

Port of Seattle Disparity Study 2024



PORT OF SEATTLE DISPARITY STUDY

2024

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About the Study Team

Colette Holt & Associates (“CHA”) is a national law and consulting firm specializing in issues related to Minority, Women and Disadvantaged Business Enterprise programs, business diversity initiatives, and affirmative action issues. The firm has conducted court-approved disparity studies and designed court-approved programs for over 30 years, including for numerous governments. CHA also provides training, monitoring, and investigative services across the country to agencies and businesses. CHA is led by Colette Holt, J.D., the founding principal of Colette Holt & Associates and a nationally recognized attorney and expert. Ms. Holt is also a frequent expert witness, and a media author, on these issues. In addition to Ms. Holt, the firm consists of Steven C. Pitts, Ph. D., who serves as the team’s economist and statistician; Ilene Grossman, B.S., Project Administrator; Glenn Sullivan, B.S., Director of Technology; Victoria Farrell, MBA, Director Qualitative Data Collection; and Joanne Lubart, J.D., Associate Counsel.

Yates Consulting Group, founded in 2008, specializes in diversity and inclusion support for prime contractors and government agencies. President Henry Yates has more than 30 years’ experience in senior state and local government positions. He has helped national and local firms with recruitment, compliance, and monitoring of D/WMBE, small and veteran business performance. The firm has worked with CHA to collect anecdotal data on other disparity studies.

WindGypsy Consulting leverages 16 years of business consulting to assist small and diverse businesses with analyzing goals, establishing, developing, and improving internal processes. The firm connects prime contractors and agencies to small and diverse businesses to surpass their procurement goals through detailed and clear communication. The firm has worked with CHA to collect contract data on other disparity studies.

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I. EXECUTIVE SUMMARY

Colette Holt & Associates (“CHA”) was retained by the Port of Seattle (“Port”) to perform a disparity study of its contracts funded by the Federal Aviation Administration (“FAA”) and locally funded contracts. We determined the Port’s utilization of Woman- and Minority-owned Business Enterprises (“WMBEs”) and Disadvantaged Business Enterprises (“DBEs”)¹ on Port construction and construction-related services contracts for fiscal years 2019 through 2022; the availability of these firms as a percentage of all firms in the Port’s geographic and industry market areas; and any disparities between the Port’s utilization of DBEs and DBE availability. We further analyzed disparities in the Puget Sound industry market, where affirmative action is rarely practiced, to evaluate whether barriers continue to impede opportunities for minorities and women when remedial intervention is not imposed. We also gathered qualitative data about the experiences of woman- and minority-owned firms in obtaining Port contracts and associated subcontracts. We evaluated the Port’s DBE Program for FAA funded contracts and its Woman and Minority Business Enterprise Program for locally funded contracts for conformance with constitutional standards, regulatory requirements and national best practices for government contracting affirmative action programs. Based on the results of these analyses, we provide recommendations for the Port’s DBE and WMBE programs.

The methodology for this study embodies the constitutional principles of *City of Richmond v. Croson*, Ninth Circuit Court of Appeals’ case law and best practices for designing race- and gender-conscious and small business contracting programs. The CHA approach has been specifically upheld by the federal courts. It is also the approach developed by Ms. Holt for the National Academy of Sciences that is now the recommended standard for conducting legally defensible disparity studies.

A. Summary of Legal Standards for Disadvantaged Business Enterprise Programs

To be effective, enforceable, and legally defensible, a race-based program for public sector contracts must meet the judicial test of constitutional “strict scrutiny”. Strict scrutiny is the highest level of judicial review. The Port must meet this test to ensure that any race- and gender-conscious program is in legal compliance.

1. Throughout this report, the term “DBE” includes firms that are certified by government agencies and minority- and woman-owned firms that are not certified. The inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts and that supports the remedial nature of these programs. See *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 723 (7th Cir. 2007) (The “remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net.”).

Strict scrutiny analysis has two prongs:

1. The government must establish its “compelling interest” in remediating race discrimination by current “strong evidence” of the persistence of discrimination. Such evidence may consist of the entity’s “passive participation” in a system of racial exclusion.
2. Any remedies adopted must be “narrowly tailored” to that discrimination; the program must be directed at the types and depth of discrimination identified.²

The compelling governmental interest prong has been met through two types of proof:

1. Statistical evidence of the underutilization of minority or woman firms by the agency and/or throughout the agency’s geographic and industry market area compared to their availability in the market area.
2. Anecdotal evidence of race- or gender-based barriers to the full and fair participation of minority and woman firms in the market area and seeking contracts with the agency. Anecdotal data can consist of interviews, surveys, public hearings, academic literature, judicial decisions, legislative reports, and other information.

The narrow tailoring prong has been met by satisfying five factors to ensure that the remedy “fits” the evidence:

1. The necessity of relief;
2. The efficacy of race-neutral remedies at overcoming identified discrimination;
3. The flexibility and duration of the relief, including the availability of waiver provisions;
4. The relationship of numerical goals to the relevant market; and
5. The impact of the relief on the rights of third parties.

In *Adarand v. Peña*,³ the United States Supreme Court extended the analysis of strict scrutiny to race-based federal enactments such as the U.S. Department of Transportation (“USDOT”) DBE program.⁴ Just as in the state and local government context, the national legislature must have a compelling governmental interest for the use of race, and the remedies adopted must be narrowly tailored to that evidence.⁵

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

3. *Adarand v. Peña*, 515 U.S. 200 (“*Adarand III*”) (1995).

4. 49 C.F.R. Part 26.

5. See, for example, *Croson*, 488 U.S. at 492-493; *Adarand III*, 515 U.S. 200, 227; see generally *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013).

Most federal courts have subjected gender preferences to “intermediate scrutiny”.⁶ Gender-based classifications must be supported by an “exceedingly persuasive justification” and be “substantially related to the objective”.⁷ The quantum of evidence necessary to satisfy intermediate scrutiny is less than that required to satisfy strict scrutiny. The Ninth Circuit requires that gender-based classifications be supported by “sufficient probative evidence” and “exceedingly persuasive justification” and be “substantially related to the objective”.⁸ However, some appellate courts have applied strict scrutiny to the gender-based presumption of social disadvantage in reviewing the constitutionality of the DBE program⁹ or held that the results would be the same under strict scrutiny.¹⁰

To comply with *Adarand*, Congress reviewed and revised the DBE program statute¹¹ and regulations¹² for federal-aid contracts in the transportation industry. The program governs the Port’s receipt of federal funds from the FAA. To date, every court that has considered the issue has found the regulations to be constitutional on their face.¹³ These cases provide important guidance to the Port about how to narrowly tailor its DBE program.

All courts have held that Congress had strong evidence of widespread racial discrimination in the construction industry. The Ninth Circuit held that “[i]n light of the substantial body of statistical and anecdotal material considered at the time of TEA-21’s enactment, Congress had a strong basis in evidence for concluding that, in at least some parts of the country, discrimination within the transportation contracting industry hinders minorities’ ability to compete for federally funded contracts.” Relevant evidence before Congress included:

- Disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms;

6. See, for example, *Builders Ass’n of Greater Chicago v. County of Cook, Chicago*, 256 F.3d 642 (7th Cir. 2001).
7. Cf. *United States v. Virginia*, 518 U.S. 515, 532 n.6 (1996).
8. *Western States Paving, Inc. v. Washington Department of Transportation*, 407 F.3d 983, 998 (9th Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006).
9. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 720 (7th Cir. 2007) (“*Northern Contracting III*”).
10. *Western States Paving Co., Inc. v. Washington State Department of Transportation*, 2013 W.L.1607239 at *13 fn.6 (9th Cir. 2005).
11. See the *Transportation Equity Act for the 21st Century* (“TEA-21”), Pub. L. No. 105-178 (b)(1), June 22, 1998, 112 Stat. 107, 113.
12. 49 C.F.R. Part 26.
13. See, for example, *Midwest Fence Corp. v. US Department of Transportation, Illinois Department of Transportation, Illinois State Toll Highway Authority DOT*, 840 F.3d 932 (7th Cir. 2016) (“*Midwest Fence II*”); *Northern Contracting; Associated General Contractors of America, San Diego Chapter, Inc., v. California Department of Transportation*, 713 F.3d 1187, 1198 (9th Cir. 2013); *Western States Paving*, 407 F.3d at 994; *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 2000) (“*Adarand VII*”), *cert. granted then dismissed as improvidently granted*, 532 U.S. 941, 534 U.S. 103 (2001); *M.K. Weeden Construction v. State of Montana*, 2013 WL 4774517 (D. Mont.) (September 4, 2013).

- Disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners;
- The large and rapid decline in minorities' participation in the construction industry when affirmative action programs were struck down or abandoned; and
- Various types of overt and institutional discrimination by prime contractors, trade unions, business networks, suppliers, and sureties against minority contractors.¹⁴

Next, the regulations were facially narrowly tailored. Part 26 provides that:

- The overall goal must be based upon demonstrable evidence of the number of DBEs ready, willing, and able to participate on the recipient's federally assisted contracts.
- The goal may be adjusted to reflect the availability of DBEs "but for" the effects of the DBE program and of discrimination.
- The recipient must meet the maximum feasible portion of the goal through race-neutral measures, as well as estimate that portion of the goal it predicts will be met through such measures.
- The use of quotas and set asides is limited to only those situations where there is no other remedy.
- The goals are to be adjusted during the year to remain narrowly tailored.
- Absent bad faith administration of the program, a recipient cannot be penalized for not meeting its goal.
- Exemptions or waivers from program requirements are available.
- The presumption of social disadvantage for racial and ethnic minorities and women is rebuttable, "wealthy minority owners and wealthy minority firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage."¹⁵

These elements have led the courts to conclude that the program is narrowly tailored on its face. First, the regulations place strong emphasis on the use of race-neutral measures that assist all small firms to achieve minority and woman participation. A recipient must also estimate the portion of the goal it predicts will be

14. *Western States Pacing*, 407 F.3d at 992-93.

15. *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d. 964, 973 (8th Cir. 2003), *cert. denied*, 541 U.S. 1041 (2004).

met through race-neutral and race-conscious contract goals¹⁶. This requirement has been central to the holdings that the DBE regulations meet narrow tailoring¹⁷. Further, a recipient may terminate race-conscious contract goals if it meets its annual overall goal through race-neutral means for two consecutive years. Finally, the authorizing legislation is subject to Congressional reauthorization that will ensure periodic public debate.

In 2015 and 2020, Congress reauthorized the DBE program based on extensive testimony and reports and again concluded that the evidence before it “provided a strong basis” to continue the program.¹⁸ The DBE program regulations were recently amended, effective May 9, 2024.

B. Port of Seattle’s Diverse Business Programs

1. U.S. Department of Transportation’s Disadvantaged Business Enterprise Program

As a recipient of USDOT funds through the FAA, the Port is required as a condition of receipt to implement a DBE program in compliance with 49 C.F.R. Part 26. The Port administers its DBE Program Plan based upon the samples and guidance from USDOT. This Plan has been approved by the FAA.

a. DBE Program Administration

The Port’s DBE Program is administered by the Diversity in Contracting (“DC”) Department within the Economic Development Division. The Diversity in Contracting Director serves as the Disadvantaged Business Enterprise Liaison Officer (“DBELO”) and is responsible for implementing all aspects of the DBE Program. The DBELO has direct, independent access to the Port’s Executive Director.

b. DBE Program Eligibility and Certification

The Port is a non-certifying member of the Washington Unified Certification Program (“UCP”). To participate in the Port’s DBE projects, firms must be certified DBE by the State of Washington’s Office of Minority and Woman Business Enterprise (“OMWBE”). DBEs must meet the requirements of 49 C.F.R. Part 26, including the business size and personal net

16. 49 C.F.R. §26.45(f)(3).

17. *See, e.g., Sherbrooke*, 345 F.3d. at 973.

18. Fixing America’s Surface Transportation Act (Fast Act), Pub. L. No. 114-94, Section 1101 (b), 129 Stat. 1323-1325 (23 U.S.C. 101 *et. seq.*) (2015).

worth limits. OMWBE maintains the Washington State UCP Directory of certified DBE firms. The Directory is posted online.

c. FAA DBE Triennial Goals

For federal fiscal years (“FFYs”) 2023 through 2025, the Port’s established FAA goal is 7.2%, with 100% achieved through race-conscious means. As discussed in Chapters IV and VII, the results of the availability analysis can be used to set the Port’s future triennial and contract or project goals.

d. Contract Goal Setting for FAA Funded Contracts

As required by 49 C.F.R. §26.51, the Port sets contract goals to meet any portion of the overall DBE goal not projected to be met through race-neutral measures. Federally funded contracts are reviewed to determine whether they provide subcontracting opportunities for participation by DBE firms. To calculate overall project goals, the Port uses the availability estimates from its CHA 2019 Disparity Study of ready, willing and able DBEs to perform the type(s) of sub-contractable work.

e. Pre-Award Procedures

When a DBE contract goal is set on a solicitation, a bidder must meet the Port’s DBE participation requirements by either meeting the goal or demonstrating its Good Faith Efforts (“GFE”) to do so, as provided in 49 C.F.R. §26.53 and Appendix A to the regulations. Bidders are required to submit information on the *Disadvantaged Business Enterprise (DBE) Proposal Form* listing certified DBE firms, DBE joint venture or partner firms and the type and dollar value of the work each will perform on the contract. Only firms which are DBE certified at the time of award may be counted towards meeting participation goal. A bidder not meeting the goal must document its GFE to do on *Documentation of Good Faith Efforts Form*. Failure to meet the goal without adequate demonstration of GFE can result in the bid or proposal being considered non-responsive.

Bidders may request in writing a reconsideration of a determination of non-responsiveness within five days. The reconsideration results are not administratively appealable to USDOT.

As part of the bid or proposal, prime contractors must agree to the civil rights Title VI Assurances in every subcontract, including procurements of materials and leases of equipment, unless exempt by Federal laws, regulation or directive.

f. Post Award Procedures

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts.

Prime contractors must show good cause and obtain the Port's prior written approval for terminating a DBE subcontractor. Prime contractors are required to make GFE to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE.

The Port conducts regular on-site reviews to ensure that DBEs are performing a Commercially Useful Function ("CUF"). A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. The Port actively monitors DBE participation by maintaining a running tally of actual DBE attainments, including comparing these attainments to commitments.

The Port enforces prompt payment provisions. Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 10 days from the prime contractor's receipt of payment from the Port.

g. Small Business Enterprise Element

To meet the requirement in §26.39, Small Business Participation, the Port is required to establish race-neutral small business element. The Port has implemented several initiatives designed to foster participation of small businesses. These include reducing barriers created by bidding and contract requirement; reducing contract size; encouraging prime contractors to subcontract work they would otherwise perform themselves; performing outreach; and offering technical assistance.

h. Record Keeping

The Port maintains a Bidders List that encompasses information about all DBE and non-DBE firms that bid on FAA assisted contracts.

The Port requires prime contractors to maintain contract records for a minimum of three years, unless otherwise provided by applicable record retention requirements or the Port's financial assistance agreement, whichever is longer. These records are available for inspection upon request by any authorized representative of the Port or USDOT.

2. Port of Seattle's Women- and Minority Business Enterprise Program

In January 2018, the Port Commission adopted Resolution 3737, §3, 2018, to establish a Diversity and Contracting Policy Directive to increase woman and minority business opportunities. The policy applies to all non-federally funded contracts and other activities at the Port, including construction and consulting contracts, purchased goods, and services. The Resolution's objectives are supported by findings from a 2014 Disparity Study showing disparities in WMBE participation in Port contracting activities.

The Resolution directed the Port's Executive Director to develop initiatives and policies to achieve the Century Agenda goal of tripling the number of WMBE firms that contract with the Port and increase to 15% the percentage of dollars spent on WMBE contracts within five years of their implementation.

DC is responsible for all aspects of managing and implementing the WMBE Program. These responsibilities include coordinating Port-wide and divisional aspirational goal setting and inclusion plans; monitoring attainment of goals; interdepartmental WMBE plan development; contract goal setting; WMBE outreach; and compliance and program reporting.

a. Small Business Elements

To assist small businesses, the Port of Seattle participates in the statewide Small Works Roster ("SWR") for public works projects. The program was amended in 2023 by the Washington legislature to standardize direct contracting with certified small businesses, eliminate small contractor fees, reduce time for small and diverse businesses seeking work, facilitate payment and performance bond sureties and establish credit history. The amended program seeks to encourage usage of different contractors, add features to inclusion plans for alternative public works projects and reduce confusion between the state and federal DBE certification programs.

There is no race or gender preference in the definition, but contractors must indicate if they are a woman-, minority-, or veteran-owned and/or small business. To remain on the list and receive contract awards, contractors must keep current records on file with the Port.

b. Program Eligibility

A business may self-certify to be eligible to participate in the Port's WMBE Program. A "Woman or Minority Business" means a business that is at least 51% owned by a woman and/or minority individual or group, including, but not limited to, African Americans, Native Americans, Asians, and Hispanics. There is no size or personal net worth limit.

The Port also accepts OMWBE M/WBE certifications.

c. Port-wide WMBE Aspirational Goals

Each Port Division and Department is required to set an annual aspirational goal for non-construction spending. The 2024 overall, Port-wide WMBE aspirational goal for all non-construction projects is 15.0%. The 2024 goal set by the DC Department for public works and construction projects is 13.0%.

d. Project WMBE Goals and Inclusion Plans

Port departments and divisions are encouraged to take into consideration diverse firms for small works construction projects with values under \$350,000 and for consulting projects less than \$200,000 and goods and services contracts under \$150,000.

Aspirational project goals are set by DC based on the project's scope, whether the project includes subcontracting opportunities and the available WMBEs in that scope. WMBE Inclusion Plans are required for all Port contracts where an aspirational contract goal is set. The Inclusion Plan requires several forms that are due at bid and final proposal time. The required forms vary according to industry, but all require the prime contractor to provide information on WMBEs that will be used on the project and documentation of GFE if the aspirational contract goal is not met.

The Port only counts work towards the goal if the work is performed by a WMBE. If the WMBE is performing as the prime, the portion of the contract value applied to the goal is the difference between the contract sum and the sum of all non-WMBE sub-contracts. The WMBE must perform a CUF to be counted towards a contract goal¹⁹.

For design build projects, past WMBE efforts are also taken into consideration in the selection process.

The Port sets WMBE aspirational goals on Job Order Contracts ("JOCs"). JOCs have a contract limit of \$500,000 and require that at least 90% of the work be subcontracted.

e. Pre-award Process

The Port regularly conducts pre-bid conferences to provide an overview of the project's scope and instructions and requirements.

19. A commercially useful function includes, but is not limited to, the performance of a distinct element of work by a firm, which has the skill and experience as well as the responsibility of performing, managing, and supervising the work using its own work force and resources.

WMBE commitments become a condition of the contract.

3. Reporting and Contract Compliance Requirements

The Port applies contract monitoring, substitution and enforcement policies and procedures to locally funded contracts similar to those it applies to its federally assisted contracts. All Port contractors/consultants with payments to subs are required to submit Monthly Amounts Paid (“MAP”) reports showing total amounts they paid to their subcontractors. Reports are submitted through the Port’s CDS portal.

To monitor compliance with WMBE commitments, DC tracks the prime contractor’s actual spend and percentage of WMBE spend against its WMBE contractual commitment throughout the life of the project. In addition to monitoring MAP reports, the team often conducts monthly and quarterly check-in meetings.

4. Outreach, Technical Assistance and Vendor Training

The Port communicates important information about upcoming contracting opportunities to DBEs and WMBEs through a wide variety of media. Notifications are automatically delivered to small and diverse businesses through VendorConnect, Constant Contact, Outlook email and direct notifications. DC publishes an online newsletter that highlights information important to contracting with the Port. All major construction projects are advertised in the Daily Journal of Commerce.

VendorConnect and the Port’s website provide access to a database of upcoming solicitations and procurement opportunities; the WMBE and DBE databases; copies of project manuals and drawings; access to registration for the SWR; and prime contractor and subcontractor and Port staff contact information. The Port’s website posts links to technical assistance, contracting resources for construction, professional services and goods and services and networking opportunities through local community-based organizations and industry groups. The website also provides links to contracting opportunities available at other local government agencies.

The Port partners with community and industry groups and other local government agencies to sponsor outreach, networking and informational sessions to encourage participation in the Port’s Programs.

PortGen was launched in 2016. A primary goal of PortGen events is to enable WMBEs to create and maintain relationships with primes and other subcontractors that will facilitate collaboration on projects. The Port has sponsored at least ten major events since 2019, such as its Aviation Industry Day and Planes,

Trains and Automobiles, to publicize upcoming Port projects and offering networking opportunities. Since 2019, the Port has conducted over 25 PortGen training and educational webinars or online training events on working with the Port and on specific projects. In 2020, the Port introduced the Advanced PortGen training program, which includes a two workshop series to equip WMBEs with resources to obtain their first government contract. In 2021, the Port introduced the Business Accelerator mentorship program under the PortGen umbrella, an application-based cohort program to assist businesses with government contracting experience to expand capacity and grow.

5. Staff Training

DC conducts internal department training. “Team Diversity in Contracting” provides information about the DBE and WMBE programs and strategies for increasing WMBE utilization. There is also an internal resources page to support department and division WMBE inclusion efforts.

DC staff regularly attend the American Contract Compliance Association’s annual National Training Institute, where they receive extensive training on national best practices for M/W/DBE programs. Staff routinely participate in FAA and the Washington Department of Transportation’s Civil Rights trainings that provide DBE Program compliance updates. Other trainings in which Port DC staff regularly participate are offered through the National Minority Supplier Development Council. These trainings offer instruction on resources and initiatives available for advancing minority businesses.

6. Business Owner and Stakeholder Interviews

To explore the impacts of the Port’s program, we interviewed 54 individuals about their experiences and solicited their suggestions for changes. We also collected written comments.

Additional Support and Training: Several interviewees supported the adoption of a mentor-protégé program. Another request was for a bonding support and financial assistance program.

Meeting DBE and WMBE Goals: Most prime contractors and consultants were able to meet the Port’s contract goals. However, more specialized scopes presented challenges to several bidders. The uncertainty about the scopes that will be needed for on-call or JOCs can make it difficult to meet contract goals.

A few large contractors repeatedly used the same certified firms. The capacity of certified firms was a concern for some prime vendors.

The Port’s administrative requirements were stated by several large firms to be a barrier to DBE/WMBE utilization.

The Port could do more to help small firms, according to a number of larger firms. Several bidders requested assistance with expanding the pool of certified firms from which to choose. A few large consultants stated that the goals add unnecessary costs to projects.

Monitoring and Enforcement: Several certified consultants reported that the Port needs more vigorous monitoring of equity commitments, especially on non-FAA funded projects.

Payments: Most firms reported they were paid reasonably promptly by the Port. A few other participants stated that they had problems being paid promptly. The processing of change order was especially problematic for small firms. One proposed solution was for the Port to develop a financing program. Another suggested approach was partial payments.

Consultant Billing Rates: One very common complaint from DBE/WMBE and non-certified firms was that the Port's policy for billing setting rates for engineering firms was cumbersome, burdensome and often unfair.

C. Utilization, Availability and Disparity Analyses of the Port's Contracts

We analyzed data from the Port's Federal Aviation Administration ("FAA") funded contracts and locally funded contracts for fiscal years 2019 through 2022. We received contract records from the Port that contained 1,068 contracts, worth \$746,906,106. To conduct the analysis, we constructed all the fields necessary where they were missing in the Port's contract records (*e.g.*, industry type; zip codes; six-digit North American Industry Classification System ("NAICS") codes of prime contractors and subcontractors; payments, race; gender; etc.). These results were used to create the overall Final Contract Data File ("FCDF") and one FCDF for each funding source.

The Port's geographic market area for FAA funded contracts and locally-funded contracts was found to consist of the three counties that make up the Seattle metropolitan area: King County, Pierce County and Snohomish County.²⁰ For the remainder of this Report, we will refer to the geographic market as the Seattle Metropolitan Statistical Area ("MSA"). Table 1-1 presents data on the share of FCDF contracts contained in each funding source's geographic market.

20. For locally funded contracts, the three county Seattle metropolitan area captured 69.4% of the FCDF. One global firm - without an office in the Seattle metro area - captured 23.4% with one contract. To exclude this contract would distort the true picture of the Port's locally funded spending, so while this analysis uses the three-county Seattle metropolitan as the geographic market, we include that one contract in the study.

Table 1-1: Summary of Findings: The Geographic Market Share of Final Contract Data File (by funding source)

Funding Source	Seattle MSA Share of FCDF
Locally-funded	69.4%
FAA	91.3%

Source: CHA analysis of City of Seattle data

CHA processed the data to determine the share of contract dollars received by different demographic groups (utilization); each group's availability weighted by each NAICS code's share of overall Port spending (weighted availability); and the disparity between the utilization and weighted availability (disparity ratio). Tables 1-2 and 1-3 present these data.

Table 1-2: Summary of Findings: FAA Funded Contracts (169 Contracts)

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE
Utilization	0.3%	12.3%	2.8%	0.4%	5.8%	21.6%	78.4%
Weighted Availability	2.6%	3.2%	2.3%	2.7%	6.5%	17.4%	82.6%
Disparity Ratio	10.5% [‡]	379.5%	118.5%	14.8% [‡]	90.2%	124.5%***	94.9%***

Source: CHA analysis of Port of Seattle data

[‡] Indicates substantive significance

*** Statistically significant at the 0.001 level

Table 1-3: Summary of Findings: Locally Funded Contracts (899 Contracts)

	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non-WMBE
Utilization	0.2%	0.8%	4.0%	1.0%	4.5%	10.5%	89.5%
Weighted Availability	3.1%	2.0%	2.0%	1.8%	4.9%	13.8%	86.2%
Disparity Ratio	6.5% [‡]	40.4% ^{‡***}	199.6%***	57.0% [‡]	91.0% ^{‡***}	76.2% ^{‡***}	103.8%***

Source: CHA analysis of Port of Seattle data

[‡] Indicates substantive significance

*** Statistically significant at the 0.001 level

The federal courts have held that disparity results must be analyzed to determine whether the results are "significant". There are two distinct methods to measure a

result's significance. First, a "large" or "substantively significant" disparity is commonly defined by courts as utilization that is equal to or less than 80% of the availability measure. A substantively significant disparity supports the inference that the result may be caused by the disparate impacts of discrimination.²¹ Second, a statistically significant disparity means that an outcome is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from chance alone.²² A more in-depth discussion of statistical significance is provided in Chapter IV and Appendix C.

Overall, CHA examined the Port's utilization of D/WMBEs compared to non-D/WMBEs and provided estimates of the availability of D/WMBEs and non-D/WMBEs to perform the construction and construction-related services utilized by the Port in its geographic market area. CHA conducted this analysis separately for its FAA funded and locally funded contracts.

In addition, CHA tested these outcomes for whether there are significant disparities in the results of utilization compared to availability. We also analyzed the contract data comparing the NAICS code concentration of D/WMBEs to non-D/WMBEs on the Port's contracts. We found that, in general, DBEs received contracting opportunities starkly different from non-DBEs. The NAICS codes that provided most of the contract dollars received by D/WMBEs were different from the codes where the Port spent its funds and those codes that generated the most funds for non-D/WMBEs generated few funds to D/WMBEs.

D. Analysis of Disparities in the Port of Seattle's Marketplace

Evidence of the experiences of minority- and woman-owned businesses outside of the Port's contracting equity programs is relevant and probative of the likely results of the Port's using only race- and gender-neutral measures. To examine the outcomes throughout the Port's market area, we explored two Census Bureau datasets and the government and academic literature relevant to how discrimination in the overall Puget Sound industry market and throughout the wider economy affects the ability of minorities and women to fairly and fully engage in the Port's prime contract and subcontract opportunities.

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21. See U.S. Equal Employment Opportunity Commission regulation, 29 C.F.R. §1607.4(D) ("A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.").
 22. A chi-square test – examining if the utilization rate was different from the weighted availability – was used to determine the statistical significance of the disparity ratio.

We analyzed the following data and literature:

- The Census Bureau’s American Community Survey from 2018-2022 for the Seattle MSA. This rich data set establishes with greater certainty any causal links between race, gender and economic outcomes. We employed a multiple regression statistical technique to examine the rates at which minorities and women form firms. In general, we found that even after considering potential mitigating factors, business formation rates by Blacks, Hispanics and White women are lower compared to similar White males. The data indicate that non-Whites and White women receive lower wages, and Blacks and White women receive lower business earnings after controlling for possible explanatory factors. These analyses support the conclusion that barriers to business success do affect non-Whites and White women entrepreneurs.
- State of Washington²³ Industry Data from the Census Bureau’s 2018 Annual Business Survey.²⁴ This dataset indicated large disparities between M/WBEs firms and non-M/WBEs, when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), and the payroll of employer firms.
- Surveys and literature on barriers to access to commercial credit and the development of human capital. These sources further establish that minorities continue to face constraints on their entrepreneurial success based on race. These constraints negatively impact the ability of firms to form, to grow, and to succeed. These results support the conclusions drawn from the anecdotal interviews and analysis of the Port’s contract data that minority entrepreneurs face obstacles to achieving success on contracts outside of business equity programs.

All three types of evidence have been found by the courts to be relevant and probative of whether a government will be a passive participant in overall marketplace discrimination without some type of affirmative intervention.

E. Qualitative Evidence of Race and Gender Barriers in the Port’s Marketplace

In addition to quantitative data, anecdotal evidence of firms’ marketplace experiences is relevant to evaluating whether the effects of current or past discrimination continue to impede opportunities for DBEs and WMBEs such that narrowly tailored race-conscious contract goals are needed to ensure equal opportunities to compete for Port prime contracts and associated subcontracts. To explore this

23. The ABS data are not disaggregated at the MSA level.

24. The 2017 data are the most recent data available.

type of anecdotal evidence, we interviewed 54 participants in four small group interviews. We also received written comments.

Many minority and woman owners reported that while progress has been made in integrating their firms into public and private sector contracting opportunities through programs like the Port's, significant barriers on the basis of race and/or gender remain.

- Many minority or woman owners had experienced stereotypes and negative assumptions about their abilities.
- Some participants stated that there was often a stigma to being a certified business.
- Some women reported experiencing sex discrimination in the construction and consulting industries.
- Several woman owners reported that work dried up when White women were no longer found to be socially and economically disadvantaged by the Washington State Department of Transportation pursuant to a disparity study. They were no longer "underutilized" DBEs and therefore their dollars could not be credited towards meeting DBE contract goals.
- Some DBEs felt that larger, majority-owned firms had special access to information about upcoming opportunities.
- Networking with contracting decision makers was challenging for some WMBEs.
- The Port's contracting programs were seen by many DBEs/WMBEs as still necessary to ensure fair opportunities to compete.

II. LEGAL STANDARDS FOR CONTRACTING EQUITY PROGRAMS

A. Summary of Constitutional Equal Protection Standards

To be effective, enforceable, and legally defensible, a race-based affirmative action program for public sector contracts, regardless of funding source, must meet the judicial test of constitutional “strict scrutiny”. Strict scrutiny is the highest level of judicial review.²⁵ Strict scrutiny analysis is comprised of two prongs:

1. The government must establish its “compelling governmental interest” in remediating race discrimination by current “strong evidence” of the persistence of discrimination. Such evidence may consist of the entity’s “passive participation” in a system of racial exclusion.
2. Any remedies adopted must be “narrowly tailored” to that discrimination; the program must be directed at the types and depth of discrimination identified.²⁶

The compelling governmental interest prong has been met through two types of proof:

1. Statistical evidence of the underutilization of minority or woman firms by the agency and/or throughout the agency’s geographic and industry market area compared to their availability in the market area. These are disparity indices, comparable to the type of “disparate impact” analysis used in employment discrimination cases.
2. Anecdotal evidence of race- or gender-based barriers to the full and fair participation of minority- and woman-owned firms in the market area or in seeking contracts with the agency. Anecdotal data can consist of interviews, surveys, public hearings, academic literature, judicial decisions, legislative reports, and other information.

25. Strict scrutiny of remedial race-conscious programs is used by courts to evaluate governmental action that classifies persons on a “suspect” basis, such as race. It is also used in actions purported to infringe upon fundamental rights. Legal scholars frequently note that strict scrutiny constitutes the most rigorous form of judicial review. *See, for example*, Richard H. Fallon, Jr., *Strict Judicial Scrutiny*, 54 U.C.L.A. Law Review 1267, 1273 (2007).

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

The narrow tailoring prong has been met by satisfying five factors to ensure that the remedy “fits” the evidence:

1. The necessity of relief;²⁷
2. The efficacy of race-neutral remedies at overcoming identified discrimination;²⁸
3. The flexibility and duration of the relief, including the availability of waiver provisions;²⁹
4. The relationship of numerical goals to the relevant market;³⁰ and
5. The impact of the relief on the rights of third parties.³¹

In *Adarand v. Peña*,³² the United States Supreme Court extended the analysis of strict scrutiny to race-based federal enactments such as the United States Department of Transportation (“USDOT”) Disadvantaged Business Enterprise (“DBE”) program for federally assisted transportation contracts.³³ Just as in the local government context, the national legislature must have a compelling governmental interest for the use of race, and the remedies adopted must be narrowly tailored to that evidence.³⁴ Most federal courts have subjected preferences for Woman-Owned Business Enterprises (“WBEs”) to “intermediate scrutiny”.³⁵ The quantum of evidence necessary to satisfy intermediate scrutiny is less than that required to satisfy strict scrutiny. The Ninth Circuit requires that gender-based classifications be supported by “sufficient probative evidence” and “exceedingly persuasive justification” and be “substantially related to the objective”.³⁶ However, appellate courts have applied strict scrutiny to the gender-based presumption of social dis-

27. *United States v. Paradise*, 480 U.S. 149, 171 (1987).

28. *Id.*

29. *Id.*

30. *Croson*, 488 U.S. at 506.

31. *Id.*

32. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995) (“*Adarand III*”).

33. 49 C.F.R. Part 26 and Part 23.

34. See, for example, *Croson*, 488 U.S. at 492-493; *Adarand III*, 515 U.S. 200, 227; see, generally *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013).

35. See, e.g., *Associated Utility Contractors of Maryland v. Mayor of Baltimore*, 83 F. Supp. 2d 613, 620 (D. Md. 2000); *W.H. Scott Construction Co., Inc. v. City of Jackson, Mississippi*, 199 F.3d 206, 215 (5th Cir. 1999); *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895 (11th Cir. 1997) (“*Engineering Contractors II*”); *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1519 (10th Cir. 1994) (“*Concrete Works II*”); *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990, 1009-1011 (3rd Cir. 1993) (“*Philadelphia II*”); *Coral Construction Co. v. King County*, 941 F.2d 910, 930-931 (9th Cir. 1991).

36. *Western States Paving, Inc. v. Washington Department of Transportation*, 407 F.3d 983, 998 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006).

advantage in reviewing the constitutionality of the DBE program³⁷ or held that the results would be the same under strict scrutiny.³⁸

Classifications not based upon a suspect class (race, ethnicity, religion, national origin or gender) are subject to the lesser standard of review called “rational basis” scrutiny.³⁹ The Ninth Circuit Court of Appeals applies intermediate scrutiny to gender conscious programs.⁴⁰ In contrast to strict scrutiny and to intermediate scrutiny, rational basis means the governmental action or statutory classification must be “rationally related” to a “legitimate” government interest.⁴¹ The courts have held there are no equal protection implications under the Fourteenth Amendment of the United States Constitution for groups not subject to systemic discrimination.⁴²

Unlike most legal challenges, the defendant bears the initial burden of producing “strong evidence” in support of its race-conscious program.⁴³ The plaintiff must then proffer evidence to rebut the government’s case, and bears the ultimate burden of production and persuasion that the affirmative action program is unconstitutional.⁴⁴ “[W]hen the proponent of an affirmative action plan produces sufficient evidence to support an inference of discrimination, the plaintiff must rebut that inference in order to prevail.”⁴⁵

A plaintiff “cannot meet its burden of proof through conjecture and unsupported criticism of [the government’s] evidence.”⁴⁶ To successfully refute the government’s case, a plaintiff must introduce “credible, particularized evidence” that rebuts the government’s showing of a strong basis in evidence.⁴⁷ For example, in the challenge to the Minnesota and Nebraska DBE programs, “plaintiffs presented evidence that the data was susceptible to multiple interpretations, but they failed

37. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 720 (7th Cir. 2007), *cert. denied*, 15-1827, June 26, 2017 (“*Northern Contracting III*”).

38. *Western States Paving*, 407 F.3d at 998.

39. *See, generally, Coral Construction*, 941 F. 2d 910; *Equal. Found. v. City of Cincinnati*, 128 F. 3d 289 (6th Cir. 1997).

40. *See, for example, Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et. al.*, 713 F.3d at 1195 (9th Cir. 2013); *Western States Paving*, 407 F.3d at 990 n.6.

41. *Heller v. Doe*, 509 U.S. 312, 320 (1993).

42. *United States v. Carolene Products Co.*, 304 U.S. 144 (1938).

43. *Aiken v. City of Memphis*, 37 F.3d 1155, 1162 (6th Cir. 1994).

44. *W.H. Scott Construction*, 199 F.3d at 219; *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1166 (10th Cir. 2000) (“*Adarand VII*”), 532 U.S. 941, *cert. granted then dismissed as improvidently granted*, 534 U.S. 103 (2001).

45. *Engineering Contractors II*, 122 F.3d at 916.

46. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 989 (10th Cir. 2003) (“*Concrete Works IV*”), *cert. denied*, 540 U.S. 1027 (2003) (10th Cir. 2003).

47. *H.B. Rowe Co., Inc. v. Tippet*, 615 F.3d 233 (4th Cir. 2010); *Midwest Fence Corp. v. U.S. Department of Transportation, Illinois Department of Transportation, Illinois State Toll Highway Authority*, 84 F. Supp. 3d 705 (N.D. Ill. 2015), *affirmed*, 840 F.3d 932 (7th Cir. 2016) (“*Midwest Fence II*”).

to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to, and participation in, federally assisted highway contracts. Thus, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.”⁴⁸ When the statistical information is sufficient to support the inference of discrimination, the plaintiff must prove that the statistics are flawed.⁴⁹ A plaintiff cannot rest upon general criticisms of studies or other related evidence; it must meet its burden that the government’s proof is inadequate to meet strict scrutiny, rendering the legislation or government program illegal.⁵⁰

To meet strict scrutiny, studies have been conducted to gather the statistical and anecdotal evidence necessary to support the use of race- and gender-conscious measures to combat discrimination. These are commonly referred to as “disparity studies” because they analyze any disparities between the opportunities and experiences of minority- and woman-owned firms and their actual utilization compared to White male-owned businesses. High quality studies also examine the elements of the agency’s program to determine whether it is sufficiently narrowly tailored. The following is a detailed discussion of the legal parameters and the requirements for conducting studies to support defensible programs.

B. Elements of Strict Scrutiny

In its landmark decision in *City of Richmond v. J.A. Croson Co.*, the United States Supreme Court established the constitutional contours of permissible race-based public contracting programs. Reversing long established Equal Protection jurisprudence, the Court, for the first time, extended the highest level of judicial examination from measures designed to limit the rights and opportunities of minorities to legislation that inures to the benefit of these victims of historic discrimination. Strict scrutiny requires that a government entity prove both its “compelling governmental interest” in remediating identified discrimination based upon “strong evidence” and that the measures adopted to remedy that discrimination are “narrowly tailored” to that evidence. However benign the government’s motive, race is always so suspect a classification that its use must pass the highest constitutional test of “strict scrutiny”.

The Court struck down the City of Richmond’s Minority Business Enterprise Plan (“Plan”) because it failed to satisfy the strict scrutiny analysis applied to “race-

48. *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d 964, 970 (8th Cir. 2003), *cert. denied*, 541 U.S. 1041 (2004).

49. *Coral Construction*, 941 F. 2d at 921; *Engineering Contractors II*, 122 F.3d at 916.

50. *Adarand VII*, 228 F.3d at 1166; *Engineering Contractors II*, 122 F.3d at 916; *Concrete Works II*, 36 F.3d at 1522-1523; *Webster v. Fulton County, Georgia*, 51 F.Supp.2d 1354, 1364 (N.D. Ga. 1999), *aff’d per curiam*, 218 F. 3d 1267 (11th Cir. 2000); *see also Wygant v. Jackson Board of Education*, 476 U.S. 267, 277-278 (1986).

based” government programs. The City’s “setaside” Plan required prime contractors awarded City construction contracts to subcontract at least 30% of the project to Minority-Owned Business Enterprises (“MBEs”). A business located anywhere in the nation was eligible to participate so long as it was at least 51% owned and controlled by minority citizens or lawfully-admitted permanent residents.

