.1%	8.3%	9.3%	14.9%	10.6%	6.0%	81.2%	13.8%	2.9%	12.7%	13.8%
<b>Education</b>															
High School D	5.4%	12.2%	6.2%	17.5%	36.4%	29.6%	12.6%	10.6%	12.1%	1.1%	7.3%	6.2%	4.7%	5.0%	5.0%
High School G	25.8%	26.5%	25.9%	35.2%	34.6%	35.0%	37.6%	29.3%	35.7%	5.6%	12.0%	10.8%	16.8%	10.5%	11.5%
Some College	21.1%	15.8%	20.1%	24.0%	14.2%	17.8%	25.6%	25.9%	25.7%	5.6%	7.4%	8.9%	24.6%	11.7%	13.7%
College +	41.9%	73.5%	41.9%	16.9%	14.8%	13.4%	17.3%	34.2%	20.3%	76.2%	72.3%	73.0%	49.0%	71.1%	67.6%
Expected Wage (log)	10.9	11.1	11.0	10.5	10.2	10.3	10.5	10.6	10.5	10.7	11.2	11.5	10.8	11.0	11.0
Expected Income (log)	11.4	11.5	11.4	10.9	10.8	10.9	11.0	11.1	11.0	11.2	11.6	11.1	11.2	11.4	11.4

Pre-Market and Passive Discrimination

Males	White			Hispanic			Black			Asian			Other Race		
	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All
Single	34.7%	20.7%	33.2%	54.1%	40.0%	45.1%	57.1%	30.8%	50.8%	47.2%	14.0%	19.9%	61.2%	18.6%	25.2%
Doesn't speak English well	0.0%	12.1%	1.5%	0.6%	43.7%	29.7%	0.0%	4.9%	1.3%	-	2.5%	2.1%	0.1%	0.8%	0.7%
Immigrant			11.1%			64.0%			23.9%	-		82.3%	-		84.4%
Non-Citizen		40.0%	4.4%		68.1%	43.6%		41.9%	10.0%	-	35.3%	29.1%	-	45.6%	38.5%

Note: The data come from the 2008-2012 ACS for New Jersey. The samples are comprised of men and women who are between 16 and 65 years of age and who are not currently enrolled in school, no veterans nor defined as disabled. There are 186,275 individual observations in the sample that translates into 3,852,208 residents in New Jersey in this sample who are 50.31% Males and 49.69% Females. Self-employed is defined as 1 if an individual identified him/herself as self-employed in either an unincorporated or incorporated business, professional practice, or farm, 0 for those who did not identify as self-employed. Expected log wage/income is estimated based on occupation, sex and race. Of the sample population, 66.5% are White, 14.7% are Hispanic, 7.7% are Blacks, 9.7% are Asians, and 1.4% are Other Race.

**Table 2. Summary Statistics (Females)**

Women	White			Hispanic			Black			Asian			Other Race		
	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All
<b>Outcome Variables</b>															
Self-employment Rate	5.6%	9.6%	5.9%	2.2%	0.9%	4.6%	1.7%	2.6%	1.9%	2.3%	7.3%	6.7%	1.6%	4.1%	3.5%
<b>Industry</b>															
Construction	1.3%	1.3%	1.3%	0.9%	0.8%	0.9%	0.3%	0.1%	0.2%	1.5%	0.3%	0.2%	0.3%	1.0%	1%
Transportation	1.9%	2.4%	2.0%	2.9%	4.7%	4.0%	5.0%	2.5%	4.4%	1.2%	1.7%	1.6%	1.8%	3.0%	3%
Professional	8.7%	8.1%	4.2%	6.4%	2.5%	8.7%	4.5%	3.4%	4.3%	17.9%	12.9%	13.5%	10.7%	22.9%	20%
Others	88.0%	88.2%	92.5%	89.7%	91.9%	86.5%	90.2%	93.9%	91.0%	79.5%	85.1%	84.7%	87.2%	73.1%	76.6%
<b>Occupation</b>															
Construction	0.4%	0.2%	0.4%	0.4%	0.6%	0.5%	0.5%	0.5%	0.5%	-	0.1%	0.1%	0.3%	0.3%	0%
Transportation	1.2%	1.8%	1.3%	2.7%	8.2%	5.9%	2.9%	1.9%	2.7%	-	0.2%	0.2%	0.9%	4.7%	4%
Architecture/Professional	0.5%	0.9%	0.5%	0.3%	0.2%	0.2%	0.3%	0.2%	0.3%	4.7%	1.2%	1.2%	0.6%	1.3%	1%
<b>Percentage (intra group) Predictor</b>	78.7%	24.0%	66.2%	78.7%	31.5%	13.0%	11.2%	10.8%	11.1%	1.3%	31.3%	8.1%	1.2%	2.5%	1.5%

## Agency Discrimination

Women	White			Hispanic			Black			Asian			Other Race		
	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All
<b>Variables</b>															
<b>Age</b>															
16-25	13.5%	7.4%	12.9%	26.0%	12.0%	18.0%	15.5%	8.25%	13.9%	33.0%	8.3%	9.2%	28.0%	6.9%	12.1%
26-55	68.0%	77.6%	68.4%	67.6%	72.9%	73.3%	70.7%	79.62%	72.8%	63.2%	80.7%	78.8%	63.4%	64.5%	64.2%
56+	18.5%	10.4%	18.6%	6.4%	19.8%	8.7%	13.7%	12.13%	13.4%	3.8%	12.9%	11.9%	8.5%	28.7%	23.7%
<b>Education</b>															
High School D	3.0%	8.5%	3.5%	9.5%	24.2%	17.9%	6.1%	9.8%	7.0%	1.7%	5.4%	5.0%	4.9%	7.9%	7.1%
High School G	23.6%	24.2%	23.7%	27.9%	33.8%	31.3%	28.3%	28.1%	28.2%	6.8%	11.1%	10.6%	21.6%	28.1%	26.5%
Some College	22.7%	18.4%	22.3%	30.4%	20.9%	25.0%	31.7%	29.1%	31.1%	17.5%	11.9%	12.5%	27.2%	15.9%	18.7%
College +	44.6%	44.9%	44.7%	24.9%	17.2%	20.5%	26.9%	29.3%	27.4%	72.7%	70.1%	70.4%	40.0%	44.9%	43.7%
Expected Wage (log)	10.3	10.3	10.3	10.1	9.9	10.0	10.2	10.3	10.2	10.4	10.7	10.7	9.9	10.4	10.3
Expected Income (log)	11.0	11.0	11.0	10.8	10.7	10.7	10.9	10.9	10.9	11.1	11.2	11.2	10.8	11.0	10.9
Single	27.9%	17.3%	27.0%	46.9%	30.6%	37.5%	51.9%	32.1%	47.4%	60.0%	16.2%	20.9%	53.2%	10.7%	21.2%
Doesn't speak English well		1.9%	0.2%	0.5%	12.9%	7.6%		0.8%	0.2%		1.2%	1.1%		1.2%	1.0%
Immigrant		32.9%	9.0%		54.9%	57.3%		35.2%	22.9%		34.8%	89.3%		33.8%	75.3%
Non-Citizen			3.0%		65.5%	31.4%			8.1%			31.1%			25.5%

Note: The data come from the 2008-2012 ACS for New Jersey. The samples are comprised of men and women who are between 16 and 65 years of age and who are not currently enrolled in school, no veterans nor defined as disabled. There are 186,275 individual observations in the sample that translates into 3,852,208 residents in New Jersey in this sample who are 50.31% Males and 49.69% Females. Self-employed is defined as 1 if an individual identified him/herself as self-employed in either an unincorporated or incorporated business, professional practice, or farm, 0 for those who did not identify as self-employed. Expected log wage/income is estimated based on occupation, sex and race. Of the sample population, 66.5% are White, 14.7% are Hispanic, 7.7% are Blacks, 9.7% are Asians, and 1.4% are Other Race.

**Table 3. Industry Representation Ratios by Race, Sex, and Nativity (2-digits NAICS code)**

Race/Ethnicity	Industry defined by two-digit and only three specific sectors											
	Construction			Transportation and Warehousing			Professional, Scientific, Management, Information, and Waste Management Services			Others		
	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All
<b>MALES</b>												
<b>Hispanic</b>	0.73	1.50	1.28	1.59	1.24	1.50	0.56	0.26	0.37	1.05	1.00	1.00
<b>White</b>	1.09	1.51	1.12	0.87	0.88	0.82	1.08	0.97	1.06	0.99	0.94	0.99
<b>Black</b>	0.54	0.50	0.53	1.93	1.84	1.90	0.47	0.59	0.50	1.05	1.04	1.05
<b>Other</b>	0.75	1.04	0.91	0.94	0.95	1.01	0.89	0.95	0.93	1.05	1.00	1.02
<b>Races/Multiple</b>												
<b>Asian and other OPI</b>	0.14	0.17	0.17	0.48	0.64	0.75	1.68	1.93	1.94	1.05	1.03	1.01
<b>FEMALES</b>												
<b>Hispanic</b>	0.67	0.67	0.75	1.26	1.26	1.57	0.81	0.81	0.58	1.02	1.02	1.02
<b>White</b>	1.16	1.16	1.25	0.81	0.81	0.78	1.08	1.08	1.10	1.00	1.00	0.99
<b>Black</b>	0.23	0.23	0.22	2.17	2.17	1.83	0.54	0.54	0.54	1.02	1.02	1.03
<b>Other</b>	0.38	0.38	0.64	1.07	1.07	0.80	0.78	0.78	0.84	1.02	1.02	1.02
<b>Races/Multiple</b>												
<b>Asian and other OPI</b>	0.64	0.64	0.49	0.65	0.65	0.83	1.73	1.73	1.50	0.95	0.95	0.97

**Note:** The data come from the 2008-2012 ACS for New Jersey. The samples are comprised of men and women who are between 16 and 65 years of age and who are not currently enrolled in school, no veterans nor defined as disabled. There are 186,275 individual observations in the sample that translates into 3,852,208 residents in New Jersey in this sample who are 50.31% Males and 49.69% Females. Self-employed is defined as 1 if an individual identified him/herself as self-employed in either an unincorporated or incorporated business, professional practice, or farm, 0 for those who did not identify as self-employed. Expected log wage/income is estimated based on occupation, sex and race. Of the sample population, 66.5% are White, 14.7% are Hispanic, 7.7% are Blacks, 9.7% are Asians, and 1.4% are Other Race. Representation Ratios defined in the text.



**Table 4. Occupation Representation Ratios by Race, Sex, and Nativity (2-digits SOC code)**

Race/Ethnicity	Occupations defined by two-digit and only three specific sectors											
	Construction and Extraction			Transportation and Material Moving			Architecture and Engineering			Others		
	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All
<b>Males</b>												
<b>Hispanic</b>	03	1.49	9	08	1.67	6	52	0.33	5	05	0.84	7
<b>White</b>	05	1.37	8	33	0.73	6	07	1.16	6	01	0.97	1
<b>Black</b>	00	0.73	1	12	1.45	8	15	0.65	0	06	1.00	7
<b>Other</b>	01	1.16	3	30	1.05	6	33	0.76	8	07	0.97	6
<b>Race/Multiple</b>												
<b>Asian</b>	02	0.22	2	06	0.37	5	01	1.70	4	06	1.20	6
<b>Females</b>												
<b>Hispanic</b>	03	1.78	3	54	2.24	3	55	0.29	7	09	0.96	7
<b>White</b>	07	0.69	8	31	0.44	5	08	1.25	4	00	1.02	1
<b>Black</b>	02	0.70	0	07	0.57	1	54	0.30	7	09	1.02	9
<b>Other</b>	00	1.22	9	11	0.44	3	39	0.79	9	00	1.02	0
<b>Races/Multiple and other OPI</b>												
<b>Asian and other OPI</b>	07	0.53	8	07	0.38	8	52	1.78	0	01	1.02	0

Note: The data come from the 2008-2012 ACS for New Jersey. The samples are comprised of men and women who are between 16 and 65 years of age and who are not currently enrolled in school, no veterans nor defined as disable. There are 186,275 individual observations in the sample that translates into 3,852,208 residents in New Jersey in this sample who are 50.31% Males and 49.69% Females. Self-employed is defined as 1 if an individual identified him/herself as self-employed in either an unincorporated or incorporated business, professional practice, or farm, 0 for those who did not identify as self-employed. Expected log wage/income is estimated based on occupation, sex and race. Of the sample population, 66.5% are White, 14.7% are Hispanic, 7.7% are Blacks, 9.7% are Asians, and 1.4% are Other Race. Representation Ratios defined in the text.

**Table 5. Industry Representation Ratios by Race, Sex, and Nativity (aggregated at 2-digits NAICS code) –Most-Awarded NJT-contracts Industries (2-digit and 4-digit NAICS codes) (see appendix for list)**

Race/Ethnicity	NJT Industries defined by two-digit and only three specific sectors											
	Construction			Transportation and Warehousing			Professional, Scientific, Management, Information, and Waste Management Svcs			Others		
	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All
<b>MALES</b>												
<b>Hispanic</b>	31	1.18	4	32	1.24	2	34	0.29	4	35	0.90	9
<b>White</b>	35	1.16	5	39	0.62	0	35	0.96	7	36	0.92	0
<b>Black</b>	35	0.56	2	35	2.10	7	36	0.74	0	32	1.46	7
<b>Other</b>	37	1.07	9	39	1.07	5	31	0.74	1	39	0.98	4
<b>Races/Multiple</b>												
<b>Asian and other OPI</b>	36	0.34	5	36	0.66	3	34	3.23	3	34	1.24	0
<b>FEMALES</b>												
<b>Hispanic</b>	35	1.13	0	34	2.11	9	34	0.45	6	31	1.04	5
<b>White</b>	39	1.34	2	30	0.47	5	32	1.01	1	30	1.04	1
<b>Black</b>	37	0.29	5	32	2.14	3	35	0.89	7	32	0.97	3
<b>Other</b>	32	1.21	9	32	0.86	1	39	0.51	3	33	1.35	5
<b>Races/Multiple</b>												
<b>Asian and other OPI</b>	37	0.64	0	34	0.30	3	37	1.58	4	32	0.88	9

Note: The data come from the 2008-2012 ACS for New Jersey. The samples are comprised of men and women who are between 16 and 65 years of age and who are not currently enrolled in school, no veterans nor defined as disabled. There are 186,275 individual observations in the sample that translates into 3,852,208 residents in New Jersey in this sample who are 50.31% Males and 49.69% Females. Self-employed is defined as 1 if an individual identified him/herself as self-employed in either an unincorporated or incorporated business, professional practice, or farm, 0 for those who did not identify as self-employed. Expected log wage/income is estimated based on occupation, sex and race. Of the sample population, 66.5% are White, 14.7% are Hispanic, 7.7% are Blacks, 9.7% are Asians, and 1.4% are Other Race. Representation Ratios defined in the text. See most-awarded industries explanation in the text and list of industries in the appendix.

**Table 6. Representation Ratios Occupations prone to self-employment in NJT most-awarded industries**

Sex/Ethnicity	NJT related Occupations defined by two-digit and only three specific groups											
	Construction and Extraction, Maintenance, Repair			Transportation and Material Moving			Architecture and Engineering			Others		
	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All
<b>Males</b>												
<b>Hispanic</b>	.78	1.30	.7	.14	1.78	0	.15	0.25	4	.73	0.51	6
<b>White</b>	.97	1.48	3	.31	0.65	4	.97	0.96	1	.14	1.04	7
<b>Black</b>	.51	0.71	6	.53	1.50	8	.33	0.57	1	.55	0.86	0
<b>Other</b>	.95	1.18	3	.15	1.05	1	.96	1.00	8	.35	0.90	4
<b>Race/Multiple</b>												
<b>Asian</b>	.17	0.20	8	.19	0.26	1	.57	2.07	0	.17	1.61	5
<b>Females</b>												
<b>Hispanic</b>	.39	1.98	4	.36	3.01	9	.95	0.19	9	.96	0.69	1
<b>White</b>	.94	1.21	9	.34	0.57	6	.95	1.10	1	.91	1.07	3
<b>Black</b>	.50		NA	4	.82	1	.27	0.26	6	.39	1.06	2
<b>Other</b>	NA	3.05	3	.16	0.43	3	.58	1.38	0	.97	1.07	0
<b>Races/Multiple</b>												
<b>Asian and/or OPI</b>	.78	0.33	4	NA	0.18	1	.23	1.48	0	.98	1.12	7

Note: The data come from the 2008-2012 ACS for New Jersey. The samples are comprised of men and women who are between 16 and 65 years of age and who are not currently enrolled in school, no veterans nor defined as disabled. There are 186,275 individual observations in the sample that translates into 3,852,208 residents in New Jersey in this sample who are 50.31% Males and 49.69% Females. Self-employed is defined as 1 if an individual identified him/herself as self-employed in either an unincorporated or incorporated business, professional practice, or farm, 0 for those who did not identify as self-employed. Expected log wage/income is estimated based on occupation, sex and race. Of the sample population, 66.5% are White, 14.7% are Hispanic, 7.7% are Blacks, 9.7% are Asians, and 1.4% are Other Race. Representation Ratios defined in the text. See most-awarded industries explanation in the text and list of industries in the appendix. "NA" stands for not available estimates (sample size is too small or zero).

**Table 7. Self-employment Representation Ratios by Race/Ethnic/Sex/Immigration with Respect at Least High School Graduates**

<b>Race, Ethnic \ Group</b>	<b>Male</b>	<b>Female</b>	<b>Native</b>	<b>Immigrant</b>	<b>ALL</b>
Hispanic	0.82	1.33	0.57	1.16	1.01
White	1.07	1.00	1.10	1.20	1.05
Black	0.57	0.59	0.45	0.58	0.56
Asian	1.14	1.17	0.58	0.99	1.18
Other race	0.85	1.05	0.83	0.89	0.92

Notes: Data from 5-year 5% ACS 2008-2012. The samples are comprised of men and women who are between 16 and 65 years of age, are not veteran nor disable, and who are not currently enrolled in school. There are 186,275 observations. Self-employed is defined as 1 if an individual identified herself as self-employed in the last 12 months and has spent most of the time and received most of her earnings in that activity. Self-employed includes incorporated and unincorporated groups. It is 0 if the response to class of worker is different to self-employed or most of the time and earnings are not coming from self-employment activities. Representation ratios are computed as the share of race group as self-employed divided by the share of race group who are at least high school graduates by each defined sex and nativity group. All values are significantly different with respect to White, Native Male at 1 % level of significance.

**Table 8. Self-employment Representation Ratios by Race/Ethnic/Sex/Immigration, with Respect to at Least High School Graduates, Disaggregated**

<b>Sex</b>	<b>Male</b>		<b>Female</b>	
	<b>Native</b>	<b>Immigrant</b>	<b>Native</b>	<b>Immigrant</b>
<b>Nativity</b>				
Hispanic	0.52	0.91	0.68	1.55
White	1.09	1.25	1.09	1.05
Black	0.43	0.65	0.52	0.54
Asian	0.51	1.03	0.71	0.90
Other race	0.73	0.88	1.01	0.90

Notes: Data from 5-year 5% ACS 2008-2012. The samples are comprised of men and women who are between 16 and 65 years of age, are not veteran nor disable, and who are not currently enrolled in school. There are 186,275 observations. Self-employed is defined as 1 if an individual identified herself as self-employed in the last 12 months and has spent most of the time and received most of her earnings in that activity. Self-employed includes incorporated and unincorporated groups. It is 0 if the response to class of worker is different to self-employed or most of the time and earnings are not coming from self-employment activities. Representation ratios are computed as the share of race group as self-employed divided by the share of race group who are at least high school graduates by each defined sex and nativity group. All values are significantly different with respect to White, Native Male at 1 % level of significance.

**Table 9. Differences in Self-Employment Rates Relative to White Native Males by Industry (2 digits)**

Group	Construction		Transportation		Professional		Others	
	Coef.	SE	Coef.	SE	Coef.	SE	Coef.	SE
<b>MALE</b>								
<b>White</b>								
Native	0.271***	0.007	-0.198***	0.009	-0.041***	0.009	-0.179***	0.007
Immigrant	0.019	0.019	0.109***	0.029	-0.036	0.028	0.027	0.02
<b>Hispanic</b>								
Native	-0.118***	0.024	0.118***	0.029	0.022	0.033	0.051	0.025
Immigrant	-0.016	0.032	0.162***	0.019	0.037	0.029	0.067	0.013
<b>Black</b>								
Native	-0.078**	0.003	0.046	0.034	0.004	0.045	0.019	0.032
Immigrant	-0.084	0.051	0.176***	0.041	0.124**	0.059	0.095***	0.036
<b>Asian</b>								
Native	-0.076	0.112	0.028	0.116	-0.071	0.115	0.029	0.113
Immigrant	0.000	0.121	0.164***	0.049	-0.071	0.044	0.057	0.043
<b>Other Race</b>								
Native	-0.096	0.068	0.079	0.076	0.079	0.091	0.069	0.068
Immigrant	0.118	0.098	0.007	0.092	-0.167**	0.084	-0.056	0.07
<b>FEMALE</b>								
<b>White</b>								
Native	-0.102***	0.018	0.060***	0.02	0.001	0.02	0.061***	0.018
Immigrant	0.067	0.064	-0.013	0.062	-0.067	0.062	0.035	0.059
<b>Hispanic</b>								
Native	0.048	0.058	0.104**	0.05	-0.001	0.052	0.105**	0.049
Immigrant	-0.093	0.094	0.142***	0.043	0.039	0.046	0.176***	0.042
<b>Black</b>								
Native	-0.091***	0.037	0.202***	0.009	0.109***	0.017	0.199***	0.007
Immigrant	-0.002	79	0.206***	0.012	0.151***	0.039	0.206***	0.008
<b>Asian</b>								
Native	-0.093	0.114	0.198***	0.009	0.119***	0.003	0.206***	0.009
Immigrant	0.134	0.172	-0.005	0.106	-0.083	0.106	0.045	0.105
<b>Other Race</b>								
Native	0.074	0.069	0.223***	0.026	0.152***	0.046	0.206***	0.01
Immigrant	-0.204*	0.115	0.198***	0.009	0.150***	0.056	0.278***	0.002

Note: Data from 2008-2012 ACS 5%. Estimated Self-employment rate using as a dependent variable a binary variable determining self-employment (1 if self-employed, 0 otherwise). Independent variables sex and race/ethnicity and their interactions. \*\*\* 1% of significance level, \*10% of significance level. The reference group is White Native Males in Construction.

**Table10. Self-Employment Rates Differences between White Native Males and Other Groups**

		Unadjusted				Adjusted			
		Native		Immigrant		Native		Immigrant	
		Coef.	SE	Coef.	SE	Coef.	SE	Coef.	SE
<b>Male</b>	White	0.123***	0.002	0.052***	0.006	0.135***	0.002	0.0467***	0.006
	Hispanic	-0.079***	0.004	-0.024***	0.007	-0.067***	0.004	-0.025***	0.008
	Black	-0.076***	0.004	-0.033***	0.009	-0.065***	0.004	0.037***	0.009
	Asian	-0.072***	0.008	-0.004	0.011	0.050***	0.008	-0.023**	0.011
	Other	-0.063***	0.009	0.000	0.019	-0.044***	0.009	-0.012	0.019
<b>Female</b>	White	-0.065***	0.002	0.004	0.008	-0.067***	0.002	0.004	0.008
	Hispanic	0.047***	0.004	0.012	0.01	0.049***	0.005	0.006	0.01
	Black	0.038***	0.004	-0.015	0.011	0.034***	0.005	-0.012	0.012
	Asian	0.046***	0.01	0.001	0.014	0.049***	0.01	-0.002	0.014
	Other	0.036***	0.012	0.009	0.026	0.034***	0.012	0.011	0.025

Note: Data from 2008-2012 ACS 5%. Estimated Self-employment rate using as a dependent variable a binary variable determining self-employment (1 if self-employed, 0 otherwise). Independent variables sex and race/ethnicity and their interactions. \*\*\* 1% of significance level, \*10% of significance level. Unadjusted estimates only use sex and race/ethnicity as control variables and interactions. Adjusted estimates includes age, education, marital status, language skill, citizenship, and industry. The reference group is White Native Males age between 25 and 55, married, speak English well, citizen, and High School Graduate.

**Table 11. Self-employment gap decomposition compared to White-Native Male (Male)**

MALES	Black-White			Hispanic-White			Asian-White		
	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant
<b>Overall</b>									
<b>White Native</b>	0.1234*** (0.0016)	0.1194*** (0.0016)	0.1194*** (0.0016)	0.1234*** (0.0016)	0.1194*** (0.0016)	0.1194*** (0.0016)	0.1234*** (0.0016)	0.1194*** (0.0016)	0.1194*** (0.0016)
<b>Black/Hispanic/Asian</b>	0.0406*** (0.0028)	0.0391*** (0.0032)	0.0447*** (0.0056)	0.055138** * (0.0022)	0.0357*** (0.0031)	0.064836** * (0.0029)	0.086201** * (0.0044)	0.058022** * (0.0116)	0.089694** * (0.0047)
<b>difference</b>	0.0828*** (0.0032)	0.0803*** (0.0036)	0.0746*** (0.0058)	0.068331** * (0.0027)	0.0836*** (0.0035)	0.054603** * (0.0033)	0.037268** * (0.0047)	0.061416** * (0.0118)	0.029744** * (0.0050)
<b>explained</b>	0.0205*** (0.0020)	0.0257*** (0.0020)	0.0057* (0.0028)	0.016342** * (0.0036)	0.0257*** (0.0022)	-0.0041 (0.0041)	-0.010093* (0.0047)	0.029897** * (0.0036)	- 0.011813** * (0.0021)
<b>unexplained</b>	0.0622*** (0.0036)	0.0545*** (0.0039)	0.0689*** (0.0062)	0.051989** * (0.0044)	0.0578*** (0.0039)	0.058703** * (0.0052)	0.047362** * (0.0065)	0.031520** (0.0118)	0.041557** * (0.0053)
<b>Explained</b>									
<b>Demographics</b>	0.0152***	0.0194***	0.0394	0.014642**	0.024928**	0.013300**	-	0.032275**	-

MALES	Black-White			Hispanic-White			Asian-White		
	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant
				*	*	*	0.005273** *	*	0.009253** *
	(0.0012)	(0.0014)	(0.1276)	(0.0013)	(0.0013)	(0.0021)	(0.0013)	(0.0031)	(0.0013)
<b>Immigration related</b>	-0.0019*	0	0	0.006799*	0	0	-0.003775	0	0
	(0.0008)	(.)	(.)	(0.0031)	(.)	(.)	(0.0033)	(.)	(.)
<b>Education</b>	0.0015	0.0026**	-0.0031	0.00022	0.001459	-0.001429	-0.002429*	- 0.004034** *	- 0.003343** *
	(0.0008)	(0.0009)	(0.0117)	(0.0016)	(0.0011)	(0.0036)	(0.0010)	(0.0010)	(0.0010)
<b>Income</b>	-0.0095***	-0.0111***	0.0578	- 0.009036** *	- 0.009793** *	- 0.018326** *	0.002821** *	0.000842	0.003253** *
	(0.0021)	(0.0022)	(0.1901)	(0.0019)	(0.0018)	(0.0032)	(0.0008)	(0.0006)	(0.0007)
<b>Industry</b>	0.0153***	0.0148***	-0.0883	0.003717** *	0.009200** *	0.002354*	-0.001437	0.000814	- 0.002470**
	(0.0009)	(0.0009)	(0.3036)	(0.0006)	(0.0008)	(0.0011)	(0.0009)	(0.0020)	(0.0009)
<b>Unexplained Demographics</b>	-0.0167**	-0.0231**	0.0026	- 0.011617**	-0.007284	- 0.013837**	0.001999	-0.005299	0.003116



**Agency Discrimination**

MALES	Black-White			Hispanic-White			Asian-White		
	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant
	(0.0058)	(0.0072)	(0.0071)	(0.0041)	(0.0073)	(0.0047)	(0.0041)	(0.0222)	(0.0036)
<b>Immigration related</b>	0.0030	0	0.0109	- 0.021022** *	0	0.019821** *	0.017608	0	0.036872** *
	(0.0026)	(.)	(0.0058)	(0.0057)	(.)	(0.0059)	(0.0166)	(.)	(0.0044)
<b>Education</b>	-0.0076	-0.0095	0.0055	0.005489	-0.006115	0.013459*	0.049270** *	-0.001536	0.050017** *
	(0.0060)	(0.0061)	(0.0122)	(0.0041)	(0.0061)	(0.0057)	(0.0143)	(0.0582)	(0.0137)
<b>Income</b>	0.0399	-0.1022	0.2608	- 0.353815**	-0.07239	- 0.587638** *	-0.213735	-0.212212	-0.258184
	(0.1825)	(0.2047)	(0.2930)	(0.1216)	(0.1925)	(0.1594)	(0.1723)	(0.5517)	(0.1677)
<b>Industry</b>	-0.0100***	-0.0078***	-0.0170***	- 0.011500** *	- 0.012318** *	- 0.013119** *	0.00364	0.006756	0.002978
	(0.0017)	(0.0020)	(0.0032)	(0.0014)	(0.0018)	(0.0020)	(0.0033)	(0.0082)	(0.0033)
<b>Constant</b>	0.0537	0.1973	-0.1940	0.444454** *	0.156006	0.640016** *	0.188579	0.24381	0.206758
	(0.1821)	(0.2050)	(0.2876)	(0.1238)	(0.1946)	(0.1624)	(0.1685)	(0.5460)	(0.1623)

MALES	Black-White			Hispanic-White			Asian-White		
	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant
<i>N</i>	<b>68,803</b>	<b>60,396</b>	<b>57,101</b>	<b>75,132</b>	<b>60,073</b>	<b>63,753</b>	<b>70,536</b>	<b>56,159</b>	<b>63,071</b>

Note: Data from 2008-2012 ACS 5%. Estimated Self-employment rate using as a dependent variable a binary variable determining self-employment (1 if self-employed, 0 otherwise). Independent variables sex and race/ethnicity and their interactions. \*\*\* 1% of significance level, \*10% of significance level. Unadjusted estimates only use sex and race/ethnicity as control variables and interactions. Adjusted estimates includes age, education, marital status, language skill, citizenship, and industry. The reference group is White Native Males age between 25 and 55, married, speak English well, citizen, and High School Graduate.

**Table 12. Self-employment Gap Decomposition Compared to White-Native Male (Female)**

FEMALES	Female(White)-White			Black-White			Hispanic-White			Asian-White		
	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant
Overall												
White Native Male	0.123 469* **	0.119 438* **	0.119 438* **	0.123 469* **	0.119 438* **	0.119 438* **	0.123 469* **	0.119 438* **	0.119 438* **	0.123 469* **	0.119 438* **	0.119 438* **
	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)
Black/Hispanic/Asian	0.059 491* **	0.055 831* **	0.096 355* **	0.019 103* **	0.017 022* **	0.026 144* **	0.046 332* **	0.022 684* **	0.064 511* **	0.068 727* **	0.024 013* *	0.074 119* **
	(0.001)	(0.001)	(0.005)	(0.002)	(0.002)	(0.004)	(0.002)	(0.002)	(0.004)	(0.004)	(0.008)	(0.005)
difference	0.063 978* **	0.063 608* **	0.023 083* **	0.104 366* **	0.102 417* **	0.093 294* **	0.077 137* **	0.096 754* **	0.054 927* **	0.054 742* **	0.095 426* **	0.045 319* **
	(0.002)	(0.002)	(0.005)	(0.002)	(0.002)	(0.004)	(0.003)	(0.003)	(0.004)	(0.005)	(0.008)	(0.005)
explained	0.009 560* **	0.005 948* *	- 0.004 887	0.028 210* **	0.029 037* **	0.017 262* **	0.026 517* **	0.029 636* **	0.012 693* *	- 0.004 041	0.031 567* **	- 0.002 731
	(0.002)	(0.002)	(0.003)	(0.002)	(0.002)	(0.003)	(0.003)	(0.003)	(0.004)	(0.005)	(0.004)	(0.002)
unexplained	0.054 418* **	0.057 659* **	0.027 969* **	0.076 156* **	0.073 380* **	0.076 032* **	0.050 620* **	0.067 118* **	0.042 234* **	0.058 783* **	0.063 859* **	0.048 050* **
	(0.003)	(0.003)	(0.006)	(0.003)	(0.003)	(0.005)	(0.004)	(0.004)	(0.005)	(0.006)	(0.008)	(0.005)
explained												
Demographics	- 0.005 828*	- 0.109 953	- 0.005 481*	0.016 708* **	0.018 860* **	- 0.013 192	0.015 727* **	0.028 946* **	0.007 009	- 0.002 396	0.037 359* **	- 0.002 891
	(0.00)	(1.47)	(0.00)	(0.00)	(0.00)	(0.01)	(0.00)	(0.00)	(0.01)	(0.00)	(0.00)	(0.00)

Pre-Market and Passive Discrimination

	2)	1)	3)	1)	1)	1)	1)	1)	1)	2)	3)	2)
Immigrati on related	- 0.000 169	0	0	- 0.002 300* *	0	0	0.004 957	0	0	- 0.003 216	0	0
	(0.00 0)	(.)	(.)	(0.00 1)	(.)	(.)	(0.00 3)	(.)	(.)	(0.00 4)	(.)	(.)
Education	0.000 083	0.005 613	- 0.000 287	0.001 044	0.002 093*	0.002 463	0.000 589	0.001 272	0.000 661	- 0.001 059	- 0.003 514* **	- 0.000 839
	(0.00 0)	(0.07 4)	(0.00 0)	(0.00 1)	(0.00 1)	(0.00 3)	(0.00 1)	(0.00 1)	(0.01 3)	(0.00 1)	(0.00 1)	(0.00 1)
Income	- 0.020 556*	- 0.390 31	- 0.003 524	- 0.013 230* **	- 0.015 347* **	- 0.048 069	- 0.015 733* **	- 0.014 690* **	- 0.127 349	- 0.001 238	- 0.005 089* **	- 0.000 758
	(0.01 0)	(5.27 0)	(0.00 2)	(0.00 3)	(0.00 3)	(0.03 0)	(0.00 4)	(0.00 3)	(0.22 6)	(0.00 1)	(0.00 1)	(0.00 1)
Industry	0.036 030* **	0.500 598	0.004 405* 546	0.025 987* **	0.023 431* **	0.076 060*	0.020 978* **	0.014 109* **	0.132 372	0.003 868	0.002 81	0.001 757
	(0.01 1)	(6.66 5)	(0.00 2)	(0.00 1)	(0.00 1)	(0.03 6)	(0.00 2)	(0.00 1)	(0.21 4)	(0.00 3)	(0.00 2)	(0.00 1)
unexplain ed												
Demogra phics	0.003 54	0.004 710*	- 0.001 546	0.003 788	0.003 53	0.002 589	- 0.003 812	0.003 066	- 0.006 051	0.005 586	- 0.005 461	0.006 41
	(0.00 2)	(0.00 2)	(0.00 4)	(0.00 4)	(0.00 5)	(0.00 5)	(0.00 3)	(0.00 6)	(0.00 4)	(0.00 5)	(0.01 6)	(0.00 4)
Immigrati on related	- 0.002 089* **	0	- 0.014 339* **	- 0.000 903	0	- 0.006 533	- 0.022 250* **	0	- 0.013 442* *	- 0.034 49	0	0.004 052

## Agency Discrimination

	(0.00 1)	(.)	(0.00 3)	(0.00 2)	(.)	(0.00 4)	(0.00 4)	(.)	(0.00 5)	(0.02 3)	(.)	(0.00 4)
Education	- 0.013 581* **	- 0.016 210* **	0.020 994* *	- 0.005 204	- 0.008 704	0.004 911	0.002 528	- 0.012 514	0.010 161	0.039 241*	0.053 357*	0.041 309*
	(0.00 3)	(0.00 3)	(0.00 8)	(0.00 5)	(0.00 5)	(0.00 7)	(0.00 4)	(0.00 7)	(0.00 5)	(0.01 6)	(0.02 4)	(0.01 7)
Income	0.595 918* **	0.500 207* **	0.850 916* **	0.949 004* **	0.743 937* **	1.430 977* **	0.873 977* **	0.726 580* *	1.107 660* **	0.348 541	0.326 923	0.275 039
	(0.07 0)	(0.07 5)	(0.13 4)	(0.16 1)	(0.18 6)	(0.28 7)	(0.13 0)	(0.22 2)	(0.17 5)	(0.20 2)	(0.29 7)	(0.21 0)
Industry	0.000 025	- 0.000 595	0.003 878	0.001 981	0.002 95	- 0.001 173	0.003 221*	- 0.000 935	0.004 475*	0.003 331	- 0.010 573* **	0.005 097*
	(0.00 1)	(0.00 1)	(0.00 2)	(0.00 1)	(0.00 2)	(0.00 1)	(0.00 1)	(0.00 1)	(0.00 2)	(0.00 2)	(0.00 3)	(0.00 2)
Constant	- 0.529 394* **	- 0.430 453* **	- 0.831 933* **	- 0.872 509* **	- 0.668 332* **	- 1.354 740* **	- 0.803 044* **	- 0.649 079* *	- 1.060 568* **	- 0.303 426	- 0.300 388	- 0.283 858
	(0.07 0)	(0.07 5)	(0.13 2)	(0.16 1)	(0.18 6)	(0.28 8)	(0.13 1)	(0.22 1)	(0.17 5)	(0.19 8)	(0.29 7)	(0.20 1)
N. obs	<b>123,6 56</b>	<b>112,0 71</b>	<b>60,27 9</b>	<b>72,01 4</b>	<b>63,26 5</b>	<b>57,44 3</b>	<b>73,78 4</b>	<b>60,61 5</b>	<b>61,86 3</b>	<b>69,21 1</b>	<b>56,08 0</b>	<b>61,82 5</b>

Note: Data from 2008-2012 ACS 5%. Estimated Self-employment rate using as a dependent variable a binary variable determining self-employment (1 if self-employed, 0 otherwise). Independent variables sex and race/ethnicity and their interactions. \*\*\* 1% of significance level, \*10% of significance level. Unadjusted estimates only use sex and race/ethnicity as control variables and interactions. Adjusted estimates includes age, education, marital status, language skill, citizenship, and industry. The reference group is White Native Males age between 25 and 55, married, speak English well, citizen, and High School Graduate.