The Plan was adopted following a public hearing during which no direct evidence was presented that the City had discriminated on the basis of race in contracts or that its prime contractors had discriminated against minority subcontractors. The only evidence before the City Council was: (a) Richmond’s population was 50% Black, yet less than one percent of its prime construction contracts had been awarded to minority businesses; (b) local contractors’ associations were virtually all White; (c) the City Attorney’s opinion that the Plan was constitutional; and (d) generalized statements describing widespread racial discrimination in the local, Virginia, and national construction industries.

In affirming the court of appeals’ determination that the Plan was unconstitutional, Justice Sandra Day O’Connor’s plurality opinion rejected the extreme positions that local governments either have *carte blanche* to enact race-based legislation or must prove their own active participation in discrimination:

[A] state or local subdivision...has the authority to eradicate the effects of private discrimination within its own legislative jurisdiction.... [Richmond] can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment...[I]f the City could show that it had essentially become a “passive participant” in a system of racial exclusion ...[it] could take affirmative steps to dismantle such a system.⁵¹

Strict scrutiny of race-based remedies is required to determine whether racial classifications are in fact motivated by notions of racial inferiority or blatant racial politics. This highest level of judicial review “smokes out” illegitimate uses of race by ensuring that the legislative body is pursuing an important enough goal to warrant use of a highly suspect tool.⁵² It also ensures that the means chosen “fit” this compelling goal so closely that there is little or no likelihood that the motive for the classification was illegitimate racial prejudice or stereotype. The Court made clear that strict scrutiny is designed to expose racial stigma; racial classifications are said to create racial hostility if they are based on notions of racial inferiority.

51. 488 U.S. at 491-92.

52. See also, *Grutter v. Bollinger*, 539 U.S. 306, 327 (2003) (“Not every decision influenced by race is equally objectionable, and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the reasons advanced by the governmental decisionmaker for the use of race in that particular context.”).

Richmond's evidence was found to be lacking in every respect.⁵³ The City could not rely upon the disparity between its utilization of MBE prime contractors and Richmond's minority population because not all minority persons would be qualified to perform construction projects; general population representation is irrelevant. No data were presented about the availability of MBEs in either the relevant market area or their utilization as subcontractors on City projects.

According to Justice O'Connor, the extremely low MBE membership in local contractors' associations could be explained by "societal" discrimination or perhaps Blacks' lack of interest in participating as business owners in the construction industry. To be relevant, the City would have to demonstrate statistical disparities between eligible MBEs and actual membership in trade or professional groups. Further, Richmond presented no evidence concerning enforcement of its own anti-discrimination ordinance. Finally, the City could not rely upon Congress' determination that there has been nationwide discrimination in the construction industry. Congress recognized that the scope of the problem varies from market to market, and, in any event, it was exercising its powers under Section Five of the Fourteenth Amendment of the United States Constitution. Local governments are further constrained by the Amendment's Equal Protection Clause.

In the case at hand, the City has not ascertained how many minority enterprises are present in the local construction market nor the level of their participation in City construction projects. The City points to no evidence that qualified minority contractors have been passed over for City contracts or subcontracts, either as a group or in any individual case. Under such circumstances, it is simply impossible to say that the City has demonstrated "a strong basis in evidence for its conclusion that remedial action was necessary."⁵⁴

This analysis was applied only to Blacks. The Court emphasized that there was "absolutely no evidence" of discrimination against other minorities. "The random inclusion of racial groups that, as a practical matter, may have never suffered from discrimination in the construction industry in Richmond, suggests that perhaps the City's purpose was not in fact to remedy past discrimination."⁵⁵

Having found that Richmond had not presented evidence in support of its compelling interest in remediating discrimination—the first prong of strict scrutiny—the Court made two observations about the narrowness of the remedy—the second prong of strict scrutiny. First, Richmond had not considered race-neutral means to increase MBE participation. Second, the 30% quota had no basis in evidence and

53. The City cited past discrimination and its desire to increase minority business participation in construction projects as the factors giving rise to the Plan.

54. *Croson*, 488 U.S. at 510.

55. *Id.*

was applied regardless of whether the individual MBE had suffered discrimination.⁵⁶ The Court noted that the City “does not even know how many MBEs in the relevant market are qualified to undertake prime or subcontracting work in public construction projects.”⁵⁷

Apparently recognizing that her opinion might be misconstrued to eliminate all race-conscious contracting efforts, Justice O’Connor closed with these admonitions:

Nothing we say today precludes a state or local entity from taking action to rectify the effects of identified discrimination within its jurisdiction. If the City of Richmond had evidence before it that non-minority contractors were systematically excluding minority businesses from subcontracting opportunities, it could take action to end the discriminatory exclusion. Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise. Under such circumstances, the City could act to dismantle the closed business system by taking appropriate measures against those who discriminate based on race or other illegitimate criteria. In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion... Moreover, evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.⁵⁸

While much has been written about *Croson*, it is worth stressing what evidence was, and was not, before the Court. First, Richmond presented *no* evidence regarding the availability of MBEs to perform as prime contractors or subcontractors and *no* evidence of the utilization of minority-owned subcontractors on City contracts.⁵⁹ Nor did Richmond attempt to link the remedy it imposed to any evidence specific to the program; it used the general population of the City rather than any measure of business availability.

Some commentators have taken this dearth of any particularized proof and argued that only the most particularized proof can suffice in all cases. They leap from the Court’s rejection of Richmond’s reliance on only the percentage of Blacks in the City’s population to a requirement that only firms that bid or have the

56. *See Grutter*, 529 U.S. at 336-337 (quotas are not permitted; race must be used in a flexible, non-mechanical way).

57. *Croson*, 488 U.S. at 502.

58. *Id.* at 509 (citations omitted).

59. *Id.* at 502.

“capacity” or “willingness” to bid on a particular contract at a particular time can be considered in determining whether discrimination against Black businesses infects the local economy.⁶⁰

This argument has been rejected explicitly by some courts. In denying the plaintiff’s summary judgment motion to enjoin the City of New York’s M/WBE construction ordinance, the court stated:

[I]t is important to remember what the *Croson* plurality opinion did and did not decide. The Richmond program, which the *Croson* Court struck down, was insufficient because it was based on a comparison of the minority population in its entirety in Richmond, Virginia (50%) with the number of contracts awarded to minority businesses (0.67%). There were no statistics presented regarding the number of minority-owned contractors in the Richmond area, *Croson*, 488 U.S. at 499, and the Supreme Court was concerned with the gross generality of the statistics used in justifying the Richmond program. There is no indication that the statistical analysis performed by [the consultant] in the present case, which does contain statistics regarding minority contractors in New York City, is not sufficient as a matter of law under *Croson*.⁶¹

Further, Richmond made no attempt to narrowly tailor a goal for the procurement at issue that reflected the reality of the project. Arbitrary quotas, and the unyielding application of those quotas, did not support the stated objective of ensuring equal access to City contracting opportunities. The *Croson* Court said nothing about the constitutionality of flexible goals based upon the availability of MBEs to perform the scopes of the contract in the government’s local market area. In contrast, the USDOT DBE program avoids these pitfalls. 49 C.F.R. Part 26 “provides for a flexible system of contracting goals that contrasts sharply with the rigid quotas invalidated in *Croson*”.

While strict scrutiny is designed to require clear articulation of the evidentiary basis for race-based decision-making and careful adoption of remedies to address discrimination, it is not, as Justice O’Connor stressed, an impossible test that no proof can meet. Strict scrutiny need not be “fatal in fact”.

60. See, for example, *Northern Contracting III*, 473 F.3d at 723.

61. *North Shore Concrete and Associates, Inc. v. City of New York*, 1998 U.S. Dist. Lexis 6785, *28-29 (E.D. N.Y. 1998); see also *Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo*, 981 F.2d 50, 61-62 (2nd Cir. 1992) (“*Croson* made only broad pronouncements concerning the findings necessary to support a state’s affirmative action plan”); cf. *Concrete Works II*, 36 F.3d at 1528 (City may rely on “data reflecting the number of MBEs and WBEs in the marketplace to defeat the challenger’s summary judgment motion”).

C. Strict Scrutiny as Applied to United States Department of Transportation Disadvantaged Business Enterprise Program

1. Elements of the DBE Program for USDOT Assisted Contracts

In *Adarand v. Peña*,⁶² the Supreme Court again overruled long settled law and extended the analysis of strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment to federal enactments. To comply with *Adarand*, Congress reviewed and revised the DBE program statute⁶³ and implemented regulations⁶⁴ for federal-aid contracts in the transportation industry. The program governs the Port's receipt of federal funds from the Federal Aviation Administration ("FAA").

To date, every court that has considered the issue has found the regulations to be constitutional on their face.⁶⁵ These cases provide important guidance to the Port about how to narrowly tailor its DBE program for FAA funded projects, as well as its initiatives for its state funded contracts.

All courts have held that Congress had strong evidence of widespread racial discrimination in the construction industry. The Ninth Circuit held that "[i]n light of the substantial body of statistical and anecdotal material considered at the time of TEA-21's enactment, Congress had a strong basis in evidence for concluding that, in at least some parts of the country, discrimination within the transportation contracting industry hinders minorities' ability to compete for federally funded contracts." Relevant evidence before Congress included:

- Disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms;
- Disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners;
- The large and rapid decline in minorities' participation in the construction industry when affirmative action programs were struck down or abandoned; and

62. *Adarand III*, 515 U.S. 200 (1995).

63. *See the Transportation Equity Act for the 21st Century* ("TEA-21"), Pub. L. No. 105-178 (b)(1), June 22, 1998, 112 Stat. 107, 113.

64. 49 C.F.R. Part 26.

65. *See, for example, Midwest Fence II*, 840 F.3d 932; *Northern Contracting III*, 473 F.3d 715; *AGC v. CalTrans*; *Western States*, 407 F.3d at 994; *Sherbrooke*; *Adarand VII*; *M.K. Weeden Construction v. State of Montana*, 2013 WL 4774517 (D. Mont.) (September 4, 2013).

- Various types of overt and institutional discrimination by prime contractors, trade unions, business networks, suppliers, and sureties against minority contractors.⁶⁶

Next, the regulations were facially narrowly tailored. Unlike the prior program,⁶⁷ the new Part 26 rule provides that:

- The overall goal must be based upon demonstrable evidence of the number of DBEs ready, willing, and able to participate on the recipient's federally assisted contracts.
- The goal may be adjusted to reflect the availability of DBEs "but for" the effects of the DBE program and of discrimination.
- The recipient must meet the maximum feasible portion of the goal through race-neutral measures as well as estimate that portion of the goal it predicts will be met through such measures.
- The use of quotas and set-asides is limited to only those situations where there is no other remedy.
- The goals are to be adjusted during the year to remain narrowly tailored.
- Absent bad faith administration of the program, a recipient cannot be penalized for not meeting its goal.
 - Periodic review is undertaken by Congress during surface transportation reauthorizations to ensure adequate durational limits.
 - The inclusion of provision allowing for individual determinations of social and economic disadvantage
 - Exemptions or waivers from program requirements are available.
 - The presumption of social disadvantage for racial and ethnic minorities and women is rebuttable, "wealthy minority owners and wealthy minority firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage."⁶⁸

These elements have led the courts to conclude that the program is narrowly tailored on its face. First, the regulations place strong emphasis on the use of race-neutral means that assist all small firms to achieve minority and woman participation. The Port must also estimate the portion of the goal it predicts

66. *Western States Paving*, 407 F.3d at 992-93.

67. The DBE program regulation in effect prior to March of 1999 was set forth in 49 C.F.R. Part 23.

68. *Sherbrooke*, 345 F.3d. at 973.

will be met through race-neutral and race-conscious measures (contract goals).⁶⁹ This requirement has been central to the holdings that the DBE regulations meet narrow tailoring.⁷⁰ Further, a recipient may terminate race-conscious contract goals if it meets its annual overall goal through race-neutral means for two consecutive years. Finally, the authorizing legislation is subject to Congressional reauthorization that will ensure periodic public debate.

In 2015, Congress reauthorized the DBE program and again concluded that the evidence before it “provided a strong basis” to continue the program.⁷¹ Relevant evidence before Congress fell into four main categories: (1) evidence of discriminatory barriers to the formation of qualified MBEs; (2) evidence of discriminatory barriers to the success of qualified MBEs; (3) evidence from local disparity studies; and (4) evidence from the results of removing affirmative action programs.⁷²

More recently, in the *Infrastructure Investment and Jobs Act (IIJA)*, also known as the *Bipartisan Infrastructure Law (BIL)*,⁷³ Congress received and reviewed testimony and voluminous documentation of race and gender discrimination from numerous sources, including congressional hearings and other investigative activities, disparity studies, scientific reports, reports issued by public and private agencies at every level of government, news reports, academic publications, reports of discrimination by organizations and individuals, and discrimination lawsuits. This evidence demonstrates that race- and gender-neutral efforts alone continue to be insufficient to address the nationwide problem. Congress found that despite the real improvements caused by the DBE program, minority- and woman-owned businesses across the country continue to confront serious and significant race- and gender-based obstacles to success on USDOT funded transportation contracts.⁷⁴

2. Narrowly Tailoring the Port of Seattle’s DBE Program

Agencies that receive FAA grants for planning or development and award prime contracts for projects that equal or exceed an accumulative amount of \$250,000.00 in a fiscal year must have a DBE program and must meet related

69. 49 C.F.R. §26.45(f)(3).

70. See, e.g., *Sherbrooke*, 345 F.3d. at 973.

71. *Fixing America’s Surface Transportation Act (Fast Act)*, Pub. L. No. 114-94, Section 1101 (b), 129 Stat. 1323-1325 (23 U.S.C. 101 et. seq.) (2015).

72. *Adarand VII*, 228 F.3d at 1167-1175; see also *Sherbrooke*, 345 F.3d at 969-970; *Western States*, 407 F.3d at 720-721, and Appendix – The Compelling Interest for Affirmative Action in Federal Procurement: A Preliminary Survey, 61 Fed. Reg. 26050 (May 23, 1996) (citing approximately thirty congressional hearings since 1980 concerning MBEs).

73. Pub. L. No. 117-58, 117th Congress (2021).

74. The Invest in America Act also addresses aspects of the COVID-19 pandemic and states that its incidents and effects on DBEs constitute another reason for continuing the USDOT DBE Program.

requirements as an expressed condition of receiving these funds. Therefore, the Port must establish a DBE program plan in conformance with 49 C.F.R. Part 26 (“Part 26”).

While the Ninth Circuit has agreed with the other Federal courts that have reviewed the DBE program and found that Part 26 and its authorizing statutes are constitutional, it has said that in order to be narrowly tailored, the race-conscious elements of a national program must be limited to those parts of the country where its race-based measures are demonstrably needed. The Ninth Circuit has moved beyond the DBE regulatory and legal framework and added the requirement that a recipient must provide additional evidence beyond the national data in the record upon which Congress relied in enacting the DBE program in order to narrowly tailor the agency’s DBE program. In *Western States Paving v. Washington State Department of Transportation*, the court was persuaded by USDOT’s argument that race-conscious goals can only be applied by recipients in those localities where the effects of discrimination are present. “As the United States correctly observed in its brief and during oral argument, it cannot be said that TEA-21 is a narrowly tailored remedial measure unless its application is limited to those states in which the effects of discrimination are actually present.”⁷⁵ In addition, each group sought to be included in race-conscious relief must have suffered discrimination in the agency’s market area.⁷⁶

WSDOT failed to introduce any evidence at the summary judgment stage to address the question whether “the effects of discrimination [are] present in the Department’s markets.”⁷⁷ The court was proffered no statistical or anecdotal data similar to that presented to the district court in the challenge to the Minnesota Department of Transportation’s DBE program.⁷⁸ “The record is therefore devoid of any evidence suggesting that minorities currently suffer--or have ever suffered--discrimination in the Washington transportation contracting industry. We must therefore conclude that Washington's application of TEA-21 conflicts with the guarantees of equal protection because the State's DBE program is not narrowly tailored to further Congress's remedial objective.”⁷⁹

As the result of the decision in *Western States Paving*, states in the Ninth Circuit must establish the presence of discrimination within their transportation contracting industry. Even if discrimination is present within the state, the pro-

75. 407 F.3d at 998.

76. 407 F.3d at 999.

77. 407 F.3d at 996.

78. See generally, *Sherbrooke* (Minnesota and Nebraska had conducted studies. CHA served as counsel to the Minnesota DOT report.).

79. 407 F.3d at 999.

gram is narrowly tailored only if it applies to those minority groups that have actually suffered discrimination.

In the wake of *Western States*, the Office of General Counsel of USDOT issued official institutional guidance in the form of *Questions and Answers Concerning Response to Western States Paving Co. v. Washington State Department of Transportation (USDOT Guidance)* for the benefit of states in the Ninth Circuit.⁸⁰ The USDOT Guidance calls for consideration of both statistical and anecdotal evidence and advises recipients to gather evidence of discrimination and its effects separately for each of the presumptively disadvantaged Part 26 groups. Recipients should consider, as they plan their studies, the evidence-gathering efforts that Federal courts have approved in the past and specifically points to the studies in the *Sherbrooke* and *Northern Contracting* cases.⁸¹ In conducting subsequent studies, research should include:

- Evidence for each racial and ethnic group and White women.
- An assessment of any anecdotal and complaint evidence of discrimination.
- Evidence of barriers in obtaining bonding and financing and disparities in business formation and earnings.
- Disparity analyses between DBE utilization by the agency and the availability of DBEs to perform in its markets.
- Comparison of DBE utilization on contracts with goals to utilization on contracts without goals.
- Evidence-gathering efforts that Federal courts have approved in the past.

Under Part 26, the Port must use a two-step goal-setting process to establish its overall triennial goal for its FAA funded contracts. The Port's overall triennial DBE goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on its USDOT assisted contracts. As discussed in the USDOT Guidance, a disparity study is the preferred method in the Ninth Circuit to determine the availability of DBEs to perform in the recipient's market.⁸²

Under Step 1, the Port must determine the base figure for the relative availability of DBEs. Under Step 2, the Port must examine all evidence available in

80. <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/western-states-paving-company-case-qa>.

81. *Sherbrooke*; *Northern Contracting III*.

82. An availability study using a methodology similar to that of this Report was recently upheld as the basis for the Illinois Department of Transportation's DBE program, as well as the Illinois Tollway's program for non-federally funded contracts.

its jurisdiction to determine whether to adjust the base figure. The Port must consider the current capacity of DBEs, as measured by the volume of work DBEs have performed in recent years.

To perform Step 1—estimating the base figure of DBE availability—the study must conduct the following analyses. First, it must empirically establish the geographic and product dimensions of its contracting and procurement market area. This is a fact driven inquiry; it may or may not be the case that the market area is the government’s jurisdictional boundaries.⁸³ A commonly accepted definition of geographic market area applied in this Report is the contiguous locations that account for at least 75% of the agency’s contract and subcontract dollar payments.⁸⁴ Likewise, the accepted approach is to analyze those detailed industries that make up at least 75% of the prime contract and subcontract payments for the Study period.⁸⁵ This is the methodology recommended in the Transportation Research Board’s *National Disparity Study Guidelines*. Second, the study must calculate the availability of DBEs in the Port’s market area, discussed below.

Programs based upon studies similar to the “custom census” methodology employed for this Report have been deemed a rich and relevant source of data and have been upheld repeatedly. This includes the availability analysis and the examination of disparities in the business formation rates and business earnings of minorities and women compared to similarly situated non-minority males. The Illinois Department of Transportation’s (IDOT’s) DBE program was upheld based on this approach combined with other economy-wide and anecdotal evidence. The USDOT’s institutional guidance for Part 26 refers approvingly to this case. IDOT’s plan was based upon sufficient proof of discrimination such that race-neutral measures alone would be inadequate to assure that DBEs operate on a “level playing field” for government contracts.

The stark disparity in DBE participation rates on goals and non-goals contracts, when combined with the statistical and anecdotal evidence of discrimination in the relevant marketplaces, indicates that IDOT’s 2005 DBE goal represents a “plausible lower-bound estimate” of DBE participation in the absence of discrimination... Plaintiff presented no persuasive evidence contravening the conclusions of IDOT’s studies, or explaining the disparate usage of DBEs on goals and non-goals contracts... IDOT’s proffered evidence of discrimination against DBEs was not limited to alleged discrimination by prime

83. *Concrete Works II*, 36 F.3d at 1520 (to confine data to strict geographic boundaries would ignore “economic reality”).

84. *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*, Transportation Research Board of the National Academy of Sciences, NCHRP Report, Issue No. 644, 2010, p. 49 (*National Disparity Study Guidelines*).

85. *Id.* at 50-51.

contractors in the award of subcontracts. IDOT also presented evidence that discrimination in the bonding, insurance, and financing markets erected barriers to DBE formation and prosperity. Such discrimination inhibits the ability of DBEs to bid on prime contracts, thus allowing the discrimination to indirectly seep into the award of prime contracts, which are otherwise awarded on a race- and gender-neutral basis. This indirect discrimination is sufficient to establish a compelling governmental interest in a DBE program... Having established the existence of such discrimination, a governmental entity 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.⁸⁶

In upholding the Minnesota Department of Transportation's DBE program using the same approach, the Eighth Circuit opined that while plaintiff attacked the study's data and methods, it

failed to establish that better data was [sic] available or that Mn/DOT was otherwise unreasonable in undertaking this thorough analysis and in relying on its results. The precipitous drop in DBE participation in 1999, when no race-conscious methods were employed, supports Mn/DOT's conclusion that a substantial portion of its 2001 overall goal could not be met with race-neutral measures, and there is no evidence that Mn/DOT failed to adjust its use of race-conscious and race-neutral methods as the year progressed, as the DOT regulations require.⁸⁷

More recently, the Seventh Circuit affirmed the district court and upheld the Illinois Tollway's DBE program for non-federal-aid contracts based upon a Colette Holt & Associates disparity study utilizing this methodology. Plaintiff's main objection to the defendant's evidence was that it failed to account for "capacity" when measuring DBE availability and underutilization. As is well established, "Midwest would have to come forward with 'credible, particularized evidence' of its own, such as a neutral explanation for the disparity between DBE utilization and availability showing that the government's data is flawed, demonstrating that the observed disparities are statistically insignificant or presenting contrasting statistical data. [citation omitted]. Plaintiff 'fail[ed] to provide any independent statistical analysis or make this showing here.'"⁸⁸ Midwest offered only mere conjecture about how the defendants'

86. *Northern Contracting II*, at *82 (internal citations omitted); see *Croson*, 488 U.S. at 492.

87. *Sherbrooke*, 3345 F.3d at 973.

88. See *Midwest Fence II*, 84 F. Supp. 3d 705.

studies' supposed failure to account for capacity may or may not have impacted other evidence demonstrating actual bias.

In the Ninth Circuit, recipients must take the further step of ensuring that only those groups that have suffered discrimination in its marketplace are eligible for race-conscious relief. In practice, this means that the agency must have commissioned a disparity study that found that a group no longer is subject to discriminatory barriers and enjoys a level playing field for recipient prime contracts and subcontracts. If a group is no longer "underutilized", a firm owned by a member of an otherwise presumptively socially disadvantaged group may not be credited toward meeting contract goals.⁸⁹ Further, the availability of any such group cannot be part of the analysis to set contract goals.⁹⁰

Guidance on the application of this test has been provided by courts in the Ninth Circuit in the wake of *Western States*. In the challenge to the California Department of Transportation's ("CalTrans") DBE program, the court affirmed the district court's judgment that CalTrans program was sufficiently narrowly tailored.⁹¹ CalTrans properly relied upon a disparity study to determine whether there was evidence of discrimination in California's contracting industry.

The district court in *Mountain West Holding Co., Inc. v. Montana*,⁹² applied *Western States Paving* and rejected the plaintiff's argument that the Montana Department of Transportation's DBE goal-setting program unlawfully required prime contractors to give preference to minority and female subcontractors competing for work with prime contractors on state jobs. Montana established sufficient evidence to demonstrate discrimination in the Department's transportation contracting industry. The court relied on evidence demonstrating that participation by DBEs declined after Montana abandoned contract goals in the wake of *Western States Paving*, as well as anecdotal evidence of a "good ol' boys" network within the state's contracting industry.⁹³ Following Mountain West's appeal, the Ninth Circuit determined that the claims for injunctive and declaratory relief were moot, since Montana does not currently employ gender- or race-conscious goals, and the goals were several years old.

89. No case has addressed whether a firm certified under the individual consideration of social and economic disadvantage criteria set out in Appendix E to Part 26 can be counted towards contract goals.

90. Part 26, §26.45 (h) states that overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

91. *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation*, 713 F.3d 1187 (9th Cir. 2013).

92. 2017 WL 2179120 (9th Cir. May 16, 2017), Memorandum Opinion (Not for Publication), dismissing in part, reversing in part and remanding the U.S. District Court decision at 2014 WL 6686734 (D. Mont. 2014).

93. *Id.*

As discussed in Chapter VI of this report, there is no requirement that anecdotal evidence be verified. The *CalTrans* case specifically rejects such a test. Further,

AGC also discounts the anecdotal evidence because some accounts ascribe minority underutilization to factors other than overt discrimination, such as difficulties with obtaining bonding and breaking into the “good ole boy” network of contractors. However, federal courts and regulations have identified precisely these factors as barriers that disadvantage minority firms because of the lingering effects of discrimination. [citations omitted] Moreover [sic], AGC ignores the many incidents of racial and gender discrimination presented in the anecdotal evidence. Caltrans does not claim, and the anecdotal evidence does not need to prove, that every minority-owned business is discriminated against. It is enough that the anecdotal evidence supports Caltrans’ [sic] statistical data showing a pervasive pattern of discrimination.⁹⁴

Even where an agency has established its right to employ race-conscious contract goals on appropriate solicitations, the recipient must use race-neutral measures to the maximum feasible extent.⁹⁵ There is no requirement that an agency must try or exhaust all possible race-neutral approaches and prove they failed before it can implement contract goals.⁹⁶

Difficulty in accessing procurement opportunities, restrictive bid specifications, excessive experience requirements, and overly burdensome insurance and/or bonding requirements, for example, might be addressed by the Port without resorting to the use of race or gender in its decision-making. Effective remedies include unbundling of contracts into smaller units, providing technical support, and developing programs to address issues of financing, bonding, and insurance important to all small and emerging businesses.⁹⁷ Further, governments have a duty to ferret out and punish discrimination against minorities and women by their contractors, staff, lenders, bonding companies or others.⁹⁸ It was precisely these types of race-neutral remedies applied by Cal-

94. *Id.* at *9; see also *Mountain West Holding Co. v. Montana Department of Transportation*, 2014 WL 6686734 (D. Mont. 2014) (study uncovered substantial anecdotal evidence of discrimination in Montana's transportation contracting market, including evidence of a “good ole boy network.”); *H.B. Rowe*, 615 F.3d at 261 (“such networks exert a chronic and pernicious influence on the marketplace that calls for remedial action.”).

95. 49 C.F.R. §26.51(a).

96. 2013 WL 1607239 at *10.

97. *Id.*

98. *Crosby*, 488 U.S. at 503 n.3.

Trans that the Ninth Circuit pointed to in holding its program to meet strict scrutiny.⁹⁹

99. 2013 WL 1607239 at *10.

III. PORT OF SEATTLE'S EQUITY IN CONTRACTING PROGRAMS

This Chapter describes Port of Seattle's Disadvantaged Business Enterprise ("DBE") program for Federal Aviation Administration ("FAA") funded contracts and its Women- and Minority-owned Business ("WMBE") Program for state and locally funded construction and construction-related services contracts. We first provide overviews of the elements of the programs. We then provide results of our interviews with businesses about the implementation of the programs and results from our electronic survey of business owners.

A. U.S. Department of Transportation's Disadvantaged Business Enterprise Program

As a recipient of U.S. Department of Transportation ("USDOT") funds through the FAA, the Port of Seattle is required, as a condition of receipt, to implement a DBE Program in compliance with 49 C.F.R. Part 26. The Port of Seattle has signed an assurance that it will comply with 49 C.F.R. Part 26 requiring the following program elements:

- Maintaining and reporting to USDOT, program performance data, including the utilization of DBEs on its federal-aid contracts and creating a bidders list of all firms bidding to Port of Seattle as prime contractors and firms bidding to those prime contractors as subcontractors.
- Adopting a non-discrimination policy statement and including it in DOT funded contracts.
- Appointing a DBE Liaison Officer ("DBELO"), with substantial responsibilities and direct reporting to the chief executive office of the agency.
- Making efforts to utilize DBE financial institutions.
- Adopting a prompt payment mechanism for its prime contractors and for the prompt payment of subcontractors by prime contractors.
- Creating and maintaining a DBE directory. Port of Seattle is a member of the Washington Unified Certification Program and conducts DBE certifications.
- Addressing possible overconcentration of DBEs in certain types of work.
- Including elements to assist small businesses.

1. DBE Program Administration

The Port's DBE Program is administered by the Diversity in Contracting ("DC") Department, within the Economic Development Division. The Diversity in Contracting Director in the Economic Development Division serves as the DBELO and is responsible for implementing all aspects of the DBE Program. The DBELO has direct, independent access to the Port's Executive Director. The DBELO has a staff of two to assist in the administration of the program. The DBELO's responsibilities include, but are not limited to, developing, implementing and monitoring the DBE Program and gathering and reporting required statistical data and information in coordination with other applicable Port departments.

2. DBE Program Eligibility Requirements

The Port is a non-certifying member of the Washington Unified Certification Program ("UCP"). To participate in the Port's DBE projects, firms must be certified as a DBE by the Office of Minority and Woman Business Enterprise ("OMWBE"). DBEs must meet the requirements of 49 C.F.R. Part 26, including the business size¹⁰⁰ and personal net worth limits¹⁰¹. The firm must be organized as a for-profit business and the owner must be a U.S. citizen or permanent U.S. resident. The applicant owner must own, manage, and control the business on a day-to-day basis.

OMWBE maintains the Washington State UCP Directory of certified DBE firms. The Directory is posted online.¹⁰²

3. FAA DBE Triennial Goals

The Port administers a DBE Program Plan based upon the Samples and Guidance from USDOT. As part of the Plan, the Port is required to submit a triennial DBE goal to the FAA. For federal fiscal years 2023 through 2025, the Port's approved goal is 7.2%, with 100% achieved through race-conscious means.

As discussed in Chapters IV and VII, the results of the availability analysis can be used to set the Port's future triennial and contract goals.

4. Contract Goal Setting for FAA Funded Contracts

As required by 49 C.F.R. §26.51, the Port sets contract goals to meet any portion of the overall DBE goal not projected to be met through race-neutral mea-

100. The current overall cap is \$30.72M.

101. The current limit is \$2.047M.

102. www.omwbe.wa.gov/directory-certified-firm

tures. Federally funded contracts are reviewed to determine whether they provide subcontracting opportunities for participation by DBE firms. To calculate overall project goals, the Port uses availability estimates from its CHA 2019 Disparity Study of ready, willing and able DBEs to perform the type(s) of subcontractable work.

The project manager assigned to the project completes a DBE Availability Analysis Worksheet that includes calculations of the proposed goal by each scope of work. The form is submitted to the DC DBE team for review and for determining accuracy.

For FAA funded Job Order Contracts up to \$500,000, the Port has set a 5% to 6% DBE goal and prime contractors are required to subcontract at least 90% of the work.

5. Pre-Award Procedures

When a DBE contract goal is set on a solicitation, a bidder¹⁰³ must meet the Port's DBE participation requirements by either meeting the goal or demonstrating its Good Faith Efforts¹⁰⁴ ("GFE") to do so as provided in 49 C.F.R. §26.53 and Appendix A to the regulations. Bidders are required to submit a *Disadvantaged Business Enterprise (DBE) Proposal Form* electronically with the Bid or within one hour after the published bid submittal time. The *Form* must list certified DBE firms, DBE joint venture or partner firms and the type and dollar value of the work each will perform on the contract. Only firms which are currently DBE certified at the time of award may be counted towards meeting participation goal.

A bidder or proposer not meeting the goal must complete the *Documentation of Good Faith Efforts Form*, together with supporting documentation, detailing its efforts to utilize DBE firms on the contract. The Port also requires submission of the *Subcontractor Bidding Report* at bid time that provides anecdotal and small business data. Failure to meet the goal without adequate demonstration of GFEs or the submission of the required forms can result in the bid or proposal being considered non-responsive. The DBELO determines whether a bidder/offeror who has not met the contract goal has documented sufficient GFE to meet the goal, to be regarded as a responsible bidder.

Within five days of bid opening, the bidder is required to submit a signed DBE *Letter of Intent Form* for all DBE firms listed on the *Form* attesting to the per-

103. The use of the term "bidder" encompasses any company/supplier/enterprise responding to a bid invitation, request for proposal, request for a quote or any other solicitation for services or goods.

104. Good Faith Efforts are the bidder's efforts to achieve the Port of Seattle's DBE contract goal.

centage utilization of work, applicable NAICS codes and contract amount on the project.

Bidders and offerors may request in writing administrative reconsideration within five days of a determination that the bid was non-responsive for failure to make GFE. The reconsideration official must not have played any role in the original determination. The results of the reconsideration are issued in writing. The reconsideration results are not administratively appealable to USDOT.

Prior to award, bidders may substitute a DBE listed on the *Form* for another DBE only if the original firm certifies to the Port, in writing, that it cannot perform the work or the Port requests a substitution for that certified firm. No changes to the bid are allowed.

As part of the bid or proposal, prime contractors must agree to the civil rights Title VI Assurances in every subcontract, including procurements of materials and leases of equipment, unless exempt by Federal laws, regulation or directive.

6. Post Award Procedures

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts.

Prime contractors must show good cause and obtain the Port's prior written approval for terminating a DBE subcontractor. The DBE subcontractor must be notified in writing of the prime contractor's intent to terminate and/or substitute the DBE, and the reason(s) for the request. The subcontractor has five days from the notification date to object to the termination. Good cause for substitution or termination includes but are not limited to the following circumstances:

- The DBE firm's failure or refusal to execute a written contract.
- The DBE firm's failure or refusal to perform the work of its subcontract consistent with normal industry standards, provided that the refusal is not a result of bad faith or discriminatory action by the prime contractor.
- The DBE subcontractor's failure or refusal to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- The DBE subcontractor is bankrupt, insolvent, or exhibits credit unworthiness.
- The DBE subcontractor has been suspended or is involved in debarment proceedings pursuant to 2 C.F.R. Parts 180, 215 and 1,200 or applicable state law.

- The Port has determined that the DBE subcontractor is not a responsible contractor.
- The DBE subcontractor voluntarily withdraws from the project and provides the Port written notice of its withdrawal.
- Ineligibility of the DBE to be counted for the type of work required.
- The DBE owner dies or becomes disabled and the firm is unable to complete its work on the contract.

The contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the DBE listed in the *DBE Proposal Form*.

Prime contractors are required to make GFE to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. The substituted DBE must perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. Contractors must document its GFE to find another DBE and are required to submit proof within seven days of the Port's request. This may be extended for an additional seven days, if necessary, at the request of the contractor. The Port provides a written determination to the contractor stating whether or not GFE have been demonstrated.

If a prime contractor refuses to comply in the time specified, the Port's contracting office/representative can issue a stop work order until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may initiate a termination for default proceeding.

The Port conducts regular on-site reviews to ensure that DBEs are performing a Commercially Useful Function ("CUF"). A DBE performs a CUF when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved.

The Port actively monitors DBE participation by maintaining a running tally of actual DBE attainments, including comparing these attainments to commitments. Work site monitoring and review of contract records is performed by the DBELO.

The Port enforces prompt payment provisions. Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 10 days from the prime contractor's receipt of payment from the Port. The Port does not withhold retainage from prime contractors or prime consultants on federal-aid contracts. However, prime contractors or consultants may withhold retainage from subcontractors or subconsultants. Prime contractors

are required to return retainage to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

7. Small Business Enterprise Element

To meet the requirement in §26.39, Small Business Participation, the Port is required to establish a race-neutral small business element. The Port has implemented several initiatives designed to foster participation of small businesses. These include reducing barriers created by bidding and contract requirements, reducing contract size, encouraging prime contractors to subcontract work they would otherwise perform themselves, performing outreach and offering technical assistance.

8. Record Keeping

The Port maintains a Bidders List that encompasses information about all DBE and non-DBE firms that bid on FAA assisted contracts.

The Port requires prime contractors to maintain contract records for a minimum of three years, unless otherwise provided by applicable record retention requirements or the Port's financial assistance agreement, whichever is longer. These records must be available for inspection upon request by any authorized representative of the Port or USDOT.

B. Port of Seattle's WMBE Program

In January 2018, the Port Commission adopted a resolution (Res. 3737, §3, 2018) to establish a Diversity and Contracting Policy Directive to increase woman and minority business opportunities. The Port seeks to affirmatively expand its efforts to increase WMBE participation in Port contracts and ensure that WMBEs are afforded fair and equitable opportunities to compete for Port contracts, succeed as subcontractors, and that they do not face unfair and unnecessary barriers when seeking and performing on Port contracts. The policy applies to all non-federally funded contracts and other activities at the Port, including construction and consulting contracts, purchased goods, and services. The Resolution's objectives are supported by findings from a 2014 Disparity Study showing disparities in WMBE participation in Port contracting activities.

The Resolution directed the Port's Executive Director to develop the following initiatives and policies to increase WMBE utilization:

- Achieve the Century Agenda goal to triple the number of WMBE firms that contract with the Port and increase to 15% the percentage of dollars spent on

WMBE contracts within five years of the Diversity in Contracting Program implementation.

- Executive-level accountability that drives performance across the Port.
- Port-wide goal setting and reporting processes, requiring divisions/ departments to establish annual WMBE plans that include aspirational WMBE goals and performance targets.
- Clear lines of responsibility and accountability for implementation with designated WMBE liaisons for each division.
- Enhanced compliance and tracking of key performance objectives and incorporation of WMBE goals into the Port's Long-Range Plan.
- Categories of contracts where inclusion plans and other tools will be used.
- Procedures to ensure prompt payment and change order processes.
- Expanded technical assistance for WMBE firms, coordination with external partners, and support for internal training to Port staff.

The DC Department is responsible for all aspects of managing and implementing the WMBE Program. These responsibilities include coordinating Port-wide and divisional aspirational goal setting and inclusion plans; monitoring attainment of goals; interdepartmental WMBE plan development; contract goal setting; WMBE outreach; and compliance and program reporting. Port departments and divisions support DC with annual goal setting, contract compliance, tracking, outreach and the contract solicitation process.

1. Small Business Elements

To assist small businesses, the Port of Seattle participates in the statewide Small Works Roster ("SWR") for public works projects. The program was amended in 2023 by the Washington legislature to standardize direct contracting with certified small businesses, eliminate small contractor fees, reduce time for small and diverse businesses seeking work, facilitate payment and performance bond sureties and establish credit history. The amended program seeks to encourage usage of different contractors, add features to inclusion plans for alternative public works projects and reduce confusion between certification programs for the state and federal DBE.

Small Works is defined as any contract under \$350,000. For projects valued at under \$150,000, firms on the Roster can be contracted directly or by soliciting quotes from all firms on the Roster. The Port is required to contract with a firm on the SWR when at least six contractors are listed. When there are five or less contractors listed, contracting with one of the firms is at the Port's discretion.

For projects from \$150,000 to \$350,000, all contractors on the roster must be invited to quote.

The new SWR program requires utilization plans when direct contracting is employed. The Port must rotate contractors or document its attempts to contract with others on the roster.

To be eligible to participate in SWR, firms must meet the following criteria:

- Size, ownership, control, and personal net worth certification criteria adopted by OMWBE in accordance with RCW 39.19.030(7)(b).
- The U.S. Small Business Administration size standards.
- Average maximum gross revenue of \$28.48M or the maximum set for the industry NAICS code.
- Owner net worth of \$1.32M or less, excluding value of primary residence and business.
- Matches the federal small business definition without the requirement for citizenship or permanent resident.
- Be licensed or registered to perform work in Washington State.

There is no race or gender preference in the definition or certification of a small business, but contractors must indicate if they are woman-, minority-, or veteran-owned and/or small business. To remain on the list and receive contract awards, contractors must keep current records on file with the Port.

Contractors can register for SWR through the VendorConnect, the Port's web-based contracting portal.

a. Program Eligibility

To be eligible to participate in the Port's WMBE Program, businesses may self-identify as an WMBE. A "Woman or Minority Business" is defined as a business that is at least 51% owned by a woman and/or minority individual or group, including, but not limited to, African Americans, Native Americans, Asians, and Hispanics. There is no size or personal net worth limit.

A firm can self-identify when registering in VendorConnect portal, on the *Company Information Form* that is required when submitting a bid for Service Agreement contracts or by having a prime contractor enter its information in the Monthly Amounts Paid ("MAP") reporting application in the Port's Contract Data System ("CDS").

The Port also accepts OMWBE M/WBE certifications. To qualify, a firm must:

- Be an independent for-profit small business.
- Be licensed to do business in Washington State.
- Meet the U.S. Small Business Administration size standards for small businesses, with an overall limit of \$30.72M in gross receipts over a three-year average.
- Be majority owned by an individual or individual whose personal net worth is less than \$2.04M (excluding the primary residence and equity in the business).
- Registered with the Washington Secretary of State.

b. Port-wide WMBE Aspirational Goals

Each Port Division and Department must set an annual aspirational goal for non-construction spending. The 2024 overall, Port-wide WMBE aspirational goal is 15.0% for all non-construction projects. The 2024 goal set by the DC Department for public works and construction is 13.0%.

c. Project WMBE Goals and Inclusion Plans

Port departments and divisions are encouraged to consider diverse firms for small works construction projects with values under \$150,000 and for consulting and goods and services projects under \$50,000. Construction projects with values between \$150,000 and \$350,000, consulting projects with values between \$50,000 and \$199,000 and goods and services contracts between \$50,000 and \$150,000 generally require consideration of at least three or more diverse firms.

Aspirational project goals are set by the DC department based on the project's scope, whether the project includes subcontracting opportunities and the available WMBEs in that scope. The WMBE aspirational goal is the minimum percentage of WMBE participation that prime firms must agree to make efforts to achieve when responding to the project solicitation.

WMBE Inclusion Plans are required for all Port contracts where an aspirational contract goal is set. The Inclusion Plan encompasses several forms that are due at bid and final proposal time. Submission of *The Diversity in Contracting Inclusion Plan Form* is required on all Service Agreement/Consulting projects. This Form outlines the affirmative efforts, company information for the prime and each subcontractor and business support strategies the proposer will use to achieve WMBE participation in the project, including GFE if the goal is not met. The *Women and Minority Business Enterprise Commitment Plan Form* is required on all construction projects. This form lists WMBEs by name and/or scope of work, the subcontract dol-

lar value or percentage of the work (as measured as a percentage of the contract sum) and the name of the individual responsible for WMBE management and outreach. For construction and goods and services projects, the bidder or proposer must submit an *Affirmative Efforts Form* documenting its GFE to contract with WMBEs firms, if their commitment does not meet or exceed the goal. This *Form* outlines the bidder or proposer's meaningful attempts to perform outreach, participation in the pre-bid meeting and any offers of assistance with business development, a prompt payment plan and dispute resolution mitigation plan. All forms are due at bid time. Failure to meet the goal or to provide acceptable Affirmative Efforts can result in the bidder being deemed not responsible and the proposal or bid rejected. During its review and approval of WMBE inclusion plans, the DC department contacts rejected WMBEs to verify information and confirm the bidder or proposer's GFE.

The Port only counts work towards the goal if the work is performed by an WMBE. If the WMBE is performing as the prime, the portion of the contract value applied to the goal is the difference between the contract sum and the sum of all non-WMBE sub-contracts. WMBE utilization credit is not given for a WMBE acting merely as a passive conduit of funds to a non-WMBE or as a broker in a transaction. The WMBE must perform a CUF to be counted towards a contract goal. A CUF includes, but is not limited to, the performance of a distinct element of work by a firm, which has the skill and experience as well as the responsibility of performing, managing, and supervising the work using its own work force and resources.

For design build projects, past WMBE efforts are also taken into consideration in the selection process.

The Port sets WMBE aspirational goals on Job Order contracts ("JOCs"). JOCs have contract limit of \$500,000 and require that at least 90% of the work be subcontracted.

d. Pre-award Process

The Port regularly conducts prebid conferences to provide an overview of the project's scope and instructions and requirements.

WMBE commitments become a condition of the contract.

2. Reporting and Contract Compliance Requirements

The Port applies contract monitoring, substitution and enforcement policies and procedures to locally funded contracts similar to those it applies to its federally assisted contracts. All Port contractors/consultants with payments to

subs are required to submit MAP reports showing total amounts they paid to their subcontractors. Reports are submitted through the Port's CDS portal.

To monitor compliance with WMBE commitments, the DC team tracks the prime contractor's actual spend and percentage of WMBE spend against its WMBE contractual commitment throughout the life of the project. In addition to monitoring MAP reports, the team often conducts monthly and quarterly check-in meetings.

Prime contractors must show good cause and obtain the Port's prior written approval for substituting a listed WMBE. This includes execution of change orders.

3. Outreach, Technical Assistance and Vendor Training

The Port communicates important information about upcoming contracting opportunities to DBEs and WMBEs through wide variety of media. Notifications are automatically delivered to small and diverse businesses through VendorConnect, Constant Contact, Outlook email and direct notifications.

Procurement forecasts are posted on the Port's website.¹⁰⁵ The procurement forecast is updated every 4-8 weeks. Firms on the Diversity in Contracting mailing distribution list receive emails that include links that lead to the future procurements list.

DC publishes an online newsletter that highlights information important to contracting with the Port. All major construction projects are advertised in the Daily Journal of Commerce.

VendorConnect and the Port's website provide access to a database of upcoming solicitations and procurement opportunities, the WMBE and DBE databases, copies of project manuals and drawings, access to registration for the SWR, prime contractor and subcontractor and Port staff contact information. The Port's website posts links to technical assistance, contracting resources for construction, professional services and goods and services and networking opportunities through local community-based organizations and industry groups. The website also provides links to contacting opportunities available at other local government agencies.

The Port partners with community and industry groups and other local government agencies to sponsor outreach, networking and informational sessions to encourage participation in the Port's Programs. Events from 2022 and 2023 include:

105. <https://www.portseattle.org/page/future-procurements-list>.

- Planes, Trains and Automobiles
- Champion of Inclusion Awards and Business After Hours Reception
- Regional Contracting Forum
- Port of Seattle and OMWBE Certification Workshops 101 & 201
- Port of Seattle and Tabor 100 and Department of Enterprise Services Certification Workshop
- Port of Seattle and Conference of Minority Transportation Officials Outreach Event
- Port of Seattle and other local agency Job Order Contract and Small Works Roster Outreach Event
- Port of Seattle and the Minority Business Development Council Outreach Event

The Port offers technical assistance and training through its PortGen program. PortGen is an umbrella term applied to all communications, in-person and online events hosted by the Port to connect WMBEs with business development training, Port contracts, or networking opportunities. The program is divided into three areas of concentration to accommodate firms with varying levels of contracting experience:

- PortGen
 - PortGen 101: Webinars providing essential information for working at the Port.
 - PortGen First Look: Presentations (in-person or online) on specific Port projects.
 - PortGen Connects: Networking-focused in-person events.
- Advanced PortGen is a workshop series to equip WMBE firms with resources to obtain their first government contract.
- PortGen Business Accelerator is an application-based cohort program for businesses that have had government contracting experience and are interested in building capacity and expanding.

PortGen originally launched in 2016. Since 2019, the Port has conducted over 25 PortGen training and educational webinars or online training events on working with the Port and on specific projects. A primary goal of PortGen events is to enable WMBEs to create and maintain relationships with primes and other subcontractors that will facilitate collaboration on projects. The Port has sponsored at least ten major events since 2019, such as its Aviation Indus-

try Day, to publicize upcoming Port projects that includes printed procurement forecasts and offering networking opportunities. In 2023, the Port hosted several networking events in partnership with prime contractors working on major Port projects.

PortGen workshops have highlighted specific project opportunities, including the following.

- Introduction to Major Construction at the Port
- SEA C1 Project Presentation
- SEA Fire Station Project Presentation 2022
- Restroom Renovations Project Presentation 2022
- Contracting and Information Technology and Communications at the Port 2023
- Insurance and Project labor Agreements and Telecommunications: Meet Me Room- Fiber Project 2023
- Utility Meter Networking and Baggage Claim 2023
- Three Design Projects 2023
- Dining and Retail Program and Food Incubator Kiosks Project 2023

In 2020, the Port launched Advanced PortGen, a workshop series focused on firms new to government contracting. The seven-week series offered instruction to assist WMBE firms on how to obtain government contracts; weekly business development presentations; introductions to technical assistance organizations; and introductions to different government agencies.

In 2021, the Port introduced the Business Accelerator mentorship program under the PortGen umbrella. The is a 10-week course for WMBEs with previous government contracting experience. Participants take twice-weekly development classes and meet weekly one-on-one with their mentor. Mentors are matched to each protégé.

4. Staff Training

DC conducts internal department training, “Team Diversity in Contracting” provides information about the DBE and WMBE Program and strategies for increasing WMBE utilization. There is also an internal resources page to support department and division WMBE inclusion efforts.

DC staff regularly attend the American Contract Compliance Association’s annual National Training Institute, where they receive extensive training on

national best practices for M/W/DBE programs. Staff routinely participate in FAA and the Washington Department of Transportation's Civil Rights trainings that provide DBE Program compliance updates. Other trainings in which Port DC staff regularly participate are offered through the National Minority Supplier Development Council. These trainings offer information on resources and initiatives available for advancing minority businesses.

C. Experiences with Port of Seattle's Contracting Equity Programs and Procurement Policies

To explore the impacts of race- and gender-neutral contracting policies and procedures and the implementation of Port of Seattle's contracting, we conducted four group interviews with 54 business owners about their experiences and solicited their suggestions for improvements. We also received written comments throughout the study period.

The following are summaries of the topics discussed during the group interviews. Quotations are indented and have been edited for readability. They are representative of the views expressed during the sessions by participants.

1. Contracting Equity Programs

As discussed in Chapter VI, most DBEs/WMBEs supported the programs and the continued use of contract goals.

a. Additional Support and Training

Several interviewees supported the adoption of a mentor-protégé program.

I've been involved with the SBA and the Mentor-Protege Program with the SBA on federal contracting for the Department of Defense, NAVFAC, Army Corps of Engineers. That program is extraordinarily successful. They know how to do it right, and I've often wondered why the Port does not simply adopt what the SBA does or accept the SBA's existing program and allow joint ventures in the Mentor-Protege Program with the SBA to participate on larger projects for the Port of Seattle.

There are probably more opportunities with the industry, maybe not just specific to the Port, to provide mentorship and get them involved in a chunk of a project to get them comfortable and experience working.

I've heard, "I need portfolios." I've heard, "Sorry, with your no experience." My thing is where do I get it? Who's mentoring these small people like me?

Another request was for a bonding support program.

I think for the majority of small businesses [a bonding support program] would be useful.... Your bonding rate as a small business is substantially higher than what [a larger competitor's] bond rate is.... We're a disadvantaged business, so that in itself is going to say we're not going to be able to get the bonding that a larger business can get. Yet we're held to those same standards of getting those bonds. So, I do think there needs to be a rework around the bonding requirements for DBEs or SBEs and WBEs, all of us.

If we have to require the same bonding requirements, that's a larger percentage of our contract, it's harder to compete. I know as a GC that I've been in this boat before where I want to pass down the pay when paid type contract requirements. And I have had DBE subcontractors bid to me that say I can't do that, but I'm also a small business and can't afford to finance that either.

Anything that translates utilizing DBE businesses into helping to be the low bidder [would be welcomed].

b. Meeting DBE and WMBE Contract Goals

Most prime contractors and consultants were able to meet the Port's contract goals.

I find them to be reasonable and in line with what can be achieved.

We've found that the goals are great because we figure out how to meet them and then we win. We use them as a competitive advantage.

The goals are achievable and realistic, again, project by project basis.

To the Port's credit, on solicitations where we've been selected as finalists, there's typically somebody from the Port of Seattle DBE, I forget the true name of the department, but they're usually on those interviews as well,

stressing the importance and how the Port always has the goal to grow those programs.

Overall, the program is good.

More specialized scopes present challenges to several bidders.

But then at the same time, if you get into the real specialty, then you don't see the women and the minorities. It's really, really small. We don't have a large pool to choose from. So that does create a little bit of an issue when it comes to the availability too.

We push the goal down to our prime subs but it's a challenge.

The uncertainty about the scopes that will be needed for on-call or job order contracts can make it difficult to meet contract goals.

My largest contract with the Port right now is a mechanical electrical on-call. So, we don't know what projects are coming on it. We put together a team with a WMBE architect, a WMBE cost estimator and a WMBE civil engineer. And then the project that showed up had little to none of those disciplines.... I'm probably not going to meet my goals on that contract because you don't know what is coming.

A few large contractors repeatedly used the same certified firms.

While we've had success, it seems to be with some of the usual suspects as far as that we have relationships with. We've made some certain learning new relationships, new partners and such, but there are those that are getting smaller and a bigger pool for especially certain scopes of work has been a challenge.... [There are] not a lot of enclosure type contractors out there when we're looking at steel or others. There's just few and far between of those that have the capacity and the knowledge and interest in taking on the risk of working at the Port. And I would say enclosure, steel and even some of the more specialty finish contractors, there's a pretty small pool of those that are willing to take the leap and have experience working at the airport anyway.

The teaming process has been challenging, setting up your team. Because we're trying to balance the best qualified

firms and also bringing on new firms. And sometimes there's one really good WMBE architect that knows the Port of Seattle really well. And they're a hot commodity right now and they're screaming busy. So, I'm not getting a level of service as I used to out of them sometimes. Do I want to do something different that'll serve the project better? [Yes,] but I need to get my WMBE numbers up. So, we're playing this ping pong back and forth. And that's just part of the game.

The capacity of certified firms was a concern for some prime vendors.

The overall availability [can sometimes be a problem]. While the Port definitely lends outreach and support to find OMWBE and DBE firms, it really comes down to their capability and their capacity.

The Port's administrative requirements were recognized by several large firms as a barrier to DBE/WMBE utilization.

Minority-owned businesses that are younger, not as well established, really struggle with working at the Port because the paperwork just really drowns them. And I think what happens is, and this is something I've noticed both in my time in Seattle and my time in [city], and I'm not in any way belittling this business arrangement, but it is not uncommon for women-owned businesses in the construction industry to be like a husband and wife team, where often the husband may have the technical background and the wife is managing the business side of things. So, there's a path there to bring in previous experience where I think a lot of minority-owned subcontractors don't have access to that sort of arrangement. So, what we've seen is what we've gone out and encountered subcontractors that [name] would feel comfortable working with. Maybe they're not the most experienced, maybe they're not the number one firm that we choose in terms of just who's the best, but we're willing to work with them and to grow them. But to bring them into the Port and to try and get them to work through the Port's procurement process, it's very challenging with the amount of paperwork, it's very challenging with the administrative hurdles that they have to go over.

It's just real intimidating for a lot of firms, I think, in terms of whether we're talking [project labor agreements] or just the

documentation. A lot of the smaller firms, I feel like when we've engaged with some that want to figure out how to work at the Port, once they realize all the requirements and what their capacities are to even get engaged and learn, their interest falls off very quickly.

The difference in the vendors who seem to work well with the Port and the ones who don't... is who is well established, who has the sort of administrative horsepower to handle the paperwork.

[WMBEs] that we hope to mentor and bring on and figure out how to engage and provide opportunities with the Port to get them involved in a project, but then all of a sudden other things become a lot more attractive.

The Port could do more to help small firms, according to a number of larger firms.

An underlying theme of all these administrative things isn't necessarily just doing them, especially in a competitive bid environment. How do you price them? How does a firm who's never had any experience at the Port price, "Okay, I have five guys who need badging. How many labor hours do I have to spend for badging?" That's very hard to communicate, and I don't think that the Port really does that at all. They will tell you the steps involved in badging but that's a little different than assigning labor hours to it.... The thing that would really help a lot of the firms who are new working at the Port is to really give them some guidelines and to give them some structure and hey, not only do you have to do these administrative things, yes, that comes with public works, but here's the actual cost impact of those things. I very much empathize with the subcontractors that we worked with at the Port who say, "How am I supposed to know how much time I'm supposed to spend doing this piece of paperwork and this piece of paperwork and this piece of paperwork?" And that has been a consistent theme that has really affected their bottom lines and their ability and desire to do work at the Port moving forward.

Any additional Port's ability to provide a resource for training, whether it's PLA documentation or safety or background on, "Okay, here's a comprehensive list of all the things you need to fully understand and the effort it takes

and the resources it's going to take to get involved in a Port project." You're not just going to show up and say, "Oh, here's a price and I can walk onto a job and do something.

A lot of the firms don't have the knowledge to understand the payment schedule and even though we have an accelerated payment schedule that we offer to pay them ahead of time. Also, the reporting, they have a difficult time understanding all the requirements of reporting, not just to [name] but to the Port as well because again, there's multi levels.... A lot of times the capacity goes into the technical assistance, meaning they don't have a huge workforce, as well as also understanding some of the requirements of the contract like PLA and of course certified payroll. I always call it the back office function aspect. And that lends sometimes to go into having the substitution and the payment issues.

[The Port] could have a training session maybe twice a year or three times a year for small businesses to be WMBEs to understand certified payroll as well as their internal CDS because a lot of times individuals are just not familiar with their internal platform. So, they could offer a training themselves. And of course, certified payroll, LCPTracker, I've used it, their tutorials are good, but then sometimes that hands-on, having individuals there [is more helpful].... PLA 101, Port PLA 101, similar to Safety 101. "Hey, here's a template and this is some of the things you always need to do when you're filling out your PLAs or your whatever." So similar. Having the PLA having a template saying, "Here are the things that you'll automatically have to comply with or just know." And again, it helps them in the long run to stay compliant. But again, the knowledge, especially if they're going to continue working at the Port, which is what the WMBE and the DBE program is really the purpose. You want to help build a capacity so you have those firms continue working with not only the Port, but then being able to scale up and potentially perform [larger contracts].

Several bidders requested assistance with expanding the pool of certified firms from which to choose.

[It would be helpful] if there was a list of here's people who have worked and what projects they've worked on [at the Port].... [Then] we know we can really focus on these ones because they've worked at the Port and do have that

experience and probably are interested. For larger projects, there's not necessarily as many businesses out there that could handle the size of some of the packages that we're bidding. So, I think the greater opportunity oftentimes is as a lower tier. And so just an additional resource might be helpful.

The biggest thing that we're always looking to improve is just getting additional firms that can be successful.

I would be open to more outreach.... And I'm especially interested in hearing about their Port-like experience. I want to hear about their experience on similar type projects to the Port. A civil engineer who designed a drainage system for a residential neighborhood, I'm sure you're great with that but that's not what I need right now. So, give me the school you designed that has a similar system or something like that.

A few large consultants stated that the goals add unnecessary costs to projects.

They've been very reasonable. I'll speak as a taxpayer; they've been too reasonable. They're paying extra money for bringing WMBE firms on board that it's costing the project extra money. That's not necessary. I'm creating work to get my WMBE numbers up. It's like, the project costs an extra \$30,000 design fee just to get the WMBE numbers. And it's like, that's great, we're getting our WMBE numbers, but we got to be good stewards of the public money too.

c. Monitoring and Enforcement

Several certified consultants reported that the Port needs more vigorous monitoring of equity commitments, especially on non-FAA funded projects.

Where's the accountability?

Some of these people are in DEI roles, and again, there isn't any accountability.

Everybody's doing all the reporting, it's just that nobody's then holding them accountable for what they're reporting.

I think mostly it's [prime consultants] just wanting to use their own staff.... The primes have been pretty clear that

they have the work, they're just not going to give it to us. So, I don't know. I just wish there was more follow-through and making sure that there was compliance on those goals. Otherwise, why do it? It's just causing everybody more administrative headache.

I don't have any problem getting contracts or being on contracts with King County, but they have B2G, a compliance thing. And even the subconsultants, they get a compliance report and you say, yes, you got that. They paid you on time and all that stuff. Well, that would probably be something they should do with the Port of Seattle as well.

The Port has done, it seems from my perspective, a pretty good job of trying to set some goals for WMBE participation. It's all about the implementation and holding the primes accountable for working with the prime for the sub consultants that they've selected and making them realize their goals. And so, it would be great to have more WMBE specialist support whenever there's an issue because sometimes project managers aren't fully trained up on how to ensure good WMBE inclusion. And so having somebody who can come in and be very directive and help them, I think would be really beneficial.

2. Experiences with Port of Seattle's Procurement and Contracting Policies

a. Payments

Most firms reported they were paid reasonably promptly by the Port.

I love the work with the Port. You guys pay like a slot machine, on time. The one issue that can delay payments is sometimes if a new sub messes up an invoice. You have very particular invoice requirements. But once we get it dialed in, it's pretty good.... Once the new subs get the process figured out, it's usually pretty seamless.

It's also just trying to keep money flowing in a timely manner, them being the second or even sometimes third tier contractor on the job.

A few other participants stated they had problems being paid promptly.

Where we stumble with a Port is the payment. We typically are 60, 90 days to get paid and then we turn around and then pay our subs.

Sometimes it seems the Port project managers arbitrarily decide when they don't want to pay, to hold people's feet to the fire.... We're a small business and there's 70 grand sitting out there that somebody decided they didn't want to pay.

The processing of change order was especially problematic for small firms.

My experience with the Port is much like other public entities or semi-public entities like Sound Transit, very similar. It's very challenging to get paid in a timely manner when there are changes due to design flaws or change of conditions. It's moving mountains to try and get somebody to actually acknowledge it and accept responsibility, and eventually trickle down and get us as a small business, paid. We end up being the bank, and that's really just an incredibly poor way to do business.... Usually, you're having to go through the prime to get to the owner, to get to the Port. So, the first hurdle is getting the general contractor even to acknowledge that there is a change order worth submitting. Once you get through that, then the next challenge is getting somebody at the Port to accept what the prime has set, and it just goes back and forth. Once something goes all the way through the system and the Port does acknowledge it and does issue a change, well, then, eventually, you'll get paid. But that process can take months and months. In the meantime, you're generally on a contract that is tied to the prime and the Port schedule, and you can't ever delay that schedule. So, you have to keep working, keep producing because if you delay the schedule, now, you are in violation of the contract. And so, you are at risk by continuing to move ahead, but you don't dare not move ahead because you don't want to be in danger of having violated the schedule.

We run into issues with change orders and how those are processed and how they impact our firms.

On one job where the Port indicated they didn't want to get in the middle of the structural engineer, which was [name], and then, the prime contractor and the subcontractor. And we're just so far down the ladder. You're trying to work

through its chain of command.... In any other business, you would just stop selling the job. But then, they come at you with the legal team saying, "You are in violation of the purchase order or the subcontract. You're not performing." So, they're using the letter of the law to circumvent the intent here, which is not a place where anybody wants to be.

You're David versus Goliath, right? The thing that I have sadly come to learn in recent years is it's free for them to tell you no. And you just have to keep doing the contract. So, at what point are you as a small business having to be more focused on getting work done than spending time fighting about something? And they have all the resources to be able to tell you no.... Trying to get an agency to recognize the design errors, particularly of their subcontracted consultant and design teams [is difficult], because there's usually an established relationship there.... Those engineering and consulting firms usually are working with the agencies on multiple repeat projects, and they will never admit fault for their design errors. So, then, you have the agency just believing everything they say.... I think that is more of a factor of the size of our businesses and things that are difficult for us. I don't have in-house legal, like some of the huge GCs, just all they do is fight change orders.

While we've experienced good partnership with the actual staff at the Port, it's usually the architects and engineers and consultants that we have no control over. But the Port really should be forcing them to be more responsive during that process so it will help mitigate the delays that we encounter with that. That's a big concern of ours, just trying to keep payments and billings flowing. We find sometimes if there are too many hands in the pot trying to review these. One person reviews it for two weeks and then has comments and then they say, "Wait, this consultant needs to touch it too," and it's going on for weeks and even months. So, that's something that we have encountered on a couple Port jobs.... It's really turned off a lot of our small contractors that they just don't want to participate.... The biggest complaints I'm getting now just to try to retain them on these projects is the change order and payment negotiation process.

The change order process is so painful at the Port.... Subs are being asked to stick their necks out and do work on [time and materials], not knowing what they'll get paid, and then they're getting really beat up on what hours the Port's actually willing to pay for. That's maybe it's a universal challenge but it's particularly one that affects subs that don't have a ton of financial strength.

I have pleaded to the Port of commissioners, I went, spoke there. I am just asking for the Port to pay us for all those change orders that we are out. We have been out for, shoot, since it started. So, no, the job's not closed. We're still waiting on just getting paid out. Luckily, I bonded around the retention, so they don't have my retainage, but we're out a substantial amount of money just on change orders.... Five years is ridiculous.

One proposed solution was for the Port to develop a financing program.

It would be great if the Port could allocate funding, their own funding program to these WMBE firms as an option. I know that the Port commission is very supportive of the diversity and contracting work. And so, I think if there is interest or support for that on behalf of the Commission or even of course starting with the diversity and contracting team, but I think it would be a great benefit to working with the Port.

Another suggested approach was partial payments.

If a co-sub has a messed up invoice, it delays our invoice until they get it sorted out. So, is there a way to do partial payments for the portion of the invoice that's correct? I'm sure that happens to us as the SBE. Probably the same impact on a WMBE firm.

b. Consultant Billing Rates

One very common complaint from DBE/WMBE and non-certified firms was that the Port's policy for setting billing rates for engineering firms was cumbersome, burdensome and often unfair.

Rate negotiation is unfair to small business. The Port uses its weight to force acceptance of low rates or walk.

The Port's rate process is time consuming for both the consultant and the Port — often with multiple back and

forth submittals—and leaves consultants feeling undervalued, disrespected, and bullied. Small firms like [name] don't have dedicated personnel for contracting and rate negotiation, so this process consumes the valuable time of people who would otherwise have billable project work, and it increases overhead costs in a business with already small margins. Furthermore, this rate process is repeated on every new Port contract, even if rates have already been negotiated that same year. Solution: there has to be a certain amount of trust and recognition between the Port and its consultants that we are each an expert in our own business. The Port contracts with enough consultants to have a good idea of market rates without needing to control each and every level, title, and rate. Consultants should be allowed to use our own job titles and rates.

I would encourage them to completely redo their whole rate evaluation structure. It seems like they've overcomplicated it, to be quite honest. They've got eight or 10 different things you have to fill out for a person. And then based on that, you get to a classification or a level and then you propose a rate and then they go back, you go back and forth. But outside of that, because nobody else that I work with, whether it's King County or the Port of Seattle or Sound Transit, WSDOT, they don't do that. But anyway, I do think some guidance when you're thinking about contracts. Especially if it's one year, that's one thing, but they're doing more and more IDIQs, which are three to five years. And so, you need to have a long, long range thinking about, "Okay, what's going to happen as you move people through the organization, as they gain experience, as they get to different professional levels?"

All organizations need to move to is a staff classification level and not a by person, because I think we all know it, the rates and salaries for staff are just skyrocketing and it is hard to do these adjustments on an annual basis. And so, if there's a range by staff classification, that is easier to make micro adjustments throughout, over time than opposed to going through an arbitrary, a long process once a year where you have to do it by individual.

Once a contract is in place, we have found there is no room for flexibility without a formal amendment to the contract.

In a small firm, each staff member plays an integral role on the team. When we experience staff turnover or hire for a new position, we can't use new staff on a Port project until they are formally added via an amendment. We've experienced submitting new staff in February and finally receiving an amendment in November.... Contracts should be written to allow for easier substitution and addition of new employees and other direct costs.

One of the big contracting hurdles for anybody at the Port is this rate process. And not having pre-approved rates like we do with WSDOT, even within a project for us, adding a different staff member can be a real hassle [and delay].... Sometimes we just eat the time.... I've held the time and not billed it until I get the approved rate. I've sat on \$40,000 worth of invoices, finished the project, got the approved rate, and then sent a big bill. And that was a business decision we made because the staff had availability at the time, that was the right thing to do to serve the Port, but it's still an inconvenience.... We're big. We can hold it and we can navigate through. I can only imagine with a smaller business what that hurdle is like. Or something as simple as Bob quits and we hire Sally and I want to do a swap out, I got to wait to get Sally the approved rate before we can start billing for her. And people leaving and being hired is a normal business occurrence.

The rate approval process [is a barrier].... The original proposal was done in 2021 with the rates, et cetera, that were included. But then the contract wasn't executed until three years later. And so, when [name] went back to the Port to ask for current rates for their WMBEs, they were like, "No," the max annual rate increase is like 3% or something like that. And so, it was quite an issue with the small businesses that were subcontracting to do the work. And [name] really has worked with them in the past and wanted them to get their current rates.... [The] Port's contracting department [told us] to go out and get other bids ... then come up with the lowest bidder or other. It just wasn't good business for [name] to do. And so, it was ended up being worked out with a new service directive and the rates getting approved that way, but overall, it was a bit frustrating and time delay in the back and forth for getting those rates approved for those WMBE firms.

The last two years with the rate increases and the inflationary forces that impact our labor pool. We got hit, but we had to raise our employees, rightly so they deserve it, at 8, 9%, but the Port only raised our rates 3%, and then we tried to negotiate, we couldn't negotiate.... We have to eat those rates and pay our employees at a higher rate. And that also includes the WMBEs ... and they're hurting that way even more so [than we are as a large firm].

D. Conclusion

Overall, the programs were supported by participants and were viewed as important to the growth and development of DBEs and WMBEs. Prime contractors were generally able to comply with program requirements, including goals. However, there are some challenges to address:

- Some firms want more assistance to expand DBE and WMBE capacity through adoption of a mentor protégé program, a bonding support program and financing assistance.
- Bidders sometimes had difficulty finding DBEs and WMBEs when there are specialized scopes or uncertainty about scopes for on-call or job order contracts.
- Large contractors tended to use the same certified firms repeatedly.
- Sometimes there were administrative barriers to DBE/WMBE utilization.
- Expanding the pool of certified firms was requested by prime contractors.
- More vigorous monitoring equity commitments was needed, especially on non-FAA funded projects.
- Change order payments were a frequent issue.
- Offering partial payment to offset with late payments was one suggestion.
- The current process for setting billing rates for engineering firms burdened many firms of all sizes and ownership.

IV. CONTRACT DATA ANALYSIS FOR THE PORT OF SEATTLE

A. Contract Data Overview

We analyzed data from the Port of Seattle’s U.S. Department of Transportation’s Federal Aviation Administration (“FAA”) funded contracts and locally funded contracts for fiscal years 2019 through 2022. We received contract records from the Port that contained 1,068 contracts, worth \$746,906,106. To conduct the analysis, we constructed all the fields necessary where they were missing in the Port’s contract records (e.g., industry type; zip codes; six-digit North American Industry Classification System (“NAICS”) codes of prime contractors and subcontractors; payments, race; gender; etc.). These results were used to create the overall Final Contract Data File (“FCDF”) and one FCDF for each funding source.

B. Summary of Findings

Table 4-1 presents the distribution of the FCDF across the two funding sources.

Table 4-1: Summary of Findings: Distribution of the FCDF Across Funding Sources

Funding Source	Share of FCDF
Local	86.9%
FAA	13.1%
TOTAL	100.0%

Source: CHA analysis of Port of Seattle data

The Port of Seattle’s geographic market area for FAA funded contracts and locally funded contracts was found to consist of the three counties that make up the Seattle metropolitan area: King County, Pierce County and Snohomish County.¹⁰⁶ For the remainder of this Chapter, we will refer to the geographic market as the Seattle Metropolitan Statistical Area (“MSA”). Table 4-2 presents data on the share of FCDF contracts contained in each funding sources’ geographic market.

106. For locally funded contracts, the three county Seattle metropolitan area captured 69.4% of the FCDF. One global firm – without an office in the Seattle metro area – captured 23.4% with one contract. To exclude this contract would distort the true picture of the Port’s locally funded spending, so while this analysis uses the three-county Seattle metropolitan as the geographic market, we include that one contract in the study.

**Table 4-2: Summary of Findings: The Geographic Market Share of Final Contract Data File
(by funding source)**

Funding Source	Seattle MSA Share of FCDF
Local	69.4%
FAA	91.3%

Source: CHA analysis of Port of Seattle data

Tables 4-3 and 4-4 present data on utilization and weighted availability for each funding source. In addition, the tables present data on disparity ratios for FAA funded and locally funded contracts.

**Table 4-3: Summary of Findings: FAA Funded Contracts
(169 Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE
Utilization	0.3%	12.3%	2.8%	0.4%	5.8%	21.6%	78.4%
Weighted Availability	2.6%	3.2%	2.3%	2.7%	6.5%	17.4%	82.6%
Disparity Ratio	10.5% [‡]	379.5%	118.5%	14.8% [‡]	90.2%	124.5%***	94.9%***

Source: CHA analysis of Port of Seattle data

[‡] Indicates substantive significance

*** Statistically significant at the 0.001 level

**Table 4-4: Summary of Findings: Locally Funded Contracts
(899 Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non-WMBE
Utilization	0.2%	0.8%	4.0%	1.0%	4.5%	10.5%	89.5%
Weighted Availability	3.1%	2.0%	2.0%	1.8%	4.9%	13.8%	86.2%
Disparity Ratio	6.5% [‡]	40.4% ^{‡***}	199.6%***	57.0% [‡]	91.0% ^{‡***}	76.2% ^{‡***}	103.8%***

Source: CHA analysis of Port of Seattle data

[‡] Indicates substantive significance

*** Statistically significant at the 0.001 level

The analysis presents the following results for each funding source:

- Contract Data Overview.
- The Geographic and Product Market for Port of Seattle Contracts.
- Utilization of firms in the Port of Seattle’s Geographic and Product Market.
- The Availability of DBEs/WMBEs for Port of Seattle Contracts in its Geographic and Product Markets.
- Disparity Analysis of FAA funded and locally funded contracts.

Because the methodology for the data analysis is identical across both funding source, we detail only the methodology for the FAA funded contracts in order to avoid repetition.

C. FAA Contracts: Contract Data Overview

Tables 4-5 and 4-6 provide data on the FCDF for FAA funded contracts.

**Table 4-5: Final Contract Data File Number of Contracts
(FAA Funded)**

Contract Type	Total Contracts	Share of Total Contracts
Prime Contract	12	7.1%
Subcontract	157	92.9%
TOTAL	169	100.0%

Source: CHA analysis of Port of Seattle data

**Table 4-6: Final Contract Data File Net Dollar Value of Contracts
(FAA Funded)**

Business Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contracts	\$57,267,433	58.7%
Subcontract	\$40,289,155	41.3%
TOTAL	\$97,556,588	100.0%

Source: CHA analysis of Port of Seattle data

The following sections present our analysis, which consisted of five steps:

- The determination of the geographic and product markets for the analysis.

- The estimation of the utilization of DBEs/WMBEs by the Port.
- The calculation of the unweighted and weighted availability of DBEs/WMBEs in the Port's marketplace.
- The examination of concentration of contract dollars among DBEs/WMBEs and non-DBEs/WMBEs.
- The presentation of the disparity analysis.

1. FAA Funded Contracts: The Geographic and Product Market for Port of Seattle Contracts

As discussed in Chapter II, the federal courts¹⁰⁷ and the U.S. Department of Transportation DBE regulations¹⁰⁸ and Guidance¹⁰⁹ for the DBE program for FAA funded contracts, require that an agency narrowly tailor any race- and gender-conscious program to its geographic market area. This element of the analysis must be empirically established.¹¹⁰ The accepted approach is to analyze those detailed industries, as defined by six-digit NAICS codes,¹¹¹ that make up approximately 75% of the prime contract and subcontract payments for the study period.¹¹² The determination of the Port's geographic and product market required three steps:

1. Develop the FCDF to determine the product market. Table 4-7 presents these results.
2. Identify the geographic market.
3. Determine the product market constrained by the geographic parameters. Table 4-8 presents these results.

a. Final Contract Data File for Port of Seattle's FAA Funded Contracts

The FCDF for the Port's FAA funded contracts, which establishes the Port's product market, consisted of 36 NAICS codes, with a total contract dollar

107. *Port of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 508 (1989) (Richmond was specifically faulted for including minority contractors from across the country in its program based on the national evidence that supported the USDOT DBE program); see 49 C.F.R. §26.45(c); <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise> ("D. Explain How You Determined Your Local Market Area.... your local market area is the area in which the substantial majority of the contractors and subcontractors with which you do business are located and the area in which you spend the substantial majority of your contracting dollars.").

108. 49 C.F.R. §26.45(c).

109. <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

110. *Concrete Works of Colorado, Inc. v. the Port and County of Denver*, 36 F.3d 1513, 1520 (10th Cir. 1994) (to confine data to strict geographic boundaries would ignore "economic reality").

111. www.census.gov/eos/www/naics.

112. *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*, Transportation Research Board of the National Academy of Sciences, NCHRP Report, Issue No. 644, 2010, p. 49 (*National Disparity Study Guidelines*).

value of \$97,556,588. Table 4-7 presents each NAICS code with its share of the total contract dollar value. The NAICS codes are presented in the order of the code with the largest share to the code with the smallest share.

**Table 4-7: Industry Percentage Distribution of Port of Seattle Contracts by Dollars
(FAA Funded)**

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
237310	Highway, Street, and Bridge Construction	44.8%	44.8%
236220	Commercial and Institutional Building Construction	10.9%	55.7%
541620	Environmental Consulting Services	9.5%	65.2%
237110	Water and Sewer Line and Related Structures Construction	5.1%	70.3%
238990	All Other Specialty Trade Contractors	4.2%	74.5%
238220	Plumbing, Heating, and Air-Conditioning Contractors	3.7%	78.2%
238110	Poured Concrete Foundation and Structure Contractors	3.6%	81.8%
236116	New Multifamily Housing Construction (except For-Sale Builders)	2.4%	84.2%
238210	Electrical Contractors and Other Wiring Installation Contractors	2.2%	86.5%
238350	Finish Carpentry Contractors	2.2%	88.6%
238190	Other Foundation, Structure, and Building Exterior Contractors	1.6%	90.2%
238910	Site Preparation Contractors	1.3%	91.5%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	1.3%	92.8%
561730	Landscaping Services	1.2%	94.0%
238330	Flooring Contractors	1.0%	95.1%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	1.0%	96.1%
238290	Other Building Equipment Contractors	0.7%	96.7%
238120	Structural Steel and Precast Concrete Contractors	0.6%	97.3%
238310	Drywall and Insulation Contractors	0.5%	97.8%
541310	Architectural Services	0.4%	98.2%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541611	Administrative Management and General Management Consulting Services	0.4%	98.6%
541330	Engineering Services	0.3%	98.9%
541380	Testing Laboratories	0.2%	99.1%
423220	Home Furnishing Merchant Wholesalers	0.2%	99.3%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.2%	99.4%
488490	Other Support Activities for Road Transportation	0.2%	99.6%
238320	Painting and Wall Covering Contractors	0.1%	99.7%
561990	All Other Support Services	0.1%	99.8%
531210	Offices of Real Estate Agents and Brokers	0.1%	99.8%
238150	Glass and Glazing Contractors	0.1%	99.9%
541370	Surveying and Mapping (except Geophysical) Services	0.02%	99.9%
238160	Roofing Contractors	0.02%	99.96%
444190	Other Building Material Dealers	0.02%	99.98%
562910	Remediation Services	0.01%	99.99%
541612	Human Resources Consulting Services	0.01%	99.999%
423710	Hardware Merchant Wholesalers	0.001%	100.0%
Total			100.0%

Source: CHA analysis of Port of Seattle data

b. Geographic Market for FAA Funded Contracts

To determine the geographic market area, we applied the standard of identifying the firm locations that account for close to 75% of contract and sub-contract dollar payments in the FCDF.¹¹³ Firm location was determined by zip code and aggregated into counties as the geographic unit. The Seattle MSA (King, Pierce, and Snohomish Counties) captured 91.3% of the FCDF. Therefore, we used the Seattle MSA as the geographic market.

113. National Disparity Study Guidelines, at p. 29.

2. FAA Funded Contracts: Utilization of Firms in Port of Seattle's Geographic and Product Market

Having determined the Port's geographic market area, the next step was to determine the dollar value of its utilization of WMBE firms¹¹⁴ as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. There were 33 NAICS codes after constraining the FCDF by the geographic market; the dollar value of the contracts in these codes was \$89,117,605.