## Subcontinental Asian

Table 13. Summary Statistics of Subcontinental Asian Males and Females

Subcontinental Asian	Males			Females		
	Native	Immigrant	All	Native	Immigrant	All
Outcome Variables						
<b>Self-employment Rate</b>	6.7%	7.1%	7.1%	1.2%	7.7%	7.2%
Industry						
<b>Construction</b>	0.6%	1.4%	1.4%	0.6%	0.3%	0.3%
<b>Transportation</b>	-	4.3%	4.1%	0.7%	1.7%	1.6%
<b>Professional</b>	18.0%	43.6%	42.4%	18.7%	18.4%	18.4%
Others						
Occupation						
<b>Construction</b>	1.2%	0.5%	0.5%	-	-	-
<b>Transportation</b>	2.5%	3.6%	3.6%	0.5%	0.1%	0.1%
<b>Architecture/Professional</b>	3.6%	3.8%	3.8%	-	0.6%	0.5%
Predictor Variables						
Age						
<b>16-25</b>	33.7%	4.6%	5.9%	41.5%	7.2%	9.6%
<b>26-55</b>	65.1%	88.5%	87.4%	57.8%	83.0%	81.2%
<b>56+</b>	1.2%	6.9%	6.6%	0.7%	9.8%	9.2%
Education						
<b>High School D</b>	4.4%	11.3%	11.0%	3.2%	4.4%	4.4%
<b>High School G</b>	5.4%	3.9%	3.9%	9.3%	8.1%	8.2%
<b>Some College</b>	10.2%	4.6%	4.9%	16.6%	12.3%	12.6%
<b>College +</b>	79.3%	79.8%	79.8%	69.0%	74.1%	73.8%
<b>Expected Wage (log)</b>	10.8	11.1	11.1	10.4	10.7	10.6
<b>Expected Income (log)</b>	11.4	11.5	11.5	11.1	11.2	11.2
<b>Single</b>	64.3%	22.4%	24.4%	62.6%	11.0%	14.7%
<b>Doesn't speak English well</b>	-	0.1%	0.1%	-	0.8%	0.8%
<b>Immigrant</b>	-	-	95.2%	-	-	93.0%
<b>Non-Citizen</b>	-	54.1%	51.5%	-	34.0%	31.6%

Note: The data come from the 2008-2012 ACS for New Jersey. The samples are comprised of men and women who are between 16 and 65 years of age and who are not currently enrolled in school, no veterans nor defined as disabled. Number of observations 8,359 representing in weighted levels 5.1% of the population.

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**Table 14. Industry and Construction Representation Ratios**

Race/Ethnicity	Industry defined by two-digit and only three specific sectors											
	Construction			Transportation and Warehousing			Professional, Sctfc, Mgmt, Adm. , and Waste Mgmt Svcs			Others		
	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All
Males	0.02	0.01	0.01	0.14	0.04	0.04	0.16	0.32	0.31	0.81	0.63	0.64
Females	0.01	0.00	0.00	0.01	0.02	0.02	0.13	0.16	0.01	0.15	0.82	0.96

Race/Ethnicity	Industry defined by two-digit and only three specific sectors											
	Construction and Extraction, Maint., Repair			Transportation and Material Moving			Architecture and Engineering			Others		
	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All	Native	Immigrant	All
Males	0.04	0.02	0.02	0.03	0.04	0.04	0.05	0.04	0.04	0.88	0.89	0.89
Females	0.00	0.00	0.01	0.00	0.02	0.02	0.00	0.01	0.15	1.00	0.96	0.82

Note: The data come from the 2008-2012 ACS for New Jersey. The samples are comprised of men and women who are between 16 and 65 years of age and who are not currently enrolled in school, no veterans nor defined as disabled. : Number of observations 8,359 representing in weighted levels 5.1% of the population.

**Table 15. Self-employment/Representation ratios decomposition compared to Native-White Males (Subcontinental Asian)**

	SC Asian Male-White Male			SC Asian Female-White Male		
	All	Native	Immigrant	All	Native	Immigrant
Overall						
White Native Male	0.123469** *	0.119438* **	0.119438* **	0.123469** *	0.119438* **	0.119438* **
	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)
Subcontinental Asian	0.071136** *	0.067326* *	0.071347* **	0.073795** *	0.180233* **	0.084667* **
	(0.005)	(0.021)	(0.005)	(0.007)	(0.000)	(0.007)

Pre-Market and Passive Discrimination

difference	0.052333** *	0.052113*	0.048091* **	0.049674** *	- 0.060794* **	0.034771* **
	(0.005)	(0.021)	(0.006)	(0.007)	(0.002)	(0.008)
explained	- 0.026444** *	0.039311* **	0.044155* **	-0.013197*	0.000815	0.016996* *
	(0.006)	(0.006)	(0.004)	(0.005)	(0.009)	(0.006)
unexplained	0.078777** *	0.012802	0.003935	0.062871** *	- 0.061610* **	0.017775* **
	(0.008)	(0.021)	(0.004)	(0.008)	(0.009)	(0.009)
explained						
Demographics	- 0.005391** *	0.039840* **	- 0.007859* **	- 0.005754**	0.001105	-0.05692
	(0.001)	(0.005)	(0.002)	(0.002)	(0.013)	(0.047)
Immigration related	-0.00348	0	0.067985* **	-0.006741	0	0.08494
	(0.004)	(.)	(0.005)	(0.004)	(.)	(0.051)
Education	- 0.003982**	- 0.004471* **	- 0.004785* **	-0.002296*	0.000458	-0.009812
	(0.001)	(0.001)	(0.001)	(0.001)	(0.006)	(0.009)
Income	0.003975** *	0.000711	0.004057* **	- 0.002270**	-0.000229	-0.006778
	(0.001)	(0.001)	(0.001)	(0.001)	(0.003)	(0.006)



## Agency Discrimination

Industry	-	0.00323	-	0.003864**	-0.000519	0.005567
	0.017566**		0.015242*	*		
	*		**			
	(0.002)	(0.003)	(0.002)	(0.001)	(0.007)	(0.005)
unexplained						
Demographics	0.012591	0.003966	0.003	0.011031	0.003694	0.001213
	(0.007)	(0.015)	(0.002)	(0.006)	(0.146)	(0.003)
Immigration related	0.061863*	0	-0.001685	-0.051768	0	-0.004654
	(0.025)	(.)	(0.002)	(0.040)	(.)	(0.003)
Education	0.042445	0.081056	0.009344	-0.038953	-0.000011	-0.033089
	(0.022)	(0.090)	(0.008)	(0.029)	(0.000)	(0.026)
Income	-0.314465	-0.595063	-0.07386	-0.156239	-0.557048	-0.191035
	(0.207)	(0.619)	(0.065)	(0.190)	(19.225)	(0.191)
Industry	0.008174	0.00577	0.001252	0.003492	0.009187	0.004101
	(0.007)	(0.008)	(0.002)	(0.003)	(0.025)	(0.004)
Constant	0.268169	0.517072	0.065885	0.295306	0.482569	0.241239
	(0.205)	(0.554)	(0.062)	(0.196)	(19.104)	(0.193)
N. obs	<b>66,908</b>	<b>55,479</b>	<b>60,123</b>	<b>64,635</b>	<b>55,422</b>	<b>57,907</b>

Note: The data come from the 2008-2012 ACS for New Jersey. The samples are comprised of men and women who are between 16 and 65 years of age and who are not currently enrolled in school, no veterans nor defined as disabled. : Number of observations 8,359 representing in weighted levels 5.1% of the population.

**Table 16 List of Industries with most-awarded NJT Contracts/Subcontracts (approx.. 75%)**

Code	Title	ACS Code
<b>BOTH</b>		
541330	Engineering Services	5413
237310	Highway, Street, and Bridge Construction	23
238210	Electrical Contractors and Other Wiring Installation Contractors	23
541611	Administrative management and General management, Consulting Services	5416
238990	All Other Specialty Trade Contractors	23
237990	Other Heavy and Civil Engineering Construction	23
236210	Industrial Building Construction	23
238220	Painting and Wall Covering Contractors	23
541370	Surveying and Mapping (except Geophysical) Services	5413
236220	Commercial and Institutional Building Construction	23
<b>PRIME</b>		
332312	Fabricated Structural Metal Manufacturing	332M
441110	Home Centers	4411
238220	Plumbing, heating, and air-conditioning contractors	23
336510	Railroad Rolling Stock Manufacturing	3365
424720	Petroleum & Petroleum Products Merchant Wholesalers (except Bulk Stations and terminals)	4247
531320	Offices of Real Estate Appraisers	531
541511	Custom Computer Programming	5415
541612	Human Resources Consulting Services	5416
333120	Construction Machinery Manufacturing	3331
336211	Motor Vehicle Body Manufacturing	336M
711510	Independent Artists, Writers and Performers	711
423610	Electrical Apparatus and Equipment, Wiring Supplies and Related Equipment wholesales	4236
423830	Industrial Machinery and Equipment Merchant Wholesalers	4238
485113	Bus and Other Motor Vehicle Transit System	485M
562111	Solid Waste Collection	562
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electric repair)	8113
812930	Parking Lots and Garages	8129
561720	Janitorial Services	5617
<b>SUBCONTRACT</b>		
541310	Architectural Services	5413
541620	Environmental Consulting Services	5416
541690	Other Scientific and Technical Consultant Services	5416
541380	Testing Laboratories	5413

<b>541614</b>	Process, Physical Distribution, and Logistics Consulting Services	5416
<b>485410</b>	School and Employee Bus Transportation	485M
<b>238120</b>	Structural Steel and Precast Concrete Contractors	23
<b>541820</b>	Public Relations Agencies	5418
<b>541910</b>	Marketing Research and Public Opinion Polling	5419
<b>541613</b>	Other Activities Related to Real Estate	5416

Note: The list contain the 6-digit NAICS codes of the most awarded NJT industries using the number of contracts awarded.

**Table 17. Sample List of Occupations**

<b>SOC Occupational Code</b>	<b>Label</b>
<b>419020</b>	Real Estate Sales Agents
<b>472031</b>	Carpenters
<b>533030</b>	Heavy and Tractor -- Trailer Truck Drivers
<b>131111</b>	Management Analysts
<b>119XXX</b>	Property Real Estate Managers
<b>471011</b>	Supervisors of Construction and Extraction
<b>119141</b>	Architectural and Engineering Managers
<b>472150</b>	Plumbers, pipe layers
<b>1191XX</b>	Managers, other services
<b>472111</b>	Electricians
<b>171010</b>	Architects, including Landscape Architects
<b>472140</b>	Painters, Construction and Maintenance
<b>472040</b>	Carpet installers, Floor layers, hard titles
<b>411012</b>	First line non-retail sales workers
<b>132021</b>	Appraisers and Assessors of Real Estate
<b>472020</b>	Brickmason, block masons, Stone masons
<b>411011</b>	First line Supervisors of Retail Sales workers
<b>271020</b>	Designers
<b>172051</b>	Civil Engineering
<b>132011</b>	Accountants and Auditors
<b>1721YY</b>	Industrial Engineers, Marine Engineers and Naval Architects
<b>533020</b>	Bus drivers, School and Special Clients
<b>537062</b>	Laborers and Freight, Stock, and Material movers hand
<b>132052</b>	Personal finance Advisors
<b>474011</b>	Construction and Building and Braziers
<b>112011</b>	Advertising and Promotion Managers

# DISCRIMINATION IN CREDIT MARKETS

## Problem

Potential discrimination against minority business enterprises (MBEs) is a significant concern to both policymakers and government agencies. Concerns regarding the impact of redlining, the systematic practice of charging more for, or denying individuals and businesses access to banking services and the provision of credit in predominately minority communities, led to the signing into law and implementation of the Community Reinvestment Act (CRA) in 1977. The intent of the CRA was to eliminate redlining and encourage lending institutions to help meet the credit needs of individuals and businesses (often MBEs) in low- and moderate-income neighborhoods, which are often neighborhoods comprised of large minority populations. While important strides have been made in improving equality of access to loans for MBEs, significant inequalities remain (Bates and Robb, 2014; Bhutta, 2008).

In this analysis, we explore potential disparities in loan amounts to small businesses in low income census tracts in counties with large minority populations in both New Jersey and Greater New Jersey (GNJ), which is primarily composed of counties in Delaware, Pennsylvania, and New York that are contiguous with New Jersey. Documenting the size and magnitude of disparities in small business loans in New Jersey and Greater New Jersey is of importance because these disparities may be related to lower success of minority small business formation and lower success of disadvantaged business enterprises contracting with public and private entities.

## Background

Previous research exploring potential pre-market discrimination in credit markets has generally found disparities in small business loans to firms in minority and low income communities. Using CRA data from 1998, Immergluck (2002) found that small businesses in predominantly African-American census tracts in Philadelphia had, on average, 1.2 loans per 100 small businesses in contrast with 11 loans per 100 small businesses in majority white census tracts. When examining lending rates in the Chicago area, Immergluck (1999) found that minority and low income neighborhoods experienced lower lending rates than white and higher income neighborhoods after controlling for firm size, firm population, and industrial mix. Bostic and Lampani (1999) found that African-American applicants for small business loans were rejected more frequently than white applicants, in part, because the businesses were located in lower income, minority neighborhoods. Additionally, Bates (1989) determined that small businesses located in predominately minority populated neighborhoods (for both white- and minority-owners) received smaller loans, on average, than small businesses in lower minority neighborhoods after controlling for owner and firm traits. Lower lending rates also likely have a negative impact on minority application rates. Robb (2013) found that minority business owners were more likely to avoid applying for small loans because the owners believed they would be denied a loan. Overall, research indicates that MBEs and more broadly small businesses located in low income and/or high minority neighborhoods receive, on average, smaller loan amounts and have lower lending rates than majority-owned businesses and small businesses located in relatively higher income and predominately white neighborhoods.

### Data

## Examination of Potential Disparities in Small Business Loans

The distribution of loans to small businesses in low-income and high minority communities in New Jersey and Greater New Jersey (GNJ) were examined using small business loan data from the Community Reinvestment Act (CRA). The analysis for New Jersey incorporated all counties in New Jersey while the analysis for GNJ incorporated all counties in New Jersey (21 counties) as well as counties in adjacent states that were contiguous with New Jersey (Pennsylvania, New York, and Delaware; Tables 1 & 2). Further, the selected non-New Jersey counties in combination with all New Jersey counties comprised the location of 76% of all New Jersey Transit (NJT) contracts issued to businesses from 2005 to 2013. No NJT contracts were issued to businesses in Pike County in Pennsylvania, so this county was not included in the GNJ analysis. Queens County in New York and Montgomery and Chester Counties in Pennsylvania, which are one county removed from New Jersey, were included in the analysis to allow for county coverage of 75% of all NJT loans.

Small business loan data from the CRA that was used in the analyses was aggregated at the county level for 2013 (the lowest level of aggregation). Thus, county was the unit of observation for our analyses. A small business is defined as a firm with revenues of \$1,000,000 or less a year. Additionally, small business loans are considered loans of \$1,000,000 or less. Information in the CRA data delineating census tracts by percent of median family income (MFI) allowed for determining loan amounts to census tracts within counties by MFI. If a census tract was located in a metropolitan statistical area (MSA) or metropolitan division (MD), the reference MFI was for the corresponding MSA or MD. If a census tract was located outside of an MSA or MD, then the reference MFI was a statewide measure. Low income census tracts were defined as those census tracts at less than 50 percent of the reference MFI.

Additionally, the 2013 American Community Survey (ACS) 3-year estimate was used to calculate the white and minority (non-white) percentages in each of our designated counties. Minority individuals were those individuals that were not identified as white alone in the ACS sample. High minority counties were counties with a minority percentage that was greater than one standard deviation above the mean minority percentage overall for all counties in the New Jersey or GNJ sample, respectively. For the New Jersey analysis, the mean minority percentage in New Jersey counties was 36.07 percent with a standard deviation of 18.57 percent. Four of 21 New Jersey counties were identified as high minority, including Essex County, Hudson County, Passaic County, and Union County (Table 1). For the GNJ analysis, the mean minority percentage in GNJ counties (including New Jersey counties) was 38.53 percent with a standard deviation of 19.80 percent. Six of 37 counties in GNJ were identified as high minority, including Bronx, Kings, and Queens Counties in New York, Philadelphia County in Pennsylvania, and Essex and Hudson Counties in New Jersey (Table 2).

According to the 2013 ACS 3-year estimate, the average median income in high minority counties (in 2013 inflation-adjusted dollars) in New Jersey was \$58,295, which was approximately 22% lower than the \$74,364 average median income in non-high minority counties in New Jersey. Similarly, the average median income in high minority in GNJ was \$48,917, which was 32% lower than the \$71,517 average median income in non-high minority counties in GNJ.

## Examination of Potential Disparities in Small Business Loans

**Table 2. Minority Population Percentages in New Jersey**

County	Minority Percentage
Atlantic	42.45%
Bergen	39.59%
Burlington	30.54%
Camden	40.91%
Cape May	13.64%
Cumberland	50.94%
<b><i>Essex</i></b>	<b>67.66%</b>
Gloucester	19.88%
<b><i>Hudson</i></b>	<b>70.29%</b>
Hunterdon	12.75%
Mercer	46.94%
Middlesex	52.85%
Monmouth	23.73%
Morris	26.48%
Ocean	14.65%
<b>Passaic</b>	<b>56.05%</b>
Salem	24.00%
Somerset	39.61%
Sussex	11.94%
<b>Union</b>	<b>56.87%</b>
Warren	15.68%

\*Counties that are high minority counties in both New Jersey and Greater New Jersey are in both bold and italics

Data: American Community Survey 3-year (2011-2013)

**Table 3: Minority Population Percentages in Greater New Jersey (excluding New Jersey)**



County	State	Minority Percentage
<b>Bronx</b>	<b>New York</b>	<b>89.45%</b>
<b>Kings</b>	<b>New York</b>	<b>64.23%</b>
New York	New York	52.54%
Orange	New York	32.97%
<b>Queens</b>	<b>New York</b>	<b>73.34%</b>
Richmond	New York	36.69%
Rockland	New York	35.76%
Westchester	New York	43.94%
Bucks	Pennsylvania	14.00%
Chester	Pennsylvania	18.64%
Delaware	Pennsylvania	30.17%
Monroe	Pennsylvania	30.86%
Montgomery	Pennsylvania	21.98%
<b>Philadelphia</b>	<b>Pennsylvania</b>	<b>20.42%</b>
Northampton	Pennsylvania	63.67%
New Castle	Delaware	39.56%

Data: American Community Survey 3-year (2011-2013)

### Models and Hypothesis

To examine the distribution of small business loan dollars in 2013 to census tracts (low income and non-low income) in high minority and non-high minority counties in New Jersey alone and GNJ, we calculated the percentage of dollars awarded to firms in high minority and non-high minority counties, the percentage of dollars awarded to firms in low income census tracts in high minority and non-high minority counties, the percentage of dollars awarded to firms in low income census tracts in high minority counties relative to loans to all low income census tracts in all counties, and the percentage of dollars awarded to low income census tracts in

## Examination of Potential Disparities in Small Business Loans

high-minority counties relative to all loans in all counties. The specific models are presented below.

Given previous research, which has generally found disparities in lending for MBEs and small businesses in high minority or low-income communities, we expect loan amounts to be disproportionately lower in high minority counties in comparison with non-high minority counties in NJ and GNJ. We also expect relatively smaller loan amounts to low income census tracts than to non-low income census tracts and high minority counties to have a higher percentage of loan dollars to low income census tracts than non-high minority counties in NJ and GNJ given the considerably lower median income levels in high minority counties.

### Percentage of dollars awarded to firms in high minority counties

$HMC_i$  = total loans to firms in a high-minority county (dollars)

$C_i$  = total loans to firms in a county (dollars)

$$\frac{\sum HMC_i}{\sum C_i}$$

### Percentage of dollars awarded to firms in non-high minority counties

$NMC_i$  = loans to firms in a non-high minority county (dollars)

$C_i$  = loans to firms in a county (dollars)

$$\frac{\sum NMC_i}{\sum C_i}$$

### Percentage of dollars awarded to firms in low income census tracts in high minority counties

$LICT_i$  = loans to firms in a low-income census tract (dollars)

$HMC_i$  = loans to firms in a high-minority county (dollars)

$$\frac{\sum LICT_{ji} HMC_i}{\sum HMC_i}$$

Percentage of dollars awarded to firms in low income census tracts in non-high minority counties

LICT<sub>i</sub> = loans to firms in a low-income census tract (dollars)

NMC<sub>i</sub> = loans to firms in a non-high minority county (dollars)

$$\frac{\sum LICT_{ji} NMC_i}{\sum NMC_i}$$

Percentage of dollars awarded to firms in low income census tracts in high minority counties relative to loans to all low income census tracts in all counties

LIST<sub>i</sub> = loans to firms in a low-income census tract (dollars)

HMC<sub>i</sub> = loans to firms in a high-minority county (dollars)

LC<sub>i</sub> = loans in a county (dollars)

$$\frac{\sum LIST_{ij} HMC_i}{\sum LIST_{ij} LC_i}$$

Percentage of dollars awarded to low income census tracts in high minority counties relative to all loans in all counties

LIST<sub>i</sub> = loans to firms in a low-income census tract (dollars)

HMC<sub>i</sub> = loans to firms in a high-minority county (dollars)

LC<sub>i</sub> = loans in a county (dollars)

$$\frac{\sum LIST_{ij} HMC_i}{\sum LC_i}$$

## Results

## Examination of Potential Disparities in Small Business Loans

**Table 4. Summary of Results**

	New Jersey	Greater New Jersey
Percent of dollars award to firms in high minority counties	<b>23.7%</b>	<b>24.9%</b>
Percentage of population in high minority counties	<b>28.1%</b>	<b>38.6%</b>
Difference between loan percentage and population percentage	<b>- 4.4%</b>	<b>- 13.7%</b>
Percentage of dollars awarded to firms in non-high minority counties	<b>76.3%</b>	<b>75.1%</b>
Percentage of population in non-high minority counties	<b>71.9%</b>	<b>61.4%</b>
Difference between loan percentage and population percentage	<b>4.4%</b>	<b>13.7%</b>
Percentage of dollars awarded to firms in low income census tracts in high minority counties	<b>10.2%</b>	<b>14.3%</b>
Percentage of dollars awarded to firms in low income census tracts in non-high minority counties	<b>3.2%</b>	<b>3.1%</b>
Difference between the percentages of dollars awarded to firms in low income census tracts in high minority counties and non-high minority counties	<b>7.0%</b>	<b>11.2%</b>
Percentage of dollars awarded to firms in low income census tracts in high minority counties relative to loans to all low income census tracts in all counties	<b>48.4%</b>	<b>60.2%</b>
Percentage of dollars awarded to low income census tracts in high minority counties relative to all loans in all counties	<b>2.3%</b>	<b>3.5%</b>

All calculations are provided in **Appendix A**.

### Summary and Conclusions

The percentage of loan dollars awarded to small businesses in high minority counties was over 50% less than that awarded to non-high minority counties in NJ and GNJ. High minority counties in NJ and GNJ received a lower percentage of loan dollars than their population percentage (- 4.4% for NJ, -13.7% for GNJ), indicating high minority counties receive a smaller share of small business loans than would normally be expected given their population size. Conversely, the percentage of loans awarded to small businesses in low income census tracts in high minority counties is over three times the percentage awarded to small businesses in low income census tracts in non-high minority counties in NJ and GNJ. Further, nearly 50% and roughly 60% of all loans to low income census in NJ and GNJ were awarded to small businesses in low income census tracts in high minority counties. However, less than 4% of all loan dollars in NJ and GNJ are awarded to small businesses in low income census tracts in high minority counties.

Overall, the findings of our analysis in NJ and GNJ conform to our stated expectations and largely parallel the findings of previous research exploring potential disparities in lending to small firms in high minority and low income neighborhoods. We documented pre-market disparities in small business lending with high minority counties receiving disproportionately fewer loan dollars given their population size. However, disproportionately more loan dollars were directed to low income census tracts in high minority counties relative to low income census tracts in non-high minority counties. This dynamic is likely due, at least in part, to a higher percentage of the population in high minority counties living in low income census tracts, which is linked to the significantly lower average median income in high minority counties than in non-high minority counties. In summary, pre-market disparities in small business lending to firms in high minority counties and low income census tracts within high minority counties were

## Examination of Potential Disparities in Small Business Loans

identified for the geographic areas in which New Jersey Transit awards over three-quarters of contract dollars to business enterprises.

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**Appendix A**

Percentage of dollars awarded to firms in high minority counties

HMC<sub>i</sub> = total loans to firms in a high-minority county (dollars)

C<sub>i</sub> = total loans to firms in a county (dollars)

$$\text{For New Jersey} = \frac{\sum HMC_i}{\sum C_i} = \frac{\$1,589,617}{\$6,716,543} = \mathbf{23.7\%}$$

$$\text{Percentage of the population in high-minority counties} = \frac{2,489,234}{8,867,909} = \mathbf{28.1\%}$$

$$\text{Difference between loan percentage and population percentage} = 23.7\% - 28.1\% = \mathbf{-4.4\%}$$

$$\text{For Greater New Jersey} = \frac{\sum LMC_i}{\sum C_i} = \frac{\$4,098,737}{\$16,476,757} = \mathbf{24.9\%}$$

$$\text{Percentage of the population in high-minority counties} = \frac{9,238,676}{23,926,903} = \mathbf{38.6\%}$$

$$\text{Difference between loan percentage and population percentage} = 24.9\% - 38.6\% = \mathbf{13.8\%}$$

Percentage of dollars awarded to firms in non-high minority counties

NMC<sub>i</sub> = loans to firms in a non-high minority county (dollars)

C<sub>i</sub> = loans to firms in a county (dollars)

$$\text{For New Jersey} = \frac{\sum NMC_i}{\sum C_i} = \frac{\$5,126,926}{\$6,716,543} = \mathbf{76.3\%}$$

$$\text{Percentage of the population in non-high minority counties} = \frac{6,378,675}{8,867,909} = \mathbf{71.9\%}$$

$$\text{Difference between loan percentage and population percentage} = 76.3\% - 71.9\% = \mathbf{4.4\%}$$

$$\text{For Greater New Jersey} = \frac{\sum NMC_i}{\sum C_i} = \frac{\$12,378,020}{\$16,476,757} = \mathbf{75.1\%}$$

## Examination of Potential Disparities in Small Business Loans

$$\text{Percentage of the population in non-high minority counties} = \frac{14,688,277}{23,926,903} = \mathbf{61.4\%}$$

$$\text{Difference between loan percentage and population percentage} = 75.1\% - 61.4\% = \mathbf{13.7\%}$$

### Percentage of dollars awarded to firms in low income census tracts in high minority counties

LICT<sub>i</sub> = loans to firms in a low-income census tract (dollars)

HMC<sub>i</sub> = loans to firms in a high-minority county (dollars)

$$\text{For New Jersey} = \frac{\sum LICT_{ji} HMC_i}{\sum HMC_i} = \frac{\$162,754}{\$1,600,344} = \mathbf{10.2\%}$$

$$\text{For Greater New Jersey} = \frac{\sum LICT_{ji} HMC_i}{\sum HMC_i} = \frac{\$566,050}{\$3,959,352} = \mathbf{14.3\%}$$

### Percentage of dollars awarded to firms in low income census tracts in non-high minority counties

LICT<sub>i</sub> = loans to firms in a low-income census tract (dollars)

NMC<sub>i</sub> = loans to firms in a non-high minority county (dollars)

$$\text{For New Jersey} = \frac{\sum LICT_{ji} NMC_i}{\sum NMC_i} = \frac{\$173,224}{\$5,453,395} = \mathbf{3.2\%}$$

$$\text{For Greater New Jersey} = \frac{\sum LICT_{ji} NMC_i}{\sum NMC_i} = \frac{\$374,203}{\$12,200,899} = \mathbf{3.1\%}$$

### Difference between the percentages of dollars awarded to firms in low income census tracts in high minority counties and non-high minority counties

$$\text{For New Jersey} = 10.2\% - 3.2\% = \mathbf{7.0\%}$$

$$\text{For Greater New Jersey} = 14.3\% - 3.1\% = \mathbf{11.2\%}$$

### Percentage of dollars awarded to firms in low income census tracts in high minority counties relative to loans to all low income census tracts in all counties

LIST<sub>i</sub> = loans to firms in a low-income census tract (dollars)

HMC<sub>i</sub> = loans to firms in a high-minority county (dollars)



$LC_i$  = loans in a county (dollars)

$$\text{For New Jersey} = \frac{\sum LIST_{ij}HMC_i}{\sum LIST_{ij}LC_i} = \frac{\$162,754}{\$335,978} = \mathbf{48.4\%}$$

$$\text{For Greater New Jersey} = \frac{\sum LIST_{ij}HMC_i}{\sum LIST_{ij}LC_i} = \frac{\$566,050}{\$940,253} = \mathbf{60.2\%}$$

Percentage of dollars awarded to low income census tracts in high minority counties relative to all loans in all counties

$LIST_i$  = loans to firms in a low-income census tract (dollars)

$HMC_i$  = loans to firms in a high-minority county (dollars)

$LC_i$  = loans in a county (dollars)

$$\text{For New Jersey} = \frac{\sum LIST_{ij}HMC_i}{\sum LC_i} = \frac{\$162,754}{\$7,053,739} = \mathbf{2.3\% \text{ fff}}$$

$$\text{For Greater New Jersey} = \frac{\sum LIST_{ij}HMC_i}{\sum LIST_{ij}LC_i} = \frac{\$566,050}{\$16,160,251} = \mathbf{3.5\%}$$

## **DBE TRANSITION PROBABILITY**

### **E. Description and construction of data**

Two certified-DBE list files are used as base for the transition probability analysis, 2008 NJ DBE UCP DBE list and 2013 NJ DBE UCP list. The purpose of this exercise is to examine the key factors attributing to the “exit” of DBE firms in the certified DBE pool from 2008 to 2013. The two DBE list, 2008 NJ DBE UCP DBE list and 2013 NJ DBE UCP list, are match-merged by firm names for the analysis.

### **F. Methodology**

#### Step 1:

2008 NJ DBE UCP DBE list and 2013 NJ DBE UCP list files are match-merged by firm names.

#### Step 2:

The merged file shows drop-out ratio of the certified DBE-firms in 2008.

#### Step 3:

Logit regression is conducted which has binary dependent variable that equals one 1 if a firm remain as certified in year 2013 and 0 otherwise, with independent variables that indicates whether a firm wins any form of contract or not, whether located in NJ, gender and race variable.

#### Step 4:

Logit regression is conducted which has binary dependent variable that equals one 1 if a DBE firm graduates during the period between 2008 and 2013 and 0 otherwise, with independent variables that indicates whether a firm wins any form of contract or not, whether located in NJ, gender and race variable.

#### Step 5:

In order to test the hypothesis that the coefficient on "won contract" is larger in second model (graduation) than in the first model (remained in both period), seemingly unrelated estimation method which combines the estimation results from the separate model.

### **G. Results**

In the 2008 NJ DBE UCP file, there are 910 certified DBE firms. 65.27% (594/910) firms remain as certified firms in the 2013 NJ DBE UCP file (that is, 34.73% drop out of the list, and among 316 that drop-out, 8 graduate.).

The attached excel file contains logit regression results with binary dependent variable 1 if a firm remain as certified and 0 otherwise and independent variables that indicates whether a firm wins any form of contract or not, whether located in NJ, gender and race variable. The result shows that those DBE firms that won the contract are more likely to remain as certified DBE than those don't win. However, wining a contract does not predict graduation (statistically insignificant).

In order to test the hypothesis that the coefficient on "won contract" is larger in second model (graduation) than in the first model (remained in both period), I used seemingly unrelated estimation method which combines the estimation results from the separate model. The test fail to reject that the difference in the coefficients is zero.

**H. Tables**

NJT Transition probability analysis (Tables are available in excel file entitled "transition\_probability\_analysis")

Table 1a . Column (1). Logit Regression analysis, Dependent variable="DBE\_certified\_both\_period"

Table 1b. Column (2). Logit Regression analysis, Dependent variable="Graduated or Not"

	(1)	(2)
	DBE_certified_both_pe riod	graduated
Independent variables		
win_contract	1.403***	0.630
	(0.277)	(0.854)
NJ	-0.210	0.186
	(0.145)	(0.757)
White_female	0.472	
	(0.619)	
black2	0.303	-0.394
	(0.622)	(1.231)
Asian2	0.0101	-0.194
	(0.627)	(1.232)
Hispanic2	0.454	1.275
	(0.640)	(0.935)
Unknown2	0.824	1.310
	(0.695)	(1.238)

cons	0.259	-5.263***
	(0.609)	(0.821)
N	910	910

Standard errors in parentheses

=\*\* p<0.1

\*\* p<0.05

\*\*\* p<0.01"

Table 2. Proportion of DBE firms certified in both years 2008 and 2013

DBE certified both period	Freq.	Percent	Cum.
0	308	34.15	34.15
1	594	65.85	100
Total	902	100	

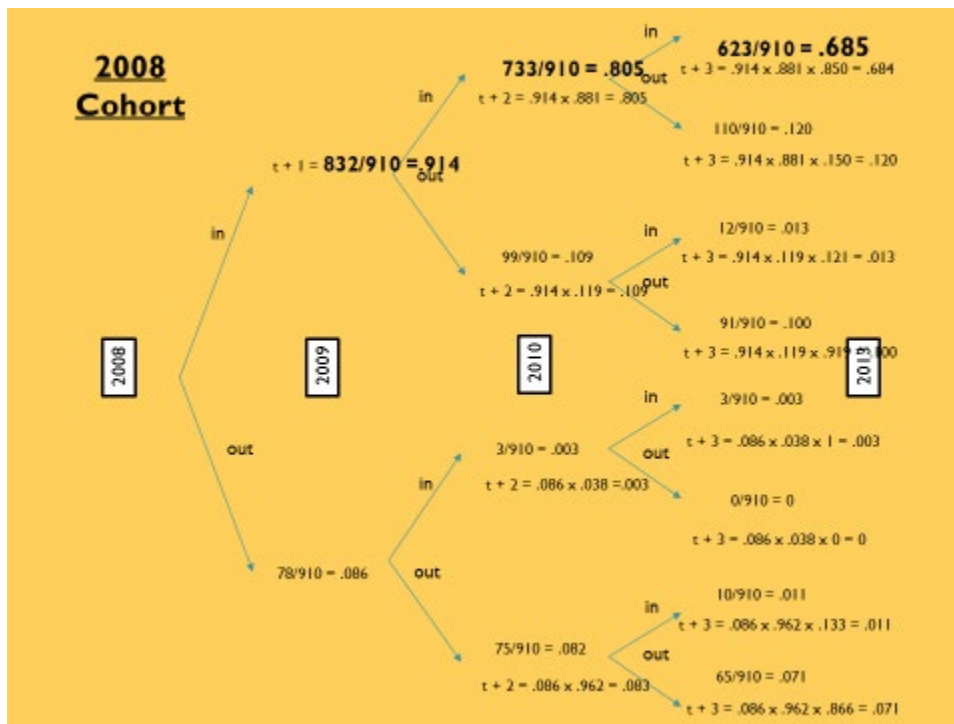
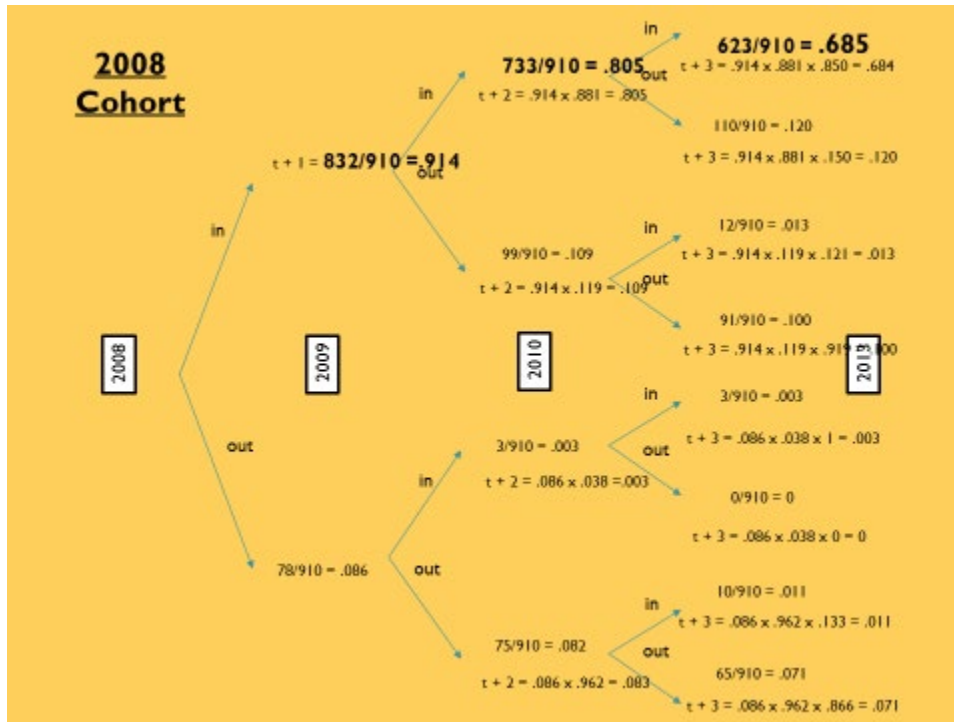
Table 3. Contract Amount Comparison: Graduated vs. Not

->	Not graduated				
Variable	Obs	Mean	Std.Dev.	Min	Max
F_Tot_contractamount	119	1197971	2051785	0	1.390e+07
->	graduated				
Variable	Obs	Mean	Std.Dev.	Min	Max
F_Tot_contractamount	2	1157660	239935.5	988000	1.327e+06

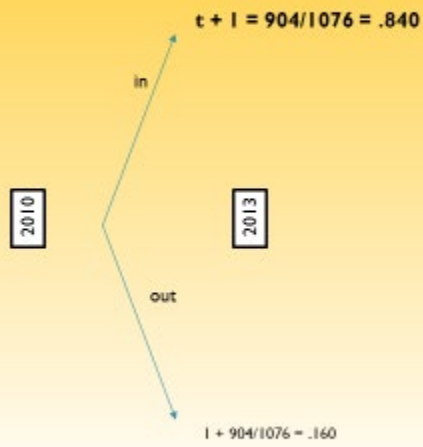
Table 4. Test of (won contract) coefficient difference between "Remain both period" vs. "graduation"

H0: [a DBE certified both period]win contract - [b graduated]win contract = 0
chi2( 1) = 0.79
Prob > chi2 = 0.375

Note: Seemingly unrelated estimation command is used to test the coefficient difference between the two model



**2010  
Cohort**



## POLICY SIMULATION SCENARIOS

### Policy Simulation 1: Contract Count

	~DBE	DBE	Total
~SBE	23	0	<b>23</b>
SBE	123	29	<b>152</b>
<b>Total</b>	<b>146</b>	<b>29</b>	<b>175</b>

P(DBE&SBE)	16.57%
P(SBE)	86.86%
P(DBE SBE)	19.08%
P(DBE)	16.57%
Change	2.51%
Market Size	175
DBE Market Share	16.57%
Projected Market DBE Share	33
Absolute Change	4
Relative Change	15.13%