Table 4-8 presents these data. We note that the contract dollar shares in Table 4-8 are equivalent to the weight of spending in each NAICS code. These data were used to calculate weighted availability¹¹⁵ from unweighted availability, as discussed below.

**Table 4-8: NAICS Code Distribution of Contract Dollars in Port of Seattle's Constrained Product Market
(FAA Funded)**

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
237310	Highway, Street, and Bridge Construction	\$42,773,644	48.0%
236220	Commercial and Institutional Building Construction	\$10,599,822	11.9%
541620	Environmental Consulting Services	\$9,271,734	10.4%
238990	All Other Specialty Trade Contractors	\$4,134,046	4.6%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$3,182,009	3.6%
238110	Poured Concrete Foundation and Structure Contractors	\$3,050,812	3.4%
236116	New Multifamily Housing Construction (except For-Sale Builders)	\$2,327,317	2.6%
238350	Finish Carpentry Contractors	\$2,141,271	2.4%

114. For our analysis, the term "WMBE" or "DBE" includes firms that are certified by government agencies and minority- and woman-owned firms that are not certified. The inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts and that supports the remedial nature of these programs. *See Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 723 (7th Cir. 2007) (The "remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net.").

115. *See "Tips for Goal Setting in the Disadvantaged Business Enterprise Program"* ("F. Wherever Possible, Use Weighting. Weighting can help ensure that your Step One Base Figure is as accurate as possible. While weighting is not required by the rule, it will make your goal calculation more accurate. For instance, if 90% of your contract dollars will be spent on heavy construction and 10% on trucking, you should weight your calculation of the relative availability of firms by the same percentages.") (emphasis in the original), <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	\$1,815,681	2.0%
238190	Other Foundation, Structure, and Building Exterior Contractors	\$1,270,471	1.4%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	\$1,235,573	1.4%
561730	Landscaping Services	\$1,187,477	1.3%
238910	Site Preparation Contractors	\$1,091,151	1.2%
238330	Flooring Contractors	\$1,022,110	1.1%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	\$936,729	1.1%
238120	Structural Steel and Precast Concrete Contractors	\$587,097	0.7%
238310	Drywall and Insulation Contractors	\$473,553	0.5%
541310	Architectural Services	\$399,645	0.4%
541330	Engineering Services	\$247,146	0.3%
541611	Administrative Management and General Management Consulting Services	\$235,389	0.3%
238290	Other Building Equipment Contractors	\$209,202	0.2%
541380	Testing Laboratories	\$194,021	0.2%
423220	Home Furnishing Merchant Wholesalers	\$173,421	0.2%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$156,326	0.2%
488490	Other Support Activities for Road Transportation	\$148,405	0.2%
238320	Painting and Wall Covering Contractors	\$93,956	0.1%
561990	All Other Support Services	\$83,889	0.1%
541370	Surveying and Mapping (except Geophysical) Services	\$23,400	0.03%
238160	Roofing Contractors	\$19,067	0.02%
444190	Other Building Material Dealers	\$13,823	0.02%
562910	Remediation Services	\$12,941	0.01%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
541612	Human Resources Consulting Services	\$5,893	0.01%
423710	Hardware Merchant Wholesalers	\$585	0.001%
TOTAL		\$89,117,605	100.0%

Source: CHA analysis of Port of Seattle data

Tables 4-9 and 4-10 present data on the Port's DBE/WMBE utilization, measured in contract dollars and percentage of contract dollars.

**Table 4-9: Distribution of Port of Seattle Contract Dollars by Race and Gender
(FAA Funded) (total dollars)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
236116	\$0	\$0	\$0	\$0	\$0	\$0	\$2,327,317	\$2,327,317
236220	\$0	\$0	\$0	\$0	\$0	\$0	\$10,599,822	\$10,599,822
237310	\$0	\$5,202,939	\$0	\$93,594	\$2,038,484	\$7,335,017	\$35,438,628	\$42,773,646
238110	\$0	\$2,963,366	\$0	\$0	\$3,938	\$2,967,304	\$83,507	\$3,050,811
238120	\$0	\$203,117	\$0	\$0	\$3,000	\$206,117	\$380,981	\$587,097
238160	\$0	\$0	\$0	\$0	\$0	\$0	\$19,067	\$19,067
238190	\$0	\$84,513	\$0	\$0	\$0	\$84,513	\$1,185,958	\$1,270,471
238210	\$0	\$405,482	\$96,311	\$225,509	\$801,268	\$1,528,571	\$287,111	\$1,815,681
238220	\$0	\$0	\$309,920	\$0	\$0	\$309,920	\$2,872,088	\$3,182,008
238290	\$0	\$0	\$0	\$43,712	\$0	\$43,712	\$165,490	\$209,202
238310	\$0	\$0	\$0	\$0	\$0	\$0	\$473,553	\$473,553
238320	\$0	\$0	\$0	\$0	\$0	\$0	\$93,956	\$93,956
238330	\$0	\$0	\$0	\$0	\$0	\$0	\$1,022,110	\$1,022,110
238350	\$0	\$23,074	\$0	\$0	\$1,517,246	\$1,540,320	\$600,951	\$2,141,270
238910	\$0	\$0	\$411,458	\$0	\$56,957	\$468,415	\$622,736	\$1,091,151
238990	\$0	\$58,630	\$0	\$0	\$2,559,898	\$2,618,528	\$1,515,518	\$4,134,046
423220	\$0	\$0	\$0	\$0	\$162,922	\$162,922	\$10,499	\$173,421
423320	\$0	\$0	\$0	\$0	\$0	\$0	\$1,235,573	\$1,235,573
423510	\$0	\$0	\$0	\$0	\$0	\$0	\$936,729	\$936,729
423710	\$0	\$0	\$0	\$0	\$0	\$0	\$585	\$585

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
444190	\$0	\$0	\$0	\$0	\$0	\$0	\$13,823	\$13,823
484220	\$119,789	\$0	\$0	\$0	\$34,977	\$154,766	\$1,560	\$156,326
488490	\$118,750	\$0	\$0	\$0	\$0	\$118,750	\$29,655	\$148,405
541310	\$0	\$0	\$0	\$0	\$0	\$0	\$399,645	\$399,645
541330	\$0	\$0	\$185,809	\$0	\$54,515	\$240,324	\$6,822	\$247,146
541370	\$0	\$0	\$0	\$0	\$0	\$0	\$23,400	\$23,400
541380	\$0	\$0	\$194,021	\$0	\$0	\$194,021	\$0	\$194,021
541611	\$1,600	\$0	\$0	\$0	\$0	\$1,600	\$233,789	\$235,389
541612	\$0	\$5,893	\$0	\$0	\$0	\$5,893	\$0	\$5,893
541620	\$0	\$0	\$0	\$0	\$0	\$0	\$9,271,734	\$9,271,734
561730	\$0	\$0	\$1,180,927	\$0	\$6,550	\$1,187,477	\$0	\$1,187,477
561990	\$0	\$0	\$83,889	\$0	\$0	\$83,889	\$0	\$83,889
562910	\$0	\$0	\$0	\$0	\$0	\$0	\$12,941	\$12,941
Total	\$240,139	\$8,947,014	\$2,462,335	\$362,815	\$7,239,755	\$19,252,058	\$69,865,547	\$89,117,605

Source: CHA analysis of Port of Seattle data

Table 4-10: Percentage Distribution of Port of Seattle Contract Dollars by Race and Gender (FAA Funded) (share of total dollars)

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
236116	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236220	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237310	0.0%	16.9%	0.0%	0.2%	0.0%	17.1%	82.9%	100.0%
238110	0.0%	97.1%	0.0%	0.0%	0.1%	97.3%	2.7%	100.0%
238120	0.0%	34.6%	0.0%	0.0%	0.5%	35.1%	64.9%	100.0%
238160	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238190	0.0%	6.7%	0.0%	0.0%	0.0%	6.7%	93.3%	100.0%
238210	0.0%	22.3%	5.3%	12.4%	44.1%	84.2%	15.8%	100.0%
238220	0.0%	0.0%	9.7%	0.0%	0.0%	9.7%	90.3%	100.0%
238290	0.0%	0.0%	0.0%	20.9%	0.0%	20.9%	79.1%	100.0%
238310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
238320	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238330	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238350	0.0%	1.1%	0.0%	0.0%	70.9%	71.9%	28.1%	100.0%
238910	0.0%	0.0%	37.7%	0.0%	5.2%	42.9%	57.1%	100.0%
238990	0.0%	1.4%	0.0%	0.0%	61.9%	63.3%	36.7%	100.0%
423220	0.0%	0.0%	0.0%	0.0%	93.9%	93.9%	6.1%	100.0%
423320	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423510	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423710	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
444190	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484220	76.6%	0.0%	0.0%	0.0%	22.4%	99.0%	1.0%	100.0%
488490	80.0%	0.0%	0.0%	0.0%	0.0%	80.0%	20.0%	100.0%
541310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541330	0.0%	0.0%	75.2%	0.0%	22.1%	97.2%	2.8%	100.0%
541370	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541380	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541611	0.7%	0.0%	0.0%	0.0%	0.0%	0.7%	99.3%	100.0%
541612	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541620	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561730	0.0%	0.0%	99.4%	0.0%	0.6%	100.0%	0.0%	100.0%
561990	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
562910	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
Total	0.3%	12.3%	2.8%	0.4%	5.8%	21.6%	78.4%	100.0%

Source: CHA analysis of Port of Seattle data

3. FAA Funded Contracts: The Availability of DBEs/WMBEs in its Geographic and Product Market

Estimates of the availability of DBEs/WMBEs in the Port’s geographic and product market are a critical component of the Port’s compliance with its constitutional obligations under strict scrutiny and the DBE program. The availability estimates must reflect the number of “ready, willing and able” firms that can perform the specific types of work required for the Port’s prime contracts and

associated subcontracts.¹¹⁶ These availability estimates are compared to the utilization percentage of dollars received by DBEs/WMBEs to determine whether minority- and woman-owned firms achieve parity. Availability estimates are also crucial for Port of Seattle to set its triennial DBE goal and narrowly tailored DBE goals for its FAA assisted contracts.

We applied the “custom census” approach, with refinements, to estimate availability. The courts and the National Model Disparity Study Guidelines¹¹⁷ have recognized this methodology as superior to the other methods for at least four reasons:

- First, it provides an internally consistent and rigorous “apples to apples” comparison between firms in the availability numerator and those in the denominator. Other approaches often have different definitions for the firms in the numerator (*e.g.*, certified or firms that respond to a survey) and the denominator (*e.g.*, registered vendors or the Census Bureau’s County Business Patterns data).
- Second, by examining a comprehensive group of firms, it “casts a broader net” beyond those known to the agency. As recognized by the courts, this comports with the remedial nature of contracting affirmative action programs by seeking to bring in businesses that have historically been excluded. Our methodology is less likely to be tainted by the effects of past and present discrimination than other methods, such as bidders’ lists, because it seeks out firms in the agency’s market area that have not been able to access the agency’s opportunities.
- Third, this approach is less impacted by variables affected by discrimination. Factors such as firm age, size, qualifications, and experience are all elements of business success where discrimination would be manifested. Several courts have held that the results of discrimination – which impact factors affecting capacity – should not be the benchmark for a program designed to ameliorate the effects of discrimination. They have acknowledged that minority and woman firms may be smaller, newer, and otherwise less competitive than non-WMBE firms because of the very discrimination sought to be remedied by race-conscious contracting programs. Racial and gender differences in these “capacity” factors are the outcomes of discrimination and it is therefore inappropriate as a matter of economics and statistics to use them as “control” variables in a disparity study.¹¹⁸

116. 49 C.F.R. §25.45(c).

117. *National Disparity Study Guidelines*, pp.57-58. This was also the approach used in the successful defense of the Illinois Department of Transportation’s Disadvantaged Business Enterprise Program in the *Northern Contracting* case, discussed in Chapter II.

- Fourth, it has been upheld by every court that has reviewed it, including most recently in the successful defense of the Illinois Tollway’s DBE program, for which we served as testifying experts.¹¹⁹

Using this framework, CHA utilized three databases to estimate availability:

- The Final Contract Data File
- The Master DBE/WMBE Directory compiled by CHA
- Dun & Bradstreet/Hoovers Database

First, we eliminated any duplicate entries in the geographically constrained FCDF. Some firms received multiple contracts for work performed in the same NAICS codes. Without this elimination of duplicate listings, the availability database would be artificially large. This list of unique firms comprised the first component of the Study’s availability determination.

To develop the Master Directory, we utilized the State of Washington’s Office of Minority Women Business Enterprise certification list of WMBEs and DBEs and the FCDFs. We limited the firms we used in our analysis to those operating within the Port’s geographic and product market.

We next developed a custom database from Hoovers, a Dun & Bradstreet company, for minority- and woman-owned firms and non-DBE/WMBE firms. Hoovers maintains a comprehensive, extensive and regularly updated listing of all firms conducting business. The database includes a vast amount of information on each firm, including location and detailed industry codes, and is the broadest publicly available data source for firm information. We purchased the information from Hoovers for the firms in the NAICS codes located in the Port’s market area to form our custom Dun & Bradstreet/Hoovers Database. In the initial download, the data from Hoovers simply identified a firm as being minority owned.¹²⁰ However, the company does keep detailed information on ethnicity (*i.e.*, is the minority firm owner Black, Hispanic, Asian, or Native American). We obtained this additional information from Hoovers by special request.

The Hoovers database is the most comprehensive list of minority-owned and woman-owned businesses available. It is developed from the efforts of a national firm whose business is collecting business information. Hoovers builds its database from over 250 sources, including information from government

118. For a detailed discussion of the role of capacity in disparity studies, *see the National Disparity Study Guidelines*, Appendix B, “Understanding Capacity.”

119. *Midwest Fence, Corp. v. U.S. Department of Transportation et al.*, 840 F.3d 932 (2016); *see also Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7th Cir. 2007), *cert. denied*, 137 S.Ct. 2292 (2017).

120. The variable is labeled: “Is Minority Owned” and values for the variable can be either “1” (for yes) or blank.

sources and various associations, and its own efforts. Hoovers conducts an audit of the preliminary database prior to the public release of the data. That audit must result in a minimum of 94% accuracy. Once published, Hoovers has an established protocol to regularly refresh its data. This protocol involves updating any third-party lists that were used and contacting a selection of firms via Hoover's own call centers.

We merged these three databases to form an accurate estimate of firms available to work on the Port's contracts.

4. The Availability Data and Results

Tables 4-11 through 4-13 present data on:

- The unweighted availability percentages by race and gender and by NAICS codes for firms in the product market for the Port's FAA funded contracts;
- The weights used to adjust the unweighted numbers;¹²¹ and
- The final estimates of the weighted averages of the individual six-digit level NAICS availability estimates in the Port's market area.

We "weighted" the availability data for two reasons. First, weighting also reflects the importance of the availability of a demographic group in a particular NAICS code, that is, how important that NAICS code is to the Port's FAA funded contracting patterns.¹²² For example, in a hypothetical NAICS Code 123456, the total available firms are 100 and 60 of these firms are DBE firms; hence, DBE availability would be 60%. However, if the Port spends only one percent of its contract dollars in this NAICS code, then this high availability would be offset by the low level of spending in that NAICS code. In contrast, if the Port spent 25% of its contract dollars in NAICS Code 123456, then the same availability would carry a greater weight. For an extended explanation of how unweighted and weighted availability are calculated, please see Appendix D.

Second, this comports with national best practices, case law and USDOT Guidance. The weighted availability represents the share of total possible contractors for each demographic group, weighted by the distribution of contract dollars across the NAICS codes in which the Port spends its contract dollars.

To calculate the weighted availability for each NAICS code, we first determined the unweighted availability for each demographic group in each NAICS code, presented in Table 4-11. In the previous example, the unweighted availability

121. These weights are equivalent to the share of contract dollars presented in the previous section.

122. <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

for DBE/WMBE firms in NAICS Code 123456 is 60%. We then multiplied the unweighted availability by the share of the Port's spending in that NAICS code, presented in Table 4-12. This share is the *weight*. Using the previous example, where the Port's spending in NAICS Code 123456 was one percent, the component of DBE/WMBE weighted availability for NAICS Code 123456 would be 0.006: 60% multiplied by one percent. We say "the component of DBE/WMBE firm weighted availability for NAICS Code 123456" because this process is repeated for each NAICS code and then the components are summed to generate an overall weighted availability estimate. The results of this calculation are presented in Table 4-13.

**Table 4-11: Unweighted DBE/WMBE Availability for Port of Seattle Contracts
(FAA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
236116	0.3%	0.0%	0.5%	0.5%	2.1%	3.4%	96.6%	100.0%
236220	1.5%	2.0%	3.0%	3.3%	5.3%	15.1%	84.9%	100.0%
237310	3.4%	5.0%	2.8%	3.8%	6.0%	21.0%	79.0%	100.0%
238110	0.8%	1.5%	0.4%	1.0%	3.3%	6.9%	93.1%	100.0%
238120	6.3%	6.3%	4.2%	2.1%	10.4%	29.2%	70.8%	100.0%
238160	0.3%	0.5%	0.3%	0.0%	2.3%	3.4%	96.6%	100.0%
238190	4.7%	7.0%	4.7%	4.7%	4.7%	25.6%	74.4%	100.0%
238210	1.5%	0.9%	0.6%	0.5%	3.0%	6.5%	93.5%	100.0%
238220	0.5%	0.3%	0.5%	0.5%	2.0%	3.8%	96.2%	100.0%
238290	9.5%	4.8%	4.8%	4.8%	4.8%	28.6%	71.4%	100.0%
238310	0.8%	1.8%	0.5%	0.0%	1.5%	4.5%	95.5%	100.0%
238320	0.5%	0.5%	0.2%	0.1%	1.9%	3.3%	96.7%	100.0%
238330	0.7%	1.4%	1.4%	0.0%	2.2%	5.8%	94.2%	100.0%
238350	0.7%	3.4%	0.7%	1.4%	2.0%	8.2%	91.8%	100.0%
238910	2.2%	1.8%	2.9%	1.8%	5.8%	14.6%	85.4%	100.0%
238990	0.9%	0.8%	0.3%	0.3%	1.3%	3.6%	96.4%	100.0%
423220	0.0%	0.0%	0.0%	0.0%	9.1%	9.1%	90.9%	100.0%
423320	0.0%	0.0%	3.8%	1.3%	1.3%	6.3%	93.8%	100.0%
423510	0.0%	0.0%	1.3%	0.0%	11.7%	13.0%	87.0%	100.0%
423710	0.0%	0.0%	0.0%	0.0%	2.4%	2.4%	97.6%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
444190	0.0%	0.0%	20.0%	0.0%	30.0%	50.0%	50.0%	100.0%
484220	7.1%	1.8%	5.3%	3.5%	15.3%	32.9%	67.1%	100.0%
488490	8.6%	0.0%	3.4%	0.0%	12.1%	24.1%	75.9%	100.0%
541310	0.4%	1.3%	2.2%	0.0%	9.8%	13.8%	86.2%	100.0%
541330	0.9%	1.4%	4.1%	0.5%	5.4%	12.3%	87.7%	100.0%
541370	5.8%	1.9%	5.8%	0.0%	1.0%	14.6%	85.4%	100.0%
541380	0.0%	1.0%	4.7%	0.0%	5.2%	11.0%	89.0%	100.0%
541611	6.5%	0.8%	2.1%	0.5%	9.8%	19.7%	80.3%	100.0%
541612	13.6%	1.6%	4.0%	0.0%	21.6%	40.8%	59.2%	100.0%
541620	3.3%	1.7%	2.2%	2.8%	18.8%	28.7%	71.3%	100.0%
561730	1.3%	0.7%	1.3%	0.2%	4.2%	7.7%	92.3%	100.0%
561990	1.1%	0.4%	0.5%	0.3%	6.1%	8.5%	91.5%	100.0%
562910	0.0%	2.6%	5.1%	0.0%	12.8%	20.5%	79.5%	100.0%
TOTAL	1.6%	1.0%	1.2%	0.6%	4.6%	9.0%	91.0%	100.0%

Source: CHA analysis of Port of Seattle data; Hoovers; CHA Master Directory

**Table 4-12: Distribution of Port of Seattle's Spending by NAICS Code
(FAA Funded) (the Weights)**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
236116	New Multifamily Housing Construction (except For-Sale Builders)	2.6%
236220	Commercial and Institutional Building Construction	11.9%
237310	Highway, Street, and Bridge Construction	48.0%
238110	Poured Concrete Foundation and Structure Contractors	3.4%
238120	Structural Steel and Precast Concrete Contractors	0.7%
238160	Roofing Contractors	0.02%
238190	Other Foundation, Structure, and Building Exterior Contractors	1.4%
238210	Electrical Contractors and Other Wiring Installation Contractors	2.0%
238220	Plumbing, Heating, and Air-Conditioning Contractors	3.6%
238290	Other Building Equipment Contractors	0.2%
238310	Drywall and Insulation Contractors	0.5%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
238320	Painting and Wall Covering Contractors	0.1%
238330	Flooring Contractors	1.1%
238350	Finish Carpentry Contractors	2.4%
238910	Site Preparation Contractors	1.2%
238990	All Other Specialty Trade Contractors	4.6%
423220	Home Furnishing Merchant Wholesalers	0.2%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	1.4%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	1.1%
423710	Hardware Merchant Wholesalers	0.001%
444190	Other Building Material Dealers	0.02%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.2%
488490	Other Support Activities for Road Transportation	0.2%
541310	Architectural Services	0.4%
541330	Engineering Services	0.3%
541370	Surveying and Mapping (except Geophysical) Services	0.03%
541380	Testing Laboratories	0.2%
541611	Administrative Management and General Management Consulting Services	0.3%
541612	Human Resources Consulting Services	0.01%
541620	Environmental Consulting Services	10.4%
561730	Landscaping Services	1.3%
561990	All Other Support Services	0.1%
562910	Remediation Services	0.01%
TOTAL		100.0%

Source: CHA analysis of Port of Seattle data

Table 4-13 presents the weighted availability results for each of the racial and gender categories. The aggregated availability of DBE/WMBE firms, weighted by the Port's spending in its geographic and industry markets, is 17.4%. This result can be used as the step one base figure for the Port's triennial DBE goal submission under 49 C.F.R. §26.45(c).

**Table 4-13: Aggregated Weighted DBE Availability
(FAA Funded)**

Black	Hispanic	Asian	Native American	White Women	DBE	Non-DBE	Total
2.6%	3.2%	2.3%	2.7%	6.5%	17.4%	82.6%	100.0%

Source: CHA analysis of Port of Seattle data; Hoovers; CHA Master Directory

5. Analysis of the Concentration of Contract Dollars among Firms

In addition to examining the level of DBE/WMBE and non-DBE/WMBE contract dollar utilization, another important dimension to a disparity analysis is an examination of any asymmetries or overconcentration¹²³ between the NAICS codes where the agency spends large shares of its funds and the NAICS codes that provide DBEs/WMBEs and non-DBEs/WMBEs their largest shares of earnings. This analysis is important for two reasons. First, to the extent that the NAICS codes where the agency spends the largest shares of its funds align with the codes that provide the largest shares of non-DBE/WMBE firm earnings AND these NAICS codes are different from the codes that provide large shares of DBE/WMBE firms earnings, this is indicative that DBE/WMBE firms do not enjoy the same position in the agency's marketplace as non-DBE/WMBE firms. Second, if an asymmetry exists between agency spending and DBE/WMBE firms' earnings, then the high utilization of DBEs/WMBEs as a group will mask unequal opportunities at a more granular level. Consequently, a narrowly tailored race- or gender-based remedial program may still be supportable under federal law. This section presents data to examine this issue.

Three findings stand out:

1. When comparing the top three NAICS codes for the Port, as measured by the share of all Port spending (the weight) and the top three NAICS codes for each DBE/WMBE group, the share of FAA funded spending going to the top three codes for DBEs exceeded the top three codes for the Port, except for the leading codes for White women where the share going to White women is very close to the share for the top three codes for all Port spending.
2. The leading codes for the Port were largely different than the top three codes for DBEs/WMBEs. Only one of the leading codes for the Port appeared among the leading codes for DBEs/WMBEs and this occurred just twice. Since DBEs/WMBEs were reliant on spending in other codes where the Port spent few dollars, a reduction in Port spending in the codes which provide DBEs/WMBEs much of their revenue would have a

123. See 49 C.F.R. 26.33(a).

minimal impact of overall Port spending but would have a disproportionately high impact on contract dollars flowing to those DBEs/WMBEs. Thus, the minimal overlap means DBE/WMBE groups are in a state of precarity.

3. In the vast majority of the three NAICS codes that provide the most contract dollars to each DBE/WMBE group, the code's share of that group's overall contract dollars exceeded that code's share of overall contract dollars received by non-DBEs/WMBEs.¹²⁴

These three findings indicate that the pattern of spending received by DBEs/WMBEs is markedly different from the pattern of spending by the Port.

Table 4-14 presents data on the share of the Port's FAA funded contract dollars received by the top three NAICS codes for each demographic group. These shares were derived from the data presented in Table 4-9. The data in this Table present evidence for the first finding. The three NAICS codes where the Port spent most of its contract dollars captured 70.3% of all FAA funded spending. While this figure is similar to the share for White women (71.7%), it is less than the share for Blacks (100.0%), Hispanics (89.1%), Asians (77.3%), and Native Americans (100.0%).

Table 4-14: Comparison of the Share of Port of Seattle Spending Captured by the Top Three NAICS Codes for Each Demographic Group (FAA Funded)

Demographic Group	Share of All Port of Seattle Spending in the Top Three NAICS Codes for Each Group
All	70.3%
Black	100.0%
Hispanic	89.1%
Asian	77.3%
Native American	100.0%
White Woman	71.7%
Non-DBE/WMBE	79.2%

Source: CHA analysis of Port of Seattle data

With respect to the second finding, Table 4-15 provides more detail on the data presented in Table 4-14. Table 4-15 lists the top three codes for each

124. Of the 15 possible codes (five DBE/WMBE groups; three NAICS codes), the DBE/WMBE share exceeded the non-DBE/WMBE share in 14 codes.

group and their corresponding share of the group’s total spending. Of the top three codes for the Port, only one– Highway, Street, and Bridge Construction (NAICS code 237310)– was a leading code for any of the DBEs/WMBEs. That code was present among the top codes for Hispanics and Native Americans.

Table 4-15: The Top Three Port of Seattle Spending NAICS Codes for Each Demographic Group (FAA Funded Contracts)

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
All			
237310	Highway, Street, and Bridge Construction	48.0%	70.3%
236220	Commercial and Institutional Building Construction	11.9%	
541620	Environmental Consulting Services	10.4%	
Black			
484220	Specialized Freight (except Used Goods) Trucking, Local	49.9%	100.0%
488490	Other Support Activities for Road Transportation	49.4%	
541611	Administrative Management and General Management Consulting Services	0.7%	
Hispanic			
237310	Highway, Street, and Bridge Construction	60.8%	89.1%
238110	Poured Concrete Foundation and Structure Contractors	24.9%	
238210	Electrical Contractors and Other Wiring Installation Contractors	3.4%	
Asian			
561730	Landscaping Services	48.0%	77.3%
238910	Site Preparation Contractors	16.7%	
238220	Plumbing, Heating, and Air-Conditioning Contractors	12.6%	
Native American			
238210	Electrical Contractors and Other Wiring Installation Contractors	62.2%	100.0%
237310	Highway, Street, and Bridge Construction	25.8%	
238290	Other Building Equipment Contractors	12.0%	
White Woman			
238990	All Other Specialty Trade Contractors	35.4%	71.7%
238350	Finish Carpentry Contractors	21.0%	
238210	Electrical Contractors and Other Wiring Installation Contractors	15.4%	

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
Non-DBE/WMBE Firm			
237310	Highway, Street, and Bridge Construction	50.7%	79.2%
236220	Commercial and Institutional Building Construction	15.2%	
541620	Environmental Consulting Services	13.3%	

Source: CHA analysis of Port of Seattle data

Tables 4-16 through 4-20 present data on the third finding: how the Port's spending varied across groups. These results illustrate the different levels of concentration of contract dollars among DBEs/WMBEs compared to non-DBEs/WMBEs. For each demographic group, we provide the three NAICS codes where the group received the largest share of the Port's spending (first presented in Table 4-14). Then, we present the weight for each code derived from the Port's overall spending. Finally, we present the share of all group contract dollars and compare that share to the corresponding share received by non-DBEs/WMBEs.

Table 4-16 presents the three NAICS codes where Black firms received the largest share of their contract dollars. While these codes captured all Black contract dollars, the corresponding figure for non-DBEs/WMBEs was 0.4%. With respect to the second finding of precarity, if the Port eliminated the 0.7% of spending in these three codes, the elimination would reduce all Black contract dollars.

Table 4-16: Three NAICS Codes where Black Firms Received the Most Spending (FAA Funded)

NAICS Code	NAICS Code Label	Weight	Share of Total Black Dollars	Share of Total Non-DBE Dollars
484220	Specialized Freight (except Used Goods) Trucking, Local	0.2%	49.9%	0.002%
488490	Other Support Activities for Road Transportation	0.2%	49.5%	0.04%
541611	Administrative Management and General Management Consulting Services	0.3%	0.7%	0.3%
Total 3-code Share of Total Group Dollars			100.0%	0.4%

Source: CHA analysis of Port of Seattle data

Table 4-17 presents the three NAICS codes where Hispanic firms received the largest share of their contract dollars. NAICS code 237310 (Highway, Street, and Bridge Construction) is a leading code for the Port and Hispanic firms so the difference between the share of Hispanic contract dollars from the three leading codes and the share of non-DBE/WMBE firms from the three codes is not as large as we see for other DBEs/WMBEs. However, if you looked at the other two codes, they provide 28.3% of Hispanic contract dollars, but just 0.5% of non-DBE contract dollars. With respect to the second finding of precarity, NAICS codes 238110 and 238210 are not among the Port’s leading three NAICS codes. If the Port eliminated the 5.4% of spending in those codes, the elimination would reduce Hispanic contract dollars by 28.3%.

Table 4-17: Three NAICS Codes where Hispanic Firms Received the Most Spending (FAA Funded)

NAICS Code	NAICS Code Label	Weight	Share of Total Hispanic Dollars	Share of Total Non-DBE Dollars
237310	Highway, Street, and Bridge Construction	48.0%	60.8%	50.7%
238110	Poured Concrete Foundation and Structure Contractors	3.4%	24.9%	0.1%
238210	Electrical Contractors and Other Wiring Installation Contractors	2.0%	3.4%	0.4%
Total 3-code Share of Total Group Dollars			89.1%	51.3%

Source: CHA analysis of Port of Seattle data

Table 4-18 presents the three NAICS codes where Asian-owned businesses received the largest share of their contract dollars. These codes comprised 77.3% of all Asian contract dollars; the corresponding figure for non-DBEs/WMBEs was 5.0%. With respect to the second finding of precarity, if the Port eliminated the 6.1% of spending in these three codes, the elimination would reduce Asian contract dollars by 77.3%.

**Table 4-18: Three NAICS Codes where Asian Firms Received the Most Spending
(FAA Funded)**

NAICS Code	NAICS Code Label	Weight	Share of Total Asian Dollars	Share of Total Non-DBE Dollars
561730	Landscaping Services	1.3%	48.0%	0.0%
238910	Site Preparation Contractors	1.2%	16.7%	0.9%
238220	Plumbing, Heating, and Air-Conditioning Contractors	3.6%	12.6%	4.1%
Total 3-code Share of Total Group Dollars			77.3%	5.0%

Source: CHA analysis of Port of Seattle data

Table 4-19 presents the three NAICS codes where Native American firms received the largest share of their contract dollars. While these codes captured all Native American contract dollars, the corresponding figure for non-DBE/ WMBE firms was 51.4%. As with Hispanics, the large non-DBE/WMBE share is because NAICS code 237310 is a leading code for Native Americans and the Port overall. With respect to the second finding of precarity, NAICS codes 238210 and 238290 are not among the Port's leading three NAICS codes. If the Port eliminated the 2.2% of spending in those codes, the elimination would reduce Native American contract dollars by 74.2%.

**Table 4-19: Three NAICS Codes where Native American Firms Received the Most Spending
(FAA Funded)**

NAICS Code	NAICS Code Label	Weight	Share of Total Native American Dollars	Share of Total Non-DBE Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	2.0%	62.2%	0.4%
237310	Highway, Street, and Bridge Construction	48.0%	25.8%	50.7%
238290	Other Building Equipment Contractors	0.2%	12.0%	0.2%
Total 3-code Share of Total Group Dollars			100.0%	51.4%

Source: CHA analysis of Port of Seattle data

Table 4-20 presents the three NAICS codes where White woman firms received the largest share of their contract dollars. These codes comprise 71.7% of all White woman contract dollars; the corresponding figure for non-DBE/WMBE firms was 3.4%. With respect to the second finding of precarity, if the Port

eliminated the 9.0% of spending in these three codes, the elimination would reduce White woman contract dollars by 71.7%.

Table 4-20: Three NAICS Codes where White Woman Firms Received the Most Spending (FAA Funded)

NAICS Code	NAICS Code Label	Weight	Share of Total White Woman Dollars	Share of Total Non-DBE Dollars
238990	All Other Specialty Trade Contractors	4.6%	35.4%	2.2%
238350	Finish Carpentry Contractors	2.4%	21.0%	0.9%
238210	Electrical Contractors and Other Wiring Installation Contractors	2.0%	15.4%	0.4%
Total 3-code Share of Total Group Dollars			71.7%	3.4%

Source: CHA analysis of Port of Seattle data

The data presented in Tables 4-14 through 4-20 support the inference that regardless of any statistical disparities between contract utilization and weighted availability, the experiences of DBE/WMBE firms with respect to participation in Port procurements were significantly different than the experiences of non-DBE/WMBE firms.

6. FAA Funded Contracts: Disparity Analysis

As required by strict constitutional scrutiny, we next calculated disparity ratios for each demographic group, comparing the group's total utilization compared to its total weighted availability.

A *disparity ratio* is the relationship between the utilization and weighted availability (as determined in the section above). Mathematically, this is represented by:

$$DR = U/WA$$

Where DR is the disparity ratio; U is utilization rate; and WA is the weighted availability.

The courts have held that disparity results must be analyzed to determine whether the results are "significant". There are two distinct methods to measure a result's significance. First, a "large" or "substantively significant" disparity is commonly defined by courts as utilization that is equal to or less than 80% of the availability measure. A substantively significant disparity supports the inference that the result may be caused by the disparate impacts of discrimination.¹²⁵ Second, statistically significant disparity means that an outcome is

unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from random chance alone.¹²⁶ A more in-depth discussion of statistical significance is provided in Appendix C.

Substantive and Statistical Significance
‡ Connotes these values are substantively significant. Courts have ruled the disparity ratio less or equal to 80 percent represent disparities that are substantively significant. (See Footnote 125 for more information.)
* Connotes these values are statistically significant at the 0.05 level. (See Appendix C for more information.)
** Connotes these values are statistically significant at the 0.01 level. (See Appendix C for more information.)
*** Connotes these values are statistically significant at the 0.001 level. (See Appendix C for more information.)

Table 4-21 presents the disparity ratios for each demographic group. The disparity ratios for Blacks and Native Americans are substantively significant. The disparity ratios for DBEs/WMBEs (as a whole) and non-DBEs/WMBEs are statistically significant at the 0.001 level.

**Table 4-21: Disparity Ratios by Demographic Group
(FAA Funded)**

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE
Disparity Ratio	10.5%‡	379.5%	118.5%	14.8%‡	90.2%	124.5%***	94.9%***

Source: CHA analysis of Port of Seattle data

‡ Indicates substantive significance

*** Statistically significant at the 0.001 level

We examined more closely the extraordinarily high disparity ratio for Hispanics. The analysis uncovered that in one NAICS code – 237310: Highway, Street, and Bridge Construction – one firm received 91.9% of all Hispanic contract dollars in this code. Overall, this firm received 43.5% of all Hispanic contract dol-

125. See U.S. Equal Employment Opportunity Commission regulation, 29 C.F.R. §1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).

126. A chi-square test – examining if the utilization rate was different from the weighted availability - was used to determine the statistical significance of the disparity ratio.

lars. Because of the large overall weight, this code has (48.0%) and high Hispanic utilization in this code (16.9%), we can infer the high disparity ratio is due to the success of this one firm and is not representative of overall procurement patterns.

D. Locally Funded Contracts: Contract Data Overview

Because the methodology behind these calculations mirrors what was done for our analysis of locally funded contract data, we dispense with detailed explanations.

Tables 4-22 and 4-23 provide data on the resulting FCDF for locally funded contracts.

**Table 4-22: Final Contract Data File Number of Contracts
(Locally Funded)**

Contract Type	Total Contracts	Share of Total Contracts
Prime Contract	108	12.0%
Subcontract	791	88.0%
TOTAL	899	100.0%

Source: CHA analysis of Port of Seattle data

**Table 4-23: Final Contract Data File Net Dollar Value of Contracts
(Locally Funded)**

Business Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contracts	\$261,791,430	40.3%
Subcontract	\$387,558,088	59.7%
TOTAL	\$649,349,518	100.0%

Source: CHA analysis of Port of Seattle data

1. Locally Funded Contracts: The Geographic and Product Market

a. Final Contract Data File for Locally Funded Contracts

Table 4-24 presents the FCDF for locally funded contracts. It consisted of 76 NAICS codes, with a total contract dollar value of \$649,349,518.

**Table 4-24: Industry Percentage Distribution of Port of Seattle Contracts by Dollars
(Locally Funded)**

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	35.7%	35.7%
238290	Other Building Equipment Contractors	29.7%	65.4%
238220	Plumbing, Heating, and Air-Conditioning Contractors	7.2%	72.6%
237310	Highway, Street, and Bridge Construction	5.0%	77.6%
236220	Commercial and Institutional Building Construction	3.5%	81.1%
484220	Specialized Freight (except Used Goods) Trucking, Local	2.6%	83.7%
238910	Site Preparation Contractors	1.7%	85.4%
238390	Other Building Finishing Contractors	1.6%	87.0%
238190	Other Foundation, Structure, and Building Exterior Contractors	1.1%	88.1%
238310	Drywall and Insulation Contractors	1.1%	89.1%
541330	Engineering Services	1.0%	90.1%
541611	Administrative Management and General Management Consulting Services	1.0%	91.1%
562910	Remediation Services	0.9%	92.0%
444190	Other Building Material Dealers	0.9%	92.8%
238150	Glass and Glazing Contractors	0.8%	93.7%
238120	Structural Steel and Precast Concrete Contractors	0.8%	94.4%
238990	All Other Specialty Trade Contractors	0.8%	95.2%
561990	All Other Support Services	0.6%	95.8%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.6%	96.4%
541990	All Other Professional, Scientific, and Technical Services	0.3%	96.8%
238330	Flooring Contractors	0.3%	97.0%
237990	Other Heavy and Civil Engineering Construction	0.2%	97.3%
561730	Landscaping Services	0.2%	97.5%
238350	Finish Carpentry Contractors	0.2%	97.8%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
238130	Framing Contractors	0.2%	98.0%
238320	Painting and Wall Covering Contractors	0.2%	98.1%
238160	Roofing Contractors	0.2%	98.3%
541310	Architectural Services	0.1%	98.4%
541420	Industrial Design Services	0.1%	98.6%
221310	Water Supply and Irrigation Systems	0.1%	98.7%
238110	Poured Concrete Foundation and Structure Contractors	0.1%	98.8%
237110	Water and Sewer Line and Related Structures Construction	0.1%	98.9%
236210	Industrial Building Construction	0.1%	99.0%
238140	Masonry Contractors	0.1%	99.1%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.1%	99.2%
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	0.1%	99.3%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	0.1%	99.4%
238170	Siding Contractors	0.1%	99.4%
811213	Communication Equipment Repair and Maintenance	0.1%	99.5%
541370	Surveying and Mapping (except Geophysical) Services	0.05%	99.5%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.04%	99.6%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.04%	99.6%
541620	Environmental Consulting Services	0.04%	99.7%
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	0.04%	99.7%
561320	Temporary Help Services	0.03%	99.7%
488490	Other Support Activities for Road Transportation	0.03%	99.8%
236115	New Single-Family Housing Construction (except For-Sale Builders)	0.03%	99.8%
423710	Hardware Merchant Wholesalers	0.02%	99.8%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
562998	All Other Miscellaneous Waste Management Services	0.02%	99.8%
562119	Other Waste Collection	0.02%	99.9%
562212	Solid Waste Landfill	0.02%	99.9%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	0.02%	99.9%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	0.02%	99.9%
561710	Exterminating and Pest Control Services	0.01%	99.9%
423210	Furniture Merchant Wholesalers	0.01%	99.9%
423220	Home Furnishing Merchant Wholesalers	0.01%	99.9%
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	0.01%	100.0%
485999	All Other Transit and Ground Passenger Transportation	0.01%	100.0%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.01%	100.0%
447190	Other Gasoline Stations	0.01%	100.0%
483211	Inland Water Freight Transportation	0.004%	100.0%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	0.004%	100.0%
561720	Janitorial Services	0.004%	100.0%
541380	Testing Laboratories	0.002%	100.0%
562991	Septic Tank and Related Services	0.002%	100.0%
811412	Appliance Repair and Maintenance	0.002%	100.0%
423740	Refrigeration Equipment and Supplies Merchant Wholesalers	0.002%	100.0%
562111	Solid Waste Collection	0.001%	100.0%
423840	Industrial Supplies Merchant Wholesalers	0.001%	100.0%
517311	Wired Telecommunications Carriers	0.001%	100.0%
561790	Other Services to Buildings and Dwellings	0.001%	100.0%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	0.001%	100.0%
561612	Security Guards and Patrol Services	0.001%	100.0%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	0.001%	100.0%
488310	Port and Harbor Operations	0.0003%	100.0%
541618	Other Management Consulting Services	0.0003%	100.0%
TOTAL		100.0%	

Source: CHA analysis of Port of Seattle data

b. Geographic Market for Locally Funded Contracts

The three county Seattle metropolitan area captured 69.4% of the FCDF. One global firm-without an office in the Seattle metro area – captured 23.4% with one contract. To exclude this contract would distort the true picture of the Port’s locally funded spending, so while this analysis uses the three-county Seattle metropolitan as the geographic market, we included that one contract in the study.