### Policy Simulation 1: Contract Dollars Awarded

	~DBE	DBE	Total
~SBE	23,353,087.63	-	<b>23,353,087.63</b>
SBE	106,935,566.90	19,162,478.11	<b>126,098,045.01</b>
<b>Total</b>	<b>130,288,654.53</b>	<b>19,162,478.11</b>	<b>149,451,132.64</b>

P(DBE&SBE)	12.82%
P(SBE)	84.37%
P(DBE SBE)	15.20%
Market Share Change	2.37%
P(DBE)	12.82%
DBE Sector Change	2.37%
Market Size	149,451,133
DBE Market Share	12.82%
New Market DBE Share	22,711,328
Relative Change	18.52%

**Policy Simulation 2: Contract Count**

	~DBE	DBE	Total
~SBE	2	0	2
SBE	8	7	15
<b>Total</b>	<b>10</b>	<b>7</b>	<b>17</b>

P(DBE&SBE)	41.18%
P(SBE)	88.24%
P(DBE SBE)	46.67%
Change in %	5.49%
P(DBE)	41.18%
Change in DBE	5.49%
Market Size	17
DBE Market Share	41.18%
New Market DBE Share	7.93
Relative Change	13.33%

**Policy Simulation 2: Contract Dollars Awarded**

	~DBE	DBE	Total
~SBE	12,998,798		12,998,798
SBE	54,008,702	46,400,349.00	100,409,051
<b>Total</b>	<b>67,007,500</b>	<b>46,400,349.00</b>	<b>113,407,849</b>

P(DBE&SBE)	40.91%
P(SBE)	88.54%
P(DBE SBE)	46.21%
Change	5.30%
P(DBE)	40.91%
Change	5.30%
Market Size	113,407,849
DBE Market Share	40.91%
New Market DBE	
Share	52,407,265
Relative Change	12.95%



**Policy Simulation 3: Primes**

	~DBE	DBE	Total
237310	442,351,820	-	442,351,820
237990	122,937,968	-	122,937,968
238120	-	-	-
238210	-	-	-
517210	-	-	-
541330	249,033,378	-	249,033,378
236210	153,792,764	-	153,792,764
236220	48,377,971	-	48,377,971
<b>Grand Total</b>	<b>1,016,493,902</b>	<b>-</b>	<b>1,016,493,902</b>

**Policy Simulation 3: Subcontractors**

	~DBE	DBE	Total
237310	-	5,955,349	5,955,349
237990	-	6,020,000	6,020,000
238120	-	9,260,000	9,260,000
238210	5,395,000	25,165,000	30,560,000
517210	21,883,101	-	21,883,101
541330	8,998,798	-	8,998,798
236210	-	-	-
236220	-	-	-
<b>Grand Total</b>	<b>36,276,899</b>	<b>46,400,349</b>	<b>82,677,248</b>

**Policy Simulation 3: Primes + Subcontractors**

	~DBE	DBE	Total
237310	442,351,820	5,955,349	448,307,169
237990	122,937,968	6,020,000	128,957,968
238120	-	9,260,000	9,260,000
238210	5,395,000	25,165,000	30,560,000
517210	21,883,101	-	21,883,101
541330	258,032,176	-	258,032,176
236210	153,792,764	-	153,792,764
236220	48,377,971	-	48,377,971
<b>Grand Total</b>	<b>1,052,770,801</b>	<b>46,400,349</b>	<b>1,099,171,150</b>

**Policy Simulation 3: DBE Prime Market Representation**

	P(DBE) Before	P(DBE) After
237310	0%	1%
237990	0%	5%
238120	0%	100%
238210	0%	82%
517210	0%	0%
541330	0%	0%
236210	0%	0%
236220	0%	0%
<b>Grand Total</b>	<b>0%</b>	<b>4%</b>

**Policy Simulation 3: Entire Contracting Market**

<b>Current</b>	
Large Contract Market Share	2,925,228,433
P(DBE)	1.59%
P(DBE Primes)	0%
P(DBE Subs)	40.91%
Prime DBE Market Value	
Sub DBE Market Value	46,400,349
Total DBE Market Values	46,400,349
<b>Prime Market Simulation</b>	
<b>(100% Simulated)</b>	
P(DBE Primes)	4.22%
Prime DBE Market Value	123,485,428
Change in DBE Prime Market Value	123,485,428
<b>(10% Simulated)</b>	
P(DBE Primes)	0.42%
Prime DBE Market Value	12,348,543
Change in DBE Prime Market Value	12,348,543
<b>(15% Simulated)</b>	
P(DBE Primes)	0.63%
Prime DBE Market Value	18,522,814
Change in DBE Prime Market Value	18,522,814

<b>(20% Simulated)</b>	
P(DBE Primes)	0.84%
Prime DBE Market Value	24,697,086
Change in DBE Prime Market Value	24,697,086

**Policy Simulation 3: Total Spending by NAICS**

NAICS	~DBE	DBE	Total
221111	4,070,393	-	4,070,393
221210	630,879,338	-	630,879,338
236115	4,750,000	-	4,750,000
236210	153,792,764	-	153,792,764
236220	48,377,971	-	48,377,971
237110	83,897,383	-	83,897,383
237130	14,077,552	-	14,077,552
237310	442,351,820	5,955,349	448,307,169
237990	122,937,968	6,020,000	128,957,968
238120	-	9,260,000	9,260,000
238210	5,395,000	25,165,000	30,560,000
238220	18,412,809	-	18,412,809
238910	21,550,160	-	21,550,160
238990	16,409,500	-	16,409,500
321114	6,098,400	-	6,098,400
323111	8,723,004	-	8,723,004
326211	21,600,718	-	21,600,718
331511	4,500,000	-	4,500,000
332312	4,140,015	-	4,140,015
334290	6,280,000	-	6,280,000
335312	4,004,818	-	4,004,818
336999	12,000,000	-	12,000,000
423610	5,639,325	-	5,639,325
423690	32,514,729	-	32,514,729
424720	228,461,749	-	228,461,749
443142	8,918,187	-	8,918,187
484110	5,500,000	-	5,500,000
485111	28,192,598	-	28,192,598
485113	45,434,620	-	45,434,620
485210	52,198,905	-	52,198,905
485999	95,456,893	-	95,456,893
517210	21,883,101	-	21,883,101

## Policy Simulation Scenarios

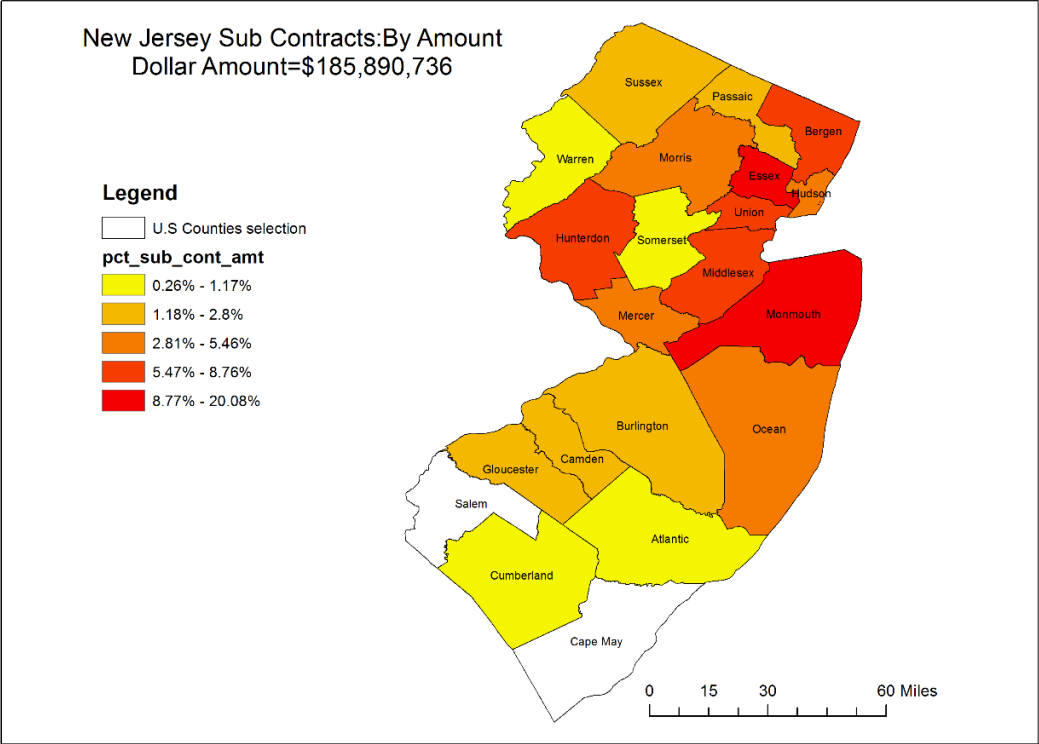
517911	16,497,390	-	16,497,390
522110	15,200,000	-	15,200,000
524210	14,530,015	-	14,530,015
532412	97,877,000	-	97,877,000
532490	4,516,730	-	4,516,730
541330	258,032,176	-	258,032,176
541370	58,373,125	-	58,373,125
541512	26,281,993	-	26,281,993
541614	5,526,242	-	5,526,242
541890	16,742,735	-	16,742,735
541910	93,772,333	-	93,772,333
561110	4,000,000	-	4,000,000
561510	62,888,358	-	62,888,358
561612	24,170,952	-	24,170,952
561720	11,718,713	-	11,718,713
561990	4,293,601	-	4,293,601
812930	5,957,000	-	5,957,000
<b>Grand Total</b>	<b>2,878,828,084</b>	<b>46,400,349</b>	<b>2,811,820,584.00</b>

### Policy Simulation 4: Fuel Sector Firms

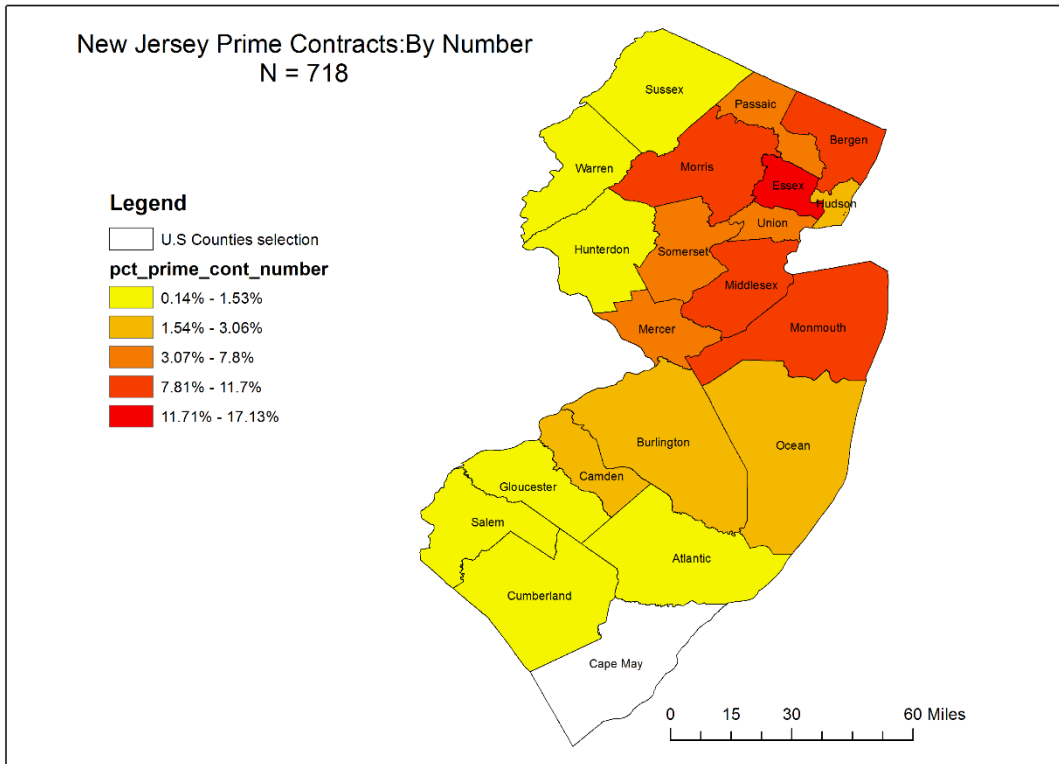
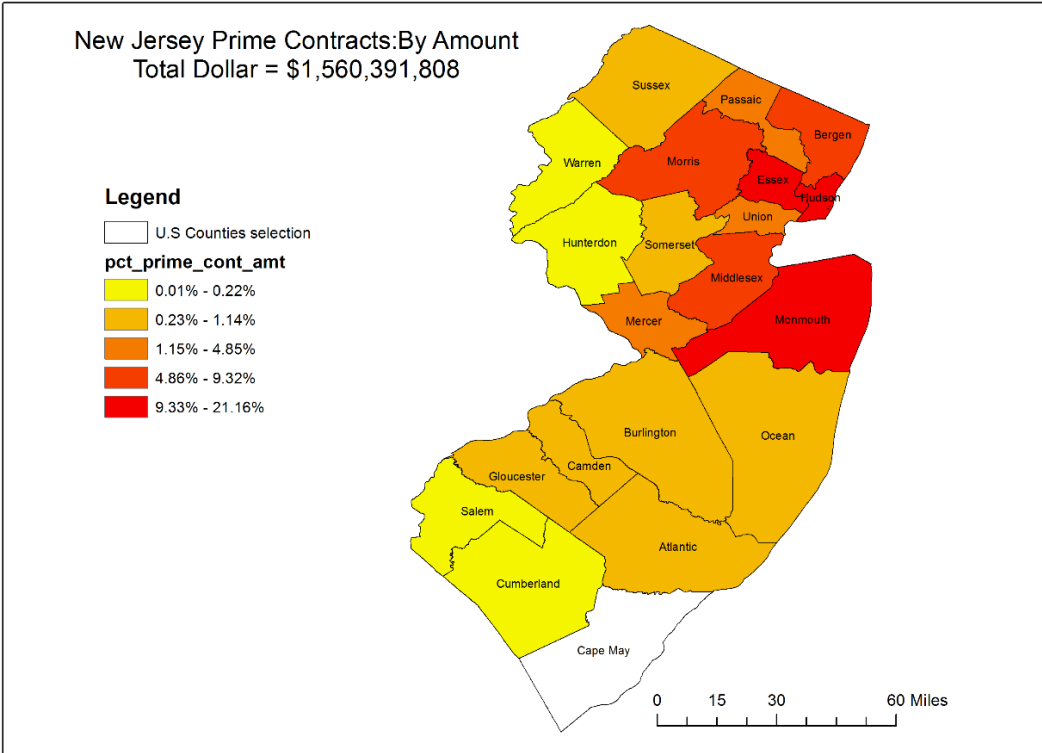
	~Minority/Women	Minority/Women	Total
Large Firm	2,144	136	<b>2,280</b>
Small Firm	30	4	<b>34</b>
<b>Total</b>	<b>2,174</b>	<b>140</b>	<b>2,314</b>

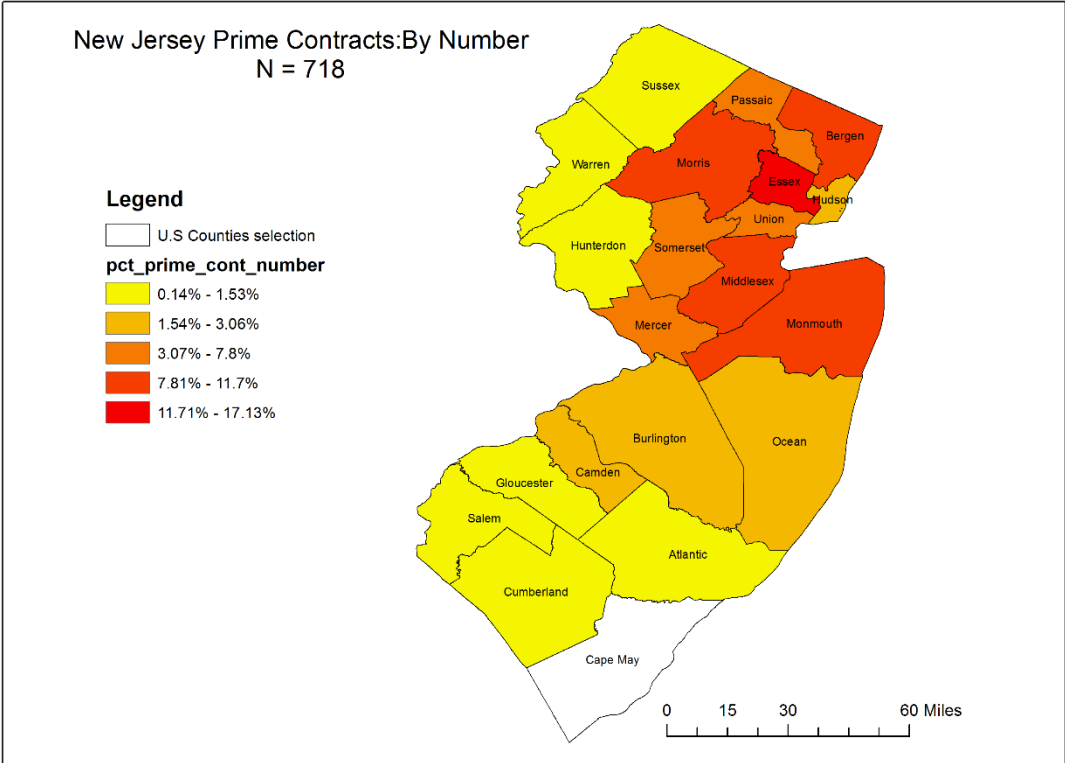
P(Min/Wo&BSE)	0.17%
P(SBE)	1.47%
P(Min/Wo SBE)	11.76%
Market Share Change	11.59%
P(Min/Wo)	6.05%
Min/Wo Sector Size Change	5.71%
Market Size	2,314
Min/Wo Market Share	6.05%
New Market Min/Wo Share	272
Absolute Change	132
Relative Change	94.45%

# DISTRIBUTION OF PRIME CONTRACTORS AND SUBCONTRACTS

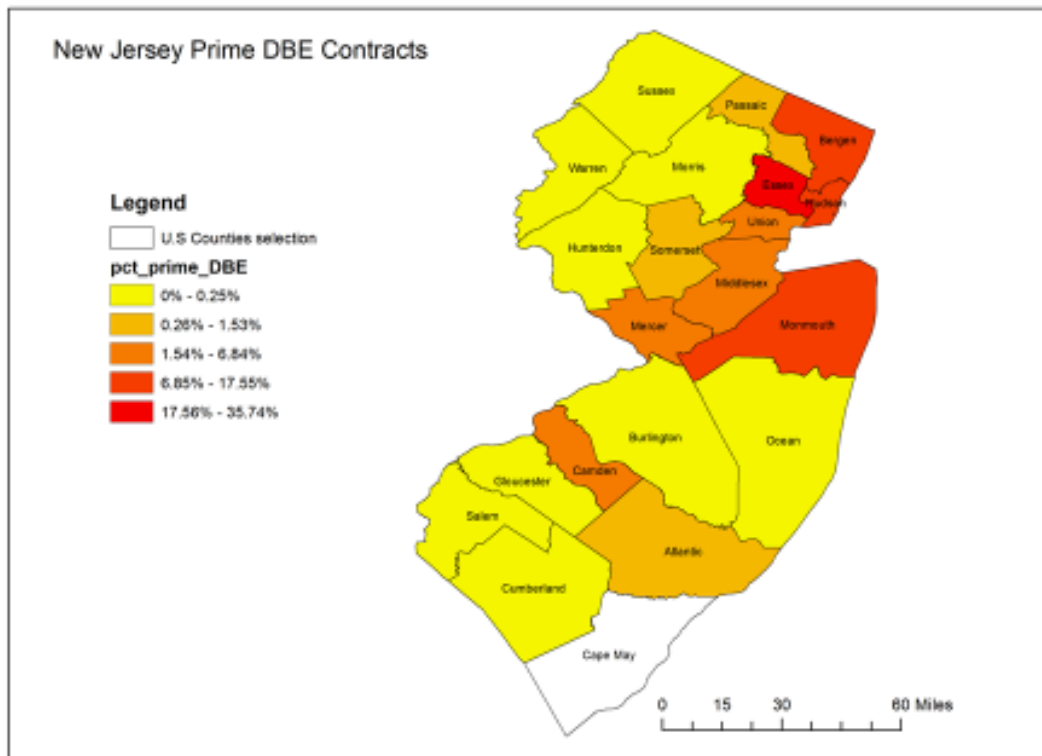
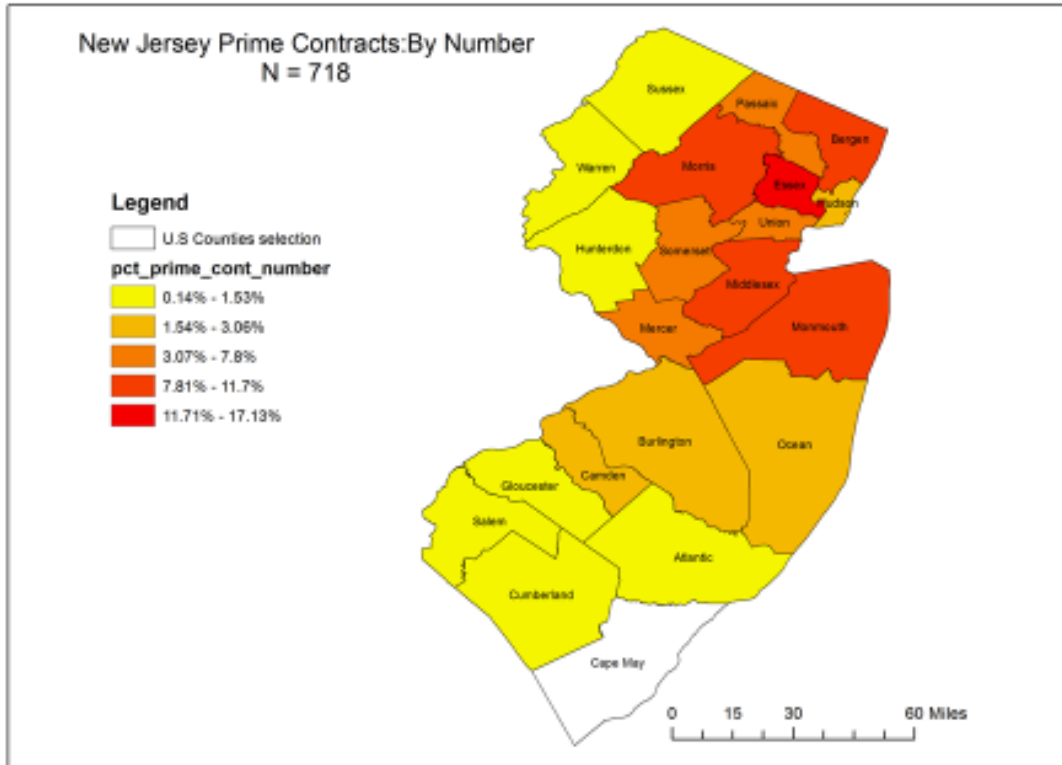


## Distribution of Prime Contractors and Subcontractors

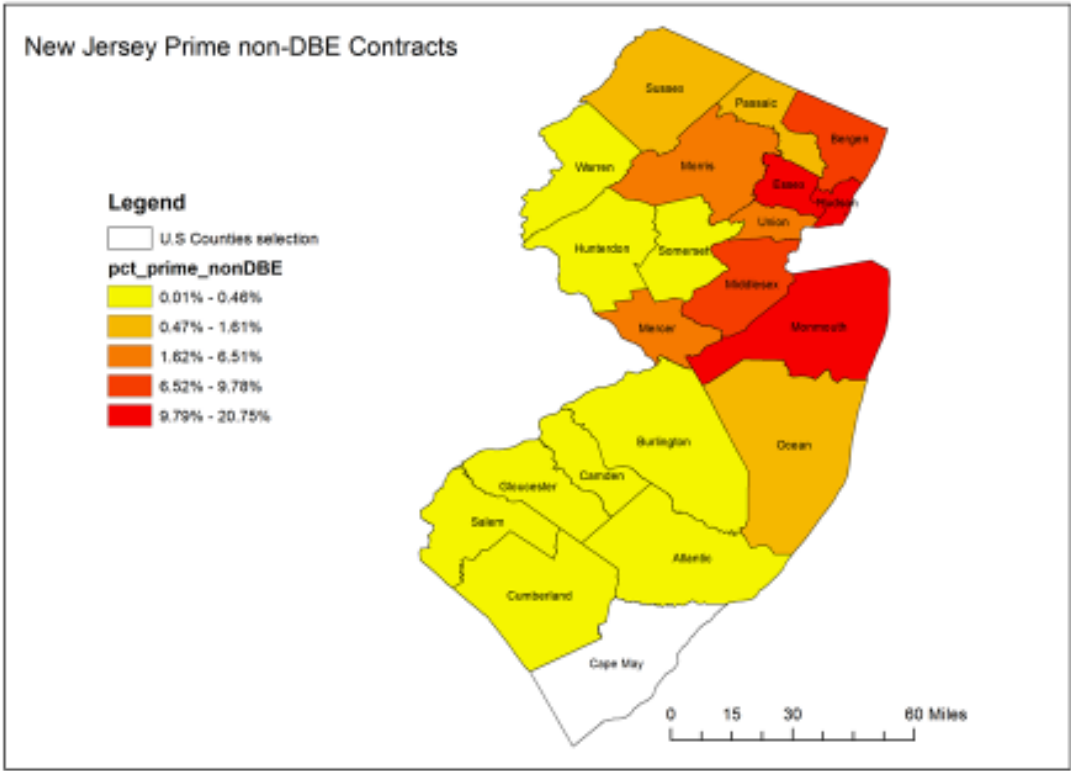
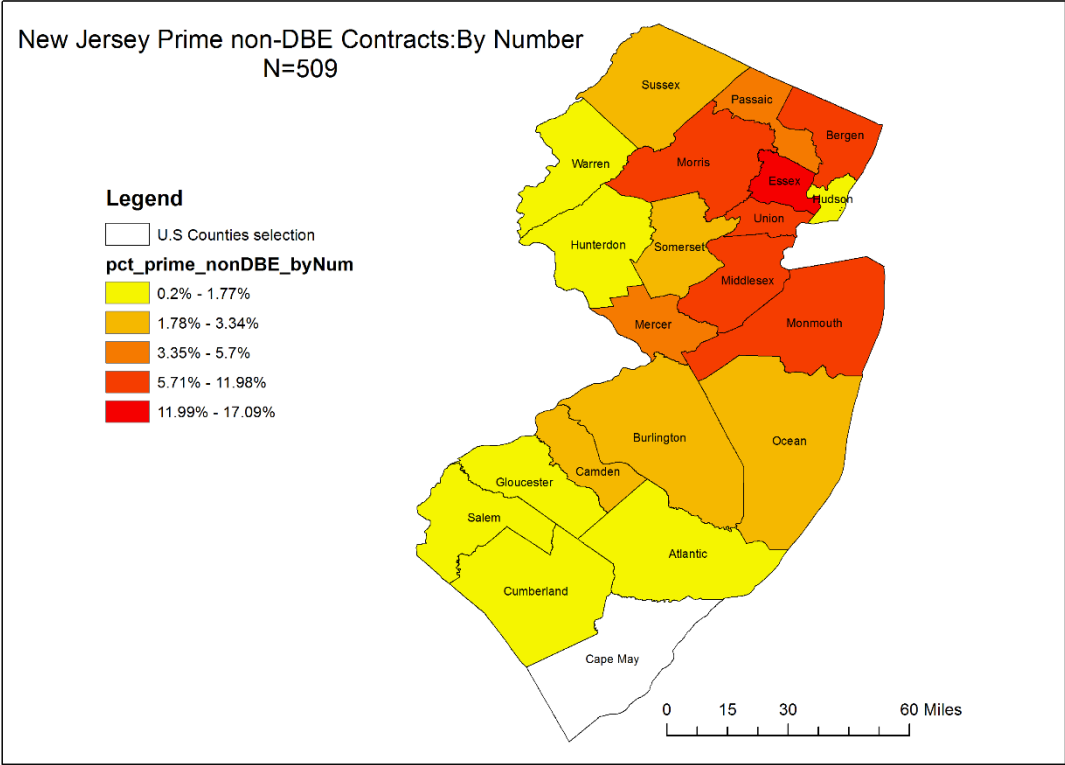




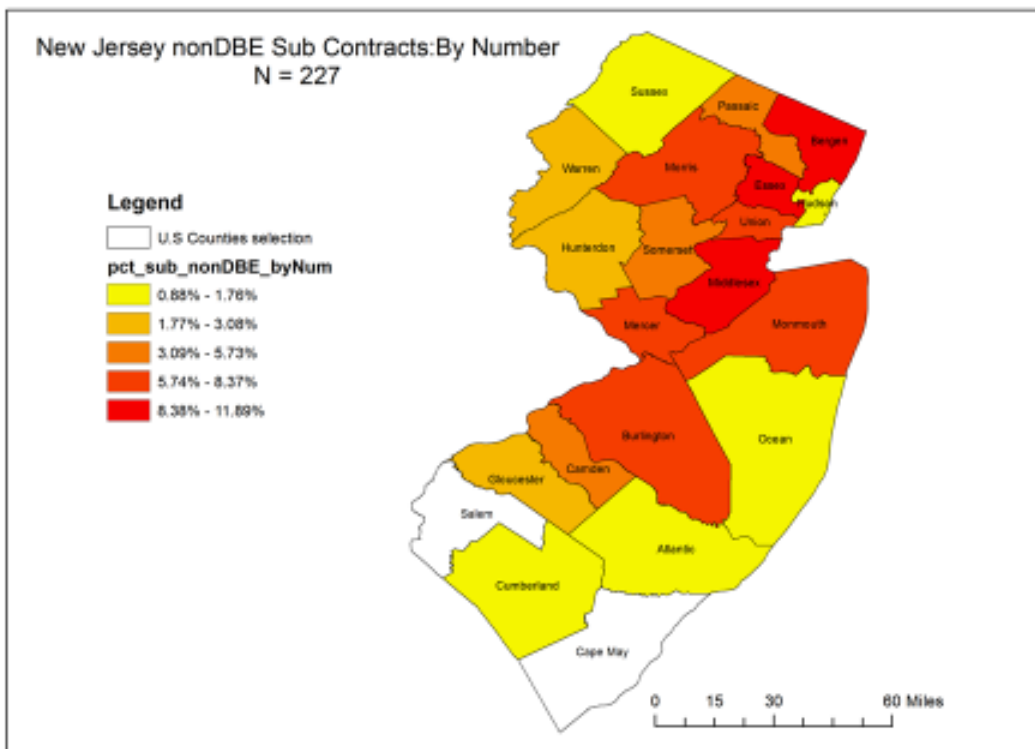
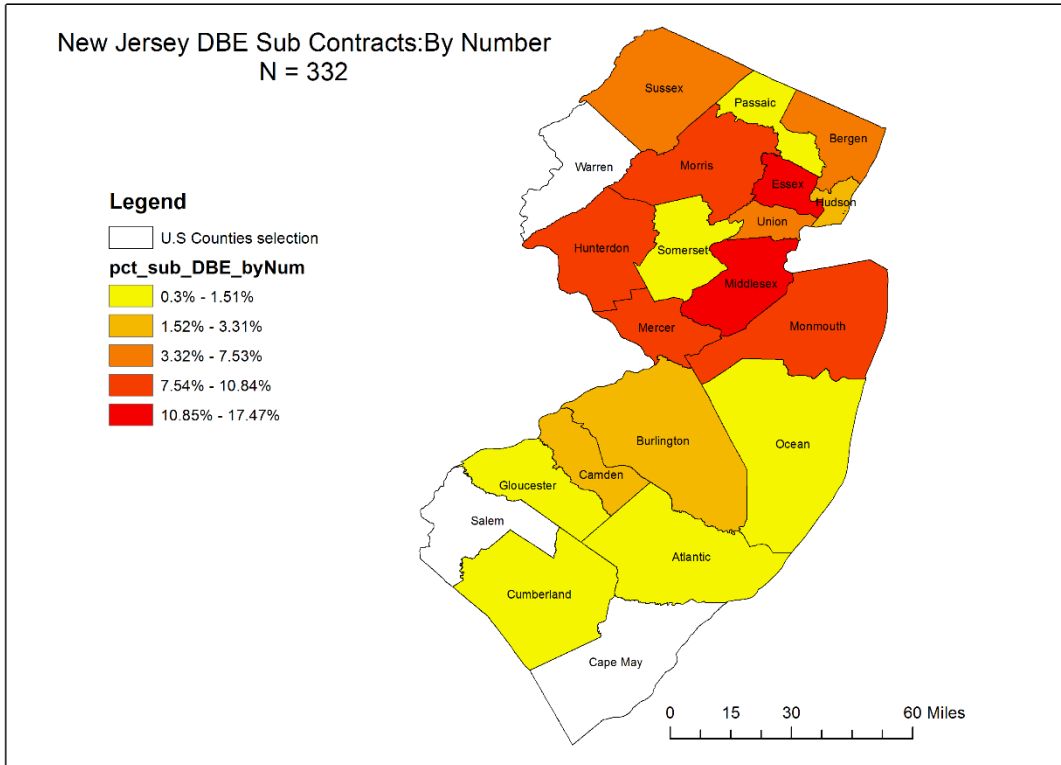
## Distribution of Prime Contractors and Subcontractors

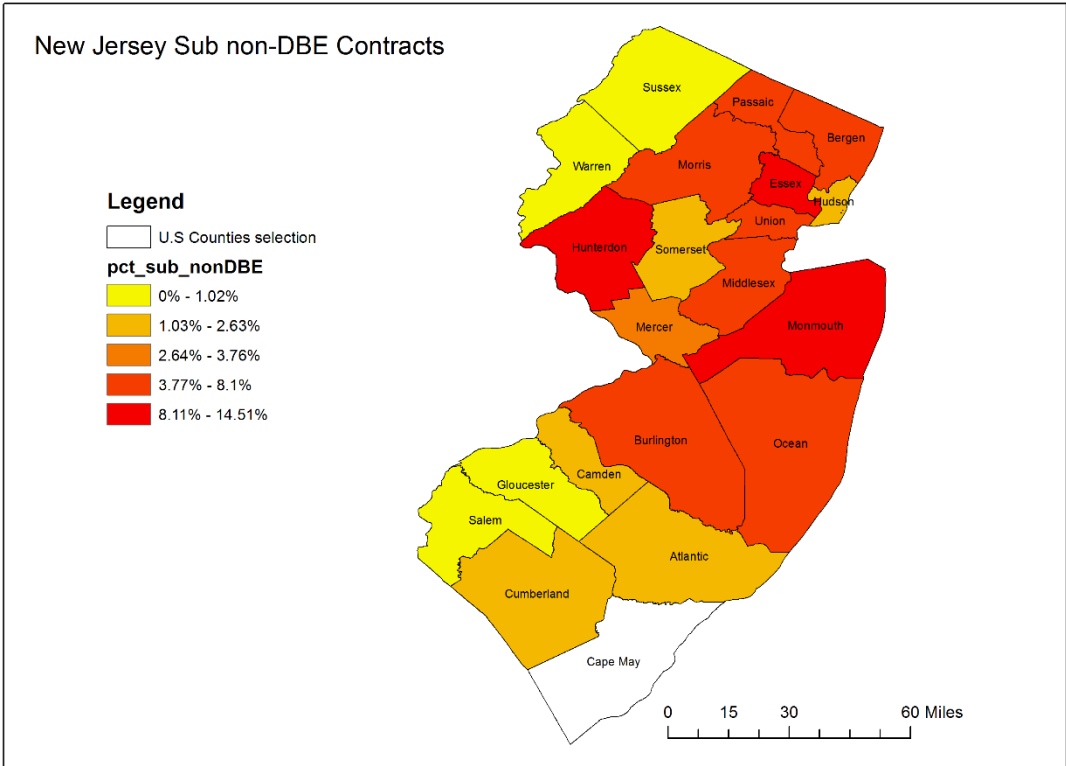
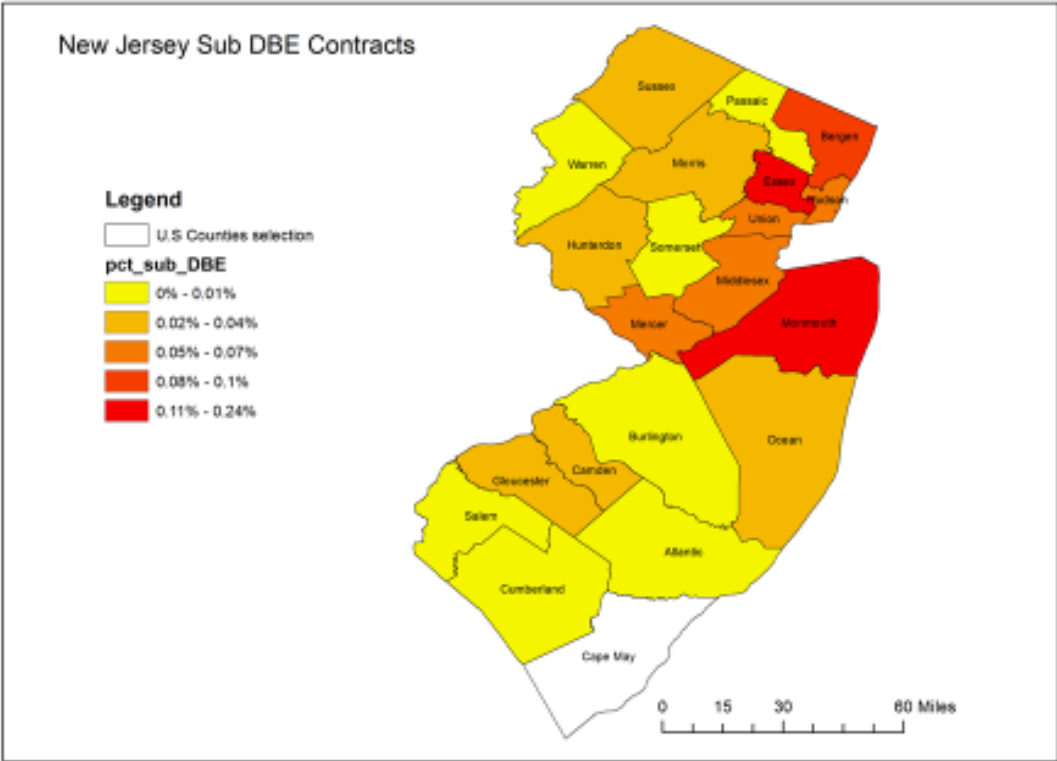






## Distribution of Prime Contractors and Subcontractors





## **ANECDOTAL EVIDENCE: PUBLIC MEETINGS**

### **Summary Report Table of Contents**

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#### **1.0 Overview**

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#### **4.0 Public Meeting Comments**

4.1 Summary of Verbal Comments Received at the Microphone Following the Presentation

4.2 Summary of Written Comments

4.3 Broad Themes Specific to NJ TRANSIT

4.4 Narrow Themes Specific to NJ TRANSIT

### 1.0 Overview

The Roy Wilkins Center for Human Relations and Social Justice (RWC), at the University of Minnesota's Humphrey School of Public Affairs is conducting a "Disparity Study" on behalf of NJ TRANSIT. Three Public Meetings were organized throughout the State of New Jersey to receive testimony as part of the Disparity Study's anecdotal data collection activities. Public Meetings were structured as forums to receive comments and testimony from the business community relevant to two issues: The race-neutral element of NJ TRANSIT's approved DBE program plan; and market barriers to full participation in the entire range of procurement and contracting activities of NJ TRANSIT. Summary information included in this report is limited to those Questions, Comments and Testimony relevant to the Disparity Study.

Public Meetings were planned with key inputs from NJ TRANSIT. The format, agenda, timeline, script, meeting materials, power point presentations, printed announcements and advertisements were approved by NJ TRANSIT before they were adopted for use.

### 2.0 Notification of the Public Meeting

The RWC team conducted outreach for the public meetings. This outreach was supported by NJ TRANSIT's Office of Business Diversity who also sent several e-blasts to their database. Further, NJ TRANSIT placed Public Meeting Notices in widely circulated newspapers; minority newspapers; and newspapers printed in Spanish. The RWC team contacted relevant organizations, including the Small Business Development Centers of New Jersey, and asked them to distribute public meeting notices to their members and associates.

In summary, the following steps were taken during public meeting outreach leading to 86 public meeting registrants and 74 people in actual attendance across the three Public Meetings.

Invitations to the Public Meetings were dispersed using the following outreach strategies:

1. M/W/S/DBE and non-certified firms were generated from a list of the Port Authority of NY/NJ dataset. This included 693 firms.
2. E-mails were forwarded to 645 firms with valid e-mail addresses; 86 of these were returned.
3. Faxes were sent to 684 firms with a fax number; of these 148 faxes did not go through.
4. Public Officials from MII database consisted of 42 public officials.
5. E-mails were forwarded to 41 public officials; of these and one was solicited by facsimile.
6. Fifty nine Chambers of Commerce from the MII database were identified; of these, 57 Chambers of Commerce were emailed; and 52 Chambers of Commerce were also sent facsimiles.
7. DBE firms were generated from the MII Database. This included 110 firms, each of which was emailed.

Additional steps were taken to bolster responses to outreach and public meeting attendance. These included:

- a) Calling all firms with a phone number but no fax number and email address to identify fax and email information.
- b) Calling all firms with a phone number and fax number but no email address to confirm receipt of the fax and to identify their email address.
- c) Calling all firms with a phone number and email address but no fax number to confirm receipt of the email and to identify their fax number.
- d) E-mailing and faxing to all firms with newly identified information.
- e) E-mailing reminder notice to all databases with e-mail addresses on numerous occasions before each public meeting.
- f) E-mailing confirmations to all registered public meeting attendees on the day before their scheduled meeting.
- g) E-mailing reminder notices to all registered public meeting attendees on the day of their scheduled meeting to remind them of the time and location and thank them for their participation in advance.

### **3.0 Public Meeting Logistics**

The logistics of the Public Meetings are summarized under the following captions to include location and attendance; public meeting format; public meeting agendas; and handouts.

#### **3.1 Location and Attendance**

The public meetings included representatives from construction companies, specialty contractors, suppliers, engineering firms, and transportation services firms. Meetings were held on the following dates at these locations throughout the State of New Jersey:

##### **Thursday, April 16, 2015**

Waterfront Technology Center,  
200 Federal Street, Camden, New Jersey  
The number of attendees at this meeting was Thirteen (13)

##### **Thursday, April 23, 2015**

Rutgers Business School, Small Business Development Center  
100 Rockefeller Road, Piscataway, New Jersey  
The number of attendees at this meeting was Sixteen (16)

##### **Thursday, April 30, 2015**

NJ Transit Headquarters  
One Penn Plaza East, 9th Floor Board Room, Newark, New Jersey  
The number of the attendees at this meeting was Forty-Six (46)

#### **3.2 Public Meeting Format**

A member of the Roy Wilkins Center Team was designated to preside over each public meeting. The presiding member was responsible for reviewing the meeting's purpose and agenda,

introducing NJ TRANSIT representatives; identifying expected outcomes as well as calling individuals to comment or testify; and directing the collection of exhibits and adjournment. A stenographer was present for the duration of each of the meetings for the purpose of developing an official transcript of the proceedings and administering the oath for each person providing testimony and/or comments.

Each meeting utilized a panel of NJ TRANSIT representatives to provide opening remarks and present the race-neutral element of the DBE Program Plan. NJ TRANSIT panel members included Leotis Sanders, VP, Office of Civil Rights and Diversity Programs, Lisa Marie Codrington, Director of Contractor Compliance for the Office of Civil Rights, and Mr. LA Hernandez, Manager, Office of Civil Rights. Opening remarks and the DBE program plan presentation were given by Mr. Sanders and Ms. Codrington only.

The Disparity Study's Principal Investigator, Dr. Samuel L. Myers, Jr. made a presentation during the Disparity Study portion of the public meeting. Additional Roy Wilkins Center Team members assisted with efficiently holding the public meetings by maintaining a comprehensive list of persons wishing to testify, and assigning time slots to those persons; handling any exhibits presented at the public meetings and keeping track of the time used by each individual making comments on the DBE plan or providing testimony. All questions raised during the public meeting were acknowledged and recorded. Meeting attendees were reminded that all questions would be answered in writing 60 days from the close of the comments period.

The transcript, together with exhibits, constitutes the official record of these meetings. Information gathered during the Public Meetings and its written comments period were analyzed to assist the RWC with the development of its business community survey. Testimony and Comments relevant to the race-neutral element of the DBE Program plan will not be discussed in this report but will be addressed by NJ TRANSIT's Office of Civil Rights and Diversity Programs.

### 3.3 Public Meeting Agenda

The following was the agenda for each public meeting:

- Call to Order
- Welcome Remarks/Statement of Purpose
- Introduction of NJ TRANSIT, the Office of Civil Rights & Diversity Programs
- Remarks NJ TRANSIT Representative(s)
- Reading of Instructions for receiving comments
- Review the DBE Program Plan
- Receive comments regarding the DBE Program Plan
- Introduction of the Disparity Study Research Team
- Remarks by the Principal Investigator
- Reading of Instructions for providing testimony
- Receive testimony
- Word of Thanks
- Adjournment

#### 4.0 Public Meeting Comments, Testimony and Questions

The following section is organized to include the speaker and corresponding page in the transcript where the comment, testimony or questions were derived. Anecdotal observations or recommendations from the testimony and written comments conclude the comments section. A qualitative summary is provided that identifies Broad, Narrow and Anecdotal themes garnered from the comments, testimony and questions compilation.

Verbal and written comments and testimony were received by email and during each public meeting. The period for receiving written comments and/or testimony ended on May 7, 2015. Those wishing to provide written comments were directed to a dedicated email address established by the Roy Wilkins Center and a physical mailing address at NJ TRANSIT. The NJ TRANSIT website, Roy Wilkins Center Website, Disparity Study Announcement, and Public Meetings Notice were utilized to invite comments and/or testimony. All written comments, questions and testimony were compiled and forwarded to NJ TRANSIT in advance of this public meetings report.

Verbal and written comments were compiled and organized to identify the main points of each speaker's testimony and written comments; only comments relative to the race-conscious element of the DBE program plan and the Disparity study are addressed in this report. Comments providing criticisms, recommendations and affirmative responses related to the race-neutral element of the NJ TRANSIT approved DBE program plan; market barriers to full participation in the entire range of procurement and contracting activities of NJ TRANSIT; obstacles and perceived obstacles in the NJ TRANSIT procurement process are reflected across several categories. A quantitative summary of each category is provided below.

#### 4.1 Summary of Verbal Comments Received at the Microphone and Written Comments:

##### A. Race-neutral element of the NJ TRANSIT approved DBE program plan

- a) Across the three public hearings, six (6) responses criticized the race neutral element of the NJ TRANSIT approved DBE Program Plan; of these two (2) were written comments and four (4) were presented during public testimony.
- b) Five (5) of six (6) responses were critical of ensuring all manner of disadvantaged certification, (MBE/WBE/DBE) be included in the revised SBE designation.
- c) One (1) of six (6) responses recommended subdividing SBE and DBE goals as part of the approved DBE program plan.
- d) One (1) of six (6) responses recommended DBE/SBE should be added to eligibility to compete in the NJ TRANSIT professional services category.
- e) One (1) of six (6) responses affirmed the NJ TRANSIT approved DBE Program Plan is working successfully.
- f) One (1) of six (6) responses recommended identifying and instituting effective tools to measure compliance in NJ as a race neutral state.



The total comments quantified in this category are summarized below; written comments included in these tallies are reviewed separately.

**Thursday, April 16, 2015, Waterfront Technology Center**

1. Add the professional services, black and minority firms to NJ TRANSIT categories. Professional services, DBEs and SBEs [should] be added to the list. When they started the program, it was MBE/WBE. It got twisted into DBE, and we got lumped into that. Now it's being re-twisted into small business, and we're getting lumped into that. The original effort of these programs [was] to get an equal opportunity to compete on government contracts. The Office of Civil Rights and Diversity Programs [should] invite some black contractors to sit [when] creating these programs; there would not be no union contract negotiations in this state or any other state in America without the unions present, pgs. 28, 29.
2. When you take a DBE program in New Jersey Transit, which is working very well, and make a small compartment with the SBE and then everything will eventually be diverted to race-neutral, I encourage that. But if it ultimately [removes] the DBE program and stays with SBE program, from what I have seen with the State of New Jersey, I think it's a failure. The NJ TRANSIT DBE Program is working very well. If you are planning to subdivide it with the SBE and give some work to SBE race-neutral, great idea, but be careful. Don't eliminate the DBE program, pgs. 29 -31.

**Thursday, April 23, 2015, Rutgers Business School, Small Business Development Center**

1. If the DBE program made 17% participation last year [and is performing] successfully, I would say continue the program and allocate separately the SBE program at like 10. So keep the DBE goal at 17%, create a separate goal, maybe 8 or 10 percent for the SBE program. And that way minority and small businesses [have less] difficulty entering the market, pgs. 64, 65.

**Thursday, April 30, 2015, NJ Transit Headquarters**

1. The fact that we're undertaking a Disparity Study is encouraging, but it's more about the will to drive the policy. One of the inherent challenges is that the State of New Jersey is a race-neutral state. And so as you talk about the marketplace, its challenging to implement effective set-aside programming. The barrier has been [identifying] effective tools to measure compliance. If we put registered goals in place I think that's a—that's a lofty idea. However, if you don't have a way to properly measure your outreach, measure the availability in the marketplace, measure participation, and then impose sanctions that have some teeth to them, its business as usual. [The marketplace is] just a reluctant to embrace best practices that make goal setting economically impactful, pg. 64.

**B. Market barriers to full participation in the entire range of procurement and contracting activities of NJ TRANSIT**

- a) Across the three public hearings, eight (8) responses identified market barriers to full participation in the entire range of procurement and contracting activities of NJ TRANSIT. Of these two (2) were written responses and six (6) were presented as public testimony.
- b) One (1) response of eight (8) criticized discrepancies within the selection of vendors for NJ TRANSIT.
- c) One (1) response of eight (8) criticized discrepancies within the selection of vendors for State of NJ projects.
- d) Four (4) responses of eight (8) criticized discrepancies in the validity of WBE designations as fronts for family business operations that are over DBE/SBE thresholds and would otherwise be ineligible.
- e) Two (2) responses of eight (8) recommended the unbundling of projects, specifically, facility support services to increase the participation of small minority companies.

The total comments quantified in this category are summarized below; written comments included in these tallies are reviewed separately.

#### **Thursday, April 16, 2015, Waterfront Technology Center**

1. There's a lot of things that should actually go to small companies. But unfortunately, what happens is some of these other companies dominate the overall management and operation of [various] NJ Transit stations. And oftentimes they use the same vendor to do traditionally what smaller minority companies could do: janitorial, pest control, landscaping; those types of things. The fact that [NJ TRANSIT is] going to look at unbundling some of these larger projects makes sense because oftentimes what happens, GC's will keep these things in-house and often eliminate us, and we don't have the opportunities that we need to compete and stay healthy, pgs. 35, 36.
2. The thing I wanted to say in compliment to New Jersey Transit is the fact that they're recognizing that un-bundling is an absolute necessity. One of the major contracts that [we have] right now, is from a small business set-aside in which the second low bidder claimed to be a small business and was going to [win the contract]. Our challenge was reviewed by New Jersey Transit official legal people [decision makers] and they confirmed our allegations, and we were the responsible lowest small business on the job, pgs. 53, 54.
3. The definition of women-owned businesses in construction has to change. Ninety five percent of all WBEs in New Jersey are outgrowths of family business operations [who have] banking advantages, industry contact advantages, personnel and procurement office advantages [on their] first day out as primes. There's no small business enterprise WBEs. They got six, seven million dollars of construction equipment. But they're small businesses [?] They can't be disadvantaged because their economic wealth is too large. I would really hope that NJ TRANSIT and other [DBE program] models of transportation agencies begin to look at this WBE fiasco, especially in construction, pg. 54.

4. My issue is about bundling, breaking up some of these larger contracts; and primarily [those] deal with [large bids] facilities support services. For example, the [current] bid for management at Newark Penn Station. We don't do much sub work. Most of the work that we have, or all the work that we have in New Jersey Transit, with Port Authority of New York and New Jersey and SEPTA, the majority of all our contracts we do as a prime on our own. This operation [for] management of Secaucus Rail station, Penn Station [are] combined, perhaps 45 million dollars. When they bundle it and put it together with the electrical and all the other trades, they throw in the pest control and the janitorial, and they never hire small and minority-owned companies to do that work, pgs. 56–58
5. We've had bad experiences as subcontractors and it's been several years now that I actually stopped soliciting for subcontracts, especially in construction. Oftentimes if there's a goal or requirement in Philadelphia, I can do work with some of the larger firms; Skanska, Keating, and can do it over in Philly because there's a [goal] requirement. Same work applies here, same type of work is available here in New Jersey [and] whether there's a goal or not, they should all be based upon our performances, pgs. 56–58

**Thursday, April 23, 2015, Rutgers Business School, Small Business Development Center**

1. Contracts in the State SBE program are a disaster. The State of New Jersey; not a single project from School Construction Authority or any other agency. It's a total failure. Why? Because the categories they have, the type of work we have; everybody with a brother-in-law, with the wife's name, they become SBE, WBE, and get the job. We did not get any SBE work in the last 20 years, p. 31.

**Thursday, April 30, 2015, NJ Transit Headquarters**

None noted.

**C. Obstacles and perceived obstacles in the NJ TRANSIT procurement process**

- a) Across three public hearings eight (8) responses identified obstacles and perceived obstacles in the NJ TRANSIT procurement process. Of these two (2) were written and six (6) were presented as public testimony.
- b) Four (4) of eight (8) responses criticized interface with the NJ TRANSIT procurement office and/or officers as a source of frustration and misinformation.
- c) One (1) of eight (8) responses criticized State representatives with allegations of direct discrimination.
- d) One (1) of eight (8) responses criticized the ability of larger, more established DBEs to take advantage of their standing and command the majority of designated contracting goals toward the overall DBE goal of a specific project.

- e) One (1) of eight (8) responses criticized discrepancies in the validity of WBE designations as fronts for family business operations that are over DBE/SBE thresholds and would otherwise be ineligible.
- f) Two (2) of eight (8) responses recommended helping smaller DBE firms [match up] with the larger DBE firms.
- g) One (1) of eight (8) responses criticized the lack of specific DBE goals on many projects.

The total comments quantified in this category are summarized below; written comments included in these tallies are reviewed separately.

#### **Thursday, April 16, 2015, Waterfront Technology Center**

1. I'm an independent dealer and as a small dealer in Moorestown who independently had a relationship with New Jersey Transit... I was told to stay out. I was referred to the head of procurement at NJ TRANSIT and for the last two years I've sent multiple emails [about] new technology. There are two letters [from NJ TRANSIT attached as exhibit 2, 04.16.15], pgs. 31–33.
2. My complaint is [about] the NAIC codes that I'm certified with [and those] you need to get set up with [in NJ TRANSIT]. I do not get anything from New Jersey Transit. Getting into construction, I'm having a hard time. I need help trying to partner with another higher contractor and/or New Jersey Transit, [and to] find out exactly who the correct buyers are to get in touch with. I've tried, I've emailed, and no success, pgs. 41, 42.
3. I'm SBE, DBE. I'm trying to MBE, they said I'm not black enough. My chief marketing officer called the state, and they said I'm black. They called the Department of State. They said I'm black. They called the IRS, they said yes, I'm black. So the state certification I'm hoping to get the certification tomorrow and I'm going to try again. [I was] promised [the] tax exemption [will be pulled] if they discriminate against African Americans because they cannot, pgs. 59, 60.

#### **Thursday, April 23, 2015, Rutgers Business School, Small Business Development Center**

1. I was trying to get the NJ Transit for a bridge painting before. It's like an 80-foot bridge, railroad bridge for painting; brush painting. We couldn't get [the contract] because we were too small to paint an 80-foot-long bridge. I filled all the proposal requirements for bonding, for insurance. I have a master's degree in engineering and also am a professional engineer in New Jersey, so I can design [the bridge]. I also involved environmental containment; covering the bridge, making sure the debris and paint won't fall into the water. We can do all of that, but they say we are too young. The agency is not determining my experience by my personal experience. They're determining my experience by the corporate experience. The company was established in September of

2012 and they see a two to three year old company. But they're not looking at my background, with more than 20 years of engineering experience, pg. 53.

2. The advantage is taken by DBE firms that are already established in the field. The new firms who want to come to the business, they face lot of problems. The government [may provide] a project and[set] a 20 percent goal for DBEs; and all the DBE goal is taken up by DBE companies that are already established for ten years or more; they are established and they have more than 100, 150 projects. NJ TRANSIT, the system is very, very good, but compliance is not good. You are not implementing it in the right way. Help the smaller DBE firms [match up] with the larger DBE firms, pgs. 57, 58.

**Thursday, April 30, 2015, NJ Transit Headquarters**

1. We do a lot of work with other railroad companies, Long Island Railroad, Metro North, Septum, basically everybody except for NJ TRANSIT; Bombardier, Napon, Shairo, Rotem, Kowasaki, GE Alstrom. We've been doing it for over 25 years and we've been trying since 2009 to become a certified—to actually just basically at this point to get in with Purchasing with New Jersey Transit. They approved us on our quality and that we are who we say we are. Since [then], they also recommended [and] we became DBE certified because we're a woman-owned business, and basically ever since then we've had trouble getting any kind of work with NJ TRANSIT in terms of actually bidding on parts. I don't really know what else I need to do to manufacture parts, pg. 52–58.

**D. Anecdotal Comments, Observations, Recommendations**

- a) Across three (3) public hearings, fourteen (14) responses made anecdotal comments, observations recommendations in relation to oversight of the NJ TRANSIT DBE Program Plan. Of these ten (10) were written and four (4) were presented as public testimony.
- b) Five (5) responses of fourteen (14) recommended a user friendly web based portal for contractors to see what's being offered at any one given time and where vendors can give a full synopsis of what their companies offer.
- c) Two (2) of fourteen (14) responses recommended a portal that allows downloading quarterly or annual reports showing the contract number, type of contract, who won it, how much, who the subs were, how much, what type of sub they are.
- d) Four (4) of fourteen (14) responses criticized sub-contractor inability to understand where respective products and services fell into the matrix of NJTRANSIT bidding categories.
- e) One (1) of fourteen (14) responses criticized the ability of DBE programs to bolster black business participation.
- f) One (1) of fourteen (14) responses recommended orientation for NJ TRANSIT DBE Program newcomers to fully understand how to utilize the program's certification.
- g) One (1) of fourteen (14) responses questioned how to lodge a complaint with NJ TRANSIT about certification fraud to launch an investigation.
- h) One (1) of fourteen (14) responses recommended adaptation of new best practices emphasizing measurement and compliance measures that provide the same data relating

to participation and outreach strategies with an appropriation for these metrics in the capital budget.

- i) One (1) of fourteen (14) responses recommended a mentor protégé program to increase capacity for second and third tier vendors.
- j) One (1) of fourteen (14) responses recommended bonding and technical assistance programs are necessary.

The total comments quantified in this category are summarized below; written comments included in these tallies are reviewed separately.

#### **Thursday, April 16, 2015, Waterfront Technology Center**

- 1. I'm a DBE. The only problem that I'm having, [is] trying to look for various contracts, bids, things that are out there, I'm having a difficult time trying to find where I fall into a category. In this day and age of computer technology, why isn't there a better hub for all of us to be able to see what's being offered at any one given time, where we can give full synopsis of what our companies really offer and what we do in order to be part of this wonderful program., pg. 39.
- 2. In this super information highway, a black firm DBE/WBE cannot simply go on New Jersey Transit's website and download a quarterly or annual report showing the contract number, type of contract, who won it, how much, who the subs were, how much, what type of sub they are. I did send an attachment from the City of Philadelphia's Office of Economic Opportunity report so that if New Jersey Transit decides to make public contract award information [available], they could use that as a format, pg. 54.
- 3. [Is there] somewhere where we can go to get information, to see contracts that have been won and by whom? And if we know a contract that was won, and we know they're not legitimate, how do we lodge a complaint and have it investigated? pgs. 60, 61.

#### **Thursday, April 23, 2015, Rutgers Business School, Small Business Development Center**

- 1. We are a small minority business and don't know where we fit in the scheme with the New Jersey Transit as far as trucking. I'm not sure if someone can kind of fit us in, because it seems like maybe some of the other types of commodities [needed] may be more applicable to DBEs. I'm not really sure. But I don't know if somebody can answer that question for me. Do they have trucking/hauling that they provide for the DBEs? pg. 33.
- 2. First of all, I'd like to support [another speaker's] comments. I agree with him. Second I have all the certifications: SBE, MBE and DBE. I have all cards in my pocket; but I don't know how to use it. In the public meeting, I requested an orientation for the newcomers so we can fully understand how to utilize the program certification we have, pg. 34.



3. The type of work that we were attempting to provide was a training of carpentry program for disadvantaged youth, City of Paterson, New Jersey. I had spoken to Mr. Ernest Williams who was Director of Certification–Special Projects with NJ TRANSIT in 2007. I attempted for about a year to follow through on this. Mr. Williams and I briefly met in my office trailer in Paterson regarding a training carpentry program for those at-risk youth. He at that time said that it was a project that he thought would interest the New Jersey Transit company and suggested that I do a proposal of needs, what we had actually talked about, and I did so. I guess for about six months to a year I attempted calling, but we didn't receive any kind of further notice as to the status of our request after that initial meeting. And that was back in 2007. Out of frustration and continued documents without any positive results or feedback, some of us kind of tossed the hat in for those reasons; especially when we don't get any response after pursuing projects or programs that were suggested during a verbal conversation, pgs. 44, 45.
4. Unbundling contracts, which is a good idea. Unbundle pieces for the small firms like other agencies; New Jersey DOT, sets aside contracts; pieces set aside for SBE firms that allow subcontractors to prime, pg. 63.
5. [I'd like to request] that New Jersey Transit [have an] on-line [portal] to change certificate, sign on-line documents and you are done; let's make it a little bit more computerized. [We could get] new upcoming projects, knowing who is certified and under what category they are certified, so we can reach out to other DBEs or MBEs, pgs. 66, 67.

**Thursday, April 30, 2015, NJ Transit Headquarters**

1. Because of the type of service that I offer, I've found it very difficult to even compete. I do leasing for residential, commercial and there have been occasions where I saw opportunities for leasing, but there was no way for me to even find out how to get my foot in the door. I've reached out to the primes, no return call and things of that nature. Most of the opportunities that NJ TRANSIT has, are obviously for transportation. So, a recommendation I would make is as a company is trying to certify, you help the company understand whether or not [NJ TRANSIT] [needs] the services they are qualified to [provide], pg. 60.
2. My comments center around adopting new best practices. [There may be something] in place that provides these, but the numbers speak to the fact that they're not performing at a level that will elevate the standing, particularly for the African-American community in the State. I'm suggesting we take a look at adopting some compliance measures to be a part of the NJ TRANSIT procurement process. Something that works uniformly so all vendors provide the same data relating to participation and outreach strategies. New York State has a 20 % MBE/WBE goal and they're advocating for a 30 % goal. A mentor protégé program is needed so that we can increase capacity for second and third

tier vendors. Lastly, bonding and technical assistance programs [are necessary]. New York has adopted all three and it's a best practice in the region; why not New Jersey do the same? We've had some conversation with the previous administration around a bonding and technical assistance programs, yet, when we approached NJ TRANSIT about moving forward, [there was] the issue of funding. There should be a part of the capital budget appropriation to have compliance measures in place. [Currently] there is no true way to get metrics on the economic impact; mechanisms to measure the goals or to measure outreach. At the end of day, if these numbers, the demographic data that I just articulated, are not changing for the better, there's clearly something wrong with the processes, procedures and practices that are in place, pgs. 35–37.

## 4.2 Summary of Written Comments

Written comments compilation consisted identifying the main points of each speaker's testimony; these comments were submitted to support testimony given or in lieu of speaking at the podium. Following each comment the page numbers and the source from where the comment was derived is noted.

### **A. Race-neutral element of the NJ TRANSIT approved DBE program plan. Thursday, April 16, 2015, Waterfront Technology Center**

1. No more "race neutral" no goal contracts should be issued. Black firms are not getting any relief when NJ Transit does not put a DBE goal on a project. This state and the nation overall has not graduated in race relations and equality yet for "race neutral" contracts to be an effective way of increasing Black and MBE's inclusion as primes on Federally funded NJT projects. I recently requested the DBE info on the NJ Turnpike work (\$2.5 Billion) for the I-95 Interchanges, Exits 6 thru 9. The response from NJ Turnpike Authority (NJTA) was that we did not use Federal money and we don't have a MBE/WBE or DBE report. Even the New Jersey SBE Program should have applied but the NJTA had no information on what Black firms and MBE's worked on the \$2.5 Billion dollar project. However, driving on that stretch of highway during the construction and knowing the names of many white female family owned firms, I did see their equipment all along the work zones; Exhibit #1: 04/16/2015.
2. Black and real SBE Firms competing on NJ TRANSIT public works contracts should have some sort of contracts where one can qualify only if, you are a NJT Black certified or MBE or WBE certified firm. US DOT has always allowed for "set-aside" contracts with their money so long as the funded recipient state does not have laws prohibiting such sincere efforts to "Level the Playing Field." Somehow, NJ TRANSIT has SBE set-asides, so it can be done for Black DBE firms and other DBE's. In Maryland, where our association assisted in the passage in the State of Maryland with H.B. #64 (1978) and their MDOT with the MBE/WBE program in 1977, their bids allow for an overall goal of



30% that can be broken down by Blacks (29%), Hispanics (5%), Asians (5%); Exhibit #1: 04/16/2015.

**B. Market barriers to full participation in the entire range of procurement and contracting activities of NJ TRANSIT**

**Thursday, April 16, 2015, Waterfront Technology Center**

1. Seemingly there is a lack of concern by US DOT and NJ TRANSIT officials about Black firms performing as prime contractors on NJT construction projects (Public Works-PW) and personal and professional services (PPS) projects. All US DOT funded agencies/departments have to report to US DOT on contract award expenditures and the DBE participation by race; gender related to those expenditures. No state in America has turned in a report in over twenty-five (25) years where Blacks received the most amount of prime/sub awards and dollar of awards ever when compared to those amounts of awards and dollars of the awards of white women and other minorities in many state reports in all areas of US DOT funding; i.e. FTA, FAA,FWHA, FRA etc.; Exhibit #1: 04/16/2015.
2. The definition of White Women Owned Business (WBE) should be changed. Our recommendation is that if a construction firm white female business owner does not have a minimum of 6% of women in their construction workforce in the trades, then they should be counted only under a new definition called a Family Owned Women Business (FOWB) with no more than a goal of 1% for these types of advantaged businesses. Over 95% of all Public Works firm that are WBE; White women DBE's and White Women SBE's are really family owned business where a women (wife, daughter, office worker, etc.) starts a "Subsidiary" of the "family business" with their family's equipment, manpower and financing along with the "Family Owned Business" contacts with suppliers and then goes to the marketplace and competes as a "Disadvantaged Business Enterprise (DBE) or a SBE. This is not what US DOT and Congressman Parren J. Mitchell conceived when the "10%" Law for US DOT funded jobs along with P.L. 95-507 was structured; Exhibit #1: 04/16/2015.

**C. Obstacles and perceived obstacles in the NJ TRANSIT procurement process.**

**Thursday, April 16, 2015, Waterfront Technology Center**

1. No DBE goals on many projects. As one NJT DBE and SBE certified firm, ICCG, Inc. is 100% against the automatic SBE goal change from DBE goals. Today, a white person or SBE can get work faster than a Black business owner. The US DOT did not intend for this to be the result of "creating a "Level Playing Field" process by passing 49 CFR Part 26; Exhibit #1: 04/16/2015.
2. The definition of White Women Owned Business (WBE) should be changed. Our recommendation is that if a construction firm white female business owner does not have a minimum of 6% of women in their construction workforce in the trades, then they should be counted only under a new definition called a Family Owned Women Business

(FOWB) with no more than a goal of 1% for these types of advantaged businesses. Over 95% of all Public Works firm that are WBE; White women DBE's and White Women SBE's are really family owned business where a women (wife, daughter, office worker, etc.) starts a "Subsidiary" of the "family business" with their family's equipment, manpower and financing along with the "Family Owned Business" contacts with suppliers and then goes to the marketplace and competes as a "Disadvantaged Business Enterprise (DBE) or a SBE. This is not what US DOT and Congressman Parren J. Mitchell conceived when the "10%" Law for US DOT funded jobs along with P.L. 95-507 was structured; Exhibit #1: 04/16/2015.

**D. Anecdotal Comments, Observations, Recommendations**  
**Thursday, April 16, 2015, Waterfront Technology Center**

1. We cannot simply download a quarterly or Annual DBE/SBE report on NJ TRANSIT projects, inclusive of contract number; name of prime and dollar amount, description of project; list of all DBE/SBE subs and their subcontract or sub consultant dollar amount and description of work, along with what type of DBE or SBE firm the owner is, i.e. Black, Hispanic. Why not and when will it begin to appear on-line? (I've attached the City of Philadelphia Office of Economic Opportunity (OEO) FY 14 Annual report for your review and use as a workable model to pattern NJ TRANSIT DBE/SBE Reports.) What's the secret on withholding the info? No state or quasi-state US DOT funded agency should continue receiving funding unless they creating quarterly and annual DBE/SBE detailed reports; Exhibit #1: 04/16/2015.
2. Get serious with the unions in New Jersey. No state has achieved a 6% women in the trades workforce on Federally funded projects since the Ex. Order was presented. Why not? Well, US DOT and the states aren't interested in seeing this small goal be achieved, or else it would have been achieved. We can build tunnels, railroads, bridges, highways and ports, but can't get 6% women in the trades as per Ex. Order 11246. No union should be allowed to have a Collective Bargaining Agreement (CBA) on any NJ Transit project if that union has not achieved the 1960's Ex. Order requiring a minimum of 6% women in the trades. Also, they should not receive any more training dollars if they persist in discriminating against women in the construction trades workforce; Exhibit #1: 04/16/2015.

**Thursday, April 30, 2015, NJ Transit Headquarters**

1. The NJ Institute for Social Justice urges NJ TRANSIT to include in their proposals defined goals, metrics and consequences to support its implementation of race neutral small business initiatives
2. Offer additional supportive services: 1) Increased access to funding agencies that provide lines of credit for working capital to DBE/SBE/MBE certified firms so that they can

become self-sustaining and bid on projects as primes; 2) Refine the payment process for DBE's that serve as sub-consultants. Specifically, allow DBE's to submit invoice directly to NJ TRANSIT in order to avoid payment delays that range from 90-120 days; 3) Increase advertisement of pre-bid meetings to DBE/MDE/SBE's. Outreach should include phone calls in addition to email notifications

**Quantitative Summary:**

Of the major issues raised in the public meetings, the following eight (8) emerged with the largest number of respondents who shared concerns:

- a) Five (5) responses were critical of ensuring all manner of disadvantaged certification, (MBE/WBE/DBE) be included in the revised SBE designation.
- b) Five (5) responses recommended a user friendly web based portal for contractors to see what's being offered at any one given time and where vendors can give a full synopsis of what their companies offer.
- c) Four (4) responses criticized discrepancies in the validity of WBE designations as fronts for family business operations that are over DBE/SBE thresholds and would otherwise be ineligible.
- d) Four (4) responses criticized interface with the NJ TRANSIT procurement office and/or officers as a source of frustration and misinformation.
- e) Four (4) of fourteen (14) responses criticized sub-contractor inability to understand where respective products and services fell into the matrix of NJTRANSIT bidding categories.
- f) Two (2) responses recommended a portal that allows downloading quarterly or annual reports showing the contract number, type of contract, who won it, how much, who the subs were, how much, what type of sub they are.
- g) Two (2) responses recommended helping smaller DBE firms [match up] with the larger DBE firms.
- h) Two (2) responses recommended the unbundling of projects, specifically, facility support services to increase the participation of small minority companies.

**Qualitative Summary:**

The public meetings unearthed qualitative anecdotal information that seemed to suggest traditionally documented obstacles in race-conscious DBE programs. The groups also illustrated impediments to effective participation in the full range of DBE program activities and other noteworthy impressions and observations. These are sorted below to reflect the: race-neutral element of the NJ TRANSIT approved DBE program plan; market barriers to full participation in the entire range of procurement and contracting activities of NJ TRANSIT; obstacles and perceived obstacles in the NJ TRANSIT procurement process. Citations to specific comments supporting each category below are also provided:

**4.3 (Broad) Themes Specific to NJ TRANSIT:**

**1. Race-neutral element of the NJ TRANSIT approved DBE program plan;**

- a) No more “race neutral,” no goal contracts should be issued; pgs. 28, 29, 35 -37, 64.

- b) As a race neutral state, the New Jersey marketplace challenges the implementation of effective set-aside programming; pgs. 28, 29, 35–37, 57, 58, Written comments.

**2. Market barriers to full participation in the entire range of procurement and contracting activities of NJ TRANSIT;**

- a) WBEs are intricate family businesses that support nepotistic practices and exploit the DBE program; pgs. 28, 29, 31, 64, 65.
- b) Separate goals for DBE and SBE programs; pgs. 29, 31, 64, 65.
- c) Strengthen; don't eliminate DBE specific projects and set asides; pgs. 29, 31, 64, 65.
- d) Unbundle specific portions of projects to improve DBE and MBE participation; pgs. 28, 64, 65.
- e) A chief barrier has been [identifying] effective tools to measure compliance; pgs. 35–37.

**3. Obstacles and perceived obstacles in the NJ TRANSIT procurement process;**

- a) Contractor engagement with NJ TRANSIT and DBE program offices is problematic; pgs. 31–33, 41, 42.
- b) GCs and primes practice patronage of specific vendors, passively discriminating against new DBE firms being able to participate in the marketplace; pgs. 54, 57, 58, Exhibit #1: 04/16/2015.
- c) Confusion about how to leverage DBE certification and engage DBE Program Plan through NJ TRANSIT; pgs. 31–33, 41, 42, 60, 61.
- d) Update technical efficacy with DBE Certification “dashboard” of vendor services to improve DBE vendor’s education and participation; pgs.39, 54, 60, 66, 67, Exhibit #1: 04/16/2015.

**Anecdotal Comments, Observations, Recommendations.**

**4.4 (Narrow) Themes Specific to NJ TRANSIT:**

**1. Race-neutral element of the NJ TRANSIT approved DBE program plan**

- a) Monitor best practices; quantitative measures of goal enforcement and outcomes (metrics on economic impact, mechanisms to measure goals or to measure outreach) are needed; pgs. 35–37.

**2. Market barriers to full participation in the entire range of procurement and contracting activities of NJ TRANSIT**

- a) Add DBE and MBE eligibility to compete within NJ TRANSIT professional services list; pgs. 28, 29.

**3. Obstacles and perceived obstacles in the NJ TRANSIT procurement process;**

a) Address charges of direct discrimination; pgs. 59, 60, written comments.

**4. Anecdotal Comments, Observations, Recommendations.**

a) Offer Support Services; pgs. 41, 42, 44, 45, 60, 61, written comments

## **ANECDOTAL EVIDENCE: FOCUS GROUPS**

The Roy Wilkins Center for Human Relations and Social Justice (RWC), at the University of Minnesota's Humphrey School of Public Affairs is conducting a "Disparity Study" on behalf of NJ TRANSIT. The Disparity Study will help determine the degree to which discrimination impacts contracting opportunities for socially and economically disadvantaged groups in the region, and guide NJ TRANSIT's use of race conscious Disadvantaged Business Enterprise (DBE) goals to address specifically those socially disadvantaged groups for which there is evidence of discrimination in contracting opportunities.

This 4<sup>th</sup> Generation Disparity Study goes beyond comparing the availability and utilization of Small, Minority, Women, and Disadvantaged Business Enterprises (S/M/W/DBE). It examines whether there are statistically significant disparities in contract award amounts, bid success rates, pre-qualification rates, and whether there are specific market barriers to full participation in the entire range of procurement and contracting activities of NJ TRANSIT. The study will detail the performance of race-neutral programs and examine whether the policies and practices of race-conscious programs result in an undue burden on firms that are not Disadvantaged Business Enterprises.

The NJ TRANSIT Disparity Study is utilizing results from interviews, focus groups, surveys, and public meetings in support of its anecdotal data collection. The report that follows will focus solely on anecdotal data collected during focus groups held with participants from the business community.

### **Method**

The business community focus group method is an empirical qualitative approach to assist with eliciting opinions about the procurement process while recalling themes and generating ideas, recommendations and comments. The anecdotal data collected during business community focus groups supports thorough consideration for the future design of impartial questions and survey instrument development. The results of the business community focus groups will be incorporated with other anecdotal data collected during the NJ TRANSIT Disparity Study.

Management Interventions Inc.(MII), serving as a subcontractor to the RWC, conducted in-depth focus groups across the State of New Jersey representing New Jersey business firms in the north, central and southern regions. During the focus groups, participants had the opportunity to discuss their experiences doing business, or attempting to do business, with NJ TRANSIT, the Port Authority of NY and NJ, and the NJ Department of Transportation. Further, participants were queried about their work in the private sector, as well as about their perceptions of the State SBE and Federal DBE programs.