2. Locally Funded Contracts: Utilization of Firms in the Geographic and Product Market

Similar to the analysis of FAA funded contract dollars, after having determined the Port’s geographic market, the next step in the analysis of locally funded contract dollars was to determine the dollar value of its utilization of DBEs/ WMBEs as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. There were 68 NAICS codes after constraining the FCDF by the geographic market; the dollar value of the contracts in these codes was \$605,528,265. Table 4-25 presents these data. As explained in the section on locally funded contracts, these contract dollar shares in Table 4-25 are equivalent to the weight of spending in each NAICS code and they will be used to calculate weighted availability from unweighted availability.

Table 4-25: NAICS Code Distribution of Contract Dollars in Port of Seattle's Constrained Product Market (Locally Funded)

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	\$228,231,616	37.7%
238290	Other Building Equipment Contractors	\$192,859,168	31.8%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$35,541,856	5.9%
237310	Highway, Street, and Bridge Construction	\$30,160,836	5.0%
236220	Commercial and Institutional Building Construction	\$22,439,338	3.7%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$16,967,446	2.8%
238910	Site Preparation Contractors	\$9,463,301	1.6%
238190	Other Foundation, Structure, and Building Exterior Contractors	\$7,159,708	1.2%
238310	Drywall and Insulation Contractors	\$6,704,582	1.1%
562910	Remediation Services	\$5,950,316	1.0%
238150	Glass and Glazing Contractors	\$5,458,414	0.9%
541330	Engineering Services	\$5,048,673	0.8%
238990	All Other Specialty Trade Contractors	\$4,615,102	0.8%
561990	All Other Support Services	\$4,010,659	0.7%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	\$3,283,167	0.5%
444190	Other Building Material Dealers	\$2,987,593	0.5%
541990	All Other Professional, Scientific, and Technical Services	\$2,102,010	0.3%
238390	Other Building Finishing Contractors	\$2,092,826	0.3%
541611	Administrative Management and General Management Consulting Services	\$1,960,121	0.3%
238330	Flooring Contractors	\$1,695,896	0.3%
237990	Other Heavy and Civil Engineering Construction	\$1,594,042	0.3%
238350	Finish Carpentry Contractors	\$1,466,955	0.2%
238130	Framing Contractors	\$1,267,887	0.2%
238320	Painting and Wall Covering Contractors	\$1,115,525	0.2%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
541310	Architectural Services	\$949,458	0.2%
238160	Roofing Contractors	\$902,565	0.1%
541420	Industrial Design Services	\$896,883	0.1%
561730	Landscaping Services	\$848,683	0.1%
221310	Water Supply and Irrigation Systems	\$813,626	0.1%
237110	Water and Sewer Line and Related Structures Construction	\$629,004	0.1%
236210	Industrial Building Construction	\$628,236	0.1%
238120	Structural Steel and Precast Concrete Contractors	\$591,778	0.1%
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	\$568,747	0.1%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	\$515,869	0.1%
238140	Masonry Contractors	\$488,012	0.1%
238110	Poured Concrete Foundation and Structure Contractors	\$443,960	0.1%
238170	Siding Contractors	\$421,583	0.1%
541370	Surveying and Mapping (except Geophysical) Services	\$301,354	0.05%
423830	Industrial Machinery and Equipment Merchant Wholesalers	\$283,449	0.05%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	\$258,961	0.04%
541620	Environmental Consulting Services	\$241,320	0.04%
488490	Other Support Activities for Road Transportation	\$192,794	0.03%
236115	New Single-Family Housing Construction (except For-Sale Builders)	\$179,527	0.03%
423710	Hardware Merchant Wholesalers	\$160,737	0.03%
562998	All Other Miscellaneous Waste Management Services	\$146,299	0.02%
562119	Other Waste Collection	\$143,928	0.02%
562212	Solid Waste Landfill	\$137,110	0.02%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	\$104,202	0.02%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	\$93,208	0.02%
423210	Furniture Merchant Wholesalers	\$63,739	0.01%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	\$53,966	0.01%
423220	Home Furnishing Merchant Wholesalers	\$48,861	0.01%
485999	All Other Transit and Ground Passenger Transportation	\$45,670	0.01%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	\$44,811	0.01%
483211	Inland Water Freight Transportation	\$28,639	0.005%
561720	Janitorial Services	\$26,537	0.004%
562991	Septic Tank and Related Services	\$14,738	0.002%
561710	Exterminating and Pest Control Services	\$12,597	0.002%
541380	Testing Laboratories	\$11,395	0.002%
811412	Appliance Repair and Maintenance	\$10,942	0.002%
423740	Refrigeration Equipment and Supplies Merchant Wholesalers	\$10,055	0.002%
562111	Solid Waste Collection	\$9,241	0.002%
423840	Industrial Supplies Merchant Wholesalers	\$8,798	0.001%
517311	Wired Telecommunications Carriers	\$5,970	0.001%
561790	Other Services to Buildings and Dwellings	\$5,544	0.001%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	\$4,995	0.001%
488310	Port and Harbor Operations	\$1,730	0.0003%
541618	Other Management Consulting Services	\$1,700	0.0003%
TOTAL		\$605,528,265	100.0%

Source: CHA analysis of Port of Seattle data

Tables 4-26 and 4-27 present data on the Port’s DBE/WMBE firm utilization, measured in contract dollars and percentage of contract dollars.

**Table 4-26: Distribution of Port of Seattle Contract Dollars by Race and Gender
(total dollars) (Locally Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non-WMBE	Total
221310	\$0	\$0	\$0	\$0	\$0	\$0	\$813,626	\$813,626
236115	\$0	\$0	\$179,527	\$0	\$0	\$179,527	\$0	\$179,527
236210	\$0	\$0	\$0	\$0	\$628,236	\$628,236	\$0	\$628,236
236220	\$0	\$401,894	\$2,313,487	\$0	\$0	\$2,715,381	\$19,723,957	\$22,439,338
237110	\$0	\$285,000	\$0	\$0	\$0	\$285,000	\$344,004	\$629,004
237310	\$0	\$1,174,695	\$391,017	\$135,594	\$1,078,620	\$2,779,926	\$27,380,910	\$30,160,836
237990	\$0	\$0	\$0	\$0	\$0	\$0	\$1,594,042	\$1,594,042
238110	\$0	\$37,203	\$36,412	\$0	\$260,104	\$333,719	\$110,241	\$443,960
238120	\$0	\$309,173	\$0	\$0	\$0	\$309,173	\$282,604	\$591,778
238130	\$0	\$92,958	\$0	\$0	\$0	\$92,958	\$1,174,929	\$1,267,887
238140	\$0	\$0	\$0	\$0	\$0	\$0	\$488,012	\$488,012
238150	\$0	\$208,625	\$0	\$0	\$4,139,149	\$4,347,774	\$1,110,640	\$5,458,414
238160	\$0	\$0	\$0	\$0	\$233,533	\$233,533	\$669,032	\$902,565
238170	\$0	\$0	\$0	\$0	\$0	\$0	\$421,583	\$421,583
238190	\$0	\$19,925	\$0	\$54,382	\$275,991	\$350,298	\$6,809,410	\$7,159,708
238210	\$885,059	\$1,725,589	\$1,465,400	\$3,223,335	\$11,090,353	\$18,389,735	\$209,841,881	\$228,231,616
238220	\$0	\$7,125	\$681,965	\$0	\$629,360	\$1,318,450	\$34,223,407	\$35,541,857
238290	\$0	\$0	\$0	\$150,371	\$409,809	\$560,179	\$192,298,995	\$192,859,174
238310	\$0	\$107,265	\$1,535	\$0	\$510,718	\$619,518	\$6,085,064	\$6,704,582
238320	\$212,963	\$134,466	\$0	\$0	\$65,075	\$412,504	\$703,021	\$1,115,525
238330	\$0	\$0	\$0	\$0	\$853,732	\$853,732	\$842,164	\$1,695,896
238350	\$0	\$0	\$0	\$0	\$0	\$0	\$1,466,955	\$1,466,955
238390	\$0	\$0	\$0	\$0	\$31,529	\$31,529	\$2,061,297	\$2,092,826
238910	\$0	\$106,172	\$37,729	\$601,051	\$695,593	\$1,440,546	\$8,022,756	\$9,463,301
238990	\$0	\$104,965	\$0	\$0	\$52,492	\$157,457	\$4,457,645	\$4,615,102
423210	\$0	\$0	\$0	\$0	\$0	\$0	\$63,739	\$63,739

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non-WMBE	Total
423220	\$0	\$0	\$0	\$0	\$48,861	\$48,861	\$0	\$48,861
423310	\$0	\$0	\$0	\$0	\$0	\$0	\$93,208	\$93,208
423320	\$0	\$0	\$0	\$0	\$67,920	\$67,920	\$191,042	\$258,961
423510	\$0	\$0	\$20,015	\$0	\$282,226	\$302,241	\$2,980,925	\$3,283,166
423610	\$0	\$0	\$0	\$0	\$0	\$0	\$53,966	\$53,966
423710	\$0	\$0	\$0	\$0	\$0	\$0	\$160,737	\$160,737
423720	\$0	\$0	\$241,351	\$0	\$7,361	\$248,713	\$267,156	\$515,869
423730	\$0	\$0	\$0	\$0	\$76,875	\$76,875	\$491,871	\$568,746
423740	\$0	\$0	\$0	\$0	\$0	\$0	\$10,055	\$10,055
423830	\$0	\$0	\$0	\$0	\$0	\$0	\$283,449	\$283,449
423840	\$0	\$0	\$0	\$0	\$0	\$0	\$8,798	\$8,798
423850	\$0	\$0	\$0	\$0	\$0	\$0	\$4,995	\$4,995
423990	\$0	\$0	\$0	\$0	\$0	\$0	\$44,811	\$44,811
444190	\$0	\$0	\$1,835	\$0	\$0	\$1,835	\$2,985,759	\$2,987,593
483211	\$0	\$0	\$0	\$0	\$0	\$0	\$28,639	\$28,639
484220	\$284,147	\$0	\$16,070,126	\$0	\$57,858	\$16,412,131	\$555,315	\$16,967,446
485999	\$0	\$0	\$0	\$0	\$45,670	\$45,670	\$0	\$45,670
488310	\$0	\$0	\$0	\$0	\$0	\$0	\$1,730	\$1,730
488490	\$0	\$0	\$22,735	\$0	\$0	\$22,735	\$170,059	\$192,794
517311	\$0	\$0	\$0	\$0	\$0	\$0	\$5,970	\$5,970
541310	\$0	\$47,848	\$436,045	\$8,640	\$0	\$492,533	\$456,925	\$949,458
541330	\$89,558	\$1,439	\$1,305,557	\$0	\$644,226	\$2,040,779	\$3,007,894	\$5,048,672
541370	\$0	\$0	\$274,462	\$0	\$26,892	\$301,354	\$0	\$301,354
541380	\$0	\$0	\$0	\$0	\$3,445	\$3,445	\$7,950	\$11,395
541420	\$0	\$0	\$182,343	\$0	\$0	\$182,343	\$714,540	\$896,883
541611	\$0	\$69,905	\$500,827	\$0	\$0	\$570,732	\$1,389,389	\$1,960,121
541618	\$0	\$0	\$1,700	\$0	\$0	\$1,700	\$0	\$1,700
541620	\$0	\$0	\$0	\$0	\$80,424	\$80,424	\$160,896	\$241,320
541990	\$0	\$0	\$29,103	\$1,645,919	\$206,089	\$1,881,110	\$220,899	\$2,102,010
561710	\$0	\$0	\$0	\$0	\$0	\$0	\$12,597	\$12,597

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non-WMBE	Total
561720	\$25,461	\$0	\$0	\$0	\$1,076	\$26,537	\$0	\$26,537
561730	\$0	\$0	\$1,710	\$0	\$694,014	\$695,724	\$152,960	\$848,683
561790	\$0	\$0	\$0	\$0	\$0	\$0	\$5,544	\$5,544
561990	\$0	\$219,203	\$40,910	\$0	\$3,686,931	\$3,947,044	\$63,615	\$4,010,659
562111	\$0	\$0	\$0	\$0	\$0	\$0	\$9,241	\$9,241
562119	\$0	\$0	\$0	\$0	\$122,135	\$122,135	\$21,793	\$143,928
562212	\$0	\$0	\$0	\$0	\$0	\$0	\$137,110	\$137,110
562910	\$0	\$0	\$0	\$0	\$0	\$0	\$5,950,316	\$5,950,316
562991	\$0	\$0	\$0	\$0	\$0	\$0	\$14,738	\$14,738
562998	\$0	\$0	\$0	\$0	\$0	\$0	\$146,299	\$146,299
811310	\$0	\$0	\$0	\$0	\$0	\$0	\$104,202	\$104,202
811412	\$0	\$0	\$0	\$0	\$0	\$0	\$10,942	\$10,942
Total	\$1,497,187	\$5,053,451	\$24,235,788	\$5,819,291	\$27,006,299	\$63,612,015	\$541,916,250	\$605,528,265

Source: CHA analysis of Port of Seattle data

**Table 4-27: Percentage Distribution of Port of Seattle Contract Dollars by Race and Gender
(share of total dollars) (Locally Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non-WMBE	Total
221310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236115	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
236210	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
236220	0.0%	1.8%	10.3%	0.0%	0.0%	12.1%	87.9%	100.0%
237110	0.0%	45.3%	0.0%	0.0%	0.0%	45.3%	54.7%	100.0%
237310	0.0%	3.9%	1.3%	0.4%	3.6%	9.2%	90.8%	100.0%
237990	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238110	0.0%	8.4%	8.2%	0.0%	58.6%	75.2%	24.8%	100.0%
238120	0.0%	52.2%	0.0%	0.0%	0.0%	52.2%	47.8%	100.0%
238130	0.0%	7.3%	0.0%	0.0%	0.0%	7.3%	92.7%	100.0%
238140	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238150	0.0%	3.8%	0.0%	0.0%	75.8%	79.7%	20.3%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non-WMBE	Total
238160	0.0%	0.0%	0.0%	0.0%	25.9%	25.9%	74.1%	100.0%
238170	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238190	0.0%	0.3%	0.0%	0.8%	3.9%	4.9%	95.1%	100.0%
238210	0.4%	0.8%	0.6%	1.4%	4.9%	8.1%	91.9%	100.0%
238220	0.0%	0.0%	1.9%	0.0%	1.8%	3.7%	96.3%	100.0%
238290	0.0%	0.0%	0.0%	0.1%	0.2%	0.3%	99.7%	100.0%
238310	0.0%	1.6%	0.0%	0.0%	7.6%	9.2%	90.8%	100.0%
238320	19.1%	12.1%	0.0%	0.0%	5.8%	37.0%	63.0%	100.0%
238330	0.0%	0.0%	0.0%	0.0%	50.3%	50.3%	49.7%	100.0%
238350	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238390	0.0%	0.0%	0.0%	0.0%	1.5%	1.5%	98.5%	100.0%
238910	0.0%	1.1%	0.4%	6.4%	7.4%	15.2%	84.8%	100.0%
238990	0.0%	2.3%	0.0%	0.0%	1.1%	3.4%	96.6%	100.0%
423210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423220	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
423310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423320	0.0%	0.0%	0.0%	0.0%	26.2%	26.2%	73.8%	100.0%
423510	0.0%	0.0%	0.6%	0.0%	8.6%	9.2%	90.8%	100.0%
423610	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423710	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423720	0.0%	0.0%	46.8%	0.0%	1.4%	48.2%	51.8%	100.0%
423730	0.0%	0.0%	0.0%	0.0%	13.5%	13.5%	86.5%	100.0%
423740	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423830	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423840	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423850	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423990	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
444190	0.0%	0.0%	0.1%	0.0%	0.0%	0.1%	99.9%	100.0%
483211	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484220	1.7%	0.0%	94.7%	0.0%	0.3%	96.7%	3.3%	100.0%

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NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non-WMBE	Total
485999	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
488310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
488490	0.0%	0.0%	11.8%	0.0%	0.0%	11.8%	88.2%	100.0%
517311	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541310	0.0%	5.0%	45.9%	0.9%	0.0%	51.9%	48.1%	100.0%
541330	1.8%	0.0%	25.9%	0.0%	12.8%	40.4%	59.6%	100.0%
541370	0.0%	0.0%	91.1%	0.0%	8.9%	100.0%	0.0%	100.0%
541380	0.0%	0.0%	0.0%	0.0%	30.2%	30.2%	69.8%	100.0%
541420	0.0%	0.0%	20.3%	0.0%	0.0%	20.3%	79.7%	100.0%
541611	0.0%	3.6%	25.6%	0.0%	0.0%	29.1%	70.9%	100.0%
541618	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541620	0.0%	0.0%	0.0%	0.0%	33.3%	33.3%	66.7%	100.0%
541990	0.0%	0.0%	1.4%	78.3%	9.8%	89.5%	10.5%	100.0%
561710	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561720	95.9%	0.0%	0.0%	0.0%	4.1%	100.0%	0.0%	100.0%
561730	0.0%	0.0%	0.2%	0.0%	81.8%	82.0%	18.0%	100.0%
561790	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561990	0.0%	5.5%	1.0%	0.0%	91.9%	98.4%	1.6%	100.0%
562111	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562119	0.0%	0.0%	0.0%	0.0%	84.9%	84.9%	15.1%	100.0%
562212	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562910	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562991	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562998	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
811310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
811412	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
Total	0.2%	0.8%	4.0%	1.0%	4.5%	10.5%	89.5%	100.0%

Source: CHA analysis of Port of Seattle data

3. Locally Funded Contracts: The Availability of DBEs/WMBEs in the Geographic and Product Market

Tables 4-28 through 4-30 present data on:

- The unweighted availability percentages by race and gender and by NAICS code;
- The weights used to adjust the unweighted numbers;¹²⁷ and
- The final estimates of the weighted averages of the individual six-digit level NAICS availability estimates in the market area.

**Table 4-28: Unweighted DBE/WMBE Availability for Port of Seattle Contracts
(Locally Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non-WMBE	Total
221310	0.0%	0.0%	0.0%	0.0%	2.5%	2.5%	97.5%	100.0%
236115	0.2%	0.1%	0.1%	0.1%	0.7%	1.1%	98.9%	100.0%
236210	4.3%	0.0%	6.4%	6.4%	6.4%	23.4%	76.6%	100.0%
236220	1.5%	2.4%	3.6%	3.2%	5.1%	15.8%	84.2%	100.0%
237110	4.3%	1.8%	5.5%	3.0%	9.8%	24.4%	75.6%	100.0%
237310	3.1%	5.1%	3.4%	3.7%	6.5%	21.8%	78.2%	100.0%
237990	5.8%	2.9%	10.6%	3.8%	5.8%	28.8%	71.2%	100.0%
238110	0.8%	1.5%	0.8%	0.9%	3.4%	7.4%	92.6%	100.0%
238120	6.3%	8.3%	4.2%	2.1%	8.3%	29.2%	70.8%	100.0%
238130	0.2%	1.5%	0.0%	0.4%	1.1%	3.2%	96.8%	100.0%
238140	0.5%	0.0%	1.0%	0.0%	2.9%	4.3%	95.7%	100.0%
238150	0.0%	3.2%	0.0%	0.0%	6.3%	9.5%	90.5%	100.0%
238160	0.3%	0.5%	0.3%	0.0%	2.6%	3.6%	96.4%	100.0%
238170	0.0%	1.8%	1.8%	0.0%	0.0%	3.5%	96.5%	100.0%
238190	4.2%	8.3%	4.2%	6.3%	8.3%	31.3%	68.8%	100.0%
238210	1.5%	0.9%	0.7%	0.7%	3.2%	6.9%	93.1%	100.0%
238220	0.5%	0.4%	0.6%	0.4%	2.3%	4.2%	95.8%	100.0%
238290	5.9%	2.9%	2.9%	2.9%	5.9%	20.6%	79.4%	100.0%

127. These weights are equivalent to the share of contract dollars presented in the previous section.

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non-WMBE	Total
238310	0.7%	1.9%	0.7%	0.0%	1.9%	5.3%	94.7%	100.0%
238320	0.6%	0.6%	0.2%	0.1%	1.9%	3.5%	96.5%	100.0%
238330	0.7%	1.4%	1.4%	0.0%	3.5%	7.1%	92.9%	100.0%
238350	0.7%	2.6%	0.7%	1.3%	1.3%	6.5%	93.5%	100.0%
238390	0.6%	0.6%	1.7%	1.1%	4.4%	8.3%	91.7%	100.0%
238910	2.1%	2.1%	2.8%	1.9%	6.6%	15.5%	84.5%	100.0%
238990	0.9%	1.0%	0.3%	0.3%	1.3%	3.7%	96.3%	100.0%
423210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423220	0.0%	0.0%	0.0%	0.0%	9.9%	9.9%	90.1%	100.0%
423310	0.0%	0.0%	0.5%	0.0%	1.4%	1.9%	98.1%	100.0%
423320	0.0%	0.0%	3.5%	1.2%	2.3%	7.0%	93.0%	100.0%
423510	0.0%	0.0%	2.4%	0.0%	14.1%	16.5%	83.5%	100.0%
423610	0.0%	0.0%	3.3%	0.8%	6.6%	10.7%	89.3%	100.0%
423710	0.0%	0.0%	0.0%	0.0%	2.2%	2.2%	97.8%	100.0%
423720	0.0%	0.0%	1.8%	0.0%	7.0%	8.8%	91.2%	100.0%
423730	0.0%	0.0%	0.0%	0.0%	9.5%	9.5%	90.5%	100.0%
423740	0.0%	0.0%	0.0%	0.0%	9.1%	9.1%	90.9%	100.0%
423830	0.0%	0.5%	0.5%	0.5%	2.7%	4.1%	95.9%	100.0%
423840	0.0%	0.0%	2.0%	0.0%	3.0%	5.1%	94.9%	100.0%
423850	0.0%	0.0%	2.6%	0.0%	9.2%	11.8%	88.2%	100.0%
423990	0.0%	0.2%	0.5%	0.2%	3.9%	4.9%	95.1%	100.0%
444190	0.0%	0.0%	0.4%	0.1%	3.2%	3.7%	96.3%	100.0%
483211	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484220	7.3%	1.7%	5.6%	3.4%	14.6%	32.6%	67.4%	100.0%
485999	4.3%	0.0%	2.1%	0.0%	10.6%	17.0%	83.0%	100.0%
488310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
488490	6.7%	0.0%	5.0%	0.0%	11.7%	23.3%	76.7%	100.0%
517311	0.0%	0.0%	0.3%	0.0%	0.3%	0.6%	99.4%	100.0%
541310	0.4%	1.7%	2.6%	0.4%	9.6%	14.8%	85.2%	100.0%
541330	1.1%	1.5%	4.4%	0.5%	6.0%	13.6%	86.4%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non-WMBE	Total
541370	5.8%	1.9%	6.7%	0.0%	1.9%	16.3%	83.7%	100.0%
541380	0.0%	1.0%	4.1%	0.0%	5.7%	10.9%	89.1%	100.0%
541420	0.0%	12.5%	16.7%	0.0%	8.3%	37.5%	62.5%	100.0%
541611	6.3%	0.9%	2.2%	0.5%	9.8%	19.7%	80.3%	100.0%
541618	0.4%	0.1%	0.3%	0.1%	2.0%	2.9%	97.1%	100.0%
541620	3.3%	1.6%	2.2%	2.7%	19.6%	29.3%	70.7%	100.0%
541990	0.6%	0.2%	2.0%	0.2%	7.4%	10.5%	89.5%	100.0%
561710	0.8%	0.0%	0.0%	0.0%	0.0%	0.8%	99.2%	100.0%
561720	3.2%	0.9%	0.8%	0.2%	6.3%	11.4%	88.6%	100.0%
561730	1.3%	0.7%	1.3%	0.2%	4.4%	7.9%	92.1%	100.0%
561790	0.7%	0.3%	0.1%	0.0%	3.8%	4.8%	95.2%	100.0%
561990	1.1%	0.5%	0.5%	0.3%	6.2%	8.6%	91.4%	100.0%
562111	10.0%	10.0%	10.0%	0.0%	0.0%	30.0%	70.0%	100.0%
562119	7.1%	0.0%	7.1%	2.4%	9.5%	26.2%	73.8%	100.0%
562212	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562910	0.0%	2.5%	5.0%	0.0%	12.5%	20.0%	80.0%	100.0%
562991	0.0%	0.0%	0.0%	0.0%	4.3%	4.3%	95.7%	100.0%
562998	0.0%	0.0%	11.1%	0.0%	22.2%	33.3%	66.7%	100.0%
811310	0.3%	0.6%	0.6%	0.6%	3.4%	5.5%	94.5%	100.0%
811412	0.4%	0.0%	0.0%	0.0%	0.7%	1.1%	98.9%	100.0%
Total	1.0%	0.6%	0.9%	0.4%	3.5%	6.4%	93.6%	100.0%

Source: CHA analysis of Port of Seattle data; Hoovers; CHA Master Directory

**Table 4-29: Distribution of Port of Seattle's Spending by NAICS Code
(the Weights) (Locally Funded)**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
221310	Water Supply and Irrigation Systems	0.1%
236115	New Single-Family Housing Construction (except For-Sale Builders)	0.03%
236210	Industrial Building Construction	0.1%
236220	Commercial and Institutional Building Construction	3.7%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
237110	Water and Sewer Line and Related Structures Construction	0.1%
237310	Highway, Street, and Bridge Construction	5.0%
237990	Other Heavy and Civil Engineering Construction	0.3%
238110	Poured Concrete Foundation and Structure Contractors	0.1%
238120	Structural Steel and Precast Concrete Contractors	0.1%
238130	Framing Contractors	0.2%
238140	Masonry Contractors	0.1%
238150	Glass and Glazing Contractors	0.9%
238160	Roofing Contractors	0.1%
238170	Siding Contractors	0.1%
238190	Other Foundation, Structure, and Building Exterior Contractors	1.2%
238210	Electrical Contractors and Other Wiring Installation Contractors	37.7%
238220	Plumbing, Heating, and Air-Conditioning Contractors	5.9%
238290	Other Building Equipment Contractors	31.8%
238310	Drywall and Insulation Contractors	1.1%
238320	Painting and Wall Covering Contractors	0.2%
238330	Flooring Contractors	0.3%
238350	Finish Carpentry Contractors	0.2%
238390	Other Building Finishing Contractors	0.3%
238910	Site Preparation Contractors	1.6%
238990	All Other Specialty Trade Contractors	0.8%
423210	Furniture Merchant Wholesalers	0.01%
423220	Home Furnishing Merchant Wholesalers	0.01%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	0.02%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.04%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.5%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.01%
423710	Hardware Merchant Wholesalers	0.03%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	0.1%
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	0.1%
423740	Refrigeration Equipment and Supplies Merchant Wholesalers	0.002%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.05%
423840	Industrial Supplies Merchant Wholesalers	0.001%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	0.001%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.01%
444190	Other Building Material Dealers	0.5%
483211	Inland Water Freight Transportation	0.005%
484220	Specialized Freight (except Used Goods) Trucking, Local	2.8%
485999	All Other Transit and Ground Passenger Transportation	0.01%
488310	Port and Harbor Operations	0.0003%
488490	Other Support Activities for Road Transportation	0.03%
517311	Wired Telecommunications Carriers	0.001%
541310	Architectural Services	0.2%
541330	Engineering Services	0.8%
541370	Surveying and Mapping (except Geophysical) Services	0.05%
541380	Testing Laboratories	0.002%
541420	Industrial Design Services	0.1%
541611	Administrative Management and General Management Consulting Services	0.3%
541618	Other Management Consulting Services	0.0003%
541620	Environmental Consulting Services	0.04%
541990	All Other Professional, Scientific, and Technical Services	0.3%
561710	Exterminating and Pest Control Services	0.002%
561720	Janitorial Services	0.004%
561730	Landscaping Services	0.1%
561790	Other Services to Buildings and Dwellings	0.001%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
561990	All Other Support Services	0.7%
562111	Solid Waste Collection	0.002%
562119	Other Waste Collection	0.02%
562212	Solid Waste Landfill	0.02%
562910	Remediation Services	1.0%
562991	Septic Tank and Related Services	0.002%
562998	All Other Miscellaneous Waste Management Services	0.02%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	0.02%
811412	Appliance Repair and Maintenance	0.002%
TOTAL		100.0%

Source: CHA analysis of Port of Seattle data

Table 4-30 presents the weighted availability results for each of the racial and gender categories. The aggregated availability of DBEs/WMBEs, weighted by Port of Seattle's spending in its geographic and industry markets, is 13.8%. This result can be used by the Port as its overall, aspirational goal for its spending on locally funded contracts.

**Table 4-30: Aggregated Weighted Availability for Port of Seattle Contracts
(Locally Funded)**

Black	Hispanic	Asian	Native American	White Women	WMBE	Non-WMBE	Total
3.1%	2.0%	2.0%	1.8%	4.9%	13.8%	86.2%	100.0%

Source: CHA analysis of Port of Seattle data; Hoovers; CHA Master Directory

4. Analysis of the Concentration of Contract Dollars among Firms

As with the analysis of FAA funded contracts, we examined the concentration of locally funded contract dollars.

Three findings stand out:

1. When comparing the top three NAICS codes for the Port, as measured by the share of all Port spending (the weight) and the top three NAICS codes for each DBE/WMBE group, the share of locally funded spending going to

the top three codes for DBEs/WMBEs exceeded the top three codes for the Port for Blacks, Asians, and Native Americans.

2. The leading codes for the Port were largely different than the top three codes for DBEs/WMBEs. Only one of leading Port codes (NAICS code 238210 – Electrical Contractors and Other Wiring Installation Contractors) appeared among the leading codes for DBEs/WMBEs. That code was among the top three for all DBEs/WMBEs. Because of the lack of overlap in the other two leading codes for DBEs/WMBEs, they are in a state of precarity whereby a small reduction in the Port’s spending would have a disproportionate impact on contract dollars flowing to those DBEs/WMBEs.
3. In the vast majority of the three NAICS codes that provide the most contract dollars to each DBE/WMBE group, the code’s share of that group’s overall contract dollars exceeded that code’s share of overall contract dollars received by non-DBEs/WMBEs.¹²⁸

These three findings indicate that the pattern of spending received by DBEs/WMBEs is markedly different from the pattern of spending by the Port.

Table 4-31 presents data on the share of the Port’s locally funded contract dollars received by the top three NAICS codes for each demographic group. These shares were derived from the data presented in Table 4-26. The data in this Table present evidence for the first finding. The three NAICS codes where the Port spent most of its contract dollars captured 75.4% of all locally funded spending. While this figure is more than the share for Hispanics (65.3%) and White women (70.0%), it is less than the share for Blacks (92.3%), Asians (81.9%), and Native Americans (94.0%).

Table 4-31: Comparison of the Share of Port of Seattle Spending Captured by the Top Three NAICS Codes for Each Demographic Group (Locally Funded)

Demographic Group	Share of All Port of Seattle Spending in the Top Three NAICS Codes for Each Group
All	75.4%
Black	92.3%
Hispanic	65.3%
Asian	81.9%

128. Of the 15 possible codes (five DBE/WMBE groups; three NAICS codes), the DBE/WMBE share exceeded the non-DBE/WMBE share in 13 codes.

Demographic Group	Share of All Port of Seattle Spending in the Top Three NAICS Codes for Each Group
Native American	94.0%
White Woman	70.0%
Non-DBE/WMBE	80.5%

Source: CHA analysis of Port of Seattle data

With respect to the second finding, Table 4-32 provides more detail on the data presented in Table 4-31. Table 4-32 lists the top three codes for each group and their corresponding share of the group's total spending. Of the top three codes for the Port, only NAICS code 238210 - Electrical Contractors and Other Wiring Installation Contractors - was a leading code for any of the DBE/ WMBE groups. That code was present among the top codes for all DBEs/ WMBEs.

Table 4-32: The Top Three Port of Seattle Spending NAICS Codes for Each Demographic Group (Locally Funded)

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
All			
238210	Electrical Contractors and Other Wiring Installation Contractors	37.7%	75.4%
238290	Other Building Equipment Contractors	31.8%	
238220	Plumbing, Heating, and Air-Conditioning Contractors	5.9%	
Black			
238210	Electrical Contractors and Other Wiring Installation Contractors	59.1%	92.3%
484220	Specialized Freight (except Used Goods) Trucking, Local	19.0%	
238320	Painting and Wall Covering Contractors	14.2%	
Hispanic			
238210	Electrical Contractors and Other Wiring Installation Contractors	34.1%	65.3%
237310	Highway, Street, and Bridge Construction	23.2%	
236220	Commercial and Institutional Building Construction	8.0%	

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
Asian			
484220	Specialized Freight (except Used Goods) Trucking, Local	66.3%	81.9%
236220	Commercial and Institutional Building Construction	9.5%	
238210	Electrical Contractors and Other Wiring Installation Contractors	6.0%	
Native American			
238210	Electrical Contractors and Other Wiring Installation Contractors	55.4%	94.0%
541990	All Other Professional, Scientific, and Technical Services	28.3%	
238910	Site Preparation Contractors	10.3%	
White Woman			
238210	Electrical Contractors and Other Wiring Installation Contractors	41.1%	70.0%
238150	Glass and Glazing Contractors	15.3%	
561990	All Other Support Services	13.7%	
Non-DBE/WMBE Firm			
238210	Electrical Contractors and Other Wiring Installation Contractors	38.7%	80.5%
238290	Other Building Equipment Contractors	35.5%	
238220	Plumbing, Heating, and Air-Conditioning Contractors	6.3%	

Source: CHA analysis of Port of Seattle data

Tables 4-33 through 4-37 present data on the third finding: how the Port's spending varied across groups. These results illustrate the different levels of concentration of contract dollars among DBEs/WMBEs compared to non-DBEs/WMBEs. For each demographic group, we provide the three NAICS codes where the group received the largest share of the Port's spending (first presented in Table 4-31). Then, we present the weight for each code derived from the Port's overall spending. Finally, we present the share of all group contract dollars and compare that share to the corresponding share received by non-DBEs/WMBEs.

Table 4-33 presents the three NAICS codes where Black firms received the largest share of their contract dollars. While these codes captured 92.3% of all Black contract dollars, the corresponding figure for non-DBEs/WMBEs was 39.0%. While this differential exists when comparing the relative shares in each of the three codes it is most pronounced in the two NAICS codes that are leading codes for Blacks but not for the Port (NAICS codes 484220 and 238320). With respect to the second finding of precarity, just focusing on

those two codes, if the Port eliminated the 3.0% of spending in those codes, the elimination would reduce Black contract dollars by 33.2%.

**Table 4-33: Three NAICS Codes where Black Firms Received the Most Spending
(Locally Funded)**

NAICS Code	NAICS Code Label	Weight	Share of Total Black Dollars	Share of Total Non-WMBE Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	37.7%	59.1%	38.7%
484220	Specialized Freight (except Used Goods) Trucking, Local	2.8%	19.0%	0.1%
238320	Painting and Wall Covering Contractors	0.2%	14.2%	0.1%
Total 3-code Share of Total Group Dollars			92.3%	39.0%

Source: CHA analysis of Port of Seattle data

Table 4-34 presents the three NAICS codes where Hispanic firms received the largest share of their contract dollars. These codes comprised 65.3% of all Hispanic contract dollars; the corresponding figure for non-DBEs/WMBEs was 47.4%. As with Black firms, this differential is most pronounced in the two NAICS codes that are leading codes for Hispanics but not for the Port (NAICS codes 237310 and 236220). With respect to the second finding of precarity, just focusing on those two codes, If the Port eliminated the 8.7% of spending in those codes, the elimination would reduce Hispanic contract dollars by 31.2%.

**Table 4-34: Three NAICS Codes where Hispanic Firms Received the Most Spending
(Locally Funded)**

NAICS Code	NAICS Code Label	Weight	Share of Total Hispanic Dollars	Share of Total Non-WMBE Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	37.7%	34.1%	38.7%
237310	Highway, Street, and Bridge Construction	5.0%	23.2%	5.1%
236220	Commercial and Institutional Building Construction	3.7%	8.0%	3.6%
Total 3-code Share of Total Group Dollars			65.3%	47.4%

Source: CHA analysis of Port of Seattle data

Table 4-35 presents the three NAICS codes where Asian-owned businesses received the largest share of their contract dollars. These codes comprised 81.9% of all Asian contract dollars; the corresponding figure for non-DBEs/WMBEs was 42.5%. This differential is due to the spending patterns in the two NAICS codes that are leading codes for Asians but not for the Port (NAICS codes 484220 and 236220). With respect to the second finding of precarity, if the Port eliminated the 6.5% of spending in those two codes, the elimination would reduce Asian contract dollars by 75.8%.

**Table 4-35: Three NAICS Codes where Asian Firms Received the Most Spending
(Locally Funded)**

NAICS Code	NAICS Code Label	Weight	Share of Total Asian Dollars	Share of Total Non-WMBE Dollars
484220	Specialized Freight (except Used Goods) Trucking, Local	2.8%	66.3%	0.1%
236220	Commercial and Institutional Building Construction	3.7%	9.5%	3.6%
238210	Electrical Contractors and Other Wiring Installation Contractors	37.7%	6.0%	38.7%
Total 3-code Share of Total Group Dollars			81.9%	42.5%

Source: CHA analysis of Port of Seattle data

Table 4-36 presents the three NAICS codes where Native American firms received the largest share of their contract dollars. While these codes captured 94.0% of all Native American contract dollars, the corresponding figure for non-DBE/WMBE firms was 40.2%. Following the pattern exhibited with Black and Hispanic contract dollars, this differential is most pronounced in the two NAICS codes that are leading codes for Blacks but not for the Port (NAICS codes 541990 and 238910). With respect to the second finding of precarity, when you focus on these two codes, you find that if the Port eliminated the 1.9% of spending in those codes, the elimination would reduce Native American contract dollars by 38.6%.

Table 4-36: Three NAICS Codes where Native American Firms Received the Most Spending (Locally Funded)

NAICS Code	NAICS Code Label	Weight	Share of Total Native American Dollars	Share of Total Non-WMBE Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	37.7%	55.4%	38.7%
541990	All Other Professional, Scientific, and Technical Services	0.3%	28.3%	0.0%
238910	Site Preparation Contractors	1.6%	10.3%	1.5%
Total 3-code Share of Total Group Dollars			94.0%	40.2%

Source: CHA analysis of Port of Seattle data

Table 4-37 presents the three NAICS codes where White woman firms received the largest share of their contract dollars. These codes comprise 70.0% of all White woman contract dollars; the corresponding figure for non-DBE/WMBE firms was 38.9%. While the share of contract dollars that White woman firms received in NAICS code 238210 was similar to the overall spending done by the Port in the code (41.1% compared to 37.7%), the differential was much starker in the other two leading codes. With respect to the second finding of precarity, examining the NAICS codes 238150 and 561990 which were not among the Port's leading three NAICS codes, if the Port eliminated the 1.6% of spending in these two codes, the elimination would reduce White woman contract dollars by 29.0%.