The Focus group invitation list was a random sample developed by the RWC. The invitation list was developed using the New Jersey Department of Transportation (NJDOT), Port Authority NY

and NJ and NJ TRANSIT vendor lists from July 1st, 2005 to September 30, 2013. In summary, business community outreach led to 27 focus group registrants and 15 firms in actual attendance at the focus groups. During our outreach an emphasis was placed upon obtaining correct email addresses for invitees to assist development of a valid outreach list for future survey administration.

MII took the following outreach steps to support focus group attendance:

- Purged list of 210 rows of information sent from the RWC and researched missing information
- E-mailed to all 93 firms with an e-mail address – 30 emails were returned
- Faxed to 19 firms without email address – 9 faxes did not go through because the number was no longer a working number
- Called all firms with a phone number but no fax number and email address to identify fax and email information – multiple messages were left on consecutive days for firms that did not answer or respond to our initial call.
- Called all firms with a phone number and fax number but no email address to confirm receipt of the fax and to identify their email address – multiple messages were left on consecutive days for firms that did not answer or respond to our initial call.
- Called all firms that had a non-working fax number to confirm email address – multiple messages were left on consecutive days for firms that did not answer or respond to our initial call.
- E-mailed and faxed to all firms with newly identified information.
- Follow up calls to firms that did not respond to initial outreach.
- Sent a confirmation email and called all focus group registrants on the day of their focus group to remind them of the time and location and thank them for their participation in advance.

Focus Group participation was impacted by a compressed outreach period of seven days and the inability to reach some selected firms because of missing and incorrect contact information. The outreach list has been updated. The original outreach list forwarded by the Roy Wilkins Center contained 210 rows of information. We excluded 48 rows of information from our outreach for the following reasons:

- 3 rows contained duplicate firms
- 2 rows contained a heading from the database “Small Purchases”
- 24 rows contained firms that had no contact information – address, phone, email were missing; 4 of these firms did not have a city or state listed – therefore we were unable to research these firms through the internet. Further, these firms were not certified as M/W/S/DBEs which prevented us from searching for their information in the UCP and other certification databases.
- 19 rows contained firms with addresses but no phone, fax or email – the compressed outreach period did not allow the time for using regular mail to reach these firms.



MII identified 50 firms from its database to supplement firms that were excluded from the original RWC database. Contact information and DBE certification status for these firms are listed on the final outreach chart which is appended. Four participants in attendance in Newark and two participants in Camden were generated based on the list from the MII database. As requested by the RWC, the NJ Small Business Development Centers invited businesses registered with their organization. Three participants in attendance in Camden and one participant in Newark were generated based on this outreach by the NJ Small Business Development Centers.

Focus group participants included owners, presidents, chief executives or other officers of businesses representing construction, engineering, architecture, trucking, signage and other construction-related industries. Of those participants interviewed, some worked exclusively as prime contractors or as subcontractors, and some worked as both. All of the businesses represented in the focus groups were located in the State of New Jersey.

Focus groups were facilitated using a question guide to encourage discussion as an open-ended dialogue. The guide on November 18th and 19th consisted of 18 questions and the guide on November 20th consisted of 17 questions. Each guide provided instructions for participants and a script for the MII facilitator. Summarily, these instructions were designed to ensure that participants understood the purpose of the focus groups, were encouraged to freely express themselves and that information gathered would provide unbiased input. The first focus group conducted failed to address the last five questions because of an agreed upon focus group length of two hours. The result of this group not addressing all of the questions in the guide may circumscribe points of data and perspective gathered in relation to the other groups.

Focus group question guides were altered after the first and second focus groups to ensure consistency of questions and to be responsive to requests made by NJ TRANSIT's Office of Business Development. The decision to use different language during focus groups 2 and 3 may limit the ability to establish the efficacy of some questions from group to group, and whether their comprehension and intent is actually established for use on the finalized survey (see the attached question guides).

Each focus group was transcribed by a professional stenographer and additional anecdotal notes of raw comments and impressions were compiled by MII. This report therefore, does not attempt to recapture participant and contracting team member names. The total number of participants across 3 focus groups was 15. The focus groups occurred on the following dates at the following locations:

- **Tuesday, November 18, 2014**

Rutgers Business School

1 Washington Park, Room 502

Newark, New Jersey

Commencing at 6:17 p.m. Iris LaRosa, Certified Shorthand Reporter



- **Wednesday, November 19, 2014**

The College of New Jersey

2000 Pennington Road

Loser Hall, Room 120

Ewing, New Jersey 08626

Beginning at 6:24 p.m.

Charlotte Marshall, Professional Reporter

- **Thursday, November 20, 2014**

Waterfront Technology Center

200 Federal Street, Room 119

Camden, New Jersey 08103

Beginning at 6:14 p.m.

Alicia Fortin, a Professional Reporter

### **Analysis**

The analysis summarizes the focus group data in three sections. The first section provides an overview of the demographic makeup of the focus group participants and background information about their firms relevant to certifications, size and industry.

The second section summarizes information related to obstacles in the procurement process, notification of contract/bid opportunities, contract bundling, and competition with large companies, experience working on private sector contracts, restrictive selection processes and favoritism. There are also other issues not related directly to experiences of discrimination or barriers to full participation that are identified in the report. Each category is described below:

- a) Obstacles in the Procurement Process – excessive procedures that create problems in the business owners’ attempts to comply with the requirements of the procurement process.
- b) Notification of Contract/Bid Opportunities – a barrier when notification of contract/bid opportunities is not well advertised, or is difficult to locate.
- c) Contract Bundling – a problem when multi-scope projects are packaged into one large contract. This practice places the project out of the reach of small businesses and relegates them to the status of a subcontractor.
- d) Competition with Large Companies – a barrier when small and local firms compete on the few opportunities available with larger firms from out of the regional area.

- e) Experience working on Private Sector Contracts – experiences of firms that have been awarded contracts on project funded with private dollars.
- f) Restrictive Selection Process – a problem when the specifications are too rigid and appear to eliminate competition in the bidding or selection process.
- g) Favoritism – when firms have a perception that some firms are given advantages over other firms.

The third section identifies the impact of perceived obstacles in the procurement process by categorizing comments related to doing business as a prime or as a subcontractor, allegations of unfair treatment, additional information regarding any racial/ethnic or gender-based discrimination and any insights regarding neutral measures, and lastly, advantages and disadvantages of DBE and other certification processes. Each category is described below:

- 1) Doing Business as a Prime Contractor or as a Subcontractor – describes information about the mix of businesses’ prime contract and subcontract work and how they obtain that work.
- 2) Allegations of Unfair Treatment – presents information about experiences with unfair treatment including bid shopping, treatment during the performance of work, and allegations of unfavorable work environments for minorities and women.
- 3) Additional Information regarding any racial/ethnic or gender-based discrimination – any allegations of race or gender based discrimination.
- 4) Insights Regarding Neutral Measures – presents information about business assistance programs, efforts to open contracting processes and other steps to remove barriers to all businesses or small businesses.
- 5) DBE and other Certification Processes – presents information about the DBE certification process, advantages and disadvantages that subcontractors experience because of DBE or MBE/WBE/SBE certifications. It may also include information about false reporting of DBE or MBE/DBE/SBE participation and falsifying good faith efforts.

## **Section I:**

### **Demographics/Background**

The majority of DBE participation within our sample was in the public sector. The distribution of the 15 firms represented across race and gender identification were relatively even, ranging in all categories between 15 and 33%. The largest proportions of businesses represented across the range of industries in the focus groups, were electrical engineers and there was a reflective balance of firms that had served as GCs, primes and subcontractors. One firm had graduated from the NJ TRANSIT DBE program.

Specific demographic makeup of the focus group participants and background information about their firms relevant to certification, ethnic/race/gender identification and industry is as follows:

- East Indian Male Chief Executive Officer, Prime Contractor, 1991, KS Engineers; Professional Services Corp; firm graduated from participation in the DBE program, but is

still in construction management. NJ TRANSIT is a large client; NJDOT, Turnpike Authority and other agencies are also clients.

- East Indian Male Owner, American Traffic and Street Sign; State of NJ, 1995; Certified DBE, MBE, SBE with NJDOT and NJT. Performs work for bridges, highways, and lanes in NY.
- White Female, CEO of Hampton-Clarke, an Environmental Remediation Company and Laboratory; Prime Contractor in PA, NY, NJ. WBE, DBE since 1986. SAM and Cage Certifications.
- African-American Male President, formed 1999, DBE certified by NJ TRANSIT. Certified as an MBE in PA, NJ, NYC; currently working on the Tappan Zee Bridge. Also has extenuating certification with MTA.
- Hispanic Female President former 2005, certified as an M/WBE in PA and certified in NJ and with MTA and the Empire State Development Corporation. In NY. Arranges the removal of soil and construction debris on project sites.
- Asian Male Chief Executive Officer. He worked as an Electrician and has five years of experience as a contractor. There was no indication of Federal certification although he holds a forklift certification.
- African-American Female, President. In business for 8 years; and certified as an SBE, MBE, WBE, DBE. Licensed in NJ and PA. Holds OSHA and lead abatement certificates. She has provided construction support to projects for more than 25 years.
- White Male, President providing IT. He has a NJ contracts data firms and has worked on state projects since 2000. His company is not minority or women owned.
- White Male, CEO. His company provides professional Engineering and Value Engineering services. They have been in business for 29 years and are certified through NJ TRANSIT.
- White Male – Owner of engineering firm where he does inspections; public housing; engineering and environmental consulting; home inspections and improvement. He is OSHA certified.
- White Female is Managing Member, a traffic and safety engineering firm that has been in business for four years. Maintains three part-time employees, holds a professional engineering license and S/W/DBE certifications.
- Hispanic Male Chief Executive Officer. He has 12 years business experience with S/M/DBE certifications. He has not been successful with any programs.
- African-American Female President providing curricula in workplace development, EEO compliance reviews and employment training services. She has been in business since 2006. Her business has D/M/W/SBE certifications and has not been able to utilize these programs.
- African-American Female Chief Executive Officer and VP have been in business for 22 years and holds D/M/WBE certifications.
- African-American Female President of firm. She is currently in the process of getting certified. She did not identify her industry.

### Demographic Summary:

The largest proportions of businesses represented across the range of industries in the focus groups, were electrical engineers.

The distribution of the 15 firms represented across race and gender identification were:

African-American 33%

White male and female 33%

Hispanic 15%

East Indian/Asian 20%

Male: 55%

Female: 45%

The distribution of the 15 firms across certifications and industry scope:

Certified: 65%

Seeking Certification: 35%

Professional Services: 65%

Construction Related Services: 35%

## **Section II:**

### **Information Related to Obstacles in the Procurement Process**

Comments providing information related to obstacles in the procurement process (such as notification of contract/bid opportunities, contract bundling, competing with large companies, experience working on private sector contracts, restrictive selection process and favoritism), are reflected across each of the categories below:

#### **A. Notification of Contract/Bid Opportunities**

Regarding improvements to the notification of contract and bid opportunities, the range of responses elicited a series of criticisms, recommendations and affirmative responses about federal DBE programs and their implementation through NJ TRANSIT and various regional authorities.

- a) Five (5) responses criticized notification of contract bid opportunities. Of these four (4) were critical of public sector and one (1) was critical of the private sector.
- b) Two (2) responses offered a recommendation for improving notification of bid opportunities. One (1) of these responses was technically off topic favoring sharing funded proposals as a means to technically assist DBE and small businesses. The other (1) of two suggested greater coordination of contract and bid data between authorities for dissemination to the public.

- c) Five (5) responses affirmed satisfaction with the notification of contract bid opportunities. Three (3) of five (5) expressed satisfaction in the Public Sector and two (2) of five (5) expressed satisfaction with notification in the private sector.

The total comments quantified in this category are summarized below.

### **In the Public Sector:**

1. "I'm on several mailing lists... my area of expertise lends itself to the DOT, somewhat the Port Authority, a little bit of NJ TRANSIT, also, some of the MPOs, the Metropolitan Planning Organizations as well. So I am on mailing lists and I get my information from them. I also do subcontracting to a lot of the larger engineering firms. So, you know, we all see that and then they usually will contact me about teaming opportunities from there."
2. "Having been in business for quite a few years GCs tend to work with somebody that they find reliable. Same applies with NJ TRANSIT or any of the other public entities. And as long as you are able to provide a service within a reasonable price and timeframe they will get in touch with you. So advertising, looking at sites to get business is not something that I do very often. That information comes to me either from the general contractor, or phone calls or e-mails."
3. "The only way I obtain information now is because DRP (Delaware Raritan Planning Authority?) is part of... "Save Our Waterfront" and so am I. They come to the meetings, they update on the construction and everything. So because I'm in relationship with them in another group, is how I get information. I'm always on the website, on New Jersey Small Business Website and I'm not finding opportunities that would be—either that I could go after, or that would be beneficial to me or my organization."
4. "One issue that I have is when I do receive these solicitations via e-mail (I think this more or less pertains to my business), if a project goes out sometimes quantities or analytics are not set within the specs or initial putting out [bid] of the project, and then I pretty much only get that information once the general contractor... I think I need to see if maybe there's a better classification for me to fall into with regard to my certification so I can get the proper solicitations."
5. "Typically, we have a newspaper, or it's a service that's comes out called, Construction Data News... it's a little newspaper that advertises projects and I get my information from there. Again, how I get my jobs are the jobs I'm totally in control on, meaning, that I'm the actual GC and I'll perform all the work, but as far as subcontracting, for—here's a NJ TRANSIT job that I brought—that I cut out of here. I don't know any of these people. They don't know me. They've never reached out to me. I tried to reach out. I've done that before. This is how I get my information; it's basically through a newspaper. And from the State of New Jersey, I get some e-mails of jobs advertised. Because I have to be classified as electrical contractor and I have to give them all kinds of financial and disclosures and so forth and so on, so I do get something from the State of New Jersey."
6. "Yeah, I think for the previous question how can they improve and help small business is, if they open up all the paper and said, we awarded this project to this company and they gave us this proposal and some other close proposal [template]; that we could consider..."

because for us to get in, we have daunting tasks just compiling necessary documentation, all the required insurance and all the bonding requirements.”

7. “I’ve come to the conclusion that the State of New Jersey is very scattered as far as how it handles procurement opportunities. There’s no coordination between agencies. Each department and agency is its own silo, its own ivory tower, so to speak. And on rare occasions you do get authorities and agencies to work together like DOT does work with the Turnpike Authority, does work with the Port Authority.” He also stated, “You cannot get a detailed annual report from any of the transportation agencies for M/W/DBE programs. Contracts come out for Professional Services and are awarded to Primes that source out the work to Sub Contractors who are more qualified to do the work than the Prime.

### **In the private sector:**

8. “As an electrician, we usually subcontract to the general construction [contractors]. And for the public information, we do not have the leisure of going through a lot [of] different publications. So I subscribed to one of the internet companies that holds the, you know, bidding information to get what I need to know as an electrical contractor. But the cost of that service is like close to—more than \$500 per 14 months... I stopped after only seeing a few bids that were relevant.”
9. “I do a lot of the reaching out and marketing; and some of the hardest websites to get through, to get on their list, are the big 500 companies. I mean, it is—pretty stupid when it comes to the computer, but I know how to read and most of the other places I register, it works. But every one of these, including Amtrak right now for some strange reason, you get registered, and three months later, they change everything around. It’s just not friendly. The fact they’ve gone IT has really, to me, lessened the abilities of a small disadvantaged business to really compete. That’s why you’re small and disadvantaged. You don’t have [anyone] sitting around watching all of the hundreds and multitudes of opportunities. And the one or two people who may have them, those persons may not be of the ability to understand what they’re even reviewing.”
10. “At one time, I paid for a service [to access bids]; was able to access a small veterans bid. I learned about FedBizOpps. A few posts on paid sites were not directed toward small and minority owned businesses.”
11. “NJ TRANSIT and New Jersey DOT use the Bid Ex website. So they post jobs onto that website and then we bid through that. So we’ll get notifications when they post a job up to that.”

**B. Contract Bundling.** These comments reflect problems when multi-scope projects are packaged into one large contract. This practice places the project out of the reach of small businesses and relegates them to the status of a subcontractor.

One (1) of one (1) response identified contract bundling as a problem in the focus groups.

1. “I know people talk about breaking up contracts or breaking up projects, so that minorities and small businesses can use them. But some of them are already small, I

mean, I've seen contracts that are under a million dollars, \$500,000, \$300,000. Those are small contracts and there's nothing to break up. They have prime contractors for million dollar contractors that are taking these projects and they're supposed to subcontract it out.”

### C. Competing with Large Companies.

These comments refer to identifiable barriers when small and local firms compete on the few opportunities available with larger firms from out of the regional area.

- a) Five (5) of seven (7) responses identified meeting needed bonding capacity, insurance and bonding thresholds as barriers in DBE/SBE ability to access contract opportunities.
- b) One (1) of seven (7) responses identified the inability to afford additional technical resources as a barrier to competing with large firms.
- c) One (1) of (7) seven responses simply conceded competing with large firms was a problem for small and disadvantaged businesses.

The total comments quantified in this category are summarized below.

1. “Has anyone ever thought of the idea of—it all comes down to money but—some sort of group like that helps small companies get bonds or helping small companies get insurances, like NJ TRANSIT provides owner-controlled insurance programs on certain jobs? Does the DBE Department ever look at, okay, we're going to provide insurance for these small companies to help them get in? I know it all comes down to money, but it's something out of the box that that the programs would really maybe help take down some of these obstacles, difficulty getting bonds, difficulty getting insurances. I don't know whatever could be done but something to think about.”
2. “General contractors sometimes ask subs to provide a bond... very onerous requirements. Agency assistance is needed with general contractors to waive bonding requirements or other measures. Small business outlays of time, effort and money limit return on investment.”
3. “Pre-qualifications include bonding capability. Financial statement versus bonding statement can be problematic. Assistance to alleviate these issues would be helpful. Tough process to manage and stay certified; when growth is needed. There is a need to train and mentor businesses coming up so they don't lose out at year's end.”
4. “The nature of the contracts, bonding requirement, and the development of pre-qualifications do serve as barriers. Timing of bid submission and feasibility to respond is often a barrier. There is no centralized guidance. Procurement staff is overworked and not enough personnel.”
5. “Obstacle is getting on the radar with primes demand; it is not feasible for small firms to meet some of the thresholds.”
6. “A good website. Needs a set-aside program. DBE's often can't buy the specs or drawings in order to compete with the larger firms. Firm has been a DBE for one year but has not received any contracts. DBE in PA has received contracts.”
7. “Competing with large companies is a major barrier for small contractors.”



**D. Experience Working in Private Sector Contracts.** These comments refer to the experiences of firms that have been awarded contracts on projects funded with private dollars.

- a) Of four (4) responses two (2) identified demarcations between the public and private sector.
- b) One (1) of four (4) responses identified negotiation leverage as far more prominent in the private sector
- c) One (1) of four (4) identified satisfaction with support to ensure subcontractor payment as more prominent in the public sector.

The total comments quantified in this category are summarized below.

1. “We have a comfort level with calling the authority and having MBE and Diversity offices support getting paid; this is not possible in the private sector.”
2. “I would say public sector is fairly straightforward. It's a low-bid process. So you submit a number and that's the exact number whether you're low or not, that's how whoever gets the job. Versus private sector they can call you back in and ask you to renegotiate your prices numerous times, and if you're not their favorite person, you're not going to get the job. So there's a much more subjective view in the private work, versus public work.”

**Restrictive Selection Process.** These comments identify problems that burden contractors when the specifications are deemed rigid and appear to eliminate competition in the bidding or selection process.

- a) Four (4) of six (6) respondents identified financial reporting and bonding requirements were problematic.
- b) One (1) of six (6) respondents suggested professional consultants have advantages in selection process.
- c) One (1) of six (6) suggested compressed timelines and bid preparation requirements were an obstacle.

The total comments quantified in this category are summarized below.

1. “Professional consultants must know way in advance. I check future procurement plans and stay in touch with clients.”
2. “Open up public bids for others to review. It is a daunting task to compile necessary information.”
3. You have to be cost basis approved and because my company is a LLC, it cannot get cost basis approval.”
4. “I completed the accounting process in order to get Cost Basis approved but is not a good program for MBE or WBE owned companies.”
5. “Burden of qualifying to be cost basis approved require too much.”
6. “Bonding is an issue in small businesses. I'm just throwing it out there because I know there are companies that are not here and they will be representing what happens to



projects. Bonding is an issue.... and it's not just because it's NJ TRANSIT, most of the agencies have to come up with ways to support small businesses to get through their bonding requirement. I think a lot of contractors that are actually performing work, do not really understand the financial requirements to reach certain bonding limits. I'll give you this example. If you have a good accountant he knows at the end of the year you're supposed to have a certain amount of dollars to show as a profit. In some smaller companies, that's tax they have to pay on. And if you don't pay any tax you can't have any bond, basically, because your financial statement will not justify that you have -- you're making enough money for a company, financial institute to lend you money. So this is an education that I think needs to be addressed with every agency, it's not just NJ TRANSIT.”

**Favoritism.** The following focus group statements indicate when firms have a perception that some firms are given advantages over other firms.

- a) Six (6) of (6) six respondents indicated they had perceptions of favoritism or acknowledged its relevancy in the contracting/bidding selection process.

The total comments quantified in this category are summarized below.

1. “Most of the GCs that are working, whether it's Port Authority or NJ TRANSIT or DOT, they seek out for contractors that they know that are going to submit a bid, or that they have worked with in the past. But sometimes I do receive stuff through Port Authority by e-mail, and the same with NJ TRANSIT as an outreach program on some projects.”
2. “I've done work in New Jersey, but it's because I knew someone. I mean, I worked for the Judiciary for about two years. But because I knew someone, you know, one of the attorneys there, and he gave me one contract and they liked my work and kept calling me for two years. And then there was a member of one of my social organizations at the Camden – City of Camden and I did some training work that -- worked with her. And they kept calling me back because it was good and I worked for them for three years. But never through searching or competing, it was just who you know. And that must go on -- I'm sure that goes on everywhere with non-minorities and non-female owned companies.”
3. “If you have an ‘in’ you’re in. Companies have their own rules and deal with who they want to do business with in the private sector, you tend to have to spend money to ensure you’re getting paid.”
4. “General contractors have relationships and use people they’re comfortable with. They often use lists to shop around and baseline prices for people they want to use.”
5. “We don’t have to dig for information; we continue to get bid opportunities through folks who know the firm.”
6. “Firms will not be fair in their selection of vendors; they don’t have to share information on whose working or who was awarded and general contractors will use who they’re comfortable with.”

### Section III:

**Impact of Perceived Obstacles in the Procurement Process.** Comments providing information related to the impact of perceived obstacles in the procurement process (doing business as a prime contractor or as a subcontractor, allegations of unfair treatment, additional information regarding any racial/ethnic or gender-based discrimination and any insights regarding neutral measures), are reflected across each of the categories below:

**A. Doing Business as a Prime Contractor or as a Subcontractor** - Regarding impact of perceived obstacles competing as a prime or a subcontractor, the range of responses elicited a series of criticisms, recommendations and affirmative responses about federal DBE programs and their implementation through NJ TRANSIT and various regional authorities.

#### **Affirming Absence of Perceived Obstacles**

- a) Five (5) respondents indicated that primes and subcontractors were satisfied with their ability to do business with NJ TRANSIT and other authorities.
- b) Of these, three (3) of respondents were functioning as primes within the scope of their affirmative comments,
- c) Two (2) of five (5) respondents represented the subcontracting pool.

The total comments quantified in this category are summarized below:

#### **Prime:**

1. “When the Tunnel Project closed; I had two million on the table... State attorneys argued for the firm not getting paid. NJDOT DBE Offices ensured payment. This is the first agency where we experienced this type of support...Tunnel project was frustrating but consoling; had to go to meeting to defend our case and push forward verifications of monies due.”
2. “We need more small business set-asides. It's very hurtful for a firm who can bid as a prime on a service supply and equipment job to also, when there's a prime, bid on a non-small business set-aside, so we need some additional kinds of set-aside opportunities.”
3. “PA, NY&NJ has one of the best in the region. Great with set-asides; we regularly get selected for proposals. They are very methodical when seeking to meet goals in projects; they have a good mentoring program for small businesses. We have a maintenance contract with PA, NY&NJ.”
4. “We have maintenance contract with Port Authority and they pay well. There's no question about it. I mean, they have a bidding process which is pretty much the same as

every agency, you know, it's a low bid one that wins any job, but I think that they have a good process when it comes to working with their smaller and minority bids.”

5. “Working with the Port Authority on a couple of projects, they are very knowledgeable on the regulations, especially with regard to minority women, minority DBEs with their work performance to satisfy the contract. They are always there to help – especially because you're a smaller person you might not know everything. You are assigned somebody who can answer any questions that you have regarding paperwork, or making sure – like for me with regards to trucking, there did come to point where they were looking for 40 trucks. I, of course, did not have 40 trucks. And at the time did not have enough minority trucks to satisfy that, but I did speak with them and with the GC and we did, they did explain to me a one-to-one ratio, and also too I had to put in my best effort to try and go out there and try to get other minority companies.”

### **Subcontractor:**

- a) Eight (8) subcontractor respondents were critical in their perception of obstacles in the procurement process.
- b) Four (4) of eight (8) expressed satisfaction with the DBE Program and its positive impact on their growth.
- c) One (1) of the eight (8) identified perceived impropriety as a conditional means of participation.
- d) One (1) of (8) suggested no benefit from the program and specifically identified NJ TRANSIT in contrast to being successful with other DBE/SBE programs.
- e) One (1) of (8) suggested their diversification and product line is not recognized because of their limited time in business.
- f) One (1) of (8) indicated their concern that they needed to take risk with their home and real property to meet funding requirements.

The total comments quantified in this category are summarized below:

6. “I guess for me I really have not seen any benefit from it. And I know which, again, I don't know if it's because the way I'm categorized for the SBE for that certification, I outgrew it. I was told that I outgrew it two years ago, so now I get nothing. I have five employees.”
7. “When I first received my woman owned business certification, I went over [to] Philadelphia to register and became licensed in Philadelphia. And one of the negative experiences that I remember, was at the time, Pennsylvania had also received our money to do City Hall. I later found that the money was retracted and the governor decided to move it somewhere else. But I was asked to participate because I was a woman-owned minority-owned business to receive money. Not to work but to receive money. I mean, unfortunately, the money was, I mean, the job was -- the money was retracted for the State of Pennsylvania and earmarked to do something else with the money. I wasn't aware of that until sometime later, that Pennsylvania took the money to use it. Because at the time I was the first female contractor to have my registration; certification nationally - that was a situation that I planned initially, when I first became certified.”

8. “We're pretty diversified and I have the certification of a proficient engineer in NJ. I also have a home inspector license, a home improvement contract license, and a technician license. We also [do] underground storage tank, sub service evaluation and I'm certified as supervisor by OSHA. I applied to NJ TRANSIT one time, sent in my proposal, but they said the company was too young to qualify.”
9. “In engineering it was very effective.”
10. “Has helped us grow tremendously; successful projects and bid work; performance however, is key.”
11. “Very successful with this program. I think they've done a good job and provided real longevity. If you produce with prime, you'll get work.”
12. “We have done some contracts as a prime; only set-asides. It took a few times to win and the program has been very helpful.”
13. “Certification has helped with other contractors; not with NJ TRANSIT.”
14. “I don't know its [DBE program] purpose; I have certification but don't know when or how to use them”
15. “I have certifications but they are not effective in helping us get to primes. Projects that mandate SBEs still are not being effective for SBEs but maybe for general contractors?”
16. “General engineering services; minority firms may be listed but not get work until the end of the contract. NJT should increase monitoring with general contractors to ensure goals are met through the length of the project.”
17. “I would like to add one thing to the comment just expressed, and that is, there is a risk management aspect to all of this. That is, even with the small business development corporation, they rely upon the private sector financial industry, like banks for bank loans, for you know, guaranteed loans, and so forth. And one of the aspects that's very painful is when you're a small business and you're seeking funding, you have to put up your house, your residence, or you have to put up your own personal property of some sort or other to risk in order to get that funding.”

**B. Allegations of Unfair Treatment.** These contractor comments present information about experiences with unfair treatment including bid shopping, treatment during performance of work, and allegations of unfavorable work environments for minorities and women.

Four (4) of four (4) respondents identified experiences of unfair treatment during the subcontractor selection process.

The total comments quantified in this category are summarized below:

1. “We won a contract with NJ public agency; was there a kickoff meeting? No; no guidance given. Didn't bother calling us and we were not sure we'd get work. We were squeezed out; listed, but no work.” Further, we've had a DOT opportunity put on hold because of management and funding issues. It's an open matter, but not moving forward; it's not a priority for the agency.”

2. “I had a negative experience with a public agency. I thought they were looking for a small and minority business. There were council people selecting close friends who were going to be on the project; Miller Homes in Trenton. Council and other relations hired people that they knew. Section 3 qualified individuals were kicked off the job and people were brought in from Camden.”
3. “Public sector agencies shouldn’t be so dismissive of vendors; SDA, NYCHA, Trenton Housing Authority. We’ve had some good experiences with the NJ Energy Rebate Program.”
4. “I have friends -- well, a couple friends that I think they are my friends, but probably they're not. They work for these huge construction companies and I've never gotten – if I ever got a little bite, it's because they needed me at the front to do something, just to show a little bit. And then, I was like, you know, basically, just put out to pasture. I don't want to use names. But... like, big top five construction companies building big hospitals around here... and you spend three months giving them proposals and doing bids and you're never good enough, your price is never good enough. And again, the magic word, how they get around it, they say goals... [their] goal is to try to hire minority or women.”

### **C. Additional Information Regarding any Racial/Ethnic or Gender-Based Discrimination**

There were no statements referring to any allegations of race or gender based discrimination.

**D. Insights Regarding Neutral Measures.** These comments present information about business assistance programs, efforts to open contracting processes and other steps to remove barriers to all businesses or small businesses.

One (1) respondent advocated for neutral measures to stay in place.

1. “I can recall in the eighties fighting to get at least a ten percent of minority in the City of Trenton. Because at the time I was very -- our family was very political, we were fighting for human rights and civil rights, and those kind of things. And even when they had the ten percent satisfied, when it came around to try to hire people, they said do it on -- do it on the side in those days, and they could rename it as something else. So I really feel very strongly that even though I'm a young, certified person that the opportunity would not be there. So this at least having them gives me a future chance of acquiring business. So I think that it's critical that they remain in place.”

**E. Advantages and Disadvantages of DBE and Other Certification Processes.** Comments in this category indicate information about the DBE certification process, advantages and disadvantages that subcontractors experience because of their DBE or MBE/WBE/SBE certifications. It may also include information about false reporting of DBE or MBE/DBE/SBE participation and falsifying good faith efforts.

- a) Four (4) of five (5) respondents indicated most of their business is done within the public domain and without the SBE/DBE program, they could not compete in the marketplace.
- b) Of these one (1) suggested they'd been more successful without the certifications and that there is a stigma associated with being a DBE.

The total comments quantified in this category are summarized below:

1. "I am certified; SBA, DBE, MBE, DOT. I can just tell you what I've experienced in my ten years. And the bottom line is, whatever I've gotten in these ten years, I've gotten it for myself, being low bid, not that I was a minority or anything else. I've done work for the DRPA down there, so I basically competed on the same level as everybody else. And I was awarded projects on the merit of being low bid and being a qualified bidder, but not on anything from any kind of help from any one of these programs. I have never been successful. And the only way I was able to finance my work and these projects, was basically, you know, just taking the equity in my house and using that. Because there has been no assistance, whatsoever, I can't get any money or anything like that. So again, I persevere and I'm here and I battle it out every day."
2. "I was working for Trump Plaza and I called my friends to say, we were laid off, don't call me [here] anymore, use this other number. And they said great, now you can work for me. But most of the work I've been doing is from word of mouth. I never applied for MWDB because I thought it stigmatized me... I've told people who were in business 'don't apply for it because if you go for it -- they know you're a minority or a woman-owned business, you're not going to get it.' And I've been more successful without that. But lately, I did apply because there were a few contracts that I wanted and I needed it. So now, I'm like you, I have everything, disadvantaged, minority-owned, business-owned and nothing (sic)."
3. "Personally, we would lose over 50% percent of our current prime contract awards. One of the larger jobs is a small business set-aside, the ROC with NJ TRANSIT, that's 3 or 4 million bucks. That's just that one job and that was a small business set-aside." without that, we possibly could have won it -- no, they would not have won it, if it was open market. There's no way."
4. "We would not be in business - 98% of our work is because there are goals" and "opportunities would disappear because deficits in degrees of qualification and other factors." It was also noted that "my business loses [its] beacon of hope. We would have to rethink [our] business model."
5. "Upwards of 95% of our work is public. Very little is private."

### **Quantitative Summary:**

Of the 12 major issues raised in the focus groups, the following nine emerged with the largest number of respondents who shared concerns:

1. Five (5) respondents criticized notification of contract bid opportunities. Of these four (4) were critical of public sector and one (1) was critical of the private sector.

2. Five (5) respondents affirmed satisfaction with the notification of contract bid opportunities. Three (3) expressed satisfaction in the Public Sector and two (2) expressed satisfaction with notification in the private sector.
3. Five (5) of seven (7) respondents identified meeting needed bonding capacity, insurance and bonding thresholds as barriers in DBE/SBE ability to access contract opportunities.
4. Four (4) of six (6) respondents identified financial reporting and bonding requirements were problematic.
5. Six (6) respondents indicated they had perceptions of favoritism or acknowledged its relevancy in the contracting/bidding selection process.
6. Five (5) respondents indicated that primes and subcontractors were satisfied with their ability to do business with NJ TRANSIT and other authorities.
7. Eight (8) subcontractor respondents were critical in their perception of obstacles in the procurement process.
8. Four (4) respondents identified experiences of unfair treatment during the subcontractor selection process.
9. Five (5) respondents indicated most of their business is done within the public domain and without the SBE/DBE program, they could not compete in the marketplace.

### **Qualitative Summary:**

The Business Community focus-groups unearthed qualitative anecdotal information that seemed to suggest traditionally documented obstacles in race-conscious DBE programs. The groups also illustrated impediments to effective participation in the full range of DBE program activities and other noteworthy impressions and observations. These are sorted below to: reflect passive discrimination and those that reflect obstacles to participation; citations to specific comments supporting each categorized obstacle below are also provided:

### **Participation Obstacles:**

**Obstacles in the Procurement Process** – Contractor comments across each of the groups pertaining to notification obstacles were specific to fragmented and disparate information sources concerning bids and certification application processes. Overall, focus group participants requested more streamlined information with regard to bid specifications and a list of next steps to guide their participation in the procurement process.

- A. Notification of Contract/Bid Opportunities** - Compressed timelines and the inability to prepare competitive proposals were identified as problematic. Further, private sector mediums like RFQ and RFP websites to identify public bids as deemed cost prohibitive and often unreliable. (A. 1-11; pgs. 7,8).
- B. Contract Bundling** - Undercapitalization and the size of contracts do not lend themselves to DBE capacity. Bundling of contracts predisposes the participation of



smaller contractors. Smaller contractors indicated they were unable to respond to size of contracts - DBE goals are perceived as unrealistic. (B. 1; pg. 9; E. 3; pg. 11).

**C. Competition with Large Companies** - Lack of resources including bonding and insurance were cited as an obstacle to participation. Certified small and emerging businesses identified gaps in the level of support contractors feel that they have, particularly in meeting financial and bonding requirements. (C.1,2,3,4 pgs. 9,10).

**D. Experience Working on Private Sector Contracts -**

1. Limited networking and mentoring pathways were viewed as obstacles by participants in the focus groups. New and emerging DBEs emphasized that they were not part of private sector networks and experienced great difficulty managing systemic processes as well as breaking into the GC and prime contractor networks and their information exchange systems. In contrast, GCs and primes were very familiar with the contracting culture and ways to navigate it. (A. 11, pg. 14; E. 3; pg. 11).

**E. Restrictive Selection Process** - Generally, focus group members indicated compressed timelines, burden of research and financing as critical obstacles to the selection process. Specifically, in terms of financing restrictions, members of each group underscored the challenges of bonding and meeting financial thresholds for bid qualifications. (E. 1,2,3, pg. 11; A.12, pg. 14).

**F. Favoritism** – Some group members did indicate they believe some firms are given advantages over other firms in the context of seeking out for contractors that they know that are going to submit a bid, or that they have worked with in the past. (E. 2, pg. 16; F, 1,2,3, pgs. 11,12).

**Passive Discrimination:**

**Impact of Perceived Obstacles in the Procurement Process** - Contractor comments reflected perceived obstacles in the procurement process including stigmatization, non-responsiveness of primes and authorities and inconsistent M/W/D/SBE goal enforcement.

**A. Doing Business as a Prime Contractor or as a Subcontractor** - Group members, particularly prime contractors spoke favorably of support and technical assistance provided by NJ TRANSIT and other authorities in reference to navigating challenges in payment and identifying support for specific bid participation (A. 1,3,4,5, pgs. 12,13).

**B. Allegations of Unfair Treatment** - Allegations of unfair treatment included identifying preferences existing between primes contractor and certain subcontractors as expressed in the focus groups. Specific information was presented about experiences with unfair treatment including bid shopping, treatment during performance of work, and allegations



of unfavorable work environments for minorities and women. (A. 6, pg. 13; B. 1,2,3,4, pgs. 14,15; E. 2, pg. 16).

**C. Additional Information Regarding Racial/ethnic or Gender-based Discrimination -** None cited.

**D. Insights Regarding Neutral Measures –** The one insight offered for this question across the groups was the certification process is a doorway to participation. (D. 1, pg. 15).

**E. Advantages and Disadvantages of DBE and other Certification Processes -** the identification of a stigma associated with the “DBE” designation was identified as a perception on the part of some focus group members. (E. 1,2,3,4,5; pgs. 15, 16).

**(Broad) Themes Specific to NJ TRANSIT:**

1. There was a perceived a level of comfort with NJ TRANSIT by larger firms that seemed to circumscribe any reporting of program gaps as against their interests. Two of these firms had graduated from the NJ TRANSIT DBE Program. Subcontractor bid participation comments stressed having a rapport with General Contractors.
2. Discussions about program access, gains and benefits revealed great exuberance to extol the virtues of the NJ TRANSIT DBE program and how it has supported larger contractors represented in the groups. Specific to the Office of Business Diversity, great gratitude was expressed for their advocacy for DBEs to assure payment after the canceling of the Access to the Regions Core Trans Hudson Tunnel Project.
3. There was subtle disagreement across focus groups between those benefiting from the program and those trying to determine its benefits and ways to navigate program mandates and services. Some contractors indicated NJ TRANSIT’s payment protocols as not responsive to the needs of subcontractors.

**(Narrow) Themes Specific to NJ TRANSIT:**

**None.**

**Broad Anecdotal Themes**

1. Goal setting and planning processes are perceived to be very non responsive to potential DBE subcontractors. Inconsistency of information was indicated at each tier of subcontractor engagement with agency/program representatives and may point to gaps in how prime contractors enforce meeting project M/W/D/SBE goals.
2. Contractors intimated a need for more training regarding the parameters of the M/W/D/SBE programs and mentoring was repeatedly being mentioned as a vehicle to assist new firms.

3. Authorities and respective DBE certification designations remain challenged in methods to impact the participation of minority firms; but they are perceived as absolutely necessary – or a “narrow” opening that supports some DBE participation with prime contractors.
4. Meeting financial requirements where bonding is concerned is a major hurdle for group participants. Participants indicated a need for additional education and technical assistance as it pertains to DBE programs, and threshold requirements in the state contracting process.

### **Narrow Anecdotal Themes**

1. Some tension and frustration surfaced from group members suggesting suppressed bid pricing for subcontractors but no one identified the names of any projects that were criticized.
2. Generally, non-certified businesses represented in the group, noted that “as [it] relates to DOT and PANY&NJ – small companies need more information about opportunities including the name of the awarded firms; the identification of primes and large contractors.”
3. It was recommended that diversity officers undergird and incentivize goal attainment in the interests of the sub- and the prime contractors - identification of incentives for primes to engage S/M/W/DBES over and above goal attainment would assist small businesses participating as subcontractors.
4. There were assertions that firms will not be fair in their selection of vendors; they don't have to share information on whose working or who was awarded; and general contractors tend to contract with whom they're comfortable with. There were intimations of special treatment that fueled perceptions that favoritism may have existed between primes and their subcontractors.
5. A centralized repository of information was repeatedly requested to facilitate understanding of supports that exist. There was contrasting perspective on the availability and utilization of bid information through Bid Ex or Federal Biz Opps

### **NJ Transit Disparity Study Business Community Focus Group Instrument**

Thank you for attending this focus group to provide input that will be used as a part of a disparity study of NJ Transit's procurement of services. My name is\_ and I am with the University of Minnesota's Disparity Study team.

We have been asked to gather information and opinions about your experiences doing business with any New Jersey based public agency and authority, including NJDOT, Port Authority and New Jersey Transit; and specifically with New Jersey Transit.

We would like to know what impacts your decisions to do business with the public and/or the private sector; whether you have chosen to certify your business as an S/M/W/DBE in the State of New Jersey; and your feedback regarding what has been helpful and what may require improvement as it relates to what you know about the procurement process at NJ Transit.

We are going to take notes over the next 2 hours as well as record the focus group. Your responses to the focus group questions will be held in confidence and the identity of respondents will not be used in any reporting following this focus group.

The recordings and notes will only be reviewed by staff at the University of Minnesota. The information will be used to assist with recalling themes, ideas, recommendations and comments that support a thorough summary of our discussion. The results from this focus group will be incorporated with other data from the Disparity Study.

At this point, we are going to discuss several issues. It is our expectation that we have encouraged your full participation by describing the method for incorporating the focus group information. This is an open discussion and your opinion is valuable, please express yourself freely. Our Goal is to have everyone participate.

Again, we thank you for being here and appreciate the time you are taking to participate in this focus group.

We would like to begin with introductions and ask that you state your name; your title; your company's name; line of work; number of years in business; City, State and Federal business certifications, if any; and anything else you'd like to share.

### Business Community Discussion Questions: November 18, 2014

1. Please discuss how you get information about procurement opportunities (project owner's website, bid notifications/dedicated e-mails, networking, word-of-mouth, etc) with any New Jersey based public agency or authority, including NJ DOT, Port Authority and New Jersey Transit. Is this information helpful? If the information has not been helpful, please let us know how you would improve it.
2. Do you receive information about Private sector procurement opportunities in the region (NJ, NY, PA) and if so how do you receive the information? Is this information helpful?

3. Please discuss your understanding of the Port Authority of New York and New Jersey M/WBE program. In General how effective is the M/WBE Program in winning contracts? Do you feel the opportunities and services provided through this program are helpful? Please explain your answer.
4. Please discuss your understanding of the State of New Jersey's SBE program. In general how effective is the SBE program in winning contracts? Do you feel the opportunities and services provided through this program are helpful? Please explain your answer.
5. Please discuss your understanding of the New Jersey Transit DBE program. In general how effective is the DBE program in winning contracts? Do you feel the opportunities and services provided through this program are helpful? Please explain your answer.
6. If you have worked with NJ Transit please identify the name of the project; project type and whether you were a prime or subcontractor. Please also identify whether that project had S/M/W/DBE goals and whether your experience working with NJ Transit was positive or negative, and why.
7. Please discuss whether your experience working as a subcontractor for a prime contractor on a NJ Transit project was positive or negative, and why. Please also identify whether that project had S/M/W/DBE goals.
8. What do you feel supports and/or interferes with your ability to do business with NJ Transit (such as technical assistance; prequalification, licensing, financing, bond requirements, etc.)?
9. What do you feel supports and/or interferes with your ability to do business in the private sector(contractor forums/meet the prime events; licensing, use of the same subcontractors repeatedly, financing, etc)?
10. How could NJ Transit improve its procurement practices to enable more businesses to participate on its projects?
11. If you have not been awarded a contract with NJ Transit as a prime contractor, please discuss why you feel you have not.

12. If you have never worked with NJT as a prime contractor or subcontractor, please discuss why you feel you have not.
13. If you have not been awarded a contract as a subcontractor to a prime contractor working on a NJ Transit project, please discuss why you feel you have not. Please identify whether you submitted bids or proposals.
14. In General what barriers do you face in winning contracts or subcontracts with any New Jersey based public agency or authority, including NJ DOT, Port Authority and New Jersey Transit? Do you believe these barriers are addressed by the SBE; M/WBE; or DBE programs?
15. Have your experiences been positive or negative when contracting with other local public sector agencies or private sector companies? Please explain and include the name of the company, type of project – public versus private, location, etc.).
16. Please compare your experience in winning private sector contracts with winning contracts with any New Jersey based public agency or authority, including NJ DOT, Port Authority and New Jersey Transit ?
17. What technical assistance or supportive services provided by NJ Transit have you used? Were they helpful? Please explain.
18. What do you feel would happen to your business if the SBE; M/WBE and or DBE programs were terminated? Explain.

### Business Community Discussion Questions: November 19, 2014

1. Please discuss how you get information about procurement opportunities (project owner's website, bid notifications/dedicated e-mails, networking, word-of-mouth, etc) with any New Jersey based public agency or authority, including NJ DOT, Port

Authority and New Jersey Transit. Is this information helpful? What if anything, requires improvement?

2. Do you receive information about Private sector procurement opportunities in the region (NJ, NY, PA) and if so how do you receive the information? Is this information helpful? What type of information? What about this information is helpful?
3. Please discuss your understanding of the Port Authority of New York and New Jersey M/WBE program. In General how effective is the M/ WBE Program in winning contracts? Do you feel the opportunities and services provided through this program are helpful? Please explain your answer.
4. Please discuss your understanding of the New Jersey Department of Transportation's SBE program. In general how effective is the SBE program in winning contracts? Do you feel the opportunities and services provided through this program are helpful? Please explain your answer.
5. Please discuss your understanding of the New Jersey Transit DBE program. In general how effective is the DBE program in winning contracts? Do you feel the opportunities and services provided through this program are helpful? Please explain your answer.
6. If you have worked or been awarded a contract with NJ Transit please identify the name of the project; project type and whether you were a prime or subcontractor. Please also identify whether that project had S/M/W/DBE goals and whether your experience working with NJ Transit was positive or negative, and why have you worked on a NJT contract as a prime? What was your experience?
7. Please discuss whether your experience working as a subcontractor for a prime contractor on a NJ Transit project was positive or negative, and why. Please also identify whether that project had S/M/W/DBE goals. Have you worked on a NJT contract as a subcontractor? What was your experience?
8. What do you feel supports and/or interferes with your ability to do business with NJ Transit (such as technical assistance; prequalification, licensing, financing, bond requirements, etc.)?

9. What do you feel supports and/or interferes with your ability to do business in the private sector (contractor forums/meet the prime events; licensing, use of the same subcontractors repeatedly, financing, etc)?
10. How could NJ Transit improve its procurement practices to enable more businesses to participate on its projects?
11. If you have not been awarded a contract with NJ Transit as a prime contractor, please discuss why you feel you have not.
12. If you have never worked with NJT as a prime contractor or subcontractor, please discuss why you feel you have not.
13. If you have not been awarded a contract as a subcontractor to a prime contractor working on a NJ Transit project, please discuss why you feel you have not. Please identify whether you submitted bids or proposals.
14. In General what barriers do you face in winning contracts or subcontracts with any New Jersey based public agency or authority, including NJ DOT, Port Authority and New Jersey Transit? Do you believe these barriers are addressed by the SBE; M/WBE; or DBE programs?
15. Have your experiences been positive or negative when contracting with other local public sector agencies or private sector companies? Please explain and include the name of the company, type of project – public versus private, location, etc.).
16. Please compare your experience in winning private sector contracts with winning contracts with any New Jersey based public agency or authority, including NJ DOT, Port Authority and New Jersey Transit ?
17. What technical assistance or supportive services provided by NJ Transit have you used? How were they helpful or not? Please explain.

18. What do you feel would happen to your business if the SBE; M/WBE and or DBE programs were terminated? Explain.

Business Community Discussion Questions: November 20, 2014

1. Please discuss how you get information about procurement opportunities (p r o j e c t o w n e r ' s website, bid notifications/dedicated e-mails, networking, word-of-mouth, etc) with any New Jersey based public agency or authority including NJ DOT, Port Authority and New Jersey Transit. Is this information helpful? What, if anything, requires improvement?
2. Do you receive information about private sector procurement opportunities in the region (NJ, NY, PA) and if so how do you receive the information? Is this information helpful? What type of information? What about this information is helpful?
3. Please discuss your understanding of the Port Authority of New York and New Jersey M/WBE program. In general how effective is the M/WBE Program in winning contracts? Do you feel the opportunities and services provided through this program are helpful? Please explain your answer.
4. Please discuss your understanding of the New Jersey Department of Transportation's SBE program. In general how effective is the SBE program in winning contracts? Do you feel the opportunities and services provided through this program are helpful? Please explain your answer.
5. Please discuss your understanding of the New Jersey Transit DBE program. In general how effective is the DBE program in winning contracts? Do you feel the opportunities and services provided through this program are helpful? Please explain your answer.
6. If you have worked on a contract with New Jersey Transit please identify the name of the project; project type and whether you were a prime or subcontractor. Please also identify whether that project had S/DBE goals and describe your experience working on a New Jersey Transit contract.
7. What do you feel supports and/or interferes with your ability to do business in the p u b l i c sector (such as technical assistance; prequalification, licensing, financing, bond requirements, etc.)?
8. What do you feel supports and/or interferes with your ability to do business in the private sector (contractor forums/meet the prime events; licensing, use of the same subcontractors repeatedly, financing, etc)?



9. How could New Jersey Transit improve its procurement practices to enable more businesses to participate on its projects?
10. Have you pursued a contract with New Jersey Transit as a prime contractor which you did not win? Please discuss why you feel you did not win that contract (or contracts).
11. Have you pursued a subcontracting opportunity on a New Jersey Transit contract which you did not win? Please discuss why you feel you did not win that contract (or contracts). Please identify whether you submitted bids or proposals.
12. Have you utilized NJT's debriefing meeting to learn why you were not successful as prime or subcontractor?
13. In General what barriers do you face in winning contracts or subcontracts with any New Jersey based public agency or authority, including NJ DOT, Port Authority and New Jersey Transit? How effectively are these barriers are addressed by the SBE or DBE programs?
14. Have your experiences been mostly positive or negative when contracting with other local public sector agencies or private sector companies? What about these experiences were positive or negative? Please explain and include the name of the company, type of project – public versus private, location, etc.
15. Please compare your experience in winning private sector contracts with winning contracts with any New Jersey based public agency or authority, including NJ DOT, Port Authority and New Jersey Transit. What have been the most significant differences?
16. What technical assistance or supportive services provided by New Jersey Transit are you aware of? What technical assistance or supportive services have you used? Were they helpful? Please explain.
17. What do you feel would happen to your business if the SBE; M/WBE and or DBE programs were discontinued? Explain.

## **SURVEY REPORT SUBCONTRACTING AND PRIME CONTRACTING IN PUBLIC VS PRIVATE SECTORS**

Overview

Section 1: Methodology

Section II: Response Rate Analysis

Section III: Summary of Main Findings

### **Appendices**

NAICs Code Distribution

Thresholds for NAICs Codes

Response Rate Analysis

Short Form Survey Results

Long Form Survey Results

### **Overview**

To determine whether there are disparities in the private vs public subcontracting marketplace, the Roy Wilkins Center for Human Relations and Social Justice (RWC), at the University of Minnesota's Humphrey School of Public Affairs implemented two online surveys. The objective was to determine whether there are factors that affect contracting or subcontracting opportunities for socially and economically disadvantaged groups and to guide NJ TRANSIT's use of race conscious Disadvantaged Business Enterprise (DBE) goals to address specifically patterns or practices that have a disparate impact on socially and economically disadvantaged groups.

The NJ TRANSIT Disparity Study is utilizing results from interviews, focus groups, surveys, and public meetings to support its anecdotal data collection. The following report focuses solely on anecdotal data collected through long form and short form surveys with participants from the business community. The survey used Qualtrics, a web-based survey software to organize, observe and capture survey results from respondents in addition to creating and sending out survey questions to the firms in the population.

Following interviews and focus groups with multiple stakeholders, the research team developed two questionnaires using pre-tested questions derived from previous surveys to elicit information about:

- The nature of the subcontracting-prime contracting process in the private sector vs the public sector;

- Barriers to full participation in contracting or subcontracting opportunities in the private sector vs the public sector generally and New Jersey Transit in particular;
- Beliefs or perceptions about unfair treatment;

### Section I: Methodology

Two relevant populations were examined. The first included all firms with domestic mailing addresses that were listed in any of the bidders or vendors lists or contract files from 2005 to 2013.. The second, *excluding firms in the first population*, were any firms listed in Dun and Bradstreet that had NAICs codes among the top NAICs codes for subcontracting by NJT. The first population received a long form questionnaire consisting of 73 questions. The second population received a short form consisting of 30 questions.

#### Long Form

Firms were included in the long-form database if they were listed in the Bidders, Vendors, and/or Contract File. We excluded firms if they did not have a domestic mailing address or had missing address, city, state, or zip code information. Dun and Bradstreet does not provide information on foreign firms and is unable to match firms with missing address information. After these exclusions, our final observation size is 2,174 firms. We obtained email addresses for 884 of these firms from New Jersey Transit and Dun and Bradstreet.

- September 14: Mailing Services sent postcards to each of the firms inviting them to participate in the survey. With two week mailing, firms received the postcards by October 1. To allow time for firms to receive and respond to the postcard invitation, the first email follow-up with firms was conducted a week later on Friday, October 9. The emails were sent out using Qualtrics at 5 am Central Time. Due to invalid email addresses, 57 of the messages bounced back, or were undeliverable.
- October 13: The second email follow-up was conducted, excluding the email addresses that bounced back during the initial follow-up. The third follow-up email was sent on October 16. The fourth and fifth follow-up emails were sent on October 19 and 28, respectively. The sixth follow-up was on November 16. The seventh and eighth follow-ups were on November 18 and 23, respectively. The ninth follow-up was on December 7<sup>th</sup>.

#### Short-form

We selected firms listed in Dun and Bradstreet with principal locations in New Jersey for participation in the short firm survey. This population was selected from the top areas of subcontracting by New Jersey Transit. We first computed by six-digit NAICs codes the percentage of subcontract dollars (from New Jersey Transit contracts) awarded to firms in particular NAICS codes. We included all firms in New Jersey for the 11 NAICS codes with highest percentage of awarded subcontract dollars (Table 3). Within the top 11 NAICS codes, we

selected all firms that fulfilled the size criteria requirements for Disadvantaged Business Enterprise (DBEs).<sup>143 144</sup>

The breakdown of firms by NAICS code and SBE/DBE thresholds are included in Appendix Table 4. The total number of firms identified in New Jersey using the criteria above was 18,426. For 2,894 of these 18,426 firms, we were able to obtain email addresses from Dun and Bradstreet. Thus, our population size is 2,894.<sup>145</sup>

- October 7: Firms were sent an initial email inviting them to complete the survey on October 7 at 5 am Central Time. Due to invalid email addresses, 156 of the messages bounced back, or were undeliverable. The first email follow-up was sent to firm on October 13 at 5 am Central Time.
- October 16: The second email follow-up was conducted on Friday, October 16. The third and fourth follow-up emails were sent on October 19 and October 28, respectively. The fifth and sixth follow-ups were sent on November 16 and 18, respectively. The seventh follow-up was sent on November 23. The eighth follow-up was sent out on December 7<sup>th</sup>.

## Section II: Response Rate Analysis

### Long Form

We received a total of 138 responses (89 completed responses; 49 partially completed responses). A partially completed response occurs when the respondent started completing the survey but never finished it. Table 1 displays the response and completion rates. They are 16.68% and 64.49%, respectively. There were 59 survey refusals. Reasons for refusal are detailed in the appendix.

Table 1: Response Rate Calculations

#### <sup>143</sup> 49 CFR 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$23.98 million.

(c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment. [74 FR 15224, Apr. 3, 2009, as amended at 79 FR 59596, Oct. 2, 2014]

<sup>144</sup> Our population is comprised of *all* firms in New Jersey in the top 11 NAICS codes that fulfill these requirements. A firm does not have to be a DBE to be included in our population. According to DBE criteria, a firm must meet small business enterprise (SBE) thresholds, which are created by the U.S. Small Business Administration (SBA). The thresholds are specific to a particular NAICS code. Additionally, firms cannot have over \$23.98 million in average annual gross receipts over a three year period.

<sup>145</sup> (Appendix A.1)Table 3: Distribution of Subcontract dollars by NAICS code  
(Appendix A.2)Table 4: DBE Thresholds and Total Number of Firms Selected by NAICS Code

<b>Population Size</b>	<b>Emails Sent</b>	<b>Invalid Emails</b>	<b>Refusals</b>	<b>Partially Completed Surveys</b>	<b>Completed Surveys</b>	<b>Response Rate</b>	<b>Completion Rate</b>
<b>2,174</b>	884	57	59	49	89	16.68%	64.49%

Notes:

Response rate = (Number of completed survey + Number of partially completed surveys) / (Emails sent – invalid emails)

Completion rate = (Number of completed surveys / (Number of completed or partially completed surveys))

The response rate for DBEs was 12.7 percent.. The response rate for non-DBEs was 6.3 percent (t=-1.494; p=0.1402). The percentage of respondents who are DBEs was 25 percent. The percentage of non-respondents who are DBEs was 9.6 percent (t=-2.081; p=0.0445)

### Short Form

We received a total of 148 responses (109 completed responses; 39 partially completed responses). A partial completed response occurs when the respondent started completing the survey but never finished it. Table 5 displays the response and completion rates. They are 5.72% and 73.65%, respectively. There were 72 survey refusals. Reasons for refusal are listed in the appendix.

**Table 5: Response Rate Calculations**

<b>Population Size</b>	<b>Emails Sent</b>	<b>Invalid Emails</b>	<b>Refusals</b>	<b>Partially Completed Surveys</b>	<b>Completed Surveys</b>	<b>Response Rate</b>	<b>Completion Rate</b>
<b>2,894</b>	2,738	153	72	39	109	5.72%	73.65%

Notes:

Response rate = (Number of completed survey + Number of partially completed surveys) / (Emails sent – invalid emails)

Completion rate = (Number of completed surveys / (Number of completed or partially completed surveys))

The response rate for DBEs was 7.7 percent.. The response rate for non-DBEs was 4.6 percent (t=-2.52; p=0.0119). Women Owned firms accounted for 12.9 percent of non-respondents while they accounted for 20.9percent of respondents. (t=-2.345; p=0.0203). Minority Owned firms accounted for 8.5 percent of non-respondents and 13.5 percent of respondents (t=-1.751; p= 0.0818)

### Section III: Summary of Main Findings

Survey results and comments from both the long and the short form surveys demonstrate information related to the challenges that firms face in doing business with New Jersey Transit and in the private sector. The challenges were recognized by respondents regardless of their DBE status. These obstacles are parallel to the key findings from the focus group and public hearing, the other parts of the anecdotal data analysis for New Jersey Transit Disparity Study. In particular, identification of key obstacles in doing business dealing with NJT draws conclusions similar to those in the focus group and public hearing reports. Identified obstacles include:

- A. Notification of Contract/Bid Opportunities** – Lack of notification of contract and bid opportunities significantly deterred the firms’ abilities to secure contracts and biddings. The answers to the survey and comments illustrated that firms were especially limited in their ability to effectively prepare competitive proposals under the compressed timelines.
- B. Allegations of Favoritism** – According to the survey, subcontractors were selected based on their previous experience working with particular firms, disadvantaging firms lacking connections or experience with prime contractors. This finding was further supported by the results and comments which indicated that finding out about contract/bidding opportunities were heavily reliant on direct contract with prime contractors or word of mouth. There was also a perception among minority or small-size firms that they were being less favored than other firms.
- C. Competing with Large Companies** – Survey results and comments demonstrated the critical importance of resources in the competitive procurement process. Firms with limited resources face a wide range of challenges when competing with larger companies such as contract bundling, which renders firms unable to succeed in the procurement process due to the size of contracts.

Two key findings from the survey report on the challenges firms face in business dealings with New Jersey Transit as part of anecdotal evidence:

- 1. Both DBEs and non-DBEs firms alike share a significant sense of obstacles in doing business with New Jersey Transit.**
- 2. Methods of finding out about contract/bidding opportunities are heavily reliant upon direct contract with prime contractors or word of mouth.**

The analysis below summarizes the survey data in two subsections. The first involves responses regarding interaction with New Jersey Transit and/or public sector funders. The second subsection involves responses relative to private sector contracting and subcontracting.

**Obstacles in contracting with New Jersey Transit and/or Other Public Sector Projects:**

Five set of obstacles were detailed in responses to questions about contracting with New Jersey Transit.

- 6) Obstacles in the Procurement Process** - excessive procedures that create problems in the business owners’ attempts to comply with the requirements of the procurement process.
- 7) Notification of Contract/Bidding Opportunities** - a barrier when notification of contract/bid opportunities is not well advertised, or is difficult to locate.

- 8) Allegations of favoritism – when firms have a perception that some firms are given advantages over other firms.
- 9) Competition with Large Companies - a barrier when small firms compete on the few opportunities available with larger firms, challenged by lack of resources.
- 10) Contract Bundling - a problem when multi-scope projects are packaged into one large contract. This practice places the project out of the reach of small businesses and relegates them to the status of a subcontractor.

### Obstacles in Business Dealings with New Jersey Transit

Survey results and comments providing information related to obstacles in the procurement process (such as notification of contract/bid opportunities, competing with large companies, and favoritism) are reflected across each of the categories below:

#### **A. Notification of Contract/Bid Opportunities**

With regard to the notification of contract and bid opportunities, the answers to the survey and comments indicated that firms regardless of DBE status were challenged in their ability to prepare competitive proposals in compressed timelines due to lack of information and notification.

##### Long Form

- a) 25% of respondents selected late notice of bid or proposal deadlines as negatively affecting the ability of their firms to do business with NJT. (#40)
  1. “Our type of product requires a lot of research and engineering before it can be quoted. We feel there is not enough time given to make an accurate proposal.”
  2. “We never received request for Engineering Services from them.”

##### Short Form

- a) Despite a small number of responses, 6 out of 7 respondents stated not knowing of bidding or subcontracting opportunities as the reason for not seeking subcontracting opportunities on privately financed projects. (#11)
  1. “Did not hear about any contracts appropriate for our skills and scope of work.”
  2. “Not aware of the pending project.”

3. "Didn't know about any opportunities."
4. "Not on Bid list. Not asked to bid."

## B. Allegations of Favoritism

The results indicate that firms select subcontractors based on their previous experience working with particular firms, giving certain firms advantages over other firms. Other comments reflecting a perception among firms that some are given advantages over others are illustrated below.

### Long Form

- a) 37% of the respondents (prime contractors) stated previous experience working with firms as the reason why their firms chose a particular subcontractor when bidding on privately financed projects. (#6)
  - (See Table 11) Reported or responded DBEs were 6.3% less likely to select having experience with firms (=1) as the reason why their firms chose a certain subcontractor in the bidding process. However, the difference was statistically insignificant.
- b) 51% of respondents (both prime and subcontractors) answered direct contact with specific prime contractors as the source of learning about potential subcontracting opportunities with prime contractors. (#24)
  - (See Table 11) Reported or responded DBEs were just as likely as non-DBEs to select direct contact with specific prime contractors (=1) as the source of learning about potential subcontracting opportunities with prime contractors. However, the difference was statistically insignificant.
- c) 38% of respondents stated that the prime contractor frequently uses competitive bidding in selecting subcontractors. (#25)
  - (See Table 11) Reported or responded DBEs were 6% more likely than non-DBEs to answer that prime contractors always or frequently (=1) uses competitive bidding process when selecting subcontractors. However, the difference was statistically insignificant.
- d) 51% of respondents answered that their firms frequently use competitive bidding to select subcontractors when bidding on privately financed projects. (#5)
  - (See Table 11) Reported or responded DBEs were 6% more likely than non-DBEs to answer that they always or frequently (=1) uses competitive bidding process when selecting subcontractors. However, the difference was statistically insignificant.



- e) Public sector prime contracts and subcontracts, as well as private sector prime contracts and subcontracts were identified as business dealings in which 19 out of 36 respondents felt their firms were treated less favorably. (#42)
1. “Minority firms are routinely treated unfairly and contract threatened compared to their European counterparts performing the same work.”
  2. “Field family owned and male dominated.”

### Short Form

- a) 85% of the respondents identified direct contact with specific prime contractors as the method of learning of potential subcontracting opportunities with prime contractors. (#12)
- b) 53% of the respondents stated previous experience working with firms as the reason why their firm chose a particular subcontractor when bidding on contracts with NJT. (#21)
3. “New Jersey Transit does not invite small Business to bid on their projects.”
4. “...You have to have experience with them to win the project...”
5. “It’s the good old boy network in play.”
6. “Did not have any relationship with them.”

### **C. Competing with Large Companies**

These comments and survey results refer to barriers when relatively smaller firms lacking resources compete with larger firms on the few opportunities available.

### Long Form

- a) 29% of respondents selected the size of projects being too large as the factor negatively affecting the ability of their firms to do business with NJT. (#40)
1. “It was expensive to go through the contract process and then there was no reward.”

### Short Form

2. “The process is too onerous for small businesses. It is geared for large businesses that have dedicated staff and legal staff just for the bidding process.”
3. “Process is too time consuming.”
4. “Too large \$ size”
5. “We are a small DBE certified by NJ Transit and Small Business Enterprise and Minority Business Enterprise. It is catch 22. You have to have experience with them to win the

project and you have to have projects to gain the experience. As a small firm we cannot hire people in anticipation that at one point we get the projects. It is frustrating.”

6. “Process is too complex and over intense.”
7. “My perception is that New Transit takes low bid and the amount of time to put together a proposal it takes to get a job is not worth the slim to no chance of getting the job.”
8. “Transit exclusively uses Verizon a large company and there is no opportunities for competition or small businesses.”

#### **D. Other barriers in working with NJT**

Responses are summarized below.

1. “Takes too long to pay”
2. “Procurements lack of following up on questions regarding prints or materials to be quoted.”
3. “Bid documents have not come out for 2 contracts that we currently hold which expired 2 years ago. Was told the procurement department is short staffed and not equipped to handle putting out new bid documents at this time. No success reaching contacts in the procurement department at NJ Transit to answer questions.”
4. “Routinely invoices remain unpaid for service related contracts since there is no penalty assessed for untimely payment in excess of 30 days.”

#### **Private Sector Barriers**

DBEs are heavily concentrated in the public sector and face barriers competing in the private sector. Non-DBE respondents are more likely than DBEs to compete in the private sector.

#### **Short Form**

(Appendix A.3) Table 11: T Test of Difference in Responses (Short Form)

- a) 27% of the respondents said they have at least once bid on New Jersey Transit. (#18)
  - (See Table 11) Reported or responded DBEs were 15.5% more likely than non-DBEs to answer that they at least once bid on New Jersey Transit. The difference was statistically significant.
- b) 50% of the respondents answered that they were certified as a Small Business Enterprise (SBE) by the State of New Jersey. (#29)

- (See Table 11) Reported or responded DBEs were 12.5% more likely than non-DBEs to answer that they were certified as a Small Business Enterprise by the State of New Jersey. The difference was statistically significant.
- c) 81% of the respondents answered they have at least once served as a subcontractor on publicly or privately financed projects. (#3)
- (See Table 11) Reported or responded DBEs were 5.7% more likely than non-DBEs to answer that they had served as a subcontractor on publicly or privately financed projects. The difference was statistically significant.
- d) 42% of the respondents answered that their firm sought opportunities to be a subcontractor with one or more prime contractors bidding on contracts with the federal government agencies in 2014. (#4\_1)
- (See Table 11) Reported or responded DBEs were 8.8% more likely than non-DBEs to answer that they had sought opportunities to be a subcontractor with prime contractors bidding on contracts with the federal government agencies. The difference was statistically significant.
- e) 44% answered that their firm sought opportunities to be a subcontractor with one or more prime contractors bidding on contracts with other New Jersey state government agencies in 2014. (#4\_5)
- (See Table 11) Reported or responded DBEs were 11% less likely than non-DBEs to answer that they have sought opportunities to be a subcontractor with prime contractors bidding on contracts with other New Jersey state government agencies. The difference was statistically significant.
- f) 88% said yes when asked if their firm had sought opportunities to subcontract with prime contractors that bid on privately financed projects between 2007 and 2014 (#10)
- (See Table 11) Reported or responded DBEs were 8.6% less likely than non-DBEs to answer that they have sought opportunities to subcontract with prime contractors that bid on privately financed projects. The difference was statistically significant.

### **Long Form**

#### **(Appendix A.4) Table 12: T Test of Difference in Responses (Long Form)**

- a) When bidding on privately financed project, the most frequent response regarding the method of selecting contractors were request for proposals and request for quotations. (#4)
- (See Table 12) Reported or responded DBEs were 12 % more likely to select request for proposals and request for quotations (=1) as the method of selecting contractors in privately financed project. The difference had weak significance.

- b) 28% of the respondents answered that their firms actively sought opportunities as a subcontractor with one or more prime contractors bidding on contracts with New Jersey Transit in 2014. (#23)
- (See Table 12) Reported or responded DBEs were 6 % more likely to answer that they had actively sought subcontracting opportunities (=1) with New Jersey Transit. The difference had weak significance.
- c) 20% of the respondents answered that they were frequently included as a subcontractor on the same prime contractor's bids to New Jersey Transit. (#27)
- (See Table 12) Reported or responded DBEs were 9.2% less likely to answer that they were included always/often (=1) as a subcontractor on the bid to New Jersey Transit. The difference had great statistical significance.
- d) 15% of the respondents answered that they often serve as a subcontractor for multiple prime contractors' bids to New Jersey Transit. (#28)
- (See Table 12) Reported or responded DBEs were 2% less likely to answer that they always/often (=1) served as a subcontractor for multiple prime contractors' bids to New Jersey Transit. The difference was statistically insignificant.
- e) 36% of the respondents stated that they believed they had a higher chance of winning a bid on a contract as a prime contractor with a public sector agency, such as New Jersey Transit, than with a private sector firm (#36)
- (See Table 12) Reported or responded DBEs were 4% less likely to answer that they had a better chance of winning a bid in the public sector (=1) as opposed to a private sector. The difference was statistically insignificant.

**Appendices**

**A.1**

Table 3: Distribution of Subcontract dollars by NAICS code

<u>NAICS Code</u>	<u>NAICS Title</u>	<u>Subcontract Dollars Awarded</u>	<u>Total Subcontract Dollars</u>	<u>Percent of Subcontract Dollars</u>
<b>238210</b>	Electrical Contractors	\$35,158,464	\$249,374,024	14.10%
<b>237310</b>	Highway, Street, and Bridge Construction	\$27,920,446	\$249,374,024	11.20%
<b>541330</b>	Engineering Services	\$26,121,711	\$249,374,024	10.47%
<b>517210</b>	Wireless Telecommunications Carriers	\$21,883,101	\$249,374,024	8.78%
<b>237990</b>	Other Heavy Civil Engineering Construction	\$17,698,957	\$249,374,024	7.10%
<b>238120</b>	Structural Steel and Precast Concrete Contractors	\$12,691,298	\$249,374,024	5.09%
<b>541611</b>	Administrative Management and General Management Consulting Services	\$12,477,732	\$249,374,024	5.00%
<b>236210</b>	Industrial Building Construction	\$9,291,221	\$249,374,024	3.73%
<b>238110</b>	Poured Concrete Foundation and Structure Contractors	\$7,092,890	\$249,374,024	2.84%
<b>236220</b>	Commercial and Institutional Building Construction	\$6,506,573	\$249,374,024	2.61%
<b>541310</b>	Architectural Services	\$5,726,281	\$249,374,024	2.30%

**A.2****Table 4: DBE Thresholds and Total Number of Firms Selected by NAICS Code**

<u>NAICS Code</u>	<u>NAICS Title</u>	<u>DBE Threshold (in millions of dollars)</u>	<u>Total Number of Firms</u>
<b>238210</b>	Electrical Contractors	\$15	4,528
<b>237310</b>	Highway, Street, and Bridge Construction	\$23.98	801
<b>541330</b>	Engineering Services	\$15	2,452
<b>517210</b>	Wireless Telecommunications Carriers	1,500 <sup>146</sup>	494
<b>237990</b>	Other Heavy Civil Engineering Construction	\$23.98	228
<b>238120</b>	Structural Steel and Precast Concrete Contractors	\$15	78
<b>541611</b>	Administrative Management and General Management Consulting Services	\$15	6,125
<b>236210</b>	Industrial Building Construction	\$23.98	156
<b>238110</b>	Poured Concrete Foundation and Structure Contractors	\$15	545
<b>236220</b>	Commercial and Institutional Building Construction	\$23.98	1,631
<b>541310</b>	Architectural Services	\$7.5	1,388

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<sup>146</sup> The SBE threshold for NAICS Code 517330 – Wireless Telecommunications Carriers is 1,500 employees.

**A3. RESPONSE RATE ANALYSIS**

Long Form The t test respondents vs. non-respondents								
	Mean of Non-Respondents	# of Non-Respondents	Mean of Respondents	# of Respondents	Difference	t-value	p-value	
DBE Status	0.096	647	0.250	36	-0.154	-2.081	0.0445	***
White	0.705	146	0.786	14	-0.080	-0.630	0.5293	
Black	0.075	146	0.071	14	0.004	0.053	0.9580	
Hispanic	0.082	146	0.000	14	0.082	1.113	0.2675	
Asian	0.137	146	0.143	14	-0.006	-0.061	0.9518	
Female	0.206	136	0.533	15	-0.327	-2.376	0.0303	***
Sales Volume	24560000.000	672	43932406.000	39	20170000.000	1.086	0.2777	
NAICS 21	0.003	356	0.000	29	0.003	0.285	0.7757	
NAICS 22	0.011	356	0.000	29	0.011	0.573	0.5673	
NAICS 23	0.222	356	0.103	29	0.118	1.499	0.1347	
NAICS 32	0.022	356	0.000	29	0.022	0.814	0.4159	
NAICS 33	0.135	356	0.034	29	0.100	2.576	0.0133	***
NAICS 42	0.076	356	0.000	29	0.076	1.539	0.1247	
NAICS 44	0.028	356	0.000	29	0.028	0.913	0.3618	
NAICS 45	0.006	356	0.000	29	0.006	0.404	0.6866	
NAICS 48	0.076	356	0.069	29	0.007	0.135	0.8930	
NAICS 51	0.020	356	0.034	29	-0.015	-0.420	0.6772	
NAICS 52	0.008	356	0.000	29	0.008	0.495	0.6208	
NAICS 53	0.034	356	0.000	29	0.034	1.003	0.3164	
NAICS 54	0.239	356	0.483	29	-0.244	-2.513	0.0173	***
NAICS 56	0.062	356	0.207	29	-0.145	-1.870	0.0715	**
NAICS 61	0.003	356	0.000	29	0.003	0.285	0.7757	
NAICS 62	0.006	356	0.000	29	0.006	0.404	0.6866	
NAICS 71	0.011	356	0.034	29	-0.023	-0.665	0.5109	
NAICS 81	0.034	356	0.000	29	0.034	1.003	0.3164	
NAICS 92	0.006	356	0.034	29	-0.029	-0.832	0.4125	

Note: Respondents include completed and partial completed and all others, including refuse and non-response are both considered as non-respondents

**Anecdotal Evidence: Survey**

LONG FORM The t test DBE vs. non-DBE								
	Mean of Non-DBE	# of Non-DBE	Mean of DBE	# of DBE	Difference	t-value	p-value	
Response	0.063	2053	0.127	63	-0.064	-1.494	0.1402	
White	0.905	105	0.345	55	0.559	7.897	0.0000	***
Black	0.029	105	0.164	55	-0.135	-2.552	0.0131	**
Hispanic	0.019	105	0.182	55	-0.163	-3.005	0.0038	***
Asian	0.048	105	0.309	55	-0.261	-3.946	0.0002	***
Female	0.170	100	0.373	51	-0.203	-2.593	0.0113	**
Sales Volume	25670000.000	649	3339522.000	62	25330000.000	1.347	0.1786	
NAICS 21	0.003	340	0.000	45	0.003	0.363	0.7165	
NAICS 22	0.012	340	0.000	45	0.012	0.730	0.4658	
NAICS 23	0.203	340	0.289	45	-0.086	-1.323	0.1866	
NAICS 32	0.024	340	0.000	45	0.024	1.039	0.2996	
NAICS 33	0.144	340	0.000	45	0.144	7.555	0.0000	***
NAICS 42	0.076	340	0.022	45	0.054	2.047	0.0437	**
NAICS 44	0.026	340	0.022	45	0.004	0.168	0.8667	
NAICS 45	0.006	340	0.000	45	0.006	0.515	0.6071	
NAICS 48	0.085	340	0.000	45	0.085	5.622	0.0000	***
NAICS 51	0.021	340	0.022	45	-0.002	-0.072	0.9426	
NAICS 52	0.009	340	0.000	45	0.009	0.631	0.5282	
NAICS 53	0.035	340	0.000	45	0.035	1.280	0.2014	
NAICS 54	0.212	340	0.600	45	-0.388	-5.034	0.0000	***
NAICS 56	0.076	340	0.044	45	0.032	0.935	0.3533	
NAICS 61	0.003	340	0.000	45	0.003	0.363	0.7165	
NAICS 62	0.006	340	0.000	45	0.006	0.515	0.6071	
NAICS 71	0.015	340	0.000	45	0.015	0.817	0.4142	
NAICS 81	0.035	340	0.000	45	0.035	1.280	0.2014	
NAICS 92	0.009	340	0.000	45	0.009	0.631	0.5282	
Note: Respondents include completed and partial completed and all others, including refuse and non-response are both considered as non-respondents. *** p<0.01, ** 0.01=<p<0.05, * 0.05<p<0.1								



## Agency Discrimination

SHORT FORM The t test respondents vs. non-respondents								
	Mean of Non-Respondents	# of Non-	Mean of Respondents	# of Respc	Difference	t-value	p-value	
Own or Rent	0.251	1114	0.200	60	0.051	0.896	0.3705	
Revenue	1.470	2745	1.340	148	0.130	0.529	0.5971	
Total Employees	12.156	2703	10.458	144	1.698	1.220	0.2240	
Total Employees This Location	10.526	2637	9.431	144	1.096	0.897	0.3710	
Year of Funding	1995.099	2699	1998.270	141	-3.171	-2.845	0.0050	***
Women Owned	0.129	2745	0.209	148	-0.080	-2.345	0.0203	***
Minority Owned	0.085	2745	0.135	148	-0.050	-1.751	0.0818	
NAICS 23	0.347	2745	0.243	148	0.104	2.835	0.0052	***
NAICS 51	0.011	2745	0.000	148	0.011	1.300	0.1938	
NAICS 54	0.642	2745	0.757	148	-0.115	-3.143	0.0020	***

Note: Respondents include completed and partial completed and all others, including refuse and non-response are both considered as non-

SHORT FORM The t test disadvantaged vs. not disadvantaged								
	Mean of Non-disadvantaged	# of Non-disadvantaged	Mean of disadvantaged	# of disadvantaged	Difference	t-value	p-value	
Response	0.046	2373	0.077	520	-0.031	-2.522	0.0119	**
Own or Rent	0.255	939	0.226	235	0.029	0.919	0.3582	
Revenue	1.394	2373	1.777	520	-0.383	-2.683	0.0075	***
Total Employees	11.587	2331	14.254	516	-2.667	-2.532	0.0115	**
Total Employees This Location	10.066	2276	12.287	505	-2.221	-2.522	0.0119	**
Year of Funding	1994.915	2327	1996.803	513	-1.888	-2.713	0.0068	***
NAICS 23	0.351	2373	0.298	520	0.053	2.370	0.0180	**
NAICS 51	0.012	2373	0.004	520	0.008	2.371	0.0179	**
NAICS 54	0.637	2373	0.698	520	-0.061	-2.733	0.0064	***

Note: Respondents include completed and partial completed and all others, including refuse and non-response are both considered as non-respondents. Disadvantaged businesses here are firms owned by women or minority. Non-women owned and non-minority owned businesses are non-disadvantaged.