Table 4-37: Three NAICS Codes where White Woman Firms Received the Most Spending (Locally Funded)

NAICS Code	NAICS Code Label	Weight	Share of Total White Woman Dollars	Share of Total Non-WMBE Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	37.7%	41.1%	38.7%
238150	Glass and Glazing Contractors	0.9%	15.3%	0.2%
561990	All Other Support Services	0.7%	13.7%	0.0%
Total 3-code Share of Total Group Dollars			70.0%	38.9%

Source: CHA analysis of Port of Seattle data

The data presented in Tables 4-31 through 4-37 support the inference that regardless of any statistical disparities between contract utilization and weighted availability, the experiences of DBE/WMBE firms with respect to participation in Port procurements were significantly different than the experiences of non-DBE/WMBE firms.

5. Locally Funded Contracts: Disparity Analysis

We next calculated disparity ratios for each demographic group, comparing the group's total utilization compared to its total weighted availability. As discussed in Chapter II, this is a requirement under the case law governing the DBE program in the Ninth Circuit Court of Appeals that has jurisdiction over State of Washington recipients.

Table 4-38 presents the disparity ratios for each demographic group. The disparity ratio for Blacks, Hispanics, Native Americans, White women and DBE/WMBE firms is substantively significant. The disparity ratios for Hispanics, Asians, White women, DBEs/WMBEs, and non-DBEs/WMBEs are statistically significant at the 0.001 level.

**Table 4-38: Disparity Ratios by Demographic Group
(Locally Funded Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non-WMBE
Disparity Ratio	6.5% [‡]	40.4% ^{‡***}	199.6%***	57.0% [‡]	91.0% ^{‡***}	76.2% ^{‡***}	103.8%***

Source: CHA analysis of Port of Seattle data

‡ Indicates substantive significance

**** Statistically significant at the 0.001 level*

As with the Port spending of FAA dollars, we examined more closely one high disparity ratio: that for Asians. The analysis uncovered that in one NAICS code – 484220: Specialized Freight (except Used Goods) Trucking, Local – one firm received 94.7% of all Port contract dollars in this code. Overall, this firm received 66.3% of all Asian contract dollars. While the weight of the code is only 2.8%, we believe the near exclusive use of one firm in the code results in the high disparity ratio and the ratio is a function of the success of this one firm and is not representative of overall procurement patterns.

E. Conclusion

This Chapter examines the Port of Seattle’s utilization of minority- and woman-owned firms compared to non-DBEs/WMBEs and provides estimates of the availability of DBE/WMBE firms and non-DBE/WMBE firms to perform the types of goods and services utilized by the Port. CHA conducted this analysis separately for its contracts from two distinct funding sources: the FAA and local sources.

In addition, the Chapter tested contracts funded by both sources for whether there are significant disparities in the results of utilization compared to availability. We also analyzed the FAA funded and locally funded contract data to compare the NAICS code concentration of DBE/WMBE firms to non-DBE/WMBE firms on Port contracts. We found that, in general, DBEs/WMBEs received contracting opportunities that starkly differ from non-DBEs/WMBEs. The NAICS codes that provided most of the contract dollars received by minority and woman-owned businesses were different from the codes where the Port spent its funds. Further, the codes that generated the most funds for non-DBEs/WMBEs generated few funds for DBEs/WMBEs.

V. ANALYSIS OF DISPARITIES IN THE PORT OF SEATTLE'S MARKETPLACE

A. Introduction

The late Nobel Prize Laureate Kenneth Arrow, in his seminal paper on the economic analysis of discrimination, observed:

Racial discrimination pervades every aspect of a society in which it is found. It is found above all in attitudes of both races, but also in social relations, in intermarriage, in residential location, and frequently in legal barriers. It is also found in levels of economic accomplishment; this is income, wages, prices paid, and credit extended.¹²⁹

This Chapter explores the data and literature relevant to how discrimination in the Puget Sound and overall Washington economy affects the ability of minorities and women to fairly and fully engage in the Port of Seattle's ("Port") construction and construction-related and services contract opportunities. First, we analyze the rates at which Disadvantaged Business Enterprises ("DBEs") in the Washington economy form firms in these industries and their earnings from those firms. Then, we analyze state-wide data to see if DBE firms' share of all firms is greater than or less than their share of all sales and receipts and their share of all annual payroll. Finally, we summarize the literature on barriers to equal access to commercial credit. All three types of evidence have been found by the courts to be relevant and probative of whether a government will be a passive participant in discrimination without some type of affirmative intervention.

A key element to determine the need for the Port to intervene in its market through contract goals is an analysis of disparities independent of the Port's intervention through its DBE program.

The courts have repeatedly held that analysis of disparities in the rate of at which minorities and women form businesses in the government agency's markets as compared to similar non-DBEs, disparities in DBE earnings, and barriers to access to capital markets are highly relevant to a determination of whether market out-

129. Arrow, Kenneth J., "What Has Economics to say about racial discrimination?" *Journal of Economic Perspectives*, 12, 2, (1998), 91-100.

comes are affected by race or gender ownership status.¹³⁰ Similar analyses supported the successful legal defense of Illinois' DBE program from constitutional challenge.¹³¹

Similarly, the Tenth Circuit Court of Appeals also upheld the U.S. Department of Transportation's DBE program, and in doing so, stated that this type of evidence

demonstrates the existence of two kinds of discriminatory barriers to minority subcontracting enterprises, both of which show a strong link between racial disparities in the federal government's disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination. The first discriminatory barriers are to the formation of qualified minority subcontracting enterprises due to private discrimination, precluding from the outset competition for public construction contracts by minority enterprises. The second discriminatory barriers are to fair competition between minority and non-minority subcontracting enterprises, again due to private discrimination, precluding existing minority firms from effectively competing for public construction contracts. The government also presents further evidence in the form of local disparity studies of minority subcontracting and studies of local subcontracting markets after the removal of affirmative action programs... The government's evidence is particularly striking in the area of the race-based denial of access to capital, without which the formation of minority subcontracting enterprises is stymied.¹³²

Business discrimination studies and lending studies are relevant and probative because they show a strong link between the disbursement of public funds and the channeling of those funds due to private discrimination. In unanimously upholding the USDOT DBE Program, federal courts agree that disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms and the disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners are strong evidence of the continuing effects of discrimination.¹³³ As recognized by a federal

130. See the discussion in Chapter II of the legal standards applicable to contracting affirmative action programs.

131. *Midwest Fence Corp. v. Illinois Department of Transportation, Illinois State Toll Highway Authority et al*, 840 F.3d 942 (7th Cir. 2016) (upholding the Tollway's program for state funded contracts modeled after Part 26 and based on CHA's expert testimony, including about disparities in the overall Illinois construction industry); *see also Midwest Fence Corp. v. Illinois Department of Transportation, Illinois State Toll Highway Authority et al*, 2015 WL 1396376 at * 21 (N.D. Ill.) ("Colette Holt [& Associates'] updated census analysis controlled for variables such as education, age, and occupation and still found lower earnings and rates of business formation among women and minorities as compared to White men."); *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003) (holding that City of Chicago's DBE program for local construction contracts satisfied "compelling interest" standards using this framework).

132. *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1169 (10th Cir. 2000), *cert. granted then dismissed as improvidently granted*, 532 U.S. 941 (2001).

court of appeals, “[e]vidence that private discrimination results in barriers to business formation is relevant because it demonstrates that DBEs are precluded *at the outset* from competing for public Goods contracts. Evidence of barriers to fair competition is also relevant because it again demonstrates that *existing* DBEs are precluded from competing for public contracts.”¹³⁴

This type of court-approved analysis is especially important for an agency such as the Port, which has been implementing its DBE program for many years. The Port’s remedial market interventions through the use of DBE contract goals has mostly ameliorated the disparate impacts of marketplace discrimination in the Port’s own contracting activities. Put another way, the contracting equity programs’ success in moving towards parity for minority and woman firms may be “masking” the effects of discrimination that, but for the contract goals, would mirror the disparities in DBE utilization in the overall economy.

To explore the question of whether firms owned by non-Whites and White women face disparate treatment in the Port’s construction and construction-related services marketplace outside of agency contracts, we examined two data sets. The first data set was the U.S. Bureau of the Census’ *American Community Survey* (“ACS”), which provided data to analyze disparities using individual entrepreneurs as the basic unit of analysis.¹³⁵ With the ACS, we will address four basic questions:

1. What are the business formation rates for the different demographic groups? We ask this question to establish a basic baseline of business formation outcomes in the private sector.
2. What is the probability of a group forming a business once the analysis considers education, age, industry, and occupation? We want to explore the issue of demographic business formation difference once we statistically tease out possible non-demographic explanations for these differences.
3. Do business earnings vary by demographic group once the analysis considers education, age, industry, and occupation? This question explores the issue of demographic differences in the central business outcome (earnings) once we statistically tease out possible non-demographic explanations for these differences.
4. Do wages vary by demographic group once the analysis considers education, age, industry, and occupation? This question is similar to the third in examining wages instead of business earnings. It is important because economic research indicates that wage levels can impact the future business formation behavior of individual.

133. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868, at *64 (Sept. 8, 2005).

134. *Id.*

135. Data from 2017-2021 American Community Survey are the most recent for a five-year period.

We used the Seattle metropolitan area, as we did in Chapter IV, as the geographic unit of analysis. We found disparities in wages, business earnings and business formation rates for minorities and women in all industry sectors in the Port's marketplace.¹³⁶

The second data set was the U.S. Bureau's Annual Business Survey ("ABS"). The ABS supersedes the more well-known Survey of Business Owners ("SBO"). The SBO was last conducted in 2012 and historically had been reported every five years. In contrast, the ABS was first conducted in 2017 and it is the Census Bureau's goal to release results annually. This study utilizes the 2018 ABS which contains 2017 data.¹³⁷ With the ABS data, six key variables are used in this analysis:

1. The number of all firms
2. The sales and receipts of all firms
3. The number of firms with employees (employer firms)
4. The sales and receipts of all employer firms
5. The number of paid employees
6. The annual payroll of employer firms

CHA examined these data in two ways: First, we calculated the minority- and woman-owned business share of each variable. Second, we calculated three disparity ratios for each grouping of minority- and woman-owned businesses and for the grouping of firms that are not non-White- or White woman-owned:

1. Ratio of sales and receipts share for all firms over the share of total number of all firms.
2. Ratio of sales and receipts share for employer firms over the share of total number of employer firms.
3. Ratio of annual payroll share over the share of total number of employer firms.

We explored the data to see if a DBE's share of sales/receipts and payroll approximates its share of firms. For example, Black firms might represent 10% of all firms but the sales for Black firms might capture just two percent of the sales of all firms. The ratio of Black share of sales over Black share of firms would be .2% (two per-

136. Possible disparities in wages are important to explore because of the relationship between wages and business formation. Research by Alicia Robb and others indicate non-White firms rely on their own financing to start businesses compared to White firms who rely more heavily on financing provided by financial institutions. To the extent non-Whites face discrimination in the labor market, they would have reduced capacity to self-finance their entrepreneurial efforts and, hence, impact business formation. *See, for example*, Robb's "Access to Capital among Young Firms, Minority-owned Firms, Woman-owned Firms, and High-tech Firms" (2013), [https://www.sba.gov/sites/default/files/files/rs403tot\(2\).pdf](https://www.sba.gov/sites/default/files/files/rs403tot(2).pdf).

137. While there are more recent surveys, much of the data needed for this analysis were not present. CHA reached out to the Census Bureau via e-mail and its response (dated November 11, 2022) was that the 2018 ABS sampled approximately 850,000 firms, which allowed a more complete set of data to be released. In the ABS conducted in 2019-2022, the sample was reduced to 300,000 firms; consequently, the detailed statistics presented in the 2018 ABS could not be reproduced. The 2023 ABS will return to the 2018 sample size of 850,000.

cent divided by 10%), indicating that the sales levels for Black firms in the industry is less than one would expect. As this ratio approaches 100%, we interpret that as a sign of approaching parity.

Results of the analysis of the ABS data indicate that non-Whites and White women's share of all employer firms is greater than their share of sales, payrolls, and employees. This supports the conclusion that barriers to business success disproportionately affect non-Whites and White women.

B. Disparate Treatment in the Port of Seattle's Marketplace: Evidence from the Census Bureau's 2018 - 2022 American Community Survey

As discussed in the beginning of this Chapter, the key question is whether firms owned by non-Whites and White women face disparate treatment in the marketplace without the intervention of the Port's contracting equity programs. In this section, we used the Census Bureau's ACS data to explore this and other aspects of this question. One element asks if demographic differences exist in the wage and salary income received by private sector workers. This exploration is important for the issue of possible variations in the rate of business formation by different demographic groups. One of the determinants of business formation is the pool of financial capital at the disposal of the prospective entrepreneur. The size of this pool is related to the income level of the individual either because the income level impacts the amount of personal savings that can be used for start-up capital, or the income level affects one's ability to borrow funds. Consequently, if particular demographic groups receive lower wages and salaries then they would have access to a smaller pool of financial capital, and thus reduce the likelihood of business formation.

The *American Community Survey Public Use Microdata Sample* ("PUMS") is useful in addressing these issues. The ACS is an annual survey of one percent of the population and the PUMS provides detailed information at the individual level. To obtain robust results from our analysis, we used the file that combines the most recent data available for years 2018 through 2022.¹³⁸ With this rich data set, our analysis can establish with greater certainty any causal links between race, gender and economic outcomes.

The Census Bureau classifies Whites, Blacks, Native Americans, and Asians as racial groupings. CHA developed a fifth grouping, "Other", to capture individuals who

138. Initially, the Census Bureau contacted approximately 3.5M households. For the analysis reported in this Chapter, we examined over 290,000 observations. For more information about the ACS PUMS, see <https://www.census.gov/programs-surveys/acs/>.

are not a member of the above four racial categories. In addition, Hispanics are an ethnic category whose members could be of any race, *e.g.*, Hispanics could be White or Black. To avoid double counting – *i.e.*, an individual could be counted once as Hispanic and once as White – CHA developed non-Hispanic subset racial categories: non-Hispanic Whites; non-Hispanic Blacks; non-Hispanic Native Americans; non-Hispanic Asians; and non-Hispanic Others. When those five groups are added to the Hispanic group, the entire population is counted and there is no double-counting. When Whites are disaggregated into White men and White women, those groupings are non-Hispanic White men and non-Hispanic White women. For ease of exposition, the groups in this report are referred to as Black, Native American, Asian, Other, White women, and White men, while the actual content is the non-Hispanic subset of these racial groups.

Often, the general public sees clear associations between race, gender, and economic outcomes and assumes this association reflects a tight causal connection. However, economic outcomes are determined by a broad set of factors including, and extending beyond, race and gender. To provide a simple example, two people who differ by race or gender may receive different wages. This difference may simply reflect that the individuals work in different industries. If this underlying difference is not known, one might assert the wage differential is the result of race or gender difference. To better understand the impact of race or gender on wages, it is important to compare individuals of different races or genders who work in the same industry. Of course, wages are determined by a broad set of factors beyond race, gender, and industry. With the ACS PUMS, we have the ability to include a wide range of additional variables such as age, education, occupation, and residence in the analysis.

We employed a multiple regression statistical technique to process this data. This methodology allows us to perform two analyses: an estimation of how variations in certain characteristics (called independent variables) will impact the level of some particular outcome (called a dependent variable), and a determination of how confident we are that the estimated variation is statistically different from zero. We have provided a more detailed explanation of this technique in Appendix A.

With respect to the first result of regression analysis, we examined how variations in the race, gender, and industry of individuals impact the wages and other economic outcomes received by individuals. The technique allowed us to determine the effect of changes in one variable, assuming that the other determining variables are the same. That is, we compared individuals of different races, but of the same gender and in the same industry; or we compared individuals of different genders, but of the same race and the same industry; or we compared individuals in different industries, but of the same race and gender. We determined the impact of changes in one variable (*e.g.*, race, gender or industry) on another variable (wages), “controlling for” the movement of any other independent variables.

With respect to the second result of regression analysis, we determined the statistical significance of the relationship between the dependent variable and independent variable. For example, we might find a relationship between gender and wages (*e.g.*, holding all other factors constant, women earn less than men). But if we find that it is not statistically different from zero, then we could not be confident that there is not any relationship between the two variables. If the relationship is not statistically different from zero, then a variation in the independent variable has no impact on the dependent variable. The regression analysis allows us to say with varying degrees of statistical confidence that a relationship is different from zero. If the estimated relationship is statistically significant at the 0.05 level, that indicates that we are 95% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.01 level, that indicates that we are 99% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.001 level, that indicates that we are 99.9% confident that the relationship is different from zero.¹³⁹ If a result is non-zero but the result is not statistically significant, then we cannot rule out zero being the true result. Note: this does not mean the result is wrong, only that there is not a statistically significant level of confidence in the result.

In the following presentation of results, each sub-section first reports data on the share of a demographic group that forms a business (business formation rates); the probabilities that a demographic group will form a business relative to White men (business formation probabilities); the differences in wages received by a demographic group relative to White men (wage differentials); and the differences in business earnings received by a demographic group relative to White men (business earnings differentials). Because the ACS contained limited observations for certain groups in particular industries, we were unable to provide reliable estimates for business outcomes for these groups. However, there were always sufficient observations in the sample of wage earners in each group in each industry to permit us to develop reliable estimates. We developed these results using data from the U.S. Bureau of the Census' ACS for the Seattle metropolitan area, the geographic market established in Chapter IV. Since the scope of this report covers construction and construction-related services, we analyzed those two sectors.

1. The Construction Industry in the Seattle Metropolitan Area

One method of exploring differences in economic outcomes is to examine the rate at which different demographic groups form businesses. Table 5-1 presents these results. As stated above, the business formation rate represents the share of a population that forms businesses. When developing industry-spe-

139. Most social scientists do not endorse utilizing a confidence level of less than 95%. Appendix C explains more about statistical significance.

cific rates, we examine the population that works in that particular industry and identify what share of that sub-population form businesses. For example, Table 5-1 indicates that 3.8% of Hispanics in the Construction industry form businesses; this is less than the 10.3% business formation rate for White men. There were low numbers of Black, Native American and Other firms in the ACS sample; consequently, reliable estimates of firm outcomes could not be made for these groups. In Table 5-1, this is indicated by the symbol “-----”.¹⁴⁰ Overall, this table indicates that White men have higher business formation rates compared to Hispanics, Asians, and White women. Table 5-2 utilizes probit regression analysis to examine the probability of forming a business after controlling for important factors beyond race and gender.¹⁴¹ This table indicates that Hispanics, Asians, and White women are less likely to form businesses compared to similarly situated White men. The reduced probabilities of business formation ranged from 4.5% to 0.3%. Only the coefficient for Hispanics was statistically significant and it was statistically significant at the 0.5 level. Another way to measure equity is to examine how the wage and salary incomes and business earnings of particular demographic groups compare to White men. Multiple regression statistical techniques allowed us to examine the impact of race and gender on economic outcomes while controlling for other factors, such as education and age.¹⁴²

Tables 5-3 and 5-4 present these data on wage and salary incomes and business earnings respectively. Table 5-3 presents data on wage differentials: DBEs earned less than White men, with the coefficients ranging from -48.7% to -11.3%. The coefficients for the wages for Blacks, Hispanics, Asians, and White women were statistically significant at the 0.001 level. Business earnings – presented in Table 5-4 – indicate that only the coefficient for Hispanics and White women were negative and neither was statistically significant.

140. This symbol was used through the chapter when there were insufficient observations to establish reliable estimates.

141. Appendix B provides a “Further Explanation of Probit Regression Analysis.”

142. See Appendix A for more information on multiple regression statistical analysis.

Table 5-1: Business Formation Rates
Construction, 2018 - 2022

Demographic Group	Business Formation Rates
Black	-----
Hispanic	3.8%
Native American	-----
Asian/Pacific Islander	8.7%
Other	-----
White Women	9.2%
DBE	5.9%
White Male	10.3%

Source: CHA calculations from the American Community Survey

Table 5-2: Business Formation Probability Differentials for Selected Groups
Relative to White Men, Construction, 2018 - 2022

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-----
Hispanic	-4.5%*
Native American	-----
Asian/Pacific Islander	-0.3%
Other	-----
White Women	-0.6%

Source: CHA calculations from the American Community Survey

** Indicates statistical significance at the 0.05 level*

Table 5-3: Wage Differentials for Selected Groups Relative to White Men
Construction, 2018 - 2022

Demographic Group	Wages Relative to White Men (% Change)
Black	-48.7%***
Hispanic	-21.2%***
Native American	-26.5%
Asian/Pacific Islander	-21.0%***
Other	-11.3%
White Women	-29.2%***

Source: CHA calculations from the American Community Survey
*** Indicates statistical significance at the 0.001 level

Table 5-4: Business Earnings Differentials for Selected Groups Relative to White Men
Construction, 2018 - 2022

Demographic Group	Earnings Relative to White Men (% Change)
Black	-----
Hispanic	-101.0%
Native American	-----
Asian/Pacific Islander	7.7%
Other	-----
White Women	-92.0%

Source: CHA calculations from the American Community Survey

2. The Construction-Related Services Industry in the Seattle Metropolitan Area

Tables 5-5 through 5-8 present the analysis of data in the Construction-Related Services industries. We found insufficient observations of certain groups to allow for proper analysis of any individual DBE category. Table 5-5 does indicate that DBEs as an aggregated category had lower business formation rates (3.5%) than White men (8.0%). Because of the sample size problem, no analysis could be made of business formation probabilities (Table 5-6) or business earnings (Table 5-8). We could examine wage differentials. Table 5-9 presents this data: Blacks, Hispanics, Asians, and White women earned less than White men. However, only the coefficients for the wages for Asians and White

women were statistically significant. The level of statistical significance was at the 0.001 level.

Table 5-5: Business Formation Rates, Construction-Related Services, 2018 - 2022

Demographic Group	Business Formation Rates
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-----
DBE	3.5%
White Male	8.0%

Source: CHA calculations from the American Community Survey

**Table 5-6: Business Formation Probability Differentials for Selected Groups
Relative to White Men, Construction-Related Services, 2018 - 2022**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-----

Source: CHA calculations from the American Community Survey

**Table 5-7: Wage Differentials for Selected Groups Relative to White Men
Construction-Related Services, 2018 - 2022**

Demographic Group	Wages Relative to White Men (% Change)
Black	-3.5%
Hispanic	-0.7%
Native American	-----
Asian/Pacific Islander	-27.0%***
Other	-12.6%
White Women	-22.5%***

Source: CHA calculations from the American Community Survey
**** Indicates statistical significance at the 0.001 level*

**Table 5-8: Business Earnings Differentials for Selected Groups Relative to White Men
Construction-Related Services, 2018 - 2022**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-----

Source: CHA calculations from the American Community Survey

Where there are sufficient observations to draw accurate inferences, the data presented in the above Tables indicate that non-Whites and White women form businesses less than White men and their wage and business earnings are less than those of White men. These analyses support the conclusion that barriers to business success do affect non-Whites and White women.

C. Disparate Treatment in the Port of Seattle’s Marketplace: Evidence from the Census Bureau’s 2017 Annual Business Survey

We further examined whether non-Whites and White women have disparate outcomes when they are active in the construction and construction-related services industries in Washington. This question is operationalized by exploring if the share of business receipts, number of firms, and payroll for firms owned by non-Whites and White women is greater than, less than, or equal to the share of all firms owned by non-Whites and White women.

To answer this question, we examined the ABS. The ABS surveyed about 850,000 employer firms and collected data on a variety of variables documenting ownership characteristics including race, ethnicity, and gender. It also collected data on the firms’ business activity with variables marking the firms’ number of employees, payroll size, sales, and industry.¹⁴³ For this analysis, we examined firms in the State of Washington. The State was the geographic unit of analysis because the ABS does not present data at the sub-state level.

With these data, we grouped the firms into the following ownership categories:^{144,145}

- Hispanics
- Non-Hispanic Blacks
- Non-Hispanic Native Americans
- Non-Hispanic Asians
- Non-Hispanic White women
- Non-Hispanic White men
- Firms equally owned by non-Whites and Whites
- Firms equally owned by men and women
- Firms that were either publicly owned or where the ownership could not be classified

For this analysis, the first four groups were aggregated to form a non-White category. Since our interest is the treatment of non-White-owned firms and White

143. For more information on the Annual Business Survey see <https://www.census.gov/programs-surveys/abs/about.html>.

144. Race and gender labels reflect the categories used by the Census Bureau.

145. For expository purposes, the adjective “non-Hispanic” will not be used in this Chapter; the reader should assume that any racial group referenced does not include members of that group who identify ethnically as Hispanic.

woman-owned firms, the last four groups were aggregated to form one category. To ensure this aggregated group is described accurately, we label this group “not non-White/non-White women”. While this label is cumbersome, it is important to be clear that this group includes firms whose ownership extends beyond White men, such as firms that are not classifiable or that are publicly traded and thus have no racial ownership. In addition to the ownership demographic data, the Survey also gathers information on the sales, number of paid employees, and payroll for each reporting firm.

We analyzed the ABS data on the following sectors:

- Construction
- Professional, Scientific and Technical Services

The ABS data – a sample of all businesses, not the entire universe of all businesses – required some adjustments. We had to define the sectors at the two-digit North American Industry Classification System (“NAICS”) code level, and therefore our sector definitions do not exactly correspond to the definitions used to analyze the Department’s contract data in Chapter IV, where we are able to determine sectors at the six-digit NAICS code level. At a more detailed level, the number of firms sampled in particular demographic and sector cells may be so small that the Census Bureau does not report the information, either to avoid disclosing data on businesses that can be identified or because the small sample size generates unreliable estimates of the universe. We therefore report two-digit data.

We analyzed the ABS data on the Construction and Professional, Scientific, and Technical Services industries. The latter industry is broader than Construction-Related Services, but It is impossible to narrow this category to construction-related services without losing the capacity to conduct race and gender specific analyses. Table 5-9 presents information on which NAICS codes were used to define each sector.¹⁴⁶

Table 5-9: Two-Digit NAICS Code Definition of Sector

ABS Sector Label	Two-Digit NAICS Codes
Construction	23
Professional, Scientific, and Technical Services	54

The balance of this Chapter reports the findings of the ABS analysis.

146. The two-digit NAICS code level did not allow us to define and analyze an information technology industry as we did with the ACS data.

1. Construction Industry

Table 5-10 presents data on the percentage share that each group has of the total of each of the following four business outcomes:

1. The number of firms with employees (employer firms)
2. The sales and receipts of all employer firms
3. The number of paid employees
4. The annual payroll of employer firms

Panel A of Table 5-10 presents data for the four basic non-White racial groups:

1. Black
2. Hispanic
3. Asian
4. Native American

Panel B of Table 5-10 presents data for the following types of firm ownership:

- Non-White
- White women
- Not non-
- White/non-White women¹⁴⁷

Categories in the second panel are mutually exclusive. Hence, firms that are non-White and equally owned by men and women are classified as non-White and firms that are equally owned by non-Whites and Whites and equally owned by men and women are classified as equally owned by non-Whites and Whites.

Since the central issue is the possible disparate treatment of non-White firms and White woman firms, we calculate three disparity ratios each for Black, Hispanic, Asian, Native American, non-White, and White woman firms respectively (a total of 18 ratios), presented in Table 5-11:

- Ratio of sales and receipts share for all employer firms over the share of total number of all employer firms.
- Ratio of sales and receipts share for employer firms over the share of total number of employer firms.

147. Again, while a cumbersome nomenclature, it is important to remain clear that this category includes firms other than those identified as owned by White men.

- Ratio of annual payroll share over the share of total number of employer firms.

For example, the disparity ratio of sales and receipts share for all firms over the share of total number of all employer firms for Black firms is 54.8% (as shown in Table 5-11). This is derived by taking the Black share of sales and receipts for all employer firms (0.4%) and dividing it by the Black share of total number of all employer firms (0.8%) that are presented in Table 5-10.¹⁴⁸ If Black-owned firms earned a share of sales equal to their share of total firms, the disparity index would have been 100%. An index less than 100% indicates that a given group is being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission’s “80% rule” that a ratio less than 80% presents a *prima facie* case of discrimination.¹⁴⁹ Twelve of the 18 disparity ratios for non-White firms and White woman firms (presented in Table 5-11) are below this threshold.¹⁵⁰

**Table 5-10: Demographic Distribution of Sales and Payroll Data – Aggregated Groups
Construction, 2017**

	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts - All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
Panel A: Distribution of Non-White Firms				
Black	0.8%	0.4%	0.6%	0.6%
Hispanic	6.7%	2.4%	4.0%	2.9%
Asian	2.1%	1.2%	1.2%	1.0%
Native American	0.9%	1.3%	1.5%	1.8%
Panel B: Distribution of All Firms				
Non-White	10.5%	5.4%	7.3%	6.4%

148. Please note that while the numbers presented in Table 5-10 are rounded to the first decimal place, the calculations resulting in the numbers presented in Table 5-11 are based on the actual (non-rounded) figures. Therefore, the Black ratio presented in Table 5-11 of 54.8% is not the same figure as that which would be derived when you divided 0.4 by 0.8 (the numbers presented in Table 5-10).

149. 29 C.F.R. §1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or 80%) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).

150. Because the data in the subsequent tables are presented for descriptive purposes, significance tests on these results are not conducted.

	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts - All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
White Women	6.3%	4.2%	5.9%	5.4%
Not Non-White/Not White Women	83.2%	90.4%	86.8%	88.2%
All Firms	100.0%	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

**Table 5-11: Disparity Ratios – Aggregated Groups
Construction, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non-White Firms			
Black	54.8%	79.3%	81.3%
Hispanic	35.9%	60.6%	44.0%
Asian	57.3%	55.9%	46.5%
Native American	143.1%	159.0%	195.2%
Panel B: Disparity Ratios for All Firms			
Non-White	51.1%	69.7%	60.5%
White Women	66.4%	92.7%	85.6%
Not Non-White/Not White Women	108.7%	104.4%	106.1%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

2. Professional, Scientific, and Technical Services Industry

Tables 5-12 and 5-13 present the same analysis for the Other Services industry. All of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-17 fall under the 80% threshold.

Table 5-12: Demographic Distribution of Sales and Payroll Data – Aggregated Groups
Professional, Scientific, and Technical Services, 2017

	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts - All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
Panel A: Distribution of Non-White Firms				
Black	1.1%	0.4%	0.6%	0.4%
Hispanic	1.5%	1.1%	1.1%	1.1%
Asian	6.7%	4.9%	4.9%	4.6%
Native American	0.3%	0.2%	0.1%	0.1%
Panel B: Distribution of All Firms				
Non-White	9.6%	6.5%	6.7%	6.1%
White Women	22.3%	6.9%	8.4%	6.1%
Not Non-White/Not White Women	68.2%	86.6%	84.9%	87.8%
All Firms	100.0%	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

Table 5-13: Disparity Ratios – Aggregated Groups
Professional, Scientific, and Technical Services, 2017

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non-White Firms			
Black	32.8%	51.6%	33.6%
Hispanic	72.5%	75.2%	70.4%
Asian	73.3%	72.9%	69.0%
Native American	54.2%	46.6%	36.3%
Panel B: Disparity Ratios for All Firms			
Non-White	67.9%	69.9%	64.1%

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
White Women	30.9%	37.7%	27.4%
Not Non-White/Not White Women	127.1%	124.6%	128.7%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

3. Conclusion

Overall, the analysis of the ABS data presented in the above tables indicate that the non-White share and White woman share of all employer firms is greater than their share of sales, payrolls, and employees. This supports the conclusion that barriers to business success disproportionately affect non-Whites and White women.

D. Evidence of Disparities in Access to Business Capital

Capital is the lifeblood of any business. Participants in the anecdotal data collection universally agreed to this fundamental fact. The interviews with business owners conducted as part of this Study confirmed that small firms, especially minority- and woman-owned firms, had difficulties obtaining needed working capital to perform on Port contracts and subcontracts, as well as expand the capacities of their firms. As demonstrated by the analyses of Census Bureau data, above, discrimination may even prevent firms from forming in the first place.

There are extensive federal agency reports and much scholarly work on the relationship between personal wealth and successful entrepreneurship. There is a consensus that disparities in personal wealth translate into disparities in business creation and ownership.¹⁵¹ The most recent research highlights the magnitude of the COVID-19 pandemic's disproportionate impact on minority-owned firms.

151. See, e.g., Evans, David S. and Jovanovic, Boyan, "An Estimated Model of Entrepreneurial Choice under Liquidity Constraints," *Journal of Political Economy*, Vol. 97, No. 4, 1989, pp. 808-827; David S. Evans and Linda S. Leighton, "Some empirical aspects of entrepreneurship," *The American Economic Review*, Vol. 79, No. 3, 1989, pp. 519-535.

1. Federal Reserve Board Small Business Credit Surveys¹⁵²

The Development Office of the 12 Reserve Banks of the Federal Reserve System has conducted Small Business Credit Surveys (“SBCS”) to develop data on small business performance and financing needs, decisions, and outcomes.

a. 2023 Small Business Credit Survey

The most recent 2024 Report on Employer Firms: Findings from the 2023 Small Business Credit Survey¹⁵³, was fielded from September through November 2023 and reached more than 6,000 small employer firms, collecting information about the performance, challenges, and credit seeking experiences of businesses across the United States. The Survey yielded 6,131 responses from a nationwide convenience sample of small employer firms with 1-499 full- or part-time employees across all 50 states and the District of Columbia. The findings suggest a further waning of effects from the COVID-19 pandemic and a modest improvement in small-business conditions. Measures of firm performance held steady and remain well above pandemic-era lows, and the share of firms reporting challenges with supply chains declined markedly between 2022 and 2023.

Older, larger, and white-owned firms were more likely than their counterparts to be fully approved for a loan, line of credit, or merchant cash advance in the 12 months prior to the survey. While White-owned applicants were fully approved 56% of the time, only 32% of Black and Hispanic applicants and only 34% of Asian-owned applicants were fully approved.

b. 2022 Report on Firms Owned by People of Color

This Report constitutes a follow-up to the *Small Business Credit Survey 2021 Report on Firms Owned by People of Color*,¹⁵⁴ which found that businesses owned by people of color often face more financial and operational challenges than their White counterparts and were frequently less successful at obtaining the funding necessary to weather the effects of the global COVID-19 pandemic. It finds that these disparities continue to persist. The Report contains results for employer firms with 1-499 employees other than the owners by four race/ethnicity categories: Asian or Pacific Islanders; Black or African American; Hispanic or Latino; and White.¹⁵⁵

152. This survey offers baseline data on the financing and credit positions of small firms before the onset of the pandemic. See [fedsmallbusiness.org](https://www.fedsmallbusiness.org).

153. <https://www.fedsmallbusiness.org/reports/survey/2024/2024-report-on-employer-firms>.

154. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

155. Findings for Native American-owned firms were omitted from the report because sample sizes were too small to make precise estimates for most measures.

The Report found that while revenues and employment improved for some businesses, most firms, particularly those owned by people of color, had not yet recovered from the effects of the pandemic. Firms owned by people of color were more likely than White-owned firms to report declines in revenue and employment in the prior twelve months. Both Asian- and Black-owned firms were more than twice as likely as White-owned firms to be in poor financial condition at the time of the survey. Asian-owned firms were more likely than other firms to report weak sales as a financial challenge, while Black-owned firms were more likely than others to say that credit availability was a concern.

The Report also found that firms owned by people of color were more likely to seek pandemic-related financial assistance than White-owned firms. Firms were less likely to apply for the Paycheck Protection Program (“PPP”) in 2021 than in 2020; however, when they did apply, firms owned by people of color were less likely than White-owned firms to report receiving the full amount of funding for which they applied in the prior twelve months.¹⁵⁶

While firms owned by people of color were more likely to apply for traditional financing than White-owned firms (excluding pandemic-related assistance programs in the prior twelve months), they were less likely to receive the funding sought. Compared to White-owned businesses, firms owned by people of color sought smaller amounts of financing. Among low-credit-risk applicants, firms owned by people of color were less likely than White-owned firms to receive all the financing they sought.

Applicant firms were more likely to seek loans, lines of credit, and cash advances at large or small banks than at non-bank lenders. However, firms owned by people of color were less likely than White-owned firms to be approved for financing. Regardless of the type of lender they applied to, firms owned by people of color were less likely than White-owned firms to be approved for the full amount of funding sought. Firms owned by people of color were half as likely as White-owned firms to be fully approved for a loan or line of credit at a small bank and almost a third as likely to be fully approved at a non-bank finance company.

c. 2022 Small Business Credit Survey

The 2022 Small Business Credit Survey (“2022 Survey”)¹⁵⁷ gathered insights about the COVID-19 pandemic’s continuing impact on small busi-

156. The Report finds that in 2021, firms continued to rely on pandemic-related financial assistance, including the PPP, Economic Injury Disaster Loans (“EIDL”) and other federal, state, and local funding programs. EIDL and PPP loans were the most common.

157. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/2022-sbcs-employer-firms-report>.

nesses, including workforce challenges, business performance, and credit conditions. The 2022 Survey yielded 10,914 responses from a nationwide convenience sample of small business firms with 1-499 full- or part-time employees across all 50 states and the District of Columbia. The 2022 Survey was fielded during September through November of 2021 and was the second survey conducted during the global pandemic.

The 2022 Survey found that the pandemic continues to significantly impact firms, with 77% reporting negative effects. While pandemic-related financial assistance programs, including the PPP, were widely used in 2020 and 2021, the 2022 Survey found a decline in their use in the 12 months prior to the Survey. Personal funds and cash reserves remain an important source of financial stability for small businesses, while financing approval rates continue to decline relative to pre-pandemic levels. Although two-thirds of employer firms received pandemic-related financial assistance in the prior 12 months, firms were less likely to seek financial assistance than they were earlier in the pandemic. Approval rates on loans, lines of credit and cash advance applications declined for the second consecutive year. Other key findings include:

- More than half of firms were in fair or poor financial condition at the time of the Survey, and nearly all firms faced at least one operational or financial challenge in the prior 12 months.
- Firms owned by people of color, smaller firms, and leisure and hospitality firms were most likely to be in fair or poor financial condition.

Application rates for traditional financing were lower in 2021 than in prior years, and those who applied were less likely to receive the financing they sought. Firms owned by people of color, firms with fewer employees, and leisure and hospitality firms were least likely to receive the full amount of financing sought.

d. 2021 Report on Firms Owned by People of Color

i. Overview

The *2021 Report on Firms Owned by People of Color*¹⁵⁸ compiles results from the 2020 SBCS. The SBCS provides data on small business performance, financing needs, and decisions and borrowing outcomes.^{159,160}

158. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

159. The SBCS is an annual survey of firms with fewer than 500 employees.

160. The 2020 SBCS was fielded in September and October 2020 and yielded 9,693 responses from small employer firms in all 50 states and the District of Columbia.

The Report provides results by four race/ethnicity categories: White, Black or African American, Hispanic or Latino, and Asian or Pacific Islander. For select key statistics, it also includes results for 4,531 non-employer firms, which are firms with no employees on payroll other than the owner(s) of the business.

Patterns of geographic concentration emerged among small business ownership by race and ethnicity. This was important given the progressive geographic spread of the novel coronavirus throughout 2020 and variations in state government responses to limit its spread. The Report found that 40% of Asian-owned small employer firms are in the Pacific census division, and another 28% are in the Middle Atlantic. Early and aggressive efforts by the impacted states may have affected the revenue performance of Asian-owned firms in the aggregate given their geographic concentration. Black-owned and Hispanic-owned small employer firms are more concentrated in the South Atlantic region, which includes states with a mix of pandemic responses. For example, while Florida lifted COVID-19 restrictions relatively quickly, the South Atlantic, including North Carolina, maintained more strict guidelines.