**A.3**

Table 11 T Test of Difference in Responses (Short Form)								
	Mean Non DBEstar	# Non DBEstar	Mean DBEstar	# DBEstar	Difference in Means	t score	p value	
<b>sf_2</b>	2.1605	81	2.0612	49	0.0993	0.6277	0.5313	reinterpreted as 1 if sub, 0 if prime or sometimes prime
<b>sf_3</b>	1.2105	57	1.1538	39	0.0567	0.6932	0.4899	
<b>sf_4_1</b>	1.4634	41	1.3750	32	0.0884	0.7508	0.4552	
<b>sf_4_2</b>	1.6750	40	1.7576	33	-0.0826	-0.7682	0.4449	
<b>sf_4_3</b>	1.5854	41	1.6129	31	-0.0275	-0.2327	0.8167	
<b>sf_4_4</b>	1.6585	41	1.6875	32	-0.0290	-0.2579	0.7972	
<b>sf_4_5</b>	1.3571	42	1.4688	32	-0.1116	-0.9617	0.3394	
<b>sf_10</b>	1.0882	34	1.1739	23	-0.0857	-0.9577	0.3424	
<b>sf_12_1</b>	1.0000	22	1.0000	18	0.0000	.	.	
<b>sf_12_4</b>	1.0000	28	1.0000	21	0.0000	.	.	
<b>sf_12_7</b>	1.0000	35	1.0000	27	0.0000	.	.	
<b>sf_13</b>	1.4638	69	1.3800	50	0.0838	0.9069	0.3663	
<b>sf_14</b>	1.2571	35	1.3226	31	-0.0654	-0.5785	0.5649	
<b>sf_15_1</b>	1.2174	23	1.1905	21	0.0269	0.2161	0.8299	
<b>sf_15_2</b>	1.8750	24	1.8571	21	0.0179	0.1719	0.8643	
<b>sf_17</b>	2.4444	18	2.5882	17	-0.1438	-0.4154	0.6805	
<b>sf_18</b>	1.8000	35	1.6452	31	0.1548	1.4095	0.1635	
<b>sf_27_1</b>	1.0000	4	1.0000	32	0.0000	.	.	
<b>sf_27_2</b>		62		18	0.0000	.	.	

## Agency Discrimination

	1.0000		1.0000					
<b>sf_29</b>	1.5738	61	1.4490	49	0.1248	1.2545	0.2124	
	* Null is Mean of DBEstar == Mean of Non DBEstar							
	*DBEstar defines as reported DBE, or responded in survey as female or racial minority							

### A.4

Table 12 The T Test of Difference in Responses (Long Form)										
	Mean DBEstar	Non # DBEstar	Non # DBEstar	Mean DBEstar	# DBEstar	Difference in Means	t score	p value		
<b>If4</b>	0.6250	16		0.5000	16	0.1250	0.6956	0.4920	(1)	
<b>If5</b>	0.5625	16		0.5000	16	0.0625	0.3437	0.7335	(2)	
<b>If6</b>	0.3750	16		0.4375	16	-0.0625	-0.3492	0.7294	(3)	
<b>If23</b>	0.4255	47		0.3600	50	0.0655	0.6554	0.5138	(4)	
<b>If24</b>	0.5000	46		0.5000	50	0.0000	0.0000	1.0000	(5)	
<b>If25</b>	0.4444	45		0.3830	47	0.0615	0.5932	0.5546	(2)	
<b>If26</b>	0.2143	42		0.2609	46	-0.0466	-0.4321	0.6667		
<b>If27</b>	0.1463	41		0.2391	46	-0.0928	-1.0844	0.2813	(2)	
<b>If28</b>	0.1463	41		0.1739	46	-0.0276	-0.3456	0.7305	(2)	
<b>If36</b>	0.3333	45		0.3750	48	-0.0417	-0.4155	0.6787	(6)	
<b>If37</b>	1.0000	3		1.0000	4	0.0000	.	.	(7)	
	* Null is Mean of DBEstar == Mean of Non DBEstar									
	*DBEstar defines as reported DBE, or responded in survey as female or racial minority									
	(1) Question Reinterpreted to requests for quotes or proposals == 1, otherwise == 0									
	(2) Question Reinterpreted to Always / Often = 1 ; otherwise = 0									
	(3) Question reinterpreted to 'Having previous experience with firms' == 1, otherwise == 0									
	(4) Question reinterpreted so 'Actively seeks subcontracting opportunities' == 1, otherwise == 0									
	(5) Question reinterpreted to 'Word of mouth or direct contact' == 1, otherwise == 0									
	(6) Question reinterpreted so having a 'better chance in the public sector' == 1, otherwise == 0									
	(7) Question reinterpreted expressing feeling any bias == 1, otherwise == 0									

**Short Form Survey Results**

**Last Modified: 02/11/2016**

1. CONSENT FORM PRINCIPAL RESEARCHER: Samuel L. Myers, Jr. Roy Wilkins Professor of Human Relations and Social Justice Humphrey School of Public Affairs 270 Humphrey Center University of Minnesota 301 19th Avenue S. Minneapolis, MN 55455 We invite you to participate in a brief research survey on contracting and subcontracting practices in New Jersey that is being conducted by the Roy Wilkins Center at the University of Minnesota. You are being invited to participate in this study because our information shows you as a firm that does business in the industries in which New Jersey Transit contracts. DESCRIPTION OF THE RESEARCH PROJECT New Jersey Transit has initiated this study to understand how subcontracting activities are undertaken in the New Jersey marketplace. If you choose to participate in this study, you will be asked to complete an online survey. As part of the survey, you will be asked to provide basic demographic information about your firm and share your experiences serving as a prime contractor or subcontractor on publicly and privately financed projects. The survey will take approximately 5 minutes to complete. YOUR PARTICIPATION Your responses to the survey will provide New Jersey Transit with the information it needs to better understand the impact of as well as ways to improve its procurement and contracting practices. You may choose not to answer any questions that you feel uncomfortable answering. Participants will not be compensated for participating in this research study. CONFIDENTIALITY All of the information obtained as part of this study will remain confidential and will only be disclosed with your permission. In any reports on the results of this study, we will not include any information that would make it possible for anyone to identify you or your individual responses. All information on responses will appear only in aggregate form. VOLUNTARY PARTICIPATION AND WITHDRAWAL Participation in this study is strictly voluntary. Your decision will not affect your professional standing or current and future relations with New Jersey Transit, the Roy Wilkins Center, or the University of Minnesota. If you choose to participate in this study and answer the questions, you may withdraw your participation at any time. If you have any questions or concerns about this study, please feel free to contact the Principal Researcher, Professor Samuel L. Myers, Jr. at (612) 626-8093 or njtsurvey@gmail.com. If you have any questions or concerns regarding this study and would like to talk to someone other than the principal investigator, you are encouraged to contact the Research Subjects' Advocate Line, D528 Mayo, Delaware Street SE, Minneapolis, Minnesota, 55455; (612) 625-1650. Do you understand and accept the above conditions and VOLUNTARILY CONSENT to participate in this research study?

#	Answer	Response	%
1	Yes, I understand and accept the conditions described above. I voluntarily provide my consent and wish to participate.	159	78%
2	No, I do not wish to participate.	46	22%
	Total	205	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.22
Variance	0.17
Standard Deviation	0.42
Total Responses	205

**2. Does your firm primarily serve as a prime contractor or subcontractor?**

#	Answer	Response	%
1	Subcontractor	41	32%
2	Prime contractor	33	26%
3	Both a prime contractor and subcontractor	55	43%
	Total	129	100%

Statistic	Value
Min Value	1
Max Value	3
Mean	2.11
Variance	0.74
Standard Deviation	0.86
Total Responses	129

**3. Have you ever served as a subcontractor on publicly or privately financed projects? A publicly financed project is a project that is funded by federal, state, or local government agencies. In contrast, a privately financed project is a project that is being funded by private individuals or for-profit businesses entities.**

#	Answer	Response	%
1	Yes	78	81%
2	No	18	19%
	Total	96	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.19
Variance	0.15
Standard Deviation	0.39
Total Responses	96

**4. In 2014, did your firm ever seek opportunities to be a subcontractor with one or more prime contractors bidding on contracts with:**

#	Question	Yes	No	Total Responses	Mean
1	Federal government agencies	42	31	73	1.42

## Anecdotal Evidence: Survey

2	New Jersey Transit	21	52	73	1.71
3	New Jersey Department of Transportation	29	43	72	1.60
4	Port Authority of New York and New Jersey	24	49	73	1.67
5	Other New Jersey state government agencies	44	30	74	1.41
6	New Jersey local government agencies	35	37	72	1.51
7	Private sector agencies	60	14	74	1.19

Statistic	Federal government agencies	New Jersey Transit	New Jersey Department of Transportation	Port Authority of New York and New Jersey	Other New Jersey state government agencies	New Jersey local government agencies	Private sector agencies
Min Value	1	1	1	1	1	1	1
Max Value	2	2	2	2	2	2	2
Mean	1.42	1.71	1.60	1.67	1.41	1.51	1.19
Variance	0.25	0.21	0.24	0.22	0.24	0.25	0.16
Standard Deviation	0.50	0.46	0.49	0.47	0.49	0.50	0.39
Total Responses	73	73	72	73	74	72	74

### 5. Between 2007 and 2014, did your firm seek opportunities to subcontract with prime contractors that bid on contracts with New Jersey Transit?

#	Answer	Response	%
1	Yes	18	86%
2	No	3	14%
	Total	21	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.14
Variance	0.13
Standard Deviation	0.36
Total Responses	21

### 6. On which projects? (Check all that apply)

#	Answer	Response	%
1	Tunnel Project	3	19%
2	Hudson Bergen Project	4	25%
3	Superstorm Sandy Project	6	38%
4	Other (please specify):	9	56%

Other (please specify):
Structural Repair Contracts
Precast Parking Garages to support commuters using the trains.
Dont remember
Station Upgrades, New construction, admin renovations
MTA
Other small engineering projects
REQUEST FOR PROP.05AL (RFP) NO. 14-012, CONSULTANT SERVICES FOR TIT LIE VI ANALYSIS OF FARE AND SERVICE CHANGES
Upper Hackensack Bridge

Statistic	Value
Min Value	1
Max Value	4
Total Responses	16

**7. How often are you included asa subcontractor on the same prime contractor's bids to New Jersey Transit?**

#	Answer	Response	%
1	Always	1	7%
2	Frequently	5	33%
3	Seldom	7	47%
4	Never	2	13%
	Total	15	100%

Statistic	Value
Min Value	1
Max Value	4
Mean	2.67
Variance	0.67
Standard Deviation	0.82
Total Responses	15

**8. How often do you serve as a subcontractor for multiple prime contractors' bids to New Jersey Transit?**

#	Answer	Response	%
1	Always	1	6%
2	Frequently	4	25%
3	Seldom	5	31%
4	Never	6	38%
	Total	16	100%

Statistic	Value
Min Value	1

Max Value	4
Mean	3.00
Variance	0.93
Standard Deviation	0.97
Total Responses	16

**9. Between 2007 and 2014, why did not your firm seek subcontracting opportunities on New Jersey Transit contracts? (Check all that apply.)**

#	Answer	Response	%
1	Not my line of work	1	33%
2	Project size--too big for my firm	0	0%
3	Too complex a process	0	0%
4	Did not know of bidding or subcontracting opportunities	1	33%
5	Not interested in public sector contracting/subcontracting	0	0%
6	Other (please specify):	1	33%

Other (please specify):  
 Not developed professional relationships and focused marketing efforts on subcontracting; focus was on being a prime contractor

Statistic	Value
Min Value	1
Max Value	6
Total Responses	3

**10. Did your firm seek opportunities to subcontract with prime contractors that bidded on privately financed projects between 2007 and 2014?**

#	Answer	Response	%
1	Yes	50	88%
2	No	7	12%
	Total	57	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.12
Variance	0.11
Standard Deviation	0.33
Total Responses	57

**11. Why did not your firm seek subcontracting opportunities on privately financed projects? (Check all that apply.)**

#	Answer	Response	%
1	Not my line of work	1	14%
2	Project size--too big for my firm	2	29%



3	Too complex a process	1	14%
4	Did not know of bidding or subcontracting opportunities	6	86%
5	Not interested in private sector contracting/subcontracting	0	0%
6	Other (please specify):	0	0%

**Other (please specify):**

Statistic	Value
Min Value	1
Max Value	4
Total Responses	7

**12. How does your firm learn of potential subcontracting opportunities with prime contractors? (Check all that apply)**

#	Answer	Response	%
1	Advertisements and notifications from public sector agencies	40	55%
2	Public meetings or pre-bid conferences	24	33%
3	Trade organizations	22	30%
4	Word of mouth	49	67%
5	Public or private sector agency websites	30	41%
7	Direct contact with specific prime contractors	62	85%
8	Other (please specify):	7	10%

**Other (please specify):**

Professional service to subcontractors
Onvia
Subscriptions based services that compile advertised opportunities
Email
Precast Manufactures needing a PCI certified Erector (JEMCO has been PCI certified for 10 years)
CDC News Subscription
Private notification company

Statistic	Value
Min Value	1
Max Value	8
Total Responses	73

**13. Does your firm primarily serve as a prime contractor or supplier on publicly or privately financed projects?**

#	Answer	Response	%
1	Yes	68	57%
2	No	51	43%
	Total	119	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.43
Variance	0.25
Standard Deviation	0.50
Total Responses	119

**14. Did your firm use any subcontractors in 2014?**

#	Answer	Response	%
1	Yes	47	71%
2	No	19	29%
	Total	66	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.29
Variance	0.21
Standard Deviation	0.46
Total Responses	66

**15. In 2014, did your firm use subcontractors on contracts funded by:**

#	Question	Yes	No	Total Responses	Mean
1	Private sector entities	35	9	44	1.20
2	New Jersey Transit	6	39	45	1.87
3	New Jersey Department of Transportation	8	38	46	1.83
4	Port Authority of New York and New Jersey	5	40	45	1.89

Statistic	Private sector entities	New Jersey Transit	New Jersey Department of Transportation	Port Authority of New York and New Jersey
Min Value	1	1	1	1
Max Value	2	2	2	2
Mean	1.20	1.87	1.83	1.89
Variance	0.17	0.12	0.15	0.10
Standard Deviation	0.41	0.34	0.38	0.32
Total Responses	44	45	46	45

**16. Which procurement methods did your firm use to select subcontractors when bidding on privately financed projects? (Check all that apply)**

#	Answer	Response	%
1	Open tendering or competitive bidding	10	29%

2	Selective tendering	13	37%
3	Request for proposals (RFPs)	14	40%
5	Two-stage tendering	2	6%
6	Request for quotations (RFQs)	14	40%
7	Single-source or non-competitive bidding	18	51%

Statistic	Value
Min Value	1
Max Value	7
Total Responses	35

**17. How often did your firm use competitive bidding to select subcontractors when bidding on privately financed projects?**

#	Answer	Response	%
1	Always	6	17%
2	Frequently	12	34%
3	Seldom	10	29%
4	Never	7	20%
	Total	35	100%

Statistic	Value
Min Value	1
Max Value	4
Mean	2.51
Variance	1.02
Standard Deviation	1.01
Total Responses	35

**18. Has your firm ever bid on contracts with New Jersey Transit?**

#	Answer	Response	%
1	Yes	18	27%
2	No	48	73%
	Total	66	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.73
Variance	0.20
Standard Deviation	0.45
Total Responses	66

**19. Which procurement methods does your firm use to select subcontractors when bidding on contracts with New Jersey Transit? (Check all that apply)**

#	Answer	Response	%
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1	Open tendering or competitive bidding	9	56%
2	Selective tendering	5	31%
3	Request for proposals (RFPs)	10	63%
4	Two-stage tendering	1	6%
5	Request for quotations (RFQs)	11	69%
6	Single source or non-competitive bidding	4	25%

Statistic	Value
Min Value	1
Max Value	6
Total Responses	16

**20. How often does your firm use competitive bidding to select subcontractors when bidding on contracts with New Jersey Transit?**

#	Answer	Response	%
1	Always	6	35%
2	Frequently	4	24%
3	Seldom	6	35%
4	Never	1	6%
	Total	17	100%

Statistic	Value
Min Value	1
Max Value	4
Mean	2.12
Variance	0.99
Standard Deviation	0.99
Total Responses	17

**21. What best describes why your firm chooses a particular subcontractor for consideration when bidding on contracts with New Jersey Transit?**

#	Answer	Response	%
1	Lowest bidder/best price	4	24%
2	Highest quality/most reliable	1	6%
3	Previous experience working with firms	9	53%
4	Family or personal ties	0	0%
5	Ability to meet SBE/DBE subcontracting requirements	2	12%
6	Other (please explain):	1	6%
	Total	17	100%

Other (please explain):  
 Lowest qualified bidder

Statistic	Value
Min Value	1

Max Value	6
Mean	2.88
Variance	2.11
Standard Deviation	1.45
Total Responses	17

**22. Have you ever requested to be debriefed when your firm was not awarded a contract as a prime with New Jersey Transit?**

#	Answer	Response	%
1	Yes	3	19%
2	No, I never asked to be debriefed.	9	56%
3	No, I did not know that I could request a debriefing.	4	25%
	Total	16	100%

Statistic	Value
Min Value	1
Max Value	3
Mean	2.06
Variance	0.46
Standard Deviation	0.68
Total Responses	16

**23. What was the MAIN reason that your firm did not bid on any contracts with New Jersey Transit?**

Text Response
Pre-qualification process
Did not hear about any contracts appropriate for our skills and scope of work.
Insufficient Insurance requirements, not an architect lead.
No specific reason.
Not aware of the pending project.
We are 8(a) and SDVOSB certified - therefore pursue contracts with the federal government to take advantage of set-aside opportunities.
New Jersey Transit does not invite small Business to bid on their projects. We never received request for Engineering Services from them
not right fit for company - providing energy services O&M services and equipment
the contracts seem to always go to the lowest bidder and not the most qualified contractor. I believe if they would take the quality of the work and the contractor into consideration and not only go with pricing they would save money in the long run.
no opportunity
Process is to time consuming and its the good old boy network in play
have not seen any that fit within our area of expertise.
Not asked
Not aware of prime contracting opportunities in recent times for services that we offer.
not in that industry
No projects were of interest during the recent time.
Not area of expertise

The process is too onerous for small businesses. It is geared for large businesses that have dedicated staff and legal staff just for the bidding process.
Not in my line of work.
scope of work
Don't work on transportation projects
Not on Bid list. Not asked to bid
My perception is that New Transit takes low bid and the amount of time to put together a proposal it takes to get a job is not worth the slim to no chance of getting the job.
None fit our skill sets...
Process is too complex and over intense
Too large \$ size
Too complicated
Didn't know about any opportunities
We are a small DBE certified by NJ Transit and Small Business Enterprise and Minority Business Enterprise. It is catch 22. You have to have experience with them to win the project and you have to have projects to gain the experience. As a small firm we cannot hire people in anticipation that at one point we get the projects. It is frustrating. Whereas MTA selected our firm to provide \$200,000 and under projects as a prime set aside for MBE firms.
No opportunities in our area of expertise and at a level and scope for which we were suited to prime.
Did not have any relationship with them.

Statistic	Value
Total Responses	31

**24. Which procurement methods does your firm use to select subcontractors when bidding on contracts with New Jersey Department of Transportation and/or the Port Authority of New York and New Jersey? (Check all that apply)**

#	Answer	Response	%
1	Open tendering or competitive bidding	6	60%
2	Selective tendering	4	40%
3	Request for proposals (RFPs)	7	70%
4	Two-stage tendering	0	0%
5	Request for quotations	7	70%
6	Single-source or non-competitive bidding	2	20%

Statistic	Value
Min Value	1
Max Value	6
Total Responses	10

**25. How often does your firm use competitive bidding to select subcontractors when bidding on contracts with New Jersey Department of Transportation and/or the Port Authority of New York and New Jersey?**

#	Answer	Response	%
1	Always	7	70%

2	Frequently	2	20%
3	Seldom	1	10%
4	Never	0	0%
	Total	10	100%

Statistic	Value
Min Value	1
Max Value	3
Mean	1.40
Variance	0.49
Standard Deviation	0.70
Total Responses	10

**26. What is the racial or ethnic group membership of the majority owner(s) of your firm? (Check all that apply)**

#	Answer	Response	%
1	White	93	83%
2	Black	11	10%
3	Hispanic	9	8%
4	Asian Pacific	6	5%
5	Subcontinent Asian	3	3%
6	Native American	4	4%
7	Other (please specify):	3	3%

Other (please specify):
Native Hawaiian
N/a
WBE

Statistic	Value
Min Value	1
Max Value	7
Total Responses	112

**27. What is the gender of the majority owner(s) of your firm?**

#	Answer	Response	%
1	Female	36	33%
2	Male	80	73%

Statistic	Value
Min Value	1
Max Value	2
Total Responses	110

**28. Is your firm certified as a Disadvantaged Business Enterprise (DBE)?**

#	Answer	Response	%
1	Yes	17	15%
2	No	94	85%
	Total	111	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.85
Variance	0.13
Standard Deviation	0.36
Total Responses	111

**29. Is your firm certified as a Small Business Enterprise (SBE) by the State of New Jersey?**

#	Answer	Response	%
1	Yes	54	50%
2	No	55	50%
	Total	109	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.50
Variance	0.25
Standard Deviation	0.50
Total Responses	109

**30. Please tell us why you do not want to participate in this survey.**

#	Answer	Response	%
1	As a general principle, I do not participate in voluntary research surveys.	6	14%
2	I do not have time to complete the survey.	3	7%
3	This survey is not relevant to my business.	21	50%
4	My firm is no longer in business.	2	5%
5	It is against company policy for me to complete research surveys.	2	5%
6	Other (please specify):	8	19%
	Total	42	100%

Other (please specify):
Results seem to offer shelter to those commissioning the survey and nothing to improve the actual conditions
We have no experience with NJ Transit and do not engage in the types of contracts that your survey would appear to be looking for.
We do not generally provide services to NJ State agencies
We have not worked with/for NJ Transit for a many years.
wrong target. i cannot help



Cannot authenticate the source or who is performing the study.
I have not participated in NJ contracts.
We are not contractors; we are engineers/architects

Statistic	Value
Min Value	1
Max Value	6
Mean	3.36
Variance	2.53
Standard Deviation	1.59
Total Responses	42

## **Long Form Survey Results**

**Last Modified: 02/13/2016**

1. CONSENT FORM PRINCIPAL RESEARCHER: Samuel L. Myers, Jr. Roy Wilkins  
Professor of Human Relations and Social Justice Humphrey School of Public Affairs 270

Humphrey Center University of Minnesota 301 19th Avenue S. Minneapolis, MN 55455 We invite you to participate in a brief research survey conducted by the Roy Wilkins Center at the University of Minnesota. You are being invited to participate in this study because your firm had bid on contracts with or was listed as a subcontractor on bids submitted to New Jersey Transit in the past. **DESCRIPTION OF THE RESEARCH PROJECT** New Jersey Transit has initiated this study to: a) to identify any barriers to full participation in New Jersey Transit contracting opportunities and b) to understand how subcontracting activities are undertaken in the New Jersey marketplace. If you choose to participate in this study, you will be asked to complete an online survey. As part of the survey, you will be asked to provide basic demographic information about your firm and share your experiences serving as a prime contractor or subcontractor in the public and private sectors. The survey should take approximately 15 minutes to complete. **YOUR PARTICIPATION** Your responses to the survey will provide New Jersey Transit with information it needs to better understand the impact of as well as ways to improve its procurement and contracting practices. You may choose not to answer any questions that you feel uncomfortable answering. Participants will not be compensated for participating in this research study. **CONFIDENTIALITY** All of the information obtained as part of this study will remain confidential and will only be disclosed with your permission. In any reports on the results of this study, we will not include any information that would make it possible for anyone to identify you or your individual responses. All information on responses will appear only in aggregate form. **VOLUNTARY PARTICIPATION AND WITHDRAWAL** Participation in this survey is strictly voluntary. Your decision to participate in the survey or not will not affect your professional standing or current and future relations with New Jersey Transit, the Roy Wilkins Center, or the University of Minnesota. If you choose to participate in this study and answer the survey questions, you may withdraw your participation at any time. If you have any questions or concerns about this study, please feel free to contact the Principal Researcher, Professor Samuel L. Myers, Jr. at (612) 626-8093 or njtsurvey@gmail.com. If you have any questions or concerns regarding this study and would like to talk to someone other than the principal investigator, you are encouraged to contact the Research Subjects' Advocate Line, D528 Mayo, 420 Delaware Street SE, Minneapolis, Minnesota 55455; (612) 625-1650. Do you understand and accept the above conditions and **VOLUNTARILY CONSENT** to participate in this research study?

#	Answer	Response	%
1	Yes, I understand and accept the conditions described above. I freely provide my consent and wish to participate.	156	86%
2	No, I do not wish to participate.	26	14%
	Total	182	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.14
Variance	0.12
Standard Deviation	0.35
Total Responses	182

**2. Did your firm use any subcontractors in 2014?**

#	Answer	Response	%
1	Yes	59	49%
2	No	62	51%
	Total	121	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.51
Variance	0.25
Standard Deviation	0.50
Total Responses	121

**3. Between 2007 and 2014, approximately how many subcontractors has your firm worked with?**

Text Response
one
30
5
3
1
6
approximately 25
200
10
6
100
5
12

5
4
100
4
10
10
1
Over 5
150-200
10
30
12
unknown
1
5
10
4
Over 25
5
none
hundreds
75
1
too numerous to note.
100
3
8
50
One
3
2
30

Statistic	Value
Total Responses	45

**4. Which procurement method best describes how your firm chooses subcontractors when bidding on privately financed projects? A privately financed project is a project that is being funded by private individuals or for-profit businesses entities.**

#	Answer	Response	%
1	Open tendering or competitive bidding	2	5%
2	Selective tendering	5	11%
3	Request for proposals (RPFs)	12	27%
4	two-stage tendering	0	0%
5	Request for quotations (RFQs)	11	25%
6	Sole source or non-competitive bidding	5	11%

7	Not applicable, I do not bid on privately financed contracts.	9	20%
	Total	44	100%

Statistic	Value
Min Value	1
Max Value	7
Mean	4.45
Variance	3.56
Standard Deviation	1.89
Total Responses	44

**5. How often does your firm use competitive bidding to select subcontractors when bidding on privately financed projects?**

#	Answer	Response	%
1	Always	10	23%
2	Frequently	12	28%
3	Seldom	10	23%
4	Never	11	26%
	Total	43	100%

Statistic	Value
Min Value	1
Max Value	4
Mean	2.51
Variance	1.26
Standard Deviation	1.12
Total Responses	43

**6. Which of the following best describes why your firm chooses a particular subcontractor when bidding on privately financed projects?**

#	Answer	Response	%
1	Lowest bidder/best price	6	14%
2	Highest quality work/most reliable	14	33%
3	Previous experience working with firms	16	37%
4	Family or personal ties	0	0%
5	Ability to meet SBE/DBE subcontracting requirements	1	2%
6	Other (please specify):	6	14%
	Total	43	100%

Other (please specify):
OUR SUBCONTRACTOR IS OUR AFFILIATE. WE PERFORM SPECIALIZED WORK.
Combination of the 1st three.
We do not use sub-contractors
a mixture of quality and price
combination of price and quality

Statistic	Value
Min Value	1
Max Value	6
Mean	2.86
Variance	2.12
Standard Deviation	1.45
Total Responses	42

**7. Has your firm ever bid on contracts with New Jersey Transit?**

#	Answer	Response	%
1	Yes	40	91%
2	No	4	9%
	Total	44	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.09
Variance	0.08
Standard Deviation	0.29
Total Responses	44

**8. How many prime contracts did your firm bid on with New Jersey Transit from January 1, 2014 to December 31, 2014?**

#	Answer	Response	%
1	Zero	15	38%
2	One	9	23%
3	Two	5	13%
4	Three	3	8%
5	Four	2	5%
6	Five	0	0%
7	Six or more	5	13%
	Total	39	100%

Statistic	Value
Min Value	1
Max Value	7
Mean	2.69
Variance	4.11
Standard Deviation	2.03
Total Responses	39

**9. How many of these bids to New Jersey Transit resulted in your firm being awarded a contract?**

#	Answer	Response	%
1	Zero	10	45%
2	One	6	27%
3	Two	2	9%
4	Three	3	14%
5	Four	1	5%
6	Five	0	0%
7	Six or more	0	0%
	Total	22	100%

Statistic	Value
Min Value	1
Max Value	5
Mean	2.05
Variance	1.57
Standard Deviation	1.25
Total Responses	22

**10. What was the total dollar amount of all of the prime contracts you received from New Jersey Transit from January 1, 2014 to December 31, 2014?**

#	Answer	Response	%
1	\$36,000 or less	11	41%
2	\$36,001 - \$100,000	5	19%
3	\$100,001 - \$500,000	3	11%
4	\$500,001 - \$750,000	3	11%
5	\$750,001 - \$1,000,000	0	0%
6	\$1,000,001 - \$1,500,000	1	4%
7	\$1,500,001 - \$3,000,000	1	4%
8	\$3,000,001 or more	3	11%
	Total	27	100%

Statistic	Value
Min Value	1
Max Value	8
Mean	2.93
Variance	5.84
Standard Deviation	2.42
Total Responses	27

**11. Have you ever requested to be debriefed when your firm was not awarded a contract as a prime with New Jersey Transit from January 1, 2014 to December 31, 2014?**

#	Answer	Response	%
1	Yes	12	32%
2	No, I did not wish to be debriefed.	14	37%
3	No, I did not know that I could request a debriefing.	12	32%

Total	38	100%
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Statistic	Value
Min Value	1
Max Value	3
Mean	2.00
Variance	0.65
Standard Deviation	0.81
Total Responses	38

**12. Did your firm use any subcontractors on any of its prime contracts with New Jersey Transit from January 1, 2014 to December 31, 2014?**

#	Answer	Response	%
1	Yes	16	47%
2	No	18	53%
	Total	34	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.53
Variance	0.26
Standard Deviation	0.51
Total Responses	34

**13. What was the total dollar amount of all of the prime contracts with New Jersey Transit that your firm awarded to subcontractors from January 1, 2014 to December 31, 2014?**

#	Answer	Response	%
1	\$17,500 or less	0	0%
2	\$17,501 - \$50,000	2	13%
3	\$50,001 - \$100,000	1	7%
4	\$100,001 - \$500,000	6	40%
5	\$500,001 - \$750,000	0	0%
6	\$750,001 - \$1,000,000	1	7%
7	\$1,000,001 - \$1,500,000	2	13%
8	\$1,500,001 - \$3,000,000	1	7%
9	\$3,000,001 or more	2	13%
	Total	15	100%

Statistic	Value
Min Value	2
Max Value	9
Mean	5.13
Variance	5.55
Standard Deviation	2.36



Total Responses	15
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**14. Approximately what percentage of your firm's total subcontract dollars were awarded to Disadvantaged Business Enterprises (DBEs) from January 1, 2014 to December 31, 2014?**

#	Answer	Response	%
1	Less than 2.5%	0	0%
2	2.5% - 5.0%	1	9%
3	6.0% - 10.0%	1	9%
4	11.0% - 15.0%	2	18%
5	16.0% - 20.0%	2	18%
6	21.0% - 25.0%	2	18%
7	26.0% - 30.0%	1	9%
8	More than 30.0%	1	9%
9	Do not know	1	9%
	Total	11	100%

Statistic	Value
Min Value	2
Max Value	9
Mean	5.36
Variance	4.45
Standard Deviation	2.11
Total Responses	11

**15. How often does your firm use competitive bidding to select subcontractors when bidding on contracts with New Jersey Transit?**

#	Answer	Response	%
1	Always	5	26%
2	Frequently	5	26%
3	Seldom	2	11%
4	Never	7	37%
	Total	19	100%

Statistic	Value
Min Value	1
Max Value	4
Mean	2.58
Variance	1.59
Standard Deviation	1.26
Total Responses	19

**16. Which reason best describes why your firm chooses a particular subcontractor when bidding on contracts with New Jersey Transit?**

#	Answer	Response	%
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1	Lowest bidder/best price	4	21%
2	Highest quality work/most reliable	1	5%
3	Previous experience working with firms	5	26%
4	Family or personal ties	0	0%
5	Ability to meet SBE/DBE subcontracting requirements	4	21%
6	Other (please specify):	5	26%
	Total	19	100%

<b>Other (please specify):</b>	
lowest reliable bidder/best price	
We had to assign the DBE subcontractors when we were awarded the 3 year contract with NJT in 2012. The subcontractors we use are also on the contract.	
combination of previous experience and quality of work	
mix between price & quality	
We use lowest price with the greatest value for the project being bid	

Statistic	Value
Min Value	1
Max Value	6
Mean	3.74
Variance	3.76
Standard Deviation	1.94
Total Responses	19

**17. Has your firm ever received a sole source award or an award that was not advertised as part of a competitive bidding process from New Jersey Transit?**

#	Answer	Response	%
1	Yes	3	17%
2	No	15	83%
	Total	18	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.83
Variance	0.15
Standard Deviation	0.38
Total Responses	18

**18. What was the total dollar amount of all of these sole source awards and/or non-advertised or non-competitive awards combined from New Jersey Transit?**

#	Answer	Response	%
1	\$17,500 or less	0	0%
2	\$17,501 - \$50,000	0	0%
3	\$50,001 - \$100,000	0	0%

4	\$100,001 - \$500,000	3	100%
5	\$500,001 - \$750,000	0	0%
6	\$750,001 - \$1,000,000	0	0%
7	\$1,000,001 - \$1,500,000	0	0%
8	\$1,500,001 - \$3,000,000	0	0%
9	\$3,000,001 or more	0	0%
	Total	3	100%

Statistic	Value
Min Value	4
Max Value	4
Mean	4.00
Variance	0.00
Standard Deviation	0.00
Total Responses	3

**19. What was the MAIN reason why your firm did not bid on any contracts with New Jersey Transit?**

#	Answer	Response	%
1	Not my line of work	5	26%
2	Project size--too big for my firm	1	5%
3	Too complex a process	2	11%
4	Did not know of bidding or subcontracting opportunities	3	16%
5	Not interested in public sector contracting/subcontracting	0	0%
6	Other (please specify):	8	42%
	Total	19	100%

Statistic	Value
Min Value	1
Max Value	6
Mean	3.84
Variance	4.58
Standard Deviation	2.14
Total Responses	19

**20. In 2014, how often did your firm use competitive bidding to select subcontractors when bidding on contracts with the New Jersey Department of Transportation, New Jersey Treasury, and/or the Port Authority of New York and New Jersey?**

#	Answer	Response	%
1	Always	7	29%
2	Frequently	4	17%
3	Seldom	3	13%
4	Never	10	42%
	Total	24	100%

Statistic	Value
Min Value	1
Max Value	4
Mean	2.67
Variance	1.71
Standard Deviation	1.31
Total Responses	24

**21. In 2014, did your firm ever seek opportunities to serve as a subcontractor with one or more prime contractors bidding on privately financed projects? A privately financed project is a project that is being funded by private individuals or for-profit businesses entities.**

#	Answer	Response	%
1	Yes	42	34%
2	No	81	66%
	Total	123	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.66
Variance	0.23
Standard Deviation	0.48
Total Responses	123

**22. What were your firm's total gross receipts from all privately financed CONTRACTS and SUBCONTRACTS received between January 1, 2014 and December 31, 2014?**

#	Answer	Response	%
1	\$17,500 or less	1	3%
2	\$17,501 - \$50,000	2	5%
3	\$50,001 - \$100,000	4	10%
4	\$100,001 - \$500,000	8	21%
5	\$500,001 - \$750,000	4	10%
6	\$750,001 - \$1,000,000	2	5%
7	\$1,000,001 - \$1,500,000	3	8%
8	\$1,500,001 - \$3,000,000	6	15%
9	\$3,000,001 or more	9	23%
	Total	39	100%