The Report found that firms owned by people of color continue to face structural barriers in acquiring the capital, business acumen, and market access needed for growth. At the time of the 2020 SBCS – six months after the onset of the global pandemic – the U.S. economy had undergone a significant contraction of economic activity. As a result, firms owned by people of color reported more significant negative effects on business revenue, employment, and operations. These firms anticipated revenue, employment, and operational challenges to persist into 2021 and beyond. Specific findings are, as follows:

ii. Performance and Challenges

Overall, firms owned by people of color were more likely than White-owned firms to report that they reduced their operations in response to the pandemic. Asian-owned firms were more likely than others to have temporarily closed and to have experienced declines in revenues and employment in the 12 months prior to the survey. In terms of sales and the supply chain, 93% of Asian-owned firms and 86% of Black-owned firms reported sales declines as a result of the pandemic. Relative to financial challenges for the prior 12 months, firms owned by people of color were more likely than White-owned firms to report financial challenges, including paying operating expenses, paying rent, making payments on debt, and credit availability. Black-owned business owners were most likely to have used personal funds in response to their firms' financial challenges. Nearly half of Black-owned firms

reported concerns about personal credit scores or the loss of personal assets. By contrast, one in five White-owned firms reported no impact on the owners' personal finances. Asian-owned firms were approximately twice as likely as White-owned firms to report that their firms were in poor financial condition.

iii. Emergency Funding

The *Report* finds that PPP loans were the most common form of emergency assistance funding that firms sought during the period. Black-owned and Hispanic-owned firms were less likely to apply for a PPP loan. Only six in ten Black-owned firms actually applied. Firms owned by people of color were more likely than White-owned firms to report that they missed the deadline or were unaware of the program. Firms owned by people of color were less likely than White-owned firms to use a bank as a financial services provider. Regardless of the sources at which they applied for PPP loans, firms that used banks were more likely to apply for PPP loans than firms that did not have a relationship with a bank. While firms across race and ethnicity were similarly likely to apply for PPP loans at large banks, White- and Asian-owned firms more often applied at small banks than did Black- and Hispanic-owned firms. Black-owned firms were nearly half as likely as White-owned firms to receive all of the PPP funding they sought and were approximately five times as likely to receive none of the funding they sought.

iv. Debt and Financing

Black-owned firms have smaller amounts of debt than other firms. About one in ten firms owned by people of color do not use financial services.

On average, Black-owned firms completed more financing applications than other applicant firms. Firms owned by people of color turned more often to large banks for financing. By contrast, White-owned firms turned more often to small banks. Black-owned applicant firms were half as likely as White-owned applicant firms to be fully approved for loans, lines of credit, and cash advances.

Firms owned by people of color were less satisfied than White-owned firms with the support from their primary financial services provider during the pandemic. Regardless of the owner's race or ethnicity, firms were less satisfied with online lenders than with banks and credit unions.

In the aggregate, 63% of all employer firms were non-applicants – they did not apply for non-emergency financing in the prior 12 months.

Black-owned firms were more likely than other firms to apply for non-emergency funding in the 12 months prior to the survey. One-quarter of Black- and Hispanic-owned firms that applied for financing sought \$25,000 or less. In 2020, firms owned by people of color were more likely than White-owned firms to apply for financing to meet operating expenses. The majority of non-applicant firms owned by people of color needed funds but chose not to apply, compared to 44% of White-owned firms. Financing shortfalls were most common among Black-owned firms and least common among White-owned firms.

Firms of color, and particularly Asian-owned firms, were more likely than White-owned firms to have unmet funding needs. Just 13% of Black-owned firms received all of the non-emergency financing they sought in the 12 months prior to the survey, compared to 40% of White-owned firms. Black-owned firms with high credit scores were half as likely as their White counterparts to receive all of the non-emergency funding they sought.

v. Findings for Non-employer Firms

Non-employer firms, those that have no paid employees other than the owner, represent the overwhelming majority of small businesses across the nation. In all, 96% of Black-owned and 91% of Hispanic-owned firms are non-employer firms, compared to 78% of White-owned and 75% of Asian-owned firms.¹⁶¹

Compared to other non-employer firms, Asian-owned firms reported the most significant impact on sales as a result of the pandemic. They were most likely to report that their firm was in poor financial condition at the time of the survey.

Compared to other non-employer firms that applied for financing, Black-owned firms were less likely to receive all of the financing they sought. Black-owned non-employer firms that applied for PPP loans were less likely than other firms to apply at banks and more often turned to online lenders. Among PPP applicants, White-owned non-employer firms were twice as likely as Black-owned firms to receive all of the PPP funding they sought.

e. 2021 Small Business Credit Survey

The 2021 SBCS¹⁶² reached more than 15,000 small businesses, gathering insights about the COVID-19 pandemic's impact on small businesses, as

161. The Report notes that a future report will describe findings from the 2020 SBCS for non-employers in greater detail.

162. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/2021-sbcs-employer-firms-report>.

well as business performance and credit conditions. The 2021 Survey yielded 9,693 responses from a nationwide convenience sample of small employer firms with between one and 499 full- or part-time employees across all 50 states and the District of Columbia. The 2021 Survey was fielded in September and October 2020, approximately six months after the onset of the pandemic. The timing of the 2021 Survey is important to the interpretation of the results. At the time of the 2021 survey, the PPP authorized by the Coronavirus Relief and Economic Security Act had recently closed applications, and prospects for additional stimulus funding were uncertain. Additionally, many government-mandated business closures had been lifted as the number of new COVID-19 cases plateaued in advance of a significant increase in cases by the year's end.

The 2021 Survey findings highlight the magnitude of the pandemic's impact on small businesses and the challenges they anticipate as they navigate changes in the business environment. Few firms avoided the negative impacts of the pandemic. Furthermore, the findings reveal disparities in experiences and outcomes across firm and owner demographics, including race and ethnicity, industry, and firm size.

Overall, firms' financial conditions declined sharply and those owned by people of color reported greater challenges. The most important anticipated financial challenge differed by race and ethnicity of the owners. Among the findings for employer firms relevant to discriminatory barriers were the following:

- For Black-owned firms, credit availability was the top expected challenge, while Asian-owned firms disproportionately cited weak demand.
- The share of firms in fair or poor financial conditions varied by race: 79% of Asian-owned firms, 77% of Black-owned firms, 66% of Hispanic-owned firms and 54% of White-owned firms reported this result.
- The share of firms that received all the financing sought to address the impacts of the pandemic varied by race: 40% of White-owned firms received all the funding sought, but only 31% of Asian-owned firms, 20% of Hispanic-owned firms and 13% of Black-owned firms achieved this outcome.

f. 2018 Small Business Credit Survey

The 2018 SBCS¹⁶³ focused on minority-owned firms. The analysis was divided into two types: employer firms and non-employer firms.

i. Employer firms

Queries were submitted to businesses with fewer than 500 employees in the third and fourth quarters of 2018. Of the 7,656 firms in the unweighted sample, five percent were Asian, 10% were Black, six percent were Hispanic, and 79% were White. Data were then weighted by number of employees, age, industry, geographic location (census division and urban or rural location), and minority status to ensure that the data is representative of the nation's small employer firm demographics.¹⁶⁴

Among the findings for employer firms relevant to discriminatory barriers were the following:

- Not controlling for other firm characteristics, fewer minority-owned firms were profitable compared to non-minority-owned firms during the past two years.¹⁶⁵ On average, minority-owned firms and non-minority-owned firms were about as likely to be growing in terms of number of employees and revenues.¹⁶⁶
- Black-owned firms reported more credit availability challenges or difficulties obtaining funds for expansion—even among firms with revenues of more than \$1M. For example, 62% of Black-owned firms reported that obtaining funds for expansion was a challenge, compared to 31% of White-owned firms.¹⁶⁷
- Black-owned firms were more likely to report relying on personal funds of owner(s) when they experienced financial challenges to fund their business. At the same time, White- and Asian-owned firms reported higher debt levels than Black- and Hispanic-owned firms.¹⁶⁸
- Black-owned firms reported more attempts to access credit than White-owned firms but sought lower amounts of financing. Forty

163. Small Business Credit Survey, <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

164. *Id.* at 22. Samples for SBCS are not selected randomly. To control for potential biases, the sample data are weighted so that the weighted distribution of firms in the SBCS matches the distribution of the small firm population in the United States by number of employees, age industry, geographic location, gender of owner, and race or ethnicity of owners.

165. *Id.* at 3.

166. *Id.* at 4.

167. *Id.* at 5.

168. *Id.* at 6.

percent of Black-owned firms did not apply because they were discouraged, compared to 14% of White-owned firms.¹⁶⁹

- Low credit score and lack of collateral were the top reported reasons for denial of applications by Black- and Hispanic-owned firms.¹⁷⁰

ii. Non-employer firms¹⁷¹

Queries were submitted to non-employer firms in the third and fourth quarters of 2018. Of the 4,365 firms in the unweighted sample, five percent were Asian, 24% were Black, seven percent were Hispanic, and 64% were White. Data were then weighted by age, industry, geographic location (census division and urban or rural location), and minority status.¹⁷²

Among the findings for non-employer firms relevant to discriminatory barriers were the following:

- Black-owned firms were more likely to operate at a loss than other firms.¹⁷³
- Black-owned firms reported greater financial challenges, such as obtaining funds for expansion, accessing credit and paying operating expenses than other businesses.¹⁷⁴
- Black- and Hispanic-owned firms submitted more credit applications than White-owned firms.¹⁷⁵

g. 2016 Small Business Credit Survey

The 2016 Small Business Credit Survey¹⁷⁶ obtained 7,916 responses from employer firms with race/ethnicity information and 4,365 non-employer firms in the 50 states and the District of Columbia. Results were reported with four race/ethnicity categories: White, Black or African American, Hispanic, and Asian or Pacific Islander.¹⁷⁷ It also reported results from woman-owned small employer firms, defined as firms where 51% or more of the

169. *Id.* at 9.

170. *Id.* at 15.

171. *Id.* at 18.

172. *Id.* at 18.

173. *Id.*

174. *Id.* at 19.

175. *Id.* at 20.

176. <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

177. When the respondent sample size by race for a survey proved to be too small, results were communicated in terms of minority vis-à-vis non-minority firms.

business is owned by women, and compared their experiences with male-owned small employer firms.

i. **The 2016 Small Business Credit Survey: Report on Minority-Owned Firms¹⁷⁸**

The 2016 SBCS Report on Minority-Owned Firms provided results for White-, Black- or African American-, Hispanic-, and Asian- or Pacific Islander-owned firms.

Demographics¹⁷⁹

The Report found that Black-, Asian-, and Hispanic-owned firms tended to be younger and smaller in terms of revenue size, and they were concentrated in different industries. Black-owned firms were concentrated in the healthcare and education industry sectors (24%). Asian-owned firms were concentrated in professional services and real estate (28%). Hispanic-owned firms were concentrated in non-manufacturing goods production and associated services industry, including building trades and Goods (27%). White-owned firms were more evenly distributed across several industries but operated most commonly in the professional services industry and real estate industries (19%), and non-manufacturing goods production and associated services industry (18%).¹⁸⁰

Profitability Performance Index¹⁸¹

After controlling for other firm characteristics, the Report found that fewer minority-owned firms were profitable compared to non-minority-owned firms during the prior two years. This gap proved most pronounced between White-owned (57%) and Black-owned firms (42%). On average, however, minority-owned firms and non-minority-owned firms were nearly as likely to be growing in terms of number of employees and revenues.

Financial and Debt Challenges/Demands¹⁸²

The number one reason for financing was to expand the business or pursue a new opportunity. Eighty-five percent of applicants sought a loan or line of credit. Black-owned firms reported more attempts to

178. <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

179. 2016 SBCS, at 2.

180. *Id.* Forty-two percent of Black-owned firms, 21% of Asian-owned firms, and 24% of Hispanic-owned firms were smaller than \$100K in revenue size compared with 17% of White-owned firms.

181. *Id.* at 3-4.

182. *Id.* at 8-9; 11-12; 13; 15.

access credit than White-owned firms but sought lower amounts of financing.

Black-, Hispanic-, and Asian-owned firms applied to large banks for financing more than they applied to any other sources of funds. Having an existing relationship with a lender was deemed more important to White-owned firms when choosing where to apply compared to Black-, Hispanic- and Asian-owned firms.

The Report also found that small Black-owned firms reported more credit availability challenges or difficulties for expansion than White-owned firms, even among firms with revenues in excess of \$1M. Black-owned firm application rates for new funding were ten percentage points higher than White-owned firms; however, their approval rates were 19 percentage points lower. A similar but less pronounced gap existed between Hispanic- and Asian-owned firms compared with White-owned firms. Of those approved for financing, only 40% of minority-owned firms received the entire amount sought compared to 68% of non-minority-owned firms, even among firms with comparably good credit scores.

Relative to financing approval, the Report found stark differences in loan approvals between minority-owned and White-owned firms. When controlling for other firm characteristics, approval rates from 2015 to 2016 increased for minority-owned firms and stayed roughly the same for non-minority-owned firms. Hispanic- and Black-owned firms reported the highest approval rates at online lenders.¹⁸³

Low credit score and lack of collateral were the top reported reasons for denial of Black- and Hispanic-owned firms' applications. Satisfaction levels were lowest at online lenders for both minority- and non-minority-owned firms. A lack of transparency was cited as one of the top reasons for dissatisfaction for minority applicants and borrowers.

Forty percent of non-applicant Black-owned firms reported not applying for financing because they were discouraged (expected not to be approved), compared with 14% of White-owned firms. The use of personal funds was the most common action taken in response to financial challenges, with 86% of Black-owned firms, 77% of Asian-owned firms, 76% of White-owned firms, and 74% of Hispanic-owned firms using this as its source.

183. The share of minority-owned firms receiving at least some financing was lower across all financing products, compared with non-minority firms.

A greater share of black-owned firms (36%) and of Hispanic-owned firms (33%) reported existing debt in the past 12 months of less than \$100,000, compared with 21% of White-owned firms and 14% of Asian-owned firms. Black-owned firms applied for credit at a higher rate and tended to submit more applications, compared with White-owned firms. Black-, Hispanic-, and Asian-owned firms applied for higher-cost products and were more likely to apply to online lenders compared to White-owned firms.

*Business Location Impact*¹⁸⁴

Controlling for other firm characteristics, minority-owned firms located in low-income minority zip codes reported better credit outcomes at large banks, compared with minority-owned firms in other zip codes. By contrast, at small banks, minority-owned firms located in low- and moderate-income minority zip codes experienced lower approval rates than minority-owned firms located in other zip codes.

*Non-employer Firms*¹⁸⁵

Non-employer firms reported seeking financing at lower rates and experienced lower approval rates than employer firms, with Black-owned non-employer firms and Hispanic-owned non-employer firms experiencing the most difficulty. White-owned non-employer firms experienced the highest approval rates for new financing, while Black-owned non-employer firms experienced the lowest approval rates for new financing.

ii. The 2016 Small Business Credit Survey: Report on Woman-Owned Firms¹⁸⁶

The 2016 SBCS Report on Woman-Owned Firms provides results from woman-owned small employer firms where 51% or more of the business is owned by women. These data compared the experience of these firms compared with male-owned small employer firms.

184. *Id.* at 17.

185. *Id.* at 21.

186. <https://www.newyorkfed.org/medialibrary/media/smallbusiness/2016/SBCS-Report-WomenOwnedFirms-2016.pdf>.

*Firm Characteristics: Woman-Owned Firms Start Small and Remain Small and Concentrate in Less Capital-Intensive Industries*¹⁸⁷

The Report found that 20% of small employer firms were woman-owned, compared to 65% male-owned and 15% equally owned. Woman-owned firms generally had smaller revenues and fewer employees than male-owned small employer firms. These firms tended to be younger than male-owned firms.

Woman-owned firms were concentrated in less capital-intensive industries. Two out of five woman-owned firms operated in the healthcare and education or professional services and real estate industries. Male-owned firms were concentrated in professional services, real estate, and non-manufacturing goods production and associated services.¹⁸⁸

*Profitability Challenges and Credit Risk Disparities*¹⁸⁹

Woman-owned firms were less likely to be profitable than male-owned firms. These firms were more likely to report being medium or high credit risk compared to male-owned firms. Notably, gender differences by credit risk were driven by woman-owned startups. Among firms older than five years, credit risk was indistinguishable by the owner's gender.

*Financial Challenges During the Prior Twelve Months*¹⁹⁰

Woman-owned firms were more likely to report experiencing financial challenges in the prior twelve months: 64% compared to 58% of male-owned firms. They most frequently used personal funds to fill gaps and make up deficiencies. Similar to male-owned firms, woman-owned firms frequently funded operations through retained earnings. Ninety percent of woman-owned firms relied upon the owner's personal credit score to obtain financing.

*Debt Differences*¹⁹¹

Sixty-eight percent of woman-owned firms had outstanding debt, similar to that of male-owned firms. However, woman-owned firms tended

187. 2016 SBCS, at 1-5.

188. Non-manufacturing goods production and associated services refers to firms engaged in Agriculture, Forestry, Fishing, and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Goods; Wholesale Trade; Transportation and Warehousing (NAICS codes: 11, 21, 22, 23, 42, 48-49).

189. *Id.* at 6-7.

190. *Id.* at 8.

191. *Id.* at 10.

to have smaller amounts of debt, even when controlled for the revenue size of the firm.

*Demands for Financing*¹⁹²

Forty-three percent of woman-owned firms applied for financing. Woman-owned applicants tended to seek smaller amounts of financing even when their revenue size was comparable.

Overall, woman-owned firms were less likely to receive all financing applied for compared to male-owned firms. Woman-owned firms received a higher approval rate for U.S. Small Business Administration loans compared to male-owned firms. Low-credit, woman-owned firms were less likely to be approved for business loans than their male counterparts with similar credit (68% compared to 78%).

*Firms That Did Not Apply for Financing*¹⁹³

Woman-owned firms reported being discouraged from applying for financing for fear of being turned down at a greater rate: 22% compared to 15% for male-owned firms. Woman-owned firms cited low credits scores more frequently than male-owned firms as their chief obstacle in securing credit. By contrast, male-owned businesses were more likely to cite performance issues.

*Lender Satisfaction*¹⁹⁴

Woman-owned firms were most consistently dissatisfied by lenders' lack of transparency and by long waits for credit decisions. However, they were notably more satisfied with their borrowing experiences at small banks rather than large ones.

2. Small Business Administration Loans to African American Businesses (2020)

As detailed in a 2021 article published in the *San Francisco Business Times*,¹⁹⁵ the number of loans to Black businesses through the SBA's 7(a) program¹⁹⁶

192. *Id.* at 16.

193. *Id.* at 14.

194. *Id.* at 26.

195. SBA Loans to African American Businesses Decrease 35%, *San Francisco Business Times* (August 11, 2021) at: <https://www.bizjournals.com/sanfrancisco/news/2021/08/11/sba-loans-to-african-american-businesses-decrease.html>. Data were obtained through a Freedom of Information Act request.

196. Section 7(a) of the Small Business Act of 1953 (P.L. 83-163, as amended).

decreased 35% in 2020.¹⁹⁷ This was the largest drop in lending to any race or ethnic group tracked by the SBA. The 7(a) program is the SBA's primary program for financial assistance to small businesses. Terms and conditions, like the guaranty percentage and loan amount, vary by the type of loan. Lenders and borrowers can negotiate the interest rate, but it may not exceed the SBA maximum.¹⁹⁸

Bankers, lobbyists, and other financial professionals attributed the 2020 decline to the impact of the PPP pandemic relief effort.¹⁹⁹ The PPP loan program provided the source of relief to underserved borrowers through a direct incentive for small businesses to keep their workers on payroll.²⁰⁰ Approximately 5.2M PPP loans were made in 2020, as compared with roughly 43,000 loans made through the 7(a) program.

In a published statement to the *Portland Business Journal*, the American Bankers Association, an industry trade group, noted that the 2020 decline in SBA 7(a) loans to Black-owned businesses is not a one-year anomaly; it has been declining for years at a much faster rate than 7(a) loans to other borrowers. The 2020 data²⁰¹ reveal that the number of SBA loans made annually to Black businesses has declined 90% since a 2007 peak, more than any other group tracked by the SBA. In that interval, the overall number of loans decreased by 65%.

The nation's four largest banks (JP Morgan Chase, Bank of America, Citigroup, and Wells Fargo), which hold roughly 35% of national deposits, made 41% fewer SBA 7(a) loans to Blacks in 2020.²⁰²

PPP loans served as a lifeline during the pandemic for millions of businesses. However, industry experts maintained that PPP loans detracted from more conventional SBA lending efforts that year. Wells Fargo provided more than 282,000 PPP loans to small businesses nationwide in 2020, with an average loan size of \$50,000. Wells Fargo, the most active lender for Black businesses nationwide in 2020, saw its SBA loans to Blacks drop from 263 in 2019 to 162

197. The total number of 7(a) loans declined 24%.

198. The SBA caps the maximum spread lenders can charge based on the size and maturity of the loan. Rates range from prime plus 4.5% to prime plus 6.5%, depending on how much is borrowed.

199. The Coronavirus Act, Relief, and Economic Security Act ("CARES Act"), required the SBA to issue guidance to PPP lenders to prioritize loans to small businesses owned by socially and economically disadvantaged individuals including Black-owned businesses. See 116-136, §1, March 27, 2020, 134 Stat. 281.

200. PPP loans were used to help fund payroll costs, including benefits, and to pay for mortgage interest, rent, utilities, workers protection costs related to COVID-19, uninsured property damage costs caused by looting or vandalism during 2020 as well as certain supplier costs and operational expenses.

201. The SBA denied the original request for information; however, the publication prevailed on appeal.

202. Data obtained by the *Business Journal* does not include information from lenders who made less than ten loans in 2020.

in 2020. Bank of America, Chase, and Citigroup also reported fewer SBA loans to African American businesses in 2020.

While PPPs have been heralded for providing needed monies to distressed small and mid-size businesses, data reveals disparities in how loans were distributed.²⁰³ An analysis in 2020 by the *Portland Business Journal*, found that of all 5.2M PPP loans, businesses in neighborhoods of color received fewer loans and delayed access to the program during the early critical days of the pandemic.²⁰⁴ More recent analysis released by the Associated Press indicates that access for borrowers of color improved exponentially during the later rounds of PPP funding, following steps designed to make the program more accessible to underserved borrowers.

3. 2010 Minority Business Development Agency Report²⁰⁵

The 2010 Minority Business Development Agency Report, “Disparities in Capital Access Between Minority and non-Minority Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs”, summarizes results from the Kauffman Firm Survey, data from the U.S. Small Business Administration’s Certified Development Company/504 Guaranteed Loan Program and additional extensive research on the effects of discrimination on opportunities for minority-owned firms. The report found that:

low levels of wealth and liquidity constraints create a substantial barrier to entry for minority entrepreneurs because the owner’s wealth can be invested directly in the business, used as collateral to obtain business loans or used to acquire other businesses.²⁰⁶

It also found, “the largest single factor explaining racial disparities in business creation rates are differences in asset levels.”²⁰⁷

Some additional key findings of the Report include:

203. While PPP loans are administered by the SBA, they are disbursed primarily through banks.

204. Many industry experts have observed that businesses that already had strong relationships with lenders were the most successful in accessing PPP loans. The nation’s long history of systemic racism in banking fostered disparities in PPP loan distribution. See Alicia Plerhoples, *Correcting Past Mistakes: PPP Loans and Black-Owned Small Businesses*, at <https://www.acslaw.org/expertforum/correcting-past-mistakes-ppp-loans-and-black-owned-small-businesses/>.

205. Robert W. Fairlie and Alicia Robb, *Disparities in Capital Access Between Minority and non-Minority Businesses: The Troubling Reality of Capital Limitations Faced by MBEs*, Minority Business Development Agency, U.S. Department of Commerce, 2010 (“MBDA Report”) (<https://archive.mbda.gov/sites/mbda.gov/files/migrated/files-attachments/DisparitiesinCapitalAccessReport.pdf>).

206. *Id.* at 17.

207. *Id.* at 22.

- Denial of Loan Applications. Forty-two percent of loan applications from minority firms were denied compared to 16% of loan applications from non-minority-owned firms.²⁰⁸
- Receiving Loans. Forty-one percent of all minority-owned firms received loans compared to 52% of all non-minority-owned firms. MBEs are less likely to receive loans than non-minority-owned firms regardless of firm size.²⁰⁹
- Size of Loans. The size of the loans received by minority-owned firms averaged \$149,000. For non-minority-owned firms, loan size averaged \$310,000.
- Cost of Loans. Interest rates for loans received by minority-owned firms averaged 7.8%. On average, non-minority-owned firms paid 6.4% in interest.²¹⁰
- Equity Investment. The equity investments received by minority-owned firms were 43% of the equity investments received by non-minority-owned firms even when controlling for detailed business and owner characteristics. The differences are large and statistically significant. The average amount of new equity investments in minority-owned firms receiving equity is 43% of the average of new equity investments in non-minority-owned firms. The differences were even larger for loans received by high sales firms.²¹¹

4. Federal Reserve Board Surveys of Small Business Finances

The Federal Reserve Board and the U.S. Small Business Administration have conducted surveys of discrimination in the small business credit market for years 1993, 1998 and 2003.²¹² These Surveys of Small Business Finances are based on a large representative sample of firms with fewer than 500 employees. The main finding from these Surveys is that MBEs experience higher loan denial probabilities and pay higher interest rates than White-owned businesses, even after controlling for differences in credit worthiness and other factors. Blacks, Hispanics and Asians were more likely to be denied credit than Whites, even after controlling for firm characteristics like credit history, credit

208. *Id.* at 5.

209. *Id.*

210. *Id.*

211. *Id.*

212. <https://www.federalreserve.gov/pubs/oss/oss3/nssbftoc.htm>. These Surveys have been discontinued. They are referenced to provide some historical context.

score and wealth. Blacks and Hispanics were also more likely to pay higher interest rates on the loans they did receive.²¹³

5. Other Reports

- Dr. Timothy Bates found venture capital funds focusing on investing in minority firms provide returns that are comparable to mainstream venture capital firms.²¹⁴
- According to the analysis of the data from the Kauffman Firm Survey, minority-owned firms' investments into their own firms were about 18% lower in the first year of operations compared to those of non-minority-owned firms. This disparity grew in the subsequent three years of operations, where minorities' investments into their own firms were about 36% lower compared to those of non-minority-owned firms.²¹⁵
- Another study by Fairlie and Robb found minority entrepreneurs face challenges (including lower family wealth and difficulty penetrating financial markets and networks) directly related to race that limit their ability to secure financing for their businesses.²¹⁶

E. Evidence of Disparities in Access to Human Capital

There is a strong intergenerational correlation with business ownership. The probability of self-employment is significantly higher among the children of the self-employed. A generational lack of self-employment capital disadvantages minorities, whose earlier generations were denied business ownership through either *de jure* segregation or *de facto* exclusion.

There is evidence that current racial patterns of self-employment are in part determined by racial patterns of self-employment in the previous generation.²¹⁷ Black men have been found to face a "triple disadvantage" in that they are less likely than White men to: 1. Have self-employed fathers; 2. Become self-employed if their fathers were not self-employed; and 3. To follow their fathers into self-employment.²¹⁸

213. See Blanchflower, D.G., Levine, P. and Zimmerman, D., "Discrimination In The Small Business Credit Market," *Review of Economics and Statistics*, (2003); Cavalluzzo, K. S. and Cavalluzzo, L. C., "Market structure and discrimination, the case of small businesses," *Journal of Money, Credit, and Banking*, (1998).

214. See Bates, T., "Venture Capital Investment in Minority Business," *Journal of Money Credit and Banking* 40, 2-3 (2008).

215. Fairlie, R.W. and Robb, A, *Race and Entrepreneurial Success: Black-, Asian- and White-Owned Businesses in the United States*, (Cambridge: MIT Press, 2008).

216. *Id.*

217. Fairlie, R W., "The Absence of the African-American Owned Business, An Analysis of the Dynamics of Self-Employment," *Journal of Labor Economics*, Vol. 17, 1999, pp 80-108.

Intergenerational links are also critical to the success of the businesses that do form.²¹⁹ Working in a family business leads to more successful firms by new owners. One study found that only 12.6% of Black business owners had prior work experiences in a family business as compared to 23.3% of White business owners.²²⁰ This creates a cycle of low rates of minority ownership and worse outcomes being passed from one generation to the next, with the corresponding perpetuation of advantages to White-owned firms.

Similarly, unequal access to business networks reinforces exclusionary patterns. The composition and size of business networks are associated with self-employment rates.²²¹ The U.S. Department of Commerce has reported that the ability to form strategic alliances with other firms is important for success.²²² Minorities and women in our interviews reported that they felt excluded from the networks that help to create success in their industries.

F. Conclusion

The economy-wide data, taken as a whole, paint a picture of systemic and endemic inequalities in the ability of firms owned by minorities and women to have full and fair access to Port contracts and associated subcontracts. This evidence supports the conclusion that absent the use of narrowly tailored contract goals, these inequities will create disparate impacts on minorities and women.

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218. Hout, M. and Rosen, H. S., "Self-employment, Family Background, and Race," *Journal of Human Resources*, Vol. 35, No. 4, 2000, pp. 670-692.
219. Fairlie, R.W. and Robb, A., "Why Are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital," *Journal of Labor Economics*, Vol. 24, No. 2, 2007, pp. 289-323.
220. *Id.*
221. Allen, W. D., "Social Networks and Self-Employment," *Journal of Behavioral and Experimental Economics (formerly The Journal of Socio-Economics)*, Vol. 29, No. 5, 2000, pp. 487-501.
222. "Increasing MBE Competitiveness through Strategic Alliances" (Minority Business Development Agency, 2008).

VI. QUALITATIVE EVIDENCE OF RACE AND GENDER BARRIERS IN THE PORT OF SEATTLE'S MARKET FOR CONSTRUCTION AND CONSTRUCTION-RELATED SERVICES CONTRACTS

In addition to quantitative data, a disparity study should further explore anecdotal evidence of experiences with discrimination in contracting opportunities in the construction and construction-related services industries. This evidence is relevant to whether despite the operations of the Port of Seattle's Disadvantaged Business Enterprise ("DBEs") program for its FAA funded contracts and its Women and Minority-owned Business Enterprise ("WMBE") program for its locally funded contracts, minority- and woman-owned firms face discriminatory barriers to their full and fair participation in the Port's opportunities. Anecdotal evidence also sheds light on the likely efficacy of continuing to use only race- and gender-neutral remedies, designed to benefit all small contractors. As discussed in Chapter II, this type of anecdotal data has been held by the courts to be relevant and probative of whether an agency has a need to use narrowly tailored DBE or WMBE contract goals to remedy the effects of past and current discrimination and to create a level playing field for contract opportunities for all firms.

The Supreme Court has held that anecdotal evidence can be persuasive because it "brought the cold [statistics] convincingly to life."²²³ Evidence about discriminatory practices engaged in by prime contractors, agency personnel, and other actors relevant to business opportunities has been found relevant regarding barriers both to minority firms' business formation and to their success on governmental projects.²²⁴ The courts have held that while anecdotal evidence is insufficient standing alone, "[p]ersonal accounts of actual discrimination or the effects of discriminatory practices

223. *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 399 (1977).

224. *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1172 (10th Cir. 2000), cert. granted, 532 U.S. 941, then dismissed as improvidently granted, 534 U.S. 103 (2001).

may, however, vividly complement empirical evidence. Moreover, anecdotal evidence of a [government's] institutional practices that exacerbate discriminatory market conditions are [sic] often particularly probative."²²⁵ "[W]e do not set out a categorical rule that every case must rise or fall entirely on the sufficiency of the numbers. To the contrary, anecdotal evidence might make the pivotal difference in some cases; indeed, in an exceptional case, we do not rule out the possibility that evidence not reinforced by statistical evidence, as such, will be enough."²²⁶

There is no requirement that anecdotal testimony be "verified" or corroborated, as befits the role of evidence in legislative decision-making, as opposed to judicial proceedings. In finding the State of North Carolina's Historically Underutilized Business program to be constitutional, the Fourth Circuit Court of Appeals opined that "[p]laintiff offers no rationale as to why a fact finder could not rely on the State's 'unverified' anecdotal data. Indeed, 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."²²⁷ 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."²²⁸

To explore this type of anecdotal evidence of possible discrimination against minorities and women in the Port's geographic and industry markets and the effectiveness of its current race-and gender-neutral measures, we conducted four small group and individual business owner interviews and interviews with industry and community partner organizations, totaling 54 participants. We received written comments throughout the term of the study.

We met with a broad cross section of business owners in the Port's geographic market for the construction and construction-related services industries. Firms ranged in size from large, long established prime contracting and consulting firms to new market entrants. We sought to explore their experiences in seeking and performing public sector prime contracts and subcontracts with the Port, other government agencies, and in the private sector. We also elicited recommendations for improvements to the DBE program and the WMBE program, discussed in Chapter III.

225. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1120, 1530 (10th Cir. 1994).

226. *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 926 (11th Cir. 1997).

227. *H.B. Rowe Co., Inc. v. Tippet*, 615 F.3d 233, 249 (4th Cir. 2010).

228. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 989 (10th Cir. 2003), *cert. denied*, 540 U.S. 1027 (2003).

The following are summaries of the issues discussed. Quotations are indented and may have been shortened for readability. The statements are representative of the views expressed by numerous participants.

We have also appended a summary of the anecdotal results from several disparity studies we have conducted in Washington State. These studies are directly relevant and probative of the barriers to success that minority and woman entrepreneurs continue to face in the Washington market.²²⁹

A. Negative perceptions of competency

Many minority or woman owners had experienced stereotypes and negative assumptions about their abilities.

When I'm in a meeting and I can't seem to convince this person who is not of color, who is in a higher leadership role, I can see the disbelief on their face when I talk to them about what it is we do.... When leadership meets with someone like me in some sort of community setting and says, "We're committed to hiring small minority-owned businesses and we're really into this," and then [name] can't get me past the front door, I doubt the veracity of what I'm being told.

"You sure black people do that?"

No one seems to be willing to take a frame of reference that says just because this firm isn't nine figures and this person speaking to me is a person of color, doesn't mean that they can't do what it is that they say they can do.

[A formerly White male owned firm was sold to two women] and immediately, upon his passing when we took it over, there were rumors that we were going to go out of business. We weren't competent, we couldn't do it. So, we had a lot of trouble securing work initially, and we then got into doing some civil work through the DBE program.... it just would be maybe easier to go to work every day if you were working for people that wanted to support you and believed in the program that is benefiting them as well.

Some participants stated that there was often a stigma to being a certified business.

When you become known as woman owned or you become known as a certified company, it is harder to get the work. Of course [there is a stigma to being a certified firm]. Absolutely. Yeah. I mean there even is

229. Appendix E: Qualitative Evidence from Washington Disparity Studies.

amongst ourselves as organizations, for years when I've come on, when we met in person, I would go to contractors and say, I would love to do work with you. And he's like, "yeah, I got numbers from you once you guys were too much". And it's like, well give me another fucking chance. Why just one time for me when you'll go back to the nationals all the time?

I don't think they believe in the program, number one. So, you're trying to overcome that. Yeah, they're going to do what they're forced to do to secure work.... it's just a challenge when people just look at you coming out of the gate, that you're in the program because maybe you can't do something somewhere else. Or there's just, I think, a necessary way that they look at you as just not being as competent or qualified as maybe someone else that is not a woman-owned business or a minority-own or a veteran-owned company.

I can work with these companies in the commercial space, private sector jobs, exactly. And they don't know that we're a woman-owned business or a DBE. And I can work with them all day long and not have a problem at all.

B. Gender Based Barriers

Some women reported experiencing sex discrimination in the construction and consulting industries.

We're not on the golf course, we're not on the fishing boats. It's hard to get in as a female contractor for subcontract opportunities if you don't have those networking things outside of business. And there's networking opportunities that you can go to lunches or these meetings that the generals have. But nothing quite hits home like being on the golf course. And I don't know, it's hard to connect with some of these estimators and project managers on the large GC level.

Things are much better. I can go to a trade show now and people don't think I'm a prostitute or a girlfriend.

Several woman owners reported that work dried up when White women were no longer found to be socially and economically disadvantaged by the Washington State Department of Transportation pursuant to a disparity study. They were no longer "underutilized" DBEs and therefore their dollars could not be credited towards meeting DBE contract goals.

When we were waived out as majority women, 93% of the primes, the number went to that number. It wasn't other minorities that were taking over the business, it all went to the prime contractor.

When they waived majority women out, I think at that point prime contractors were responsible for 87% to 88% of the federal contracting dollars in the state of Washington. When majority women were waived out, those dollars did not go to minority businesses or any other business. In effect, the overall percentage of contract dollars that went to the large, white primes went to 93%. There's enough there for them. Again, to face that kind of just not wanting to use this for whatever reason they have, most of it make believe, really does just leaves a little sourness in one's mouth.

C. Unequal Access to Contract Opportunities

Some DBEs felt that larger, majority-owned firms had special access to information about upcoming opportunities.

The good old boys' system is real. Actually, we did it in an experiment and it was half experiment. I had one of my drivers with me, we were pulled into a site, the casino here in Tacoma, the Emerald Queen. We pulled in and I walked in, I wanted to talk to the guys about trucking. They were, they were friendly, they were a little standoffish. I got a little bit of information and then I left. But, my driver, he's a tall White guy, I sent him in there. I said, "Hey man, see what you can find out." He did go in there and they were a lot more chatty and he came out with an armload of information and, "Come back tomorrow, talk to Bob, talk to Dave." It burned my butt.

One of the things that's been bracing, sobering, bracing for us, is to learn how firms of that size have intel that we would never hope to have. I had someone tell me, not going to name the firm, I had someone tell me from a firm, "Well, we don't go after business unless we know who the decision maker is." I thought that was supposed to be secret. "Unless we know who the decision maker is, unless we know the genesis of the project, unless we know what it is they're looking for, both written and unwritten."

Networking with contracting decision makers was challenging for some WMBEs.

In regards to the networking, I'd say it's been weak, because they don't have the people there that actually make the decisions we need to be in front of. They have figureheads that are there for the DBE diversity requirements, and they say they're looking to do business with our

groups, but at the end of the day it doesn't feel like it. Because the real decision makers are these project managers. Those are the people that most of us here on this call should be interacting with and meeting. What happens is, we go there, we meet all these people and the story sounds great, and then you start trying to get in there. You find out that the project managers don't have any accountability to this and they make their decisions based on who they want to deal with.... The networking events need to be, if they're going to do this thing or really open up the networking to DBE firms like all of us here, then they need to put us in front of the decision makers. They need to put us in front of the people who are actually looking to procure this work; the heads of procurement, and let us network with them, build relationships with them. When we're building them with these DEI people, it doesn't really matter because they don't hold them accountable anyway.

[The large prime firms] have no interest in working with you. It's always been that way. They want to deal with the people that look like them, that are on the golf course with them. They go on fishing trips with them.

Most of these firms have liaisons into the minority, and women-owned, and disadvantaged business, and veteran-owned programs. And yet you'll go to them and, "Wow, we didn't know you were capable of doing a job this size," or "Well, maybe you're a little overextended." It's a lot of made up, nonspecific, nothing in writing issues. And I would just say probably you would call them barriers to what should be a much easier process than I have found the process to be with WSDOT, with the Port, with Sound Transit. It should be easier than it is, and unfortunately, it's just not.

D. Obtaining Work

The Port's contracting programs were seen by many DBEs/WMBEs as still necessary to ensure fair opportunities to compete.

These programs are just so critical and whatever we can do to help them be viable and successful and be meaningful and rewarding for the businesses that are using them, the more the better.

I like where they're headed. And over the last five years, it's been noticeable, the work that they've been doing over the last decade in terms of creating opportunities.

Absolutely the goals are critically important, whether it's right or not, they create opportunities for us to work on projects and to build

relationships with primes. And the port has some, what it seems like are some pretty, not high goals, but some meaningful goals on projects. And without those, we probably would have 90% less work. And for that, I'm super thankful we built relationships with primes that have carried over to other projects.

When you have strong agency goals and expectations, the primes respond proactively.

E. Conclusion

Evidence reported in the business owner interviews and the results of our other Washington State studies suggested that minorities and women continue to suffer discriminatory barriers to full and fair access to construction and consulting prime contracts and associated subcontracts in the Port's market area. Minorities and women continue to experience negative perceptions and assumptions about their competency that impede their ability to conduct business. Minorities and women reported they still face challenges related to stereotyping, racial bias and sexism. M/W/DBEs had reduced opportunities to obtain contracts, less access to formal and informal networks, and difficulty in securing financial support relative to non-M/W/DBEs.

VII. RECOMMENDATIONS FOR PORT OF SEATTLE'S EQUITY IN CONTRACTING PROGRAMS

The quantitative and qualitative data presented in this study provide a thorough examination of whether disadvantaged, minority- and woman-owned business enterprises (“D/M/WBEs”) operating in the Port of Seattle’s geographic and procurement markets have full and fair opportunities to compete for Port Federal Aviation Administration (“FAA”) funded and locally funded construction and construction-related services prime contracts and associated subcontracts. As required by strict constitutional scrutiny and the U.S. Department of Transportation’s Disadvantaged Business Enterprise (“DBE”) program regulations governing FAA funded contracts²³⁰, we analyzed evidence of such firms’ utilization by the Port as compared to their availability in its market area and any disparities between utilization and availability; presented an analysis of overall marketplace disparities impacting D/M/WBEs in the Puget Sound area; gathered extensive anecdotal data of possible discrimination through interviews; and reviewed the Port’s DBE program for federally assisted transportation contracts and the agency’s Women- and Minority-owned Business (“WMBE”) Program for state and locally funded construction and construction-related services contracts. We also provided Appendix E, which presents summaries of anecdotal evidence of discrimination against minority and woman businesses collected during our disparity studies for other Washington state agencies.

Based on these results, case law, USDOT official Guidance and national best practices for contracting equity programs, we make the following recommendations. We acknowledge that some suggestions will require additional staff and costs.

A. Enhance Contract Data Collection and Reporting

A major challenge in performing this study was the critical element of data collection. Full and complete prime contract and associated subcontractor records, especially for non-FAA funded contracts were housed in at least three different systems. Payment data, funding source and work descriptions had to be extracted manually. Detailed subcontractor data, such as subcontractor status, NAICS code and work description, were not available in any system for non-WMBE firms or for

230. 49 C.F.R. Part 26.

WMBEs on contracts without WMBE commitments. This necessitated us having to obtain data directly from the Port's prime vendors, a time consuming process.

Based on our experiences collecting contract records for this Report, as well as conducting research for dozens of agencies, we suggest the Port collect full information on all contracts regardless of size or procurement method for both prime contractors and subcontractors. This should include email addresses, six-digit NAICS codes **for the work performed or the goods/services provided on the contract**, race and gender ownership, WMBE certification status disaggregated by race and gender, and funding source.

It will also be important to delineate reporting of WMBE participation by whether the dollars were achieved using WMBE contract goals or through race- and gender-neutral approaches (*i.e.*, WMBE prime dollars on contracts without goals, utilization in excess of the contract goal, etc.). This will enable the Port to evaluate the continuing need for contract goals and the efficacy of its race- and gender-neutral approaches.

Further, better data collection will facilitate increased monitoring of WMBE and DBE commitments, discussed below.

B. Target Outreach to M/W/DBEs and Small firms in Subindustry Codes with Low Participation

As is the case with many governments, the study revealed that M/W/DBEs are receiving few opportunities in several subindustry codes. We suggest that special outreach be conducted to firms in those sectors. Evidence from the utilization analysis in Chapter IV indicates that several subindustry codes have large dollars but little Black participation. Activities could include targeted emails about future contracts, matchmaking events focusing on those industries, and identification of firms that are not currently certified to encourage them to apply.

C. Review the Contract Change Order Process

While most firms reported that the Port pays relatively promptly, and subcontractors reported few issues with receiving payments from prime contractors, the Port's process for managing and paying for change orders elicited many negative comments. Long delays created serious cash flow issues for small firms, and even large firms complained that it is expensive and burdensome to perform new work under change orders. We suggest that the Port work with external stakeholder groups to begin to streamline and speed up this process.

D. Enhance Opportunities on Professional Services Projects

Many professional services firms— DBEs and non-DBEs alike— expressed frustration at the difficulties in obtaining contracts. A common request was to revise the system for setting rates for design contracts. Firm owners and representatives, both from WMBEs and larger consulting firms, mentioned the complexity, burdensomeness and unfairness of the current approach, which requires firms repeatedly to justify their overhead, salaries and other costs.

In March 2024, the Port revised its negotiated rate process by reducing additional process steps and updating our compensation terms to address some of the key concerns expressed by our consulting community. The Central Procurement Office (CPO) led a task team comprised of internal Port leaders, industry leaders, and associations, such as the American Council of Engineering Companies, and minority and woman organizations, to recommend key improvements. This improvement reduced effort and time in our negotiation process.

Another suggestion is to consider permitting prime consulting firms to add a fixed markup percentage (perhaps 5%) to encourage them to use certified firms as much as possible. Several large consulting firms stated that the Port’s prohibition on marking up a subconsultant’s billing rates to account for the increased costs of managing another firm was a disincentive to using M/W/DBE subconsultants to the maximum possible extent, including on contracts with no goals. Perhaps this could be another focus for the task force.

In March 2024, the CPO, along with key internal Port leaders, evaluated the request to increase the current mark-up of 4% to a higher percentage. Based on research in the local region and benchmarking against other local government agencies, the team determined a 4% mark-up was a reasonable standard. However, the Port improved its compensation terms by authorizing subconsultants to now add the 4% mark-up fee for lab work.

E. Expand the Business Accelerator Mentorship Program

The Port currently implements the Business Accelerator mentorship program under the PortGen umbrella. This a 10-week course for WMBEs that have previous government contracting experience. Participants take twice-weekly development classes and meet weekly one-on-one with their mentor. Mentors are matched to each protégé.

We suggest enhancing this program by adding incentives, metrics and accountability elements. This new initiative could be modeled after the successful programs approved by USDOT, in compliance with Appendix D to 49 C.F.R. Part 26, “Mentor-Protégé Guidelines.” These programs provide support for D/WMBEs while incentivizing the mentor to provide the types of assistance targeted to the protégé to produce identified and achievable goals. Program elements must be clearly spelled out so as not to impinge on the independence of the certified firm or raise concerns about whether it is performing a commercially useful function (“CUF”).

A program should include:

- A description of the qualifications of the mentor, including the firm’s number of years of experience as a contractor or consultant; the agreement to devote a specified number of hours per month to working with the protégé; and the qualifications of the lead individual responsible for implementing the development plan.
- A written Port-approved development plan, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement, a schedule for meetings and development of action plans, and the services and resources to be provided by the mentor to the protégé. The assistance provided by the mentor must be detailed and directly relevant to Port work. The development targets should be quantifiable and verifiable—such as increased bonding capacity, increased sales, increased areas of work specialty or prequalification—and reflect objectives that increase the protégé’s capacities and expand its business areas and expertise.
- A long term and specific commitment between the parties, *e.g.*, 12 to 36 months.
- A provision for the use of any equipment or equipment rental.
- Extra credit for the mentor’s use of the protégé to meet a contract goal (*e.g.*, 1.25% for each dollar spent), with a limit on the total percentage that could be credited on a specific contract and on total credits available under the Plan.
- Any financial assistance by the mentor to the protégé must be subject to prior written approval by the Port and must not permit the mentor to assume control of the protégé or otherwise impinge on the protégé’s continued program eligibility.
- A fee schedule to cover the direct and indirect costs for services provided by the mentor for specific training and assistance to the protégé.
- A provision that the Plan may be terminated by mutual consent or by the Port if either party desires to be removed from the relationship; either party has

failed or is unable to meet its obligations under the plan; the protégé is not progressing or is not likely to progress in accordance with the plan; the protégé has reached a satisfactory level of self-sufficiency to compete without the plan; or the plan or its provisions are contrary to legal requirements.

- Submission of quarterly reports by the parties indicating their progress toward each of the Plan's goals.
- Regular review by the Port of the parties' compliance with the Plan and progress towards meeting its objectives. Failure to adhere to the terms of the Plan or to make satisfactory progress would be grounds for termination from the Program.

We recognize that this level of direction and oversight will require resources. Close monitoring of the program will also be critical.

F. Collaborate with Other Local Agencies to Implement a Bonding and Financing Program

DBE, WBEs and large firms all pointed to difficulties in obtaining surety bonding and contract financing as major barriers to small firm participation on Port contracts. While the Port's NextGen program and other technical assistance efforts are laudable, a program for construction contractors that provides bonding and working capital would be an important addition to increase capacity on a race- and gender-neutral basis. A successful program goes beyond information and education to provide a surety and a lender that agree to bond and finance graduates of the training program would be very helpful. There are some excellent programs that provide this type of support to DBEs and other small firms contractors to increase their capacities.²³¹

G. Narrowly Tailor the WMBE Program

1. Revise Certification Eligibility

The Port currently permits a firm to self-identify as woman- or minority-owned. There is no investigation of whether the firm is in fact owned, managed and controlled by one of more women or minority persons. In marked contrast to the DBE program, there is also no limit on the personal net worth

231. Examples of successful programs are those of LAX, <https://imwis.com/recent-news-second-most-recent-story>; Los Angeles Metro, https://media.metro.net/about_us/bonding_program/images/cdbp_factsheet.pdf; and the Illinois Tollway, <https://www.illinoistollway.com/technicalassistance>.

of the owner(s) of the gross receipts of the business. All that is required is the mere attestation that the firm is woman- or minority-owned.

This lack of criteria limiting the program's benefits to small firms owned by socially and economically disadvantaged owners may well be found by the federal courts to run afoul of strict constitutional scrutiny. While obviously much less burdensome than the rigorous standards and processes required for DBE certification, the provision of the program's remedial benefits solely on the basis of race or gender may not be sufficiently narrowly tailored. As discussed in Chapter II, one of the hallmarks of the DBE program is that "wealthy minority owners and wealthy minority firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage."²³² The Port's self-certification approach meets none of these elements.

We therefore recommend that the Port require a firm to be certified as either an MBE, WBE or DBE by the State of Washington's Office of Minority and Women's Business Enterprise to be eligible to be counted towards its overall, WMBE goal or contract goals. This will ensure that the program's eligibility criteria are narrowly tailored and that only legitimate WMBEs receive benefits.

2. Revise the Policy for Counting WMBE Participation Towards Contract Goals

We recommend the Port more narrowly tailor its local program by making several revisions. In addition to creating opportunities for WMBEs, these changes will also bring the local program in line with the DBE program.

1. Count dollars spent with WMBE suppliers towards the contract goal. Disallowing credit for suppliers may lead to entire categories of firms not being solicited for Port work. The Port could apply the counting rules of the DBE program, which were recently revised,²³³ to ensure uniformity of practice.
2. A WMBE prime bidder whose self-performance meets or exceeds the contract goal should not be required to further subcontract to another WMBE. While the effort to increase inclusion is laudable, this approach may be held to violate the principles of narrow tailoring by providing a benefit for using more firms solely on the basis of race or gender. The contract goal is the boundary of what an agency can require using a race- and gender-conscious tool. There is no basis for requiring more than goal

232. *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d. 964, 973 (8th Cir. 2003), *cert. denied*, 541 U.S. 1041 (2004).

233. 49 C.F.R. § 26.55(e).

attainment. Further, if one objective is to support and grow minority and woman businesses, requiring additional subcontracting, with its attendant costs and possible loss of profits, may run counter to a purpose of the program.

3. Use the Study To Set Narrowly Tailored Overall, Annual Aspirational WMBE Goals

The Port's WMBE program has been mostly successful in opening opportunities for minority and woman firms on its non-FAA funded contracts. As reported in Chapter IV, overall, WMBEs are approaching parity with non-WMBEs in receiving Port dollars. We note, however, that the overall disparity ratio of 76.2% is both substantively and statistically significant. Further, program benefits have not accrued to each group in the same measure: the results for Black, Hispanic and Native American-owned businesses are low. In addition, when we examined whether firms were concentrated within an industry, or between industries, on the basis of race or gender, a picture emerged of unequal outcomes for WMBEs compared to non-WMBEs.

In addition, as documented in Chapter V, when examining outcomes in the wider economy, it is clear that minorities and women do not yet enjoy full and fair access to opportunities to compete in the Port's market area. Data from the Census Bureau's *Survey of Business Owners* indicate very large disparities between M/WBE firms and non-M/WBE firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), or the payroll of employer firms. Similarly, data from the Census Bureau's *American Community Survey* ("ACS") indicate that Blacks, Hispanics and White women were underutilized relative to White men. Controlling for other factors relevant to business outcomes, wages and business earnings were lower for these groups compared to White men. Data from the ACS further indicate that non-Whites and White women are less likely to form businesses compared to similarly situated White men. The results of numerous small business credit surveys reveal that M/WBEs, especially Black-owned firms, suffer significant barriers to business financing. There are also race-based barriers to the development of the human capital necessary for entrepreneurial success.

Our interviews with individual business owners and stakeholders and the results of our other studies for Washington governments further buttress the conclusion that race and sex discrimination remain persistent barriers to equal construction and construction-related contracting opportunities. Many minority and female owners reported that they still encounter barriers based on their race and/or gender and that without affirmative intervention to increase opportunities through contract goals, they will continue to be denied full and fair chances to compete.

We therefore conclude that the Port has a basis under federal strict constitutional strict scrutiny standards to continue to implement narrowly tailored race- and gender-based measures. The weighted availability estimates can be used to set the overall, annual aspirational goal.

4. Use the Study to Set Narrowly Tailored WMBE Contract Goals

The Port should use the study's detailed unweighted availability estimates as the starting point for contract specific goals. As discussed in Chapter II, an agency's constitutional responsibility is to ensure that goals are narrowly tailored to the specifics of the project.

This methodology involves four steps to develop goals that are transparent, can be replicated and are legally defensible:²³⁴

1. Weight the estimated dollar value of the scopes of the contract by NAICS codes, as determined during the process of creating the solicitation.
2. Determine the unweighted availability of WMBEs in those scopes, as estimated in the Disparity Study.
3. Calculate a weighted goal based upon the scopes and the availability of at least three available firms in each scope.
4. Adjust the result based on geography and current market conditions (for example, the volume of work currently underway in the market, project location, the entrance of newly certified firms, specialized nature of the project, etc.), past achievement on similar projects and any other relevant factors.

Written procedures spelling out the steps should be drafted and widely disseminated. A list of the six-digit NAICS codes used to set the goal could be listed in the bid documents to provide guidance on how to meet the target for that solicitation.

5. Increase Program Monitoring

In marked contrast to its process for ensuring compliance with DBE commitments on FAA funded projects, the Port does not perform CUF reviews on non-FAA assisted contracts. Ensuring that the firm listed for goal credit is in fact performing as described in the Statement of Intent is a bedrock element of good program administration. Preforming CUF reviews supports WMBE inclusion by flagging unauthorized substitutions of listed firms during performance, while there is still time for corrective action. It also helps to ensure that prime vendors and their subcontractors are not committing fraud by having the sub-

234. See www.contractgoalsetting.com, for instructions on correct contract goal setting.

contractor act as merely a conduit through which dollars are passed to create sham participation.

H. Enhance the DBE Program

1. Strengthen the Small Business Element of the DBE Program

The DBE regulations require the Port to foster small business participation:

§26.39 Fostering small business participation: (a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

Among the possible elements listed is “ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.”²³⁵

While the Port’s FAA approved DBE program plan states that it will “reduc[e] contract size,” there does not appear to be an actual protocol to do so. We suggest that clear standards be developed, such as the range of contracts that should be considered suitable for using the Small Works Roster to solicit bids (while not excluding forms that are not on the Roster); directing departments to identify in their procurement forecasts which contract opportunities should be targeted for outreach to small firms that can serve as prime contractors and consultants; reviewing experience requirements with the goal of reducing them to the lowest level necessary to ensure that the bidder or proposer has adequate experience, perhaps by recognizing similar though not identical types of work, including work performed for other governments and private sector clients.

2. Use the Study to Set the Triennial DBE Goal for FAA Funded Contracts

49 C.F.R. Part 26 requires a recipient to engage in a two-step process to set a triennial goal for DBE participation.

235. 49 C.F.R. b26.39(b)(5).

Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the “relative availability of DBEs”). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination.²³⁶

One approved method to set the triennial goal is to use data from a disparity study. We therefore recommend that the Port use the DBE aggregated weighted availability findings in Chapter IV to determine the Step One base figure for the relative availability of DBEs required by §26.45(c)²³⁷ for each funding source. These results are the estimates of total DBE availability that reflect the importance of each subindustry to the Port’s overall FAA funded contracting activity.

Under §26.45(d), the Port must perform a Step Two analysis.²³⁸ It must consider whether to adjust the Step One figure to reflect the effects of the DBE program and the level of DBE availability that would be expected in the absence of discrimination. The Port can use the statistical disparities in Chapter V of the rates at which DBEs form businesses as a possible marker of the availability of minority- and woman-owned businesses that would be expected “but for” discrimination. This is the type of “demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.”²³⁹ However, we note that while the DBE regulations have withstood repeated legal attacks, there is no direct case law upholding this type of “but for” analysis. We therefore advise the Port to proceed with caution in using the economy-wide data for an adjustment.

3. Use the Study to Set Narrowly Tailored DBE Contract Goals

We suggest the methodology described above to set narrowly tailored WMBE contract goals be applied to DBE goals on FAA funded projects.

236. 49 C.F.R. §26.45(b).

237. Table 4-9, Aggregated Weighted Availability.

238. “Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal.” 49 C.F.R. §26.45(d).

239. 49 C.F.R. §26.45(d)(3); *see also* §23.51.

I. Consider Partnering with Other Agencies and Local Organizations to Provide Bonding, Financing and Technical Assistance Programs

We recommend that the Port implement a more robust supportive services program to provide wide ranging support to certified firms. While the Port does provide some technical assistance, more could be done. A bonding and working capital element that includes a surety and a lender that agree to bond and finance graduates of the training program would be very helpful. There are some excellent programs that provide this type of support to certified contractors to increase their capacities.²⁴⁰ Other needed support includes marketing, legal services, accounting services, regulatory compliance and any other aspect of managing a business needed to work on Port construction and construction-related services contracts. Engineering firms could benefit from assistance with setting overhead rates and submitting winning proposals. Perhaps the Port can partner with WSDOT, Sound Transit, the City of Seattle and King County to increase the availability of these services and the pool of firms that can participate.

J. Develop Performance Measures for Program Success

The Port should develop quantitative performance measures for overall success of its WMBE and DBE programs to evaluate the effectiveness of various approaches in reducing any disparities and systemic barriers identified by the study. In addition to meeting goals, possible benchmarks might be:

- Progress towards meeting the overall, annual WMBE and DBE goals.
- The number of bids or proposals, industry and the dollar amount of the awards and the goal shortfall, where the bidder was unable to meet the goals and submitted good faith efforts to do so.
- The number, dollar amount and the industry code of bids or proposals rejected as non-responsive for failure to make good faith efforts to meet the goal.
- The number, industry and dollar amount of M/W/DBE substitutions during contract performance.
- Increased bidding by certified firms as prime vendors.
- Increased prime contract awards to certified firms.

240. An example of a successful supportive services program is that of the Illinois Tollway. <https://www.illinoistollway.com/technicalassistance>.

- Increased “capacity” of certified firms, as measured by bonding limits, size of jobs, profitability, complexity of work, etc.
- Increased variety in the subindustries in which M/W/DBEs are awarded prime contracts and subcontracts.

K. Conduct Regular Program Reviews

To meet the requirements of strict constitutional scrutiny and the DBE program regulations, as well as ensure that best practices in program administration continue to be applied, the Port should conduct a full and thorough review of the evidentiary basis and the implementation of its programs approximately every five to seven years.

APPENDIX A:

FURTHER EXPLANATION OF THE MULTIPLE REGRESSION ANALYSIS

As explained in the report, multiple regression statistical techniques seek to explore the relationship between a set of independent variables and a dependent variable. The following equation is a way to visualize this relationship:

$$DV = f(D, I, O)$$

where DV is the dependent variable; D is a set of demographic variables; I is a set of industry & occupation variables; and O is a set of other independent variables.

The estimation process takes this equation and transforms it into:

$$DV = C + (\beta_1 * D) + (\beta_2 * I) + (\beta_3 * O) + \mu$$

where C is the constant term; β_1 , β_2 and β_3 are coefficients, and μ is the random error term.

The statistical technique seeks to estimate the values of the constant term and the coefficients.

In order to complete the estimation, the set of independent variables must be operationalized. For demographic variables, the estimation used race, gender and age. For industry and occupation variables, the relevant industry and occupation were utilized. For the other variables, age and education were used.

A coefficient was estimated for each independent variable. The broad idea is that a person's wage or earnings is dependent upon the person's race, gender, age, industry, occupation, and education. Since this report examined the Port of Seattle, the analysis was limited to data from the Seattle MSA (King, Pierce and Snohomish Counties). The coefficient for the new variable showed the impact of being a member of that race or gender in the metropolitan area.

APPENDIX B:

FURTHER EXPLANATION OF THE PROBIT REGRESSION ANALYSIS

Probit regression is a special type of regression analysis. Probit regression analysis is used to explore the determinants of business formation because the question of business formation is a “yes” or “no” question: the individual does or does not form a business. Hence, the dependent variable (business formation) is a dichotomous one with a value of “one” or “zero”. This differs from the question of the impact of race and gender on wages, for instance, because wage is a continuous variable and can have any non-negative value. Since business formation is a “yes/no” issue, the fundamental issue is: how do the independent variables (race, gender, etc.) impact the probability that a particular group forms a business? Does the race or gender of a person raise or lower the probability he or she will form a business and by what degree does this probability change? The standard regression model does not examine probabilities; it examines if the level of a variable (*e.g.*, the wage) rises or falls because of race or gender and the magnitude of this change.

The basic probit regression model looks identical to the basic standard regression model:

$$DV = f(D, I, O)$$

where DV is the dependent variable; D is a set of demographic variables; I is a set of industry and occupation variables; and O is a set of other independent variables.

The estimation process takes this equation and transforms it into:

$$DV = C + (\beta_1 * D) + (\beta_2 * I) + (\beta_3 * O) + \mu$$

where C is the constant term; β_1 , β_2 , and β_3 are coefficients, and μ is the random error term.

As discussed above, the dependent variable in the standard regression model is continuous and can take on many values while in the probit model, the dependent variable is dichotomous and can take on only two values: zero or one. The two models also differ in the interpretation of the independent variables' coefficients; in the standard model, the interpretation is fairly straight-

forward: the unit change in the independent variable impacts the dependent variable by the amount of the coefficient.²⁴¹ However, in the probit model, because the model is examining changes in probabilities, the initial coefficients cannot be interpreted this way. One additional computation step of the initial coefficient must be undertaken in order to yield a result that indicates how the change in the independent variable affects the probability of an event (*e.g.*, business formation) occurring. For instance, with the question of the impact of gender on business formation, if the independent variable was WOMAN (with a value of 0 if the individual was male and 1 if the individual was female) and the additional computation chance of the coefficient of WOMAN yielded a value of -0.12, we would interpret this to mean that women have a 12 percent lower probability of forming a business compared to men.

241. The exact interpretation depends upon the functional form of the model.

APPENDIX C:

SIGNIFICANCE LEVELS

Many tables in this Report contain asterisks indicating that a number has statistical significance at 0.001, 0.01, or 0.05 levels (sometimes, this is presented as 99.9 percent; 99 percent and 95 percent, respectively) and the body of the report repeats these descriptions. While the use of the term seems important, it is not self-evident what the term means. This Appendix provides a general explanation of significance levels.

This Report seeks to address the question of whether or not non-Whites and White women received disparate treatment in the economy relative to White males. From a statistical viewpoint, this primary question has two sub-questions:

- What is the relationship between the independent variable and the dependent variable?
- What is the probability that the relationship between the independent variable and the dependent variable is equal to zero?

For example, an important question facing the Port of Seattle as it explores whether each racial and ethnic group and White women continue to experience discrimination in its markets is do non-Whites and White women receive lower wages than White men? As discussed in Appendix A, one way to uncover the relationship between the dependent variable (e.g., wages) and the independent variable (e.g., non-Whites) is through multiple regression analysis. An example helps to explain this concept.

Let us say, for example, that this analysis determines that non-Whites receive wages that are 35 percent less than White men after controlling for other factors, such as education and industry, which might account for the differences in wages. However, this finding is only an estimate of the relationship between the independent variable (e.g., non-Whites) and the dependent variable (e.g., wages) – the first sub-question. It is still important to determine how accurate the estimation is. In other words, what is the probability that the estimated relationship is equal to zero – the second sub-question.

To resolve the second sub-question, statistical hypothesis tests are utilized. Hypothesis testing assumes that there is no relationship between belonging to a particular demographic group and the level of economic utilization relative to White men (e.g., non-Whites earn identical wages compared to White men

or non-Whites earn 0 percent less than White men). This sometimes is called the null hypothesis. We then calculate a confidence interval to find the probability that the observed relationship (e.g., -35 percent) is between 0 and minus that confidence interval.²⁴² The confidence interval will vary depending upon the level of confidence (statistical significance) we wish to have in our conclusion. When a number is statistically significant at the 0.001 level, this indicates that we can be 99.9 percent certain that the number in question (in this example, -35 percent) lies outside of the confidence interval. When a number is statistically significant at the 0.01 level, this indicates that we can be 99.0 percent certain that the number in question lies outside of the confidence interval. When a number is statistically significant at the 0.05 level, this indicates that we can be 95.0 percent certain that the number in question lies outside of the confidence interval.

242. Because 0 can only be greater than -35 percent, we only speak of “minus the confidence level”. This is a one-tailed hypothesis test. If, in another example, the observed relationship could be above or below the hypothesized value, then we would say “plus or minus the confidence level” and this would be a two-tailed test.

APPENDIX D:

UNWEIGHTED AND WEIGHTED AVAILABILITY

Central to the analysis, under strict constitutional scrutiny, of an agency's contracting activity is understanding what firms could have received contracts. Availability has two components: unweighted availability and weighted availability. Below we define these two terms; why we make the distinction; and how to convert unweighted availability into weighted availability.

Defining Unweighted and Weighted Availability

Unweighted availability measures a group's share of all firms that could receive a contract or subcontract. If 100 firms could receive a contract and 15 of these firms are minority-owned, then MBE unweighted availability is 15 percent (15/100). *Weighted availability* converts the unweighted availability through the use of a weighting factor: the share of total agency spending in a particular NAICS code. If total agency spending is \$1,000,000 and NAICS Code AAAAAA captures \$100,000 of the total spending, then the weighting factor for NAICS code AAAAAA is 10 percent (\$100,000/\$1,000,000).

Why Weight the Unweighted Availability

It is important to understand *why* weighted availability should be calculated. A disparity study examines the overall contracting activity of an agency by looking at the firms that *received* contracts and the firms that *could have received* contracts. A proper analysis does not allow activity in a NAICS code that is not important an agency's overall spending behavior to have a disproportionate impact on the analysis. In other words, the availability of a certain group in a specific NAICS code in which the agency spends few of its dollars should have less importance to the analysis than the availability of a certain group in another NAICS code where the agency spends a large share of its dollars.

To account for these differences, the availability in each NAICS code is weighted by the agency's spending in the code. The calculation of the weighted availability compares the firms that received contracts (utilization) and the firms that could receive contracts (availability). Utilization is a group's share of total spending by an agency; this metric is measure in dollars, *i.e.*,

MBEs received 8 percent of all dollars spent by the agency. Since utilization is measured in dollars, availability must be measures in dollars to permit an “apples-to-apples” comparison.

How to Calculate the Weighted Availability

Three steps are involved in converting unweighted availability into weighted availability:

- Determine the unweighted availability
- Determine the weights for each NAICS code
- Apply the weights to the unweighted availability to calculate weighted availability

The following is a hypothetical calculation.

Table A contains data on unweighted availability measured by the number of firms:

Table A

NAICS	Black	Hispanic	Asian	Native American	White Women	Non-M/W/DBE	Total
AAAAAA	10	20	20	5	15	400	470
BBBBBB	20	15	15	4	16	410	480
CCCCCC	10	10	18	3	17	420	478
TOTAL	40	45	53	12	48	1230	1428

Unweighted availability measured as the share of firms requires us to divide the number of firms in each group by the total number of firms (the last column in Table A). For example, the Black share of total firms in NAICS code AAAAAA is 2.1 percent (10/470). Table B presents the unweighted availability measure as a group’s share of all firms.

Table B

NAICS	Black	Hispanic	Asian	Native American	White Women	Non-M/W/DBE	Total
AAAAAA	2.1%	4.3%	4.3%	1.1%	3.2%	85.1%	100.0%
BBBBBB	4.2%	3.1%	3.1%	0.8%	3.3%	85.4%	100.0%
CCCCCC	2.1%	2.1%	3.8%	0.6%	3.6%	87.9%	100.0%
TOTAL	2.8%	3.2%	3.7%	0.8%	3.4%	86.1%	100.0%

Table C presents data on the agency's spending in each NAICS code:

Table C

NAICS	Total Dollars	Share
AAAAAA	\$1,000.00	22.2%
BBBBBB	\$1,500.00	33.3%
CCCCCC	\$2,000.00	44.4%
TOTAL	\$4,500.00	100.0%

Each NAICS code's share of total agency spending (the last column in Table C) is the weight from each NAICS code that will be used in calculating the weighted availability. To calculate the overall weighted availability for each group, we first derive the every NAICS code component of a group's overall weighted availability. This is done by multiplying the NAICS code weight by the particular group's unweighted availability in that NAICS code. For instance, to determine NAICS code AAAAAA's component of the overall Black weighted availability, we would multiply 22.2 percent (the NAICS code weight) by 2.1 percent (the Black unweighted availability in NAICS code AAAAAA). The resulting number is 0.005 and this number is found in Table D under the cell which presents NAICS code AAAAAA's share of the Black weighted availability. The procedure is repeated for each group in each NAICS code. The calculation is completed by adding up each NAICS component for a particular group to calculate that group's overall weighted availability. Table D presents this information:

Table D

NAICS	Black	Hispanic	Asian	Native American	White Women	Non-M/W/DBE
AAAAAA	0.005	0.009	0.009	0.002	0.007	0.189
BBBBBB	0.014	0.010	0.010	0.003	0.011	0.285
CCCCCC	0.009	0.009	0.017	0.003	0.016	0.391
TOTAL	0.028	0.029	0.037	0.008	0.034	0.864

To determine the overall *weighted availability*, the last row of Table D is converted into a percentage (*e.g.*, for the Black weighted availability: $0.028 * 100 = 2.8$ percent). Table E presents these results.

Table E

Black	Hispanic	Asian	Native American	White Women	Non-MWBE	Total
2.8%	2.9%	3.7%	0.8%	3.4%	86.4%	100.0%

APPENDIX E:

QUALITATIVE EVIDENCE FROM WASHINGTON DISPARITY STUDIES

In addition to the anecdotal data collected for this study and provided in the Qualitative chapter of this report, Colette Holt & Associates has conducted three disparity studies in the State of Washington over the last several years. These reports shed light on the experiences of Minority- and Woman-owned Business Enterprises (“M/WBEs”) in the Puget Sound area and overall Washington marketplace. The results are quite consistent across agencies, time periods and industries. We interviewed minority and woman owners and non-M/WBE representatives about barriers to the full and fair participation of all firms in the procuring agency’s market area. The total number of participants for these interviews was 752 individuals. We also collected comments from 32 organizations representing M/WBE and prime, non-MWBE firms in an electronic survey and 299 responses from surveys conducted among businesses.

This summary of anecdotal reports provides an overview of the following Disparity Studies: King County 2024 (“King County 2024”);²⁴³ Washington State Department of Transportation (“WSDOT 2024”);²⁴⁴ the State of Washington Department of Enterprise Services 2019 (“DES 2019”);²⁴⁵ Washington State Airports 2019 (“FAA Airports 2019”);²⁴⁶ and Washington State Department of Transportation 2017 (“WSDOT 2017”)²⁴⁷.

243. King County: <https://tinyurl.com/kingcountystudy>.

244. WSDOT 2024: <https://tinyurl.com/wsdotstudy2024>.

245. DES 2019: <https://tinyurl.com/desstudy2019>.

246. FAA Airports 2019: <https://tinyurl.com/FAAAirports2019>.

247. WSDOT 2017: <https://tinyurl.com/wsdotstudy2017>.

A. Discriminatory Attitudes and Negative Perceptions of Competency and Professionalism Continue to Impede the Success of M/WBEs

Many minority and woman owners reported being stigmatized by their race and/or gender or being a certified firm. Subtle and overt stereotyping and race and gender discrimination were commonplace. Respondents reported that they often experience negative attitudes concerning their competency, skill, and professionalism. These biases impact all aspects of their attempts to obtain contracts and to be treated equally in performing contract work. The prevailing viewpoint is that M/WBEs and smaller firms are less qualified and capable.

They are very entrenched in their mindset as to because you are a person of color, you don't qualify. Period. No matter your degrees and all the certifications and everything. I have certifications as long as your arm but it does not make a difference. (DES 2019, page 113)

When I show up for projects, people see an ethnic minority, therefore incompetency. (WSDOT 2017, page 119)

There are some County] departments that have been willfully preferential to White-owned firms, whether they're male or woman-owned businesses. And in my contracting with them, what my experience was experiencing overt hostility towards me as a prime....I was negotiating a contract with this department that has been only using White firms for their entire history of existence. I was the first minority firm that got contracted with this division. And my experience with the project managers was open hostility and not even openness to discuss and talk about things. And, basically, just setting us up to fail. (King County, page 228).

Been called "BOY". Last person [to be] asked to start job and the first one to be let go from the job before it's done. (WSDOT 2024, page 261)

Just because you have that label [of MBE certification], some people have a bad view of that program....They think that you're not as good because you are an MBE, "You're only getting work because you're an MBE." I don't know how you get rid of that notion. (DES 2019, pages 113-114)

That people don't deserve to work and that we don't know how, so why hire us and that we don't have the bandwidth. Which is a lie! (WSDOT 2024, page 259)

[The] majority of time, [people] will hire people who are like themselves. You put a job out for RFQ, right? And you look for the qualifications and you say, "Oh! That person looks like me, or I relate to that person." (FAA Airports 2019, page 128)

The DBE has the lesser financial status and therefore is disqualified for large contracts. Some agencies have financial investigations of the firm's financial status that automatically disqualify our firm from large business. (King County, page 263)

There is some entrenched decision-making that leads to race-based barriers in contracting. (King County, page 260)

Typically, once a contractor realizes I am black and a female, the standards for me and my firm will raise to level that seem unreachable for most businesses. (DES 2019, page 129)

Assumption is that Hispanic-owned are subservient and only capable of landscaping and labor, not management, much less primes. (WSDOT 2024, page 259)

Institutionalized discrimination that is built into the infrastructure of all agencies. To put it very simply, large White owned firms get the majority of the business and others get the 10% of the business of government taxpayer funds. (King County, page 260)

It's just this stigma [to being a DBE]....It's a double edge sword. There's the chip on the shoulder of the people you're interfacing with, whether it's a project manager, estimator, typically some white guy that feels like the DBE program shouldn't be in existence. (FAA Airports 2019, page 129)

We have been denied work while holding a contract due to project managers not wanting to use a small company and see us grow. (King County, page 263)

It's still a man's world and a White man's world. And I'm constantly reminded of that....[there is still a] good ole boys club. (DES 2019, page 114)

It's always a question whether we can perform the work if we have qualified workers, even when we dispatch from the union. There are some Jim Crow going on because if they somehow challenge us it's intimidating to our team sometimes when yes, we may have not worked with them before but most of our workers are union trained. (WSDOT 2024, page 260)

Being black is often perceived as symbols of limits or a metaphor for “outsider.” (DES 2019, page 129)

Our work has been questioned often by lesser qualified staff of the major primes because we are a small MBE firms even with no less than 30 years of experience with our prime engineers. (King County, page 261)

Sexist attitudes were still prevalent.

I’ve been made fun of lots of times when I show up [as a woman] and I’m the engineer. (DES 2019, page 114)

I experience what is called Prove-It-Again bias which is a stereotype that requires women to be more competent in order to be seen as equally competent. (King County, page 262)

Being a woman, usually when I walk into a private chamber, the room silences and they all look at me and then nobody talks anymore and it’s very uncomfortable. (WSDOT 2024, page 220)

It’s still very a man’s world. It’s very hard to even have a woman project manager....The good ole boys. That definitely still has an issue, I notice in the construction industry, at least over here on this side of the mountains for eastern Washington. It is definitely a White man’s world. (DES 2019, page 114)

We are usually spoken over and they go to a man to get the same answer. (King County, page 261)

You definitely get kind of the dumb office girl vibe is what I call it. They just assume you don’t know what you’re talking about. You’ve never dealt with this before. You’ve never been in this industry. And I’ve watched, I’ve worked with project managers that are also women, and it’s very much so still a thing. They have to claw themselves into a respectful position, and it’s a heck of a lot harder to get there than it would be if they were a dude. (WSDOT 2024, page 220)

There’s just a different perception when it comes to women in this industry, and I very much think that it’s an issue....The unions, they would all call other males that worked in the office ... I would just pick up that phone, and I’m like, “That is not who you deal with. You deal with me.” They would automatically, and it still happens all the time, go to somebody else. Just that undertone of they need to deal with the guy, or whoever, to get something done. (WSDOT 2017, page 120)

Men don’t think women should be in construction. It’s more of male dominated area. White males discriminate against women of color and

men of color. They are happy to put their wives and daughter as owners but nobody else. (WSDOT 2024, page 262)

I went to wait on a contractor on the counter and I was told “I’ll wait for one of the boys.” (WSDOT 2017, page 120)

The most overt discrimination that I had since taking over the company was going to a woman-owned bank and talking to a woman new account manager who looked at my VP’s name and said, “Oh, are you here to sign this individual up as the new owner?” Rather than myself, who was sitting right in front of her. (DES 2019, page 116).

Usually, the older school generation has a harder time working with the females. I know that, so I play off my brother. My brother takes control of that job. (WSDOT 2017, page 121).

I went on the job pre-construction meeting and I’m going to say there was probably about six contractors there. I was the woman. “Oh, who’s the chick here?” (DES 2019, page 117)

Most of the primes I deal with are male, most of the DOT people I deal with are males. There’s no one out there for me to go to that I feel is looking out for my interest, because I’m a female. (WSDOT 2017, page 120)

I received a letter in the mail that said women did not belong in transportation and that I was taking away a job from a man who was supporting his family. It’s only about four years ago. I wrote him a letter back. “Dear angry man, of course women belong in transportation. At least we stop and ask for directions.” (WSDOT 2017, page 122)

Women also experienced sexual harassment and hostile work environments.

As a woman, I have personally had several encounters – some innocuous, just offensive and a few very scary ones. As a group, harassment occurs implicitly and in insidious ways. (DES 2019, page 130)

Comments made on jobsite about my gender. Sexual harassment by operators exposing themselves to me (contractor tried to remove me from the job to solve the problem) (WSDOT 2024, page 264)

Numerous microaggressions to physical assault by senior engineer (pinning against a wall while yelling at me). (WSDOT 2024, page 264)

The engineering and construction management field is very male dominated, so it is a bit hard to break into those areas where long standing relationships already exist. (King County, page 262)

I try to make contacts and sometimes as a woman it turns into being asked out on a date or hit on or touched inappropriately. (DES 2019, page 118)

I do get “mansplained” to a lot in my field by less qualified project managers with less expertise. (WSDOT 2024, page 263)

Mostly as a woman that we are not capable of handling large size projects. Only talked to if they think there is a chance of something else happening outside of the office. (King County, page 262)

My first journeyman, he would just start coming up on the ladder behind me and like press himself against me or something. He cup grabbed my ass a few times, and I turned him in. And all he was given was a slap on the wrist. (DES 2019, page 117)

B. Lack of Access to Business and Professional Networks and Information Limit D/M/WBEs’ Opportunities

Many minority and woman respondents reported difficulty in accessing networks and fostering relationships necessary for professional success. These barriers extended to agency staff. Respondents were unable to gain access to and communicate with key agency decisionmakers.

I want to be able to compete legitimately with [entrenched consultants] or at least get my foot in the door so I can ask to bid on a particular project. [An agency staffer] said, “Well, I don’t really know. You just have to talk to people you know.” (WSDOT 2017, page 123)

We suffer from a lack of information because we’re cut off from information from the GC and from WSDOT. We are only contractually allowed to hear what the major prime electrical tells us. These projects don’t get broken down so we’re trapped behind that. We’ve made the decision from here on out not to subtier any longer because it’s too damaging, and who knows what goes on in the mind of a WSDOT bureaucrat or prime electrical subcontractor or a general contractor. I just have feelings and suspicions that the foot is on my air hose all the time. (WSDOT 2024, page 223)

Large white owned firms get information that we are not allowed to have access to. They work on many projects inside the agencies where they network and gather information for their future work. (King County, page 263)

As a subcontracting partner we often have less access to the project management staff and therefore less access to project selection criteria and key information. (King County, page 263)

Barriers are subtle, and hidden behind pleasantries. They are pervasive and relentless. They