Statistic	Value
Min Value	1
Max Value	9
Mean	5.92
Variance	6.23
Standard Deviation	2.50

Total Responses	39
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**23. Did your firm ever seek opportunities as a subcontractor with one or more prime contractors bidding on contracts with New Jersey Transit in 2014?**

#	Answer	Response	%
1	Yes, I actively sought subcontracting opportunities.	32	28%
2	No, I did not seek out subcontracting opportunities, but primes contractors actively sought to subcontract with my firm.	12	11%
3	No, I did not actively seek out subcontracting opportunities.	69	61%
	Total	113	100%

Statistic	Value
Min Value	1
Max Value	3
Mean	2.33
Variance	0.79
Standard Deviation	0.89
Total Responses	113

**24. How does your firm learn of potential subcontracting opportunities with prime contractors? (Please check all that apply.)**

#	Answer	Response	%
1	Advertisements and notifications from public sector agencies, including New Jersey Transit	58	52%
2	Advertisements and notifications from bidders/prime contractors	42	38%
3	Public meetings/pre-bid meetings held by public sector agencies, including New Jersey Transit	29	26%
4	Public meetings/pre-bid meetings held by bidders/prime contractors	18	16%
5	Word of mouth/trade organizations	34	30%
6	Direct contact with specific prime contractors	57	51%
7	Procurement calender	13	12%
8	Other (please specify):	22	20%

Other (please specify):
Online searches at public and private sector organization websites, as well as Google.
na
We don't hear about them
Reporting Periodicals - I.E. Construction Information Systems
As one of 8 non profit TMAs in NJ we contract for an annual work program with NJT.
National Minority Supplier Development Council notices
upon specific recommendation of client to GC holding contract
does not apply. Our primary goal is direct sales, not subcontractor opportunities.
we don't
WE ARE NOT A SUB
Listing on bidder list

Bid net services like Onvia or CIS
Does not apply. As a marketing research company, we do not subcontract on other types of projects. Selected No on the previous screen, and should have been skipped over Q26-Q27. No option to put down "Not Applicable"
does not apply
We are a prime contractor, never a sub contractor
we are not a subcontractor
We do not seek such opportunities
We don't.
combination of methods
Bid Express
We don't bid as a subcontractor on public projects.
client called us

Statistic	Value
Min Value	1
Max Value	8
Total Responses	112

**25. On privately financed contracts that your firm bids on as a subcontractor, how often does the prime contractor use competitive bidding to select subcontractors?**

#	Answer	Response	%
1	Always	22	21%
2	Frequently	19	18%
3	Seldom	11	10%
4	Never	10	9%
5	Do not know	44	42%
	Total	106	100%

Statistic	Value
Min Value	1
Max Value	5
Mean	3.33
Variance	2.68
Standard Deviation	1.64
Total Responses	106

**26. Did you receive a SUBCONTRACT through a prime contractor who received a contract from New Jersey Transit between January 1, 2014 and December 31, 2014?**

#	Answer	Response	%
1	Yes	19	19%
2	No	79	81%
	Total	98	100%

Statistic	Value
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Min Value	1
Max Value	2
Mean	1.81
Variance	0.16
Standard Deviation	0.40
Total Responses	98

**27. How often are you included as a subcontractor on the same prime contractor's bids to New Jersey Transit?**

#	Answer	Response	%
1	Always	2	2%
2	Frequently	17	18%
3	Seldom	14	14%
4	Never	46	47%
5	Do not know	18	19%
	Total	97	100%

Statistic	Value
Min Value	1
Max Value	5
Mean	3.63
Variance	1.09
Standard Deviation	1.04
Total Responses	97

**28. How often do you serve as a subcontractor for multiple prime contractors' bids to New Jersey Transit?**

#	Answer	Response	%
1	Always	3	3%
2	Frequently	12	12%
3	Seldom	17	17%
4	Never	55	56%
5	Do not know	11	11%
	Total	98	100%

Statistic	Value
Min Value	1
Max Value	5
Mean	3.60
Variance	0.90
Standard Deviation	0.95
Total Responses	98

**29. Has your firm ever sought pre-qualification to bid as a prime contractor on CONSTRUCTION CONTRACTS with any state government agency?**

#	Answer	Response	%
1	Yes	31	29%
2	No	76	71%
	Total	107	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.71
Variance	0.21
Standard Deviation	0.46
Total Responses	107

**30. Which of the following government agencies have denied your firm pre-qualification as a prime contractor? (Check all that apply.)**

#	Answer	Response	%
1	New Jersey Transit	5	71%
2	New Jersey Department of Transportation	4	57%
3	Port Authority of New York and New Jersey	3	43%
4	State of New Jersey	2	29%
5	Other (please specify the name of the agency):	1	14%

Other (please specify the name of the agency):  
none

Statistic	Value
Min Value	1
Max Value	5
Total Responses	7

**31. Which of the following government agencies in New Jersey is your firm currently pre-qualified to bid as a prime contractor on CONSTRUCTION CONTRACTS? (Check all that apply.)**

#	Answer	Response	%
1	New Jersey Transit	17	63%
2	New Jersey Department of Transportation	13	48%
3	Port Authority of New York and New Jersey	15	56%
4	State of New Jersey	18	67%
5	Other (please specify the name of the agency):	7	26%

Other (please specify the name of the agency):  
NJTurnpike Auth  
na  
none  
New York City & New York State



NJ Turnpike Authority
New Jersey Turnpike
None

Statistic	Value
Min Value	1
Max Value	5
Total Responses	27

**32. When serving as a subcontractor on privately financed projects, did your firm ever have to apply for bonding or insurance? A privately financed project is a project that is being funded by private individuals or for-profit businesses entities.**

#	Answer	Response	%
1	Yes	38	38%
2	No	62	62%
	Total	100	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.62
Variance	0.24
Standard Deviation	0.49
Total Responses	100

**33. How much did it cost for your firm to obtain bonding or insurance?**

Text Response
Secure bonds through i bonds 1/2 value or ee bonds whole value
3% of project
Our Bonds range from 1.75 % to 2.00% of total contract amount
\$2500
depends on the size of the contract
2.25% for bonding
2000.
2-3K
don't remember it was a percentage of the bond
Percentage
\$2,000
Depends on Contract Value
5%
it varied on the project and it's size
dont remember
Percentage of contract amount
Varies based upon the cost of the work.
Don't know

I am not privileged to that information.
\$30,000
Project Driven but up to 3%
6000
Only the actual cost of the bonds and insurance.
varies
2% of project.
2.5 % of contract amount for performance bond, 0% for bid bond. require professional liability, \$10000

Statistic	Value
Total Responses	26

**34. When bidding as a prime contractor with New Jersey Transit, have you ever perceived that your firm was not awarded a contract because of the:**

#	Question	Yes	No	Total Responses	Mean
1	Race of your firm's majority owner	1	32	33	1.97
2	Ethnicity of your firm's majority owner	1	32	33	1.97
3	Nationality of your firm's majority owner	1	32	33	1.97
4	Immigration status of your firm's majority owner	0	32	32	2.00
5	Gender of your firm's majority owner	1	32	33	1.97

Statistic	Race of your firm's majority owner	Ethnicity of your firm's majority owner	Nationality of your firm's majority owner	Immigration status of your firm's majority owner	Gender of your firm's majority owner
Min Value	1	1	1	2	1
Max Value	2	2	2	2	2
Mean	1.97	1.97	1.97	2.00	1.97
Variance	0.03	0.03	0.03	0.00	0.03
Standard Deviation	0.17	0.17	0.17	0.00	0.17
Total Responses	33	33	33	32	33

**35. When bidding as a prime contractor on privately financed projects, have you ever perceived that your firm was not awarded a contract because of the:**

#	Question	Yes	No	Total Responses	Mean
1	Race of your firm's majority owner	9	90	99	1.91
2	Ethnicity of your firm's majority owner	8	91	99	1.92
3	Nationality of your firm's majority owner	4	95	99	1.96
4	Race of your firm's majority owner	8	90	98	1.92
5	Race of your firm's majority owner	8	90	98	1.92

Statistic	Race of your	Ethnicity of	Nationality of	Race of your	Race of your firm's
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## Agency Discrimination

	firm's majority owner	your firm's majority owner	your firm's majority owner	firm's majority owner	majority owner
Min Value	1	1	1	1	1
Max Value	2	2	2	2	2
Mean	1.91	1.92	1.96	1.92	1.92
Variance	0.08	0.08	0.04	0.08	0.08
Standard Deviation	0.29	0.27	0.20	0.28	0.28
Total Responses	99	99	99	98	98

**36. When your firm bids on contracts do you believe that your firm has a better chance to win a bid on a contract as a prime contractor with a public sector agency, such as New Jersey Transit, or with a private sector firm?**

#	Answer	Response	%
1	Public sector (e.g. public entities run or funded by the federal, state, or local government)	37	36%
2	Private sector (e.g. private, for-profit entities)	32	31%
3	Neither	33	32%
	Total	102	100%

Statistic	Value
Min Value	1
Max Value	3
Mean	1.96
Variance	0.66
Standard Deviation	0.81
Total Responses	101

**37. When seeking opportunities as a subcontractor with a prime contractor on a New Jersey Transit contract, have you ever perceived that your firm was not awarded a subcontract because of the:**

#	Question	Yes	No	Total Responses	Mean
1	Race of your firm's majority owner	6	25	31	1.81
2	Ethnicity of your firm's majority owner	5	26	31	1.84
3	Nationality of your firm's majority owner	3	28	31	1.90
4	Immigration status of your firm's majority owner	2	28	30	1.93
5	Gender of your firm's majority owner	4	26	30	1.87

Statistic	Race of your firm's majority owner	Ethnicity of your firm's majority owner	Nationality of your firm's majority owner	Immigration status of your firm's majority owner	Gender of your firm's majority owner
Min Value	1	1	1	1	1
Max Value	2	2	2	2	2

Mean	1.81	1.84	1.90	1.93	1.87
Variance	0.16	0.14	0.09	0.06	0.12
Standard Deviation	0.40	0.37	0.30	0.25	0.35
Total Responses	31	31	31	30	30

**38. When seeking opportunities as a subcontractor on privately financed projects, have you ever perceived that your firm was not awarded a subcontract because of the:**

#	Question	Yes	No	Total Responses	Mean
1	Race of your firm's majority owner	6	32	38	1.84
2	Ethnicity of your firm's majority owner	6	32	38	1.84
3	Nationality of your firm's majority owner	2	36	38	1.95
4	Immigration status of your firm's majority owner	1	36	37	1.97
5	Gender of your firm's majority owner	5	33	38	1.87

Statistic	Race of your firm's majority owner	Ethnicity of your firm's majority owner	Nationality of your firm's majority owner	Immigration status of your firm's majority owner	Gender of your firm's majority owner
Min Value	1	1	1	1	1
Max Value	2	2	2	2	2
Mean	1.84	1.84	1.95	1.97	1.87
Variance	0.14	0.14	0.05	0.03	0.12
Standard Deviation	0.37	0.37	0.23	0.16	0.34
Total Responses	38	38	38	37	38

**39. In the past two years, has your firm:**

#	Question	Yes	No	Total Responses	Mean
1	Received timely notification of bid requests from New Jersey Transit	62	37	99	1.37
2	Received requested information about bidding procedures from New Jersey Transit	61	34	95	1.36
3	Bid on a contract with New Jersey Transit where the official procedures were followed	60	35	95	1.37
4	Had your bid fairly evaluated by New Jersey Transit	54	36	90	1.40

Statistic	Received timely notification of bid requests from New Jersey Transit	Received requested information about bidding procedures from New Jersey Transit	Bid on a contract with New Jersey Transit where the official procedures were followed	Had your bid fairly evaluated by New Jersey Transit
Min Value	1	1	1	1

Max Value	2	2	2	2
Mean	1.37	1.36	1.37	1.40
Variance	0.24	0.23	0.24	0.24
Standard Deviation	0.49	0.48	0.48	0.49
Total Responses	99	95	95	90

**40. Have any of the following factors negatively affected your firm's ability to do business with New Jersey Transit, New Jersey Department of Transportation, or the Port Authority of New York and New Jersey? (Check all that apply.)**

#	Answer	Response	%
1	Bonding requirements	9	16%
2	Insurance requirements	7	13%
3	Previous experience requirements	7	13%
4	Project size--project too large	16	29%
5	Project size--project to small	4	7%
6	Price of supplies and materials	5	9%
7	Obtaining working capital	3	5%
8	Late notice of bid or proposal deadlines	14	25%
9	Prior dealings with prime contractor's owners or management	3	5%
11	Other (please specify):	17	30%

Other (please specify):	
no	
We stopped bidding because even when we won a contract they didn't do any business with us. It was expensive to go through the contract process and then there was no reward. We are a truck body shop.	
jobs are to far and few between each other	
we are primarly sub-contractors for a professional service	
field family owned and male dominated.	
Procurements lack of following up on questions regarding prints or materials to be quoted.	
na	
Governor's capricious political decisions	
PROCUREMENT DOESN'T SOLICIT US FOR MATERIAL ANYMORE????	
When agency has DBE or M/WBE subcontract goals, my firm is frequently passed over for consideration due to Not being a D/M/WBE certified firm	
take too long to pay	
Faulty bidding process unfairly favored incumbent	
Conflict of interest between firm's design contracts and CM contracts.	
our type of product requires a lot of research and engineering before it can be quoted. We feel there is not enough time given to make an accurate proposal.	
Project Specifications	
Bid documents have not come out for 2 contracts that we currently hold which expired 2 years ago. Was told the procurement department is short staffed and not equipped to handle putting out new bid documents at this time. No success reaching contacts in the procurement department	

at NJ Transit to answer questions.  
 NJ transit exclusively uses Verizon a large company and there is no opportunities for competition or small businesses

Statistic	Value
Min Value	1
Max Value	11
Total Responses	56

**41. Has your firm ever been treated less favorably due to the race, ethnicity, and/or gender of the primary owner(s) while participating or attempting to participate in business dealings within the New Jersey Marketplace?**

#	Answer	Response	%
1	Yes	12	12%
2	No	90	88%
	Total	102	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.88
Variance	0.10
Standard Deviation	0.32
Total Responses	102

**42. Choose the types of business dealings in which you felt your firm was less favorably treated. (Check all that apply.)**

#	Answer	Response	%
1	Applying for prequalification	3	30%
2	Applying for commercial loans	1	10%
3	Applying for surety bonds	1	10%
4	Applying for commercial or professional insurance	0	0%
5	Obtaining price quotes from suppliers or subcontractors	1	10%
6	Working or attempting to work on public sector prime contracts	5	50%
7	Working or attempting to work on public sector subcontracts	5	50%
8	Working or attempting to work on private sector prime contracts	5	50%
9	Working or attempting to work on private sector subcontracts	4	40%
10	Receiving timely payment for work performed	4	40%
11	Functioning on the worksite	1	10%
12	Joining or dealing with trade associations	0	0%
13	Hiring workers from union halls	2	20%
14	Required to perform inappropriate work or extra work not required of others	1	10%
15	Required to meet quality or performance standards not required of others	1	10%
16	Other (please specify):	2	20%

Other (please specify):
minority firms are routinely treated unfairly and contract threatened compared to their european counter parts performing the same work. Routinely invoices remain unpaid for service related contracts since there is no penalty assessed for untimely payment in excess of 30 days.
x

Statistic	Value
Min Value	1
Max Value	16
Total Responses	10

**43. What is the race or ethnic group membership of the majority owner(s) of your firm? (Check all that apply)**

#	Answer	Response	%
1	White	77	78%
2	Black	10	10%
3	Hispanic	4	4%
4	Asian Pacific	4	4%
5	Subcontinent Asian	1	1%
6	Native American	0	0%
7	Other (please specify):	11	11%

Other (please specify):
NJ Small Business
German
N/A
Publicly Traded Company: unknown
human
Does not apply
very diversified
None. Publicly traded corporation.
Complex issue
we are diverse
Eastern European First generation Immigrants

Statistic	Value
Min Value	1
Max Value	7
Total Responses	99

**44. What is the gender of the majority owner(s) of your firm?**

#	Answer	Response	%
1	Female	31	33%
2	Male	62	67%

Statistic	Value
Min Value	1
Max Value	2
Total Responses	93

**45. We may want to contact some of those who completed this survey to ask follow-up questions. Are you willing to let us contact you with following-up questions?**

#	Answer	Response	%
1	Yes	65	64%
2	No	37	36%
	Total	102	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.36
Variance	0.23
Standard Deviation	0.48
Total Responses	102

**46. Please provide your contact information.**

Contact name	Office phone number	Cell phone number	Best day to call	Best time to call	E-mail address	Preferred contact method
Hanford Jones	609-864-4756		anytime	anytime	hjones@industrialcommercialcleaninggroup.com	whichever works first
Rose DiMeo	973.598.3890	973.650.0159	Tuesday	10:00 on	Rdimeo@hcvlab.com	Email or Cell phone
Joyce Pratt	609-748-0936		Tuesday	10 am to 2 pm	Joyce.Pratt@tjassociatesnj.com	E-mail
M.G. Khaleeli	973-678-0800		Mon - Fri	After 3:00 pm	americantraffic2013@gmail.com	email
JOHN APPELLO	201-867-3744		WED	1:00PM	JAKENJ1@AOL.COM	E-MAIL
Chris Statile	201-337-7470		Anytime	Anytime	cpstatile@aol.com	Either
Barbara	973-	973-	anytime	morni	bbochese@iriscommunication	no



## Agency Discrimination

Bochese	902-7027	902-7027		ngs	s.org	preference
Robert Magdule	856-616-0032	215-939-7534			RMagdule@Hoppecke-US.com	e-mail
Catherine Scott	9732781444	2019569712	during week	mornings	sales@valtekinc.com	email
Charlie	201348-6336	2013607950	Friday	noon	cchurchill10@comcast.net	e-mail
Joe DeCarlo	2128680126	5164581000	tuesday	10:00am	jdecarlo@solaricorp.com	
Carol Beske	6099180200				clbeske@actengineers.com	
james	9734291008	908 4325893	any	9 - 4p.m.	algolden@aol.com	phone
Marlene Pissott	201-612-1230				wbe@ingroupinc.com	
Donna D'Errico	6096521833		9:00am	4:00pm	ahera@comcast.net	email
Edward J Jordan	856 5417241	609 3324408	any	after 10 am	ejordan@industrialcommercialcleaninggroup.com	e-mail
Bernice Venable	732-985-6677		Tuesdays	Early Morning	bvenable@alphagraphics.com	Office Phone/Email
Al Whitman					alwhitman@lewis-graham.com	email
Amy Greene	9087889676				Amygreene@amygreene.com	
Michael Thompson	6099208800		AM		met@meridianservices.com	email
Dan George		718-782-8041	Weds.	a.m.	dan@dangeorge.net	email
wes weis	9732674300				wweis@merail.com	phone
Florence	8453571405	9145840361	Tuesday	10 AM	jadflooring@aol.com	Email or cell phone
Leonard Dorf	9737726774		tues-thurs	10am-3pm	lenrd@aol.com	Email
Len Moncrieffe	201-210-2430	201-406-0460	Tuesday/Thursdays	12-5:00 PM	len.moncrieffe@pathwaynj.com	cell

**Anecdotal Evidence: Survey**

Carlton Harvey	516326 1350		Monday	10 Am to 4 PM	charvey@jamaicabearings.com	e mail
M. Baum	201- 666- 9207	201- 790- 2667	any	any	mm@taco.com	email
MARK ORRIS	215- 682- 2090		WEEKDAY	DAYTIME	MORRIS@APPTRANSIT.COM	EMAIL
Estel Lovitt	734- 529- 3400	734- 807- 0006			lovitt@mitchell-railgear.com	email
Jonathan Vaughan	973 658 3501				jvaughan@newdemand.com	email
Clyde Lynds	845- 832- 9359	201- 406- 4862	Monday	A.M.	Clyde@clydelynds.com	Email
Jeff Willis	818- 847- 0213	760- 902- 9746	M-F	9-5 PST	jw@mis-sciences.com	any
Chris Kline	610- 866- 1400		Wednesday	Afternoon	ckline@versalifteast.com	Either
John Emilius	973- 697- 2122	973- 476- 2366	anyday	anytime	jemilius@geodcorp.com	phone
Beverly Escario	212664 1100		Friday	Afternoon	beverly.escario@clarionresearch.com	Email
Larry	917- 693- 0292	917- 693- 0292			lawrence.rispoli@grainger.com	email
Jim Duffy	718720 3200		Wed	10am	jim@richmondelevator.com	email
Ronald G. Swerdon	215- 922- 8080		Tuesday	9- 11AM	rgswerdon@urbanengineers.com	email
Sharon Carpenter	973- 822- 8221				sharonpc@pcairnoise.com	email
Thomas Wasniewski	317- 299- 2292		M-F	8-5 ET	tomw@ptionaroll.com	E-mail
Donna	908-				donna@ridewise.org	e-mail

## Agency Discrimination

Allison	704-1011					
jody hill	609-730-1205		m-f			
zola bryen					bzola1@comcast.net	email
bill neary	7327454465				bneary@kmm.org	
Ana Guerreiro	973-465-8006				aguerreiro@gatewaygroupone.com	email
F GOODS TEIN	973-584-7714	908-447-3288	WEEK DAY	900 AM 400 PM	fgoodstein@majorpolicesupply.com	CELL
Richard Robinson	7187377584	9174176249	Tue	0900	richardr@reicongroupllc.com	email
Bill Castle	6092612268			Mornings	Bcastle@wjcastlegroup.com	email
Randy	212-419-0544		M, F	8AM EST	randall.doliber@aecom.com	
Michael Crowther	215-596-9110		any	Daytime	Michael.crowther@traonline.com	e-mail
Ian Brown					ian.brown@trapezegroup.com	
Rick Manning	7325741300	9087159586	Friday	Morning	rmanning@dannunziocorp.com	email
Malinda					mriviera@ppclubricants.com	email
James Leach	9733617755	8624323941	Friday	3pm	jleach@tomcoinc.net	email
Emanuel Hedvat	9087283140	2015745804	anytime	anytime	eh@chemtech.net	all
Everett Waid	239-229-5285	239-229-5285	any	any	Buzz@trapBag.com	Any
isaac fajerman	7327560295	7324961991	monday to friday	9 to 5	ifajerman@dnetit.com	Any
	9732565223				timkolandscape@optimum.net	email
					jr@bortekindustries.com	email

Statistic	Value
Total Responses	59

**47. Does your firm primarily serve as a prime contractor or subcontractor?**

#	Answer	Response	%
1	Prime contractor	79	51%
2	Subcontractor	30	19%
3	Both a prime contractor and a subcontractor	45	29%
	Total	154	100%

Statistic	Value
Min Value	1
Max Value	3
Mean	1.78
Variance	0.75
Standard Deviation	0.86
Total Responses	153

**48. Did your firm subcontract with any Disadvantaged Business Enterprises (DBEs) between January 1, 2014 and December 31, 2014?**

#	Answer	Response	%
1	Yes	12	67%
2	No	6	33%
	Total	18	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.33
Variance	0.24
Standard Deviation	0.49
Total Responses	18

**49. How often does your firm use competitive bidding to select Disadvantaged Business Enterprise (DBE) subcontractors when bidding on contracts with New Jersey Transit?**

#	Answer	Response	%
1	Always	2	11%
2	Frequently	7	37%
3	Seldom	3	16%
4	Never	7	37%
	Total	19	100%

Statistic	Value
Min Value	1

Max Value	4
Mean	2.79
Variance	1.18
Standard Deviation	1.08
Total Responses	19

**50. In 2014, did your firm bid on contracts with any of the following public agencies:**

#	Question	Yes	No	Total Responses	Mean
1	New Jersey Department of Transportation	18	19	37	1.51
2	New Jersey Treasury	6	29	35	1.83
3	Port Authority of New York and New Jersey	17	22	39	1.56

Statistic	New Jersey Department of Transportation	New Jersey Treasury	Port Authority of New York and New Jersey
Min Value	1	1	1
Max Value	2	2	2
Mean	1.51	1.83	1.56
Variance	0.26	0.15	0.25
Standard Deviation	0.51	0.38	0.50
Total Responses	37	35	39

**51. In 2014, did your firm ever seek opportunities as a subcontractor with one or more prime contractors bidding on contracts with any of the following agencies:**

#	Question	Yes, I actively sought subcontracting opportunities.	No, I did not seek subcontracting opportunities, but prime contractors actively sought to subcontract with my firm.	No, I did not actively seek out subcontracting opportunities.	Total Responses	Mean
1	New Jersey Department of Transportation	35	11	60	106	2.24
2	New Jersey Treasury	19	6	78	103	2.57
3	Port Authority of New York and New Jersey	28	17	63	108	2.32

Statistic	New Jersey Department of Transportation	New Jersey Treasury	Port Authority of New York and New Jersey
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Min Value	1	1	1
Max Value	3	3	3
Mean	2.24	2.57	2.32
Variance	0.85	0.62	0.74
Standard Deviation	0.92	0.79	0.86
Total Responses	106	103	108

**52. Did your firm receive a SUBCONTRACT through a prime contractor who received a contract from the New Jersey Department of Transportation between January 1, 2014 and December 31, 2014?**

#	Answer	Response	%
1	Yes	16	47%
2	No	18	53%
	Total	34	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.53
Variance	0.26
Standard Deviation	0.51
Total Responses	34

**53. How often was your firm included as a subcontractor on the same prime contractor's bids to the New Jersey Department of Transportation?**

#	Answer	Response	%
1	Always	1	3%
2	Frequently	13	39%
3	Seldom	10	30%
4	Never	4	12%
5	Do not know	5	15%
	Total	33	100%

Statistic	Value
Min Value	1
Max Value	5
Mean	2.97
Variance	1.28
Standard Deviation	1.13
Total Responses	33

**54. How often did your firm serve as a subcontractor for multiple prime contractors' bids to the New Jersey Department of Transportation?**

#	Answer	Response	%
1	Always	2	6%
2	Frequently	12	35%
3	Seldom	9	26%
4	Never	7	21%
5	Do not know	4	12%
	Total	34	100%

Statistic	Value
Min Value	1
Max Value	5
Mean	2.97
Variance	1.30
Standard Deviation	1.14
Total Responses	34

**55. Did your firm receive a SUBCONTRACT through a prime contractor who received a contract from the New Jersey Treasury between January 1, 2014 and December 31, 2014?**

#	Answer	Response	%
1	Yes	6	32%
2	No	13	68%
	Total	19	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.68
Variance	0.23
Standard Deviation	0.48
Total Responses	19

**56. How often was your firm included as a subcontractor on the same prime contractor's bids to the New Jersey Treasury?**

#	Answer	Response	%
1	Always	1	6%
2	Frequently	7	39%
3	Seldom	2	11%
4	Never	6	33%
5	Do not know	2	11%
	Total	18	100%

Statistic	Value
Min Value	1
Max Value	5
Mean	3.06

Variance	1.47
Standard Deviation	1.21
Total Responses	18

**57. How often did your firm serve as a subcontractor for multiple prime contractors' bids to the New Jersey Treasury?**

#	Answer	Response	%
1	Always	0	0%
2	Frequently	5	26%
3	Seldom	5	26%
4	Never	7	37%
5	Do not know	2	11%
	Total	19	100%

Statistic	Value
Min Value	2
Max Value	5
Mean	3.32
Variance	1.01
Standard Deviation	1.00
Total Responses	19

**58. Did your firm receive a SUBCONTRACT through a prime contractor who received a contract from the Port Authority of New York and New Jersey between January 1, 2014 and December 31, 2014?**

#	Answer	Response	%
1	Yes	11	41%
2	No	16	59%
	Total	27	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.59
Variance	0.25
Standard Deviation	0.50
Total Responses	27

**59. How often was your firm included as a subcontractor on the same prime contractor's bids to the Port Authority of New York and New Jersey?**

#	Answer	Response	%
1	Always	0	0%
2	Frequently	12	46%
3	Seldom	6	23%
4	Never	7	27%



5	Do not know	1	4%
	Total	26	100%

Statistic	Value
Min Value	2
Max Value	5
Mean	2.88
Variance	0.91
Standard Deviation	0.95
Total Responses	26

**60. How often did your firm serve as a subcontractor for multiple prime contractors' bids to the Port Authority of New York and New Jersey?**

#	Answer	Response	%
1	Always	0	0%
2	Frequently	9	33%
3	Seldom	8	30%
4	Never	9	33%
5	Do not know	1	4%
	Total	27	100%

Statistic	Value
Min Value	2
Max Value	5
Mean	3.07
Variance	0.84
Standard Deviation	0.92
Total Responses	27

**61. What was the source(s) of capital used to start or initially acquire this business? (Check all that apply.)**

#	Answer	Response	%
1	Personal/family savings of owner(s)	48	56%
2	Personal/family assets other than savings of owner(s)	6	7%
3	Personal/family home equity loan	8	9%
4	Personal credit card(s) carrying balances	5	6%
5	Business credit card(s) carrying balances	7	8%
6	Government-guaranteed business loan from a bank or financial institution, including SBA-guaranteed loans	6	7%
7	Business loan from a bank or financial institution	13	15%
8	Business loan from a federal, state, or local government	1	1%
9	Business loan/investment from family/friend(s)	3	3%
10	Investment by venture capitalist(s)	0	0%
11	Grants	4	5%
12	Other source(s) of capital	3	3%

14	None needed	22	26%
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Statistic	Value
Min Value	1
Max Value	14
Total Responses	86

**62. What was the total amount of capital used to start or initially acquire this business? Capital includes savings, other assets, and borrowed funds of owner(s).**

#	Answer	Response	%
1	Less than \$5,000	12	20%
2	\$5,000 - \$9,999	7	12%
3	\$10,000 - \$24,999	5	8%
4	\$25,000 - \$49,999	3	5%
5	\$50,000 - \$99,999	8	14%
6	\$100,000 - \$249,999	15	25%
7	\$250,000 - \$999,999	5	8%
8	\$1,000,000 - \$2,999,999	2	3%
9	\$3,000,000 or more	2	3%
	Total	59	100%

Statistic	Value
Min Value	1
Max Value	9
Mean	4.27
Variance	5.72
Standard Deviation	2.39
Total Responses	59

**63. In 2014, were any of the following sources of capital used to finance expansion or capital improvement(s) for this business? (Check all that apply)**

#	Answer	Response	%
1	Personal/family savings of owner(s)	22	30%
2	Personal/family assets other than savings of owner(s)	5	7%
3	Personal/family home equity loan	5	7%
4	Personal credit card(s) carrying balances	5	7%
5	Business credit card(s) carrying balances	10	14%
6	Government-guaranteed business loan from a bank or financial institution, including SBA-guaranteed loans	2	3%
7	Business loan from a bank or financial institution	20	27%
8	Business loan from a federal, state, or local government	0	0%
9	Business loan/investment from family/friend(s)	0	0%
10	Investment by venture capitalist(s)	0	0%
11	Business profits and/or assets	19	26%
12	Grants	1	1%

15	Wanted to expand or make capital improvement(s) but could not obtain funding	1	1%
16	Did not expand or make capital improvement(s)	22	30%

Statistic	Value
Min Value	1
Max Value	16
Total Responses	74

**64. When bidding as a prime contractor with the New Jersey Department of Transportation, have you ever perceived that your firm was not awarded a contract because of the:**

#	Question	Yes	No	Total Responses	Mean
1	Race of your firm's majority owner	0	17	17	2.00
2	Ethnicity of your firm's majority owner	1	16	17	1.94
3	Nationality of your firm's majority owner	0	17	17	2.00
4	Immigration status of your firm's majority owner	0	17	17	2.00
5	Gender of your firm's majority owner	1	16	17	1.94

Statistic	Race of your firm's majority owner	Ethnicity of your firm's majority owner	Nationality of your firm's majority owner	Immigration status of your firm's majority owner	Gender of your firm's majority owner
Min Value	2	1	2	2	1
Max Value	2	2	2	2	2
Mean	2.00	1.94	2.00	2.00	1.94
Variance	0.00	0.06	0.00	0.00	0.06
Standard Deviation	0.00	0.24	0.00	0.00	0.24
Total Responses	17	17	17	17	17

**65. When bidding as a prime contractor with the New Jersey Treasury, have you ever perceived that your firm was not awarded a contract because of the:**

#	Question	Yes	No	Total Responses	Mean
1	Race of your firm's majority owner	0	6	6	2.00
2	Ethnicity of your firm's majority owner	0	6	6	2.00
3	Nationality of your firm's majority owner	0	6	6	2.00
4	Immigration status of your firm's majority owner	0	6	6	2.00
5	Gender of your firm's majority owner	0	6	6	2.00

Statistic	Race of your firm's majority owner	Ethnicity of your firm's majority owner	Nationality of your firm's majority owner	Immigration status of your firm's majority owner	Gender of your firm's majority owner
Min Value	2	2	2	2	2

Max Value	2	2	2	2	2
Mean	2.00	2.00	2.00	2.00	2.00
Variance	0.00	0.00	0.00	0.00	0.00
Standard Deviation	0.00	0.00	0.00	0.00	0.00
Total Responses	6	6	6	6	6

**66. When bidding as a prime contractor with the Port Authority of New York and New Jersey, have you ever perceived that your firm was not awarded a contract because of the:**

#	Question	Yes	No	Total Responses	Mean
1	Race of your firm's majority owner	0	14	14	2.00
2	Ethnicity of your firm's majority owner	0	14	14	2.00
3	Nationality of your firm's majority owner	0	14	14	2.00
4	Immigration status of your firm's majority owner	0	14	14	2.00
5	Gender of your firm's majority owner	0	14	14	2.00

Statistic	Race of your firm's majority owner	Ethnicity of your firm's majority owner	Nationality of your firm's majority owner	Immigration status of your firm's majority owner	Gender of your firm's majority owner
Min Value	2	2	2	2	2
Max Value	2	2	2	2	2
Mean	2.00	2.00	2.00	2.00	2.00
Variance	0.00	0.00	0.00	0.00	0.00
Standard Deviation	0.00	0.00	0.00	0.00	0.00
Total Responses	14	14	14	14	14

**67. When seeking opportunities as a subcontractor with a prime contractor on a New Jersey Department of Transportation contract, have you ever perceived that your firm was not awarded a subcontract because of the:**

#	Question	Yes	No	Total Responses	Mean
1	Race of your firm's majority owner	5	28	33	1.85
2	Ethnicity of your firm's majority owner	4	29	33	1.88
3	Nationality of your firm's majority owner	1	32	33	1.97
4	Immigration status of your firm's majority owner	1	32	33	1.97
5	Gender of your firm's majority owner	4	28	32	1.88

Statistic	Race of your firm's majority owner	Ethnicity of your firm's majority owner	Nationality of your firm's majority owner	Immigration status of your firm's majority owner	Gender of your firm's majority owner
Min Value	1	1	1	1	1
Max Value	2	2	2	2	2

Mean	1.85	1.88	1.97	1.97	1.88
Variance	0.13	0.11	0.03	0.03	0.11
Standard Deviation	0.36	0.33	0.17	0.17	0.34
Total Responses	33	33	33	33	32

**68. When seeking opportunities as a subcontractor with a prime contractor on a New Jersey Treasury contract, have you ever perceived that your firm was not awarded a subcontract because of the:**

#	Question	Yes	No	Total Responses	Mean
1	Race of your firm's majority owner	4	14	18	1.78
2	Ethnicity of your firm's majority owner	4	14	18	1.78
3	Nationality of your firm's majority owner	1	17	18	1.94
4	Immigration status of your firm's majority owner	0	18	18	2.00
5	Gender of your firm's majority owner	2	16	18	1.89

Statistic	Race of your firm's majority owner	Ethnicity of your firm's majority owner	Nationality of your firm's majority owner	Immigration status of your firm's majority owner	Gender of your firm's majority owner
Min Value	1	1	1	2	1
Max Value	2	2	2	2	2
Mean	1.78	1.78	1.94	2.00	1.89
Variance	0.18	0.18	0.06	0.00	0.10
Standard Deviation	0.43	0.43	0.24	0.00	0.32
Total Responses	18	18	18	18	18

**69. When seeking opportunities as a subcontractor with a prime contractor on a Port Authority of New York and New Jersey contract, have you ever perceived that your firm was not awarded a subcontract because of the:**

#	Question	Yes	No	Total Responses	Mean
1	Race of your firm's majority owner	5	20	25	1.80
2	Ethnicity of your firm's majority owner	4	21	25	1.84
3	Nationality of your firm's majority owner	2	23	25	1.92
4	Immigration status of your firm's majority owner	1	24	25	1.96
5	Gender of your firm's majority owner	3	22	25	1.88

Statistic	Race of your firm's majority owner	Ethnicity of your firm's majority owner	Nationality of your firm's majority owner	Immigration status of your firm's majority owner	Gender of your firm's majority owner
Min Value	1	1	1	1	1
Max Value	2	2	2	2	2

Mean	1.80	1.84	1.92	1.96	1.88
Variance	0.17	0.14	0.08	0.04	0.11
Standard Deviation	0.41	0.37	0.28	0.20	0.33
Total Responses	25	25	25	25	25

**70. Is your firm certified as a Disadvantaged Business Enterprise (DBE)?**

#	Answer	Response	%
1	Yes	21	21%
2	No	77	79%
	Total	98	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.79
Variance	0.17
Standard Deviation	0.41
Total Responses	98

**71. Is your firm certified as a Small Business Enterprise (SBE) by the State of New Jersey?**

#	Answer	Response	%
1	Yes	47	47%
2	No	52	53%
	Total	99	100%

Statistic	Value
Min Value	1
Max Value	2
Mean	1.53
Variance	0.25
Standard Deviation	0.50
Total Responses	99

**72. Please tell us why you do not want to participate in this survey.**

#	Answer	Response	%
1	As a general principle, I do not participate in voluntary research surveys.	4	17%
2	I do not have time.	6	26%
4	This survey is not relevant to my business.	2	9%
5	Other (please specify):	4	17%
6	My firm is no longer in business.	0	0%
7	It is against company policy for me to complete research surveys.	7	30%
	Total	23	100%

<b>Other (please specify):</b>
I'm a member of th technical delivery team and had little to no exposure to the contractual process
was not involved in this project, hard to complete the survey
I am not in business or any other type of organisation.

Statistic	Value
Min Value	1
Max Value	7
Mean	4.04
Variance	5.77
Standard Deviation	2.40
Total Responses	23

**73. How many of these subcontractors did your firm work with on more than one occasion?**

Text Response
5
3
1
most
20
probably most
4
4
50
5
11
all
0
80
All
6
10
1
All of them
50-100
8
10
10
several
none
3
8
3

**Anecdotal Evidence: Survey**

Over 20
5
none
most
35
1
several
5
2
6
30
None
3
2
15

Statistic	Value
Total Responses	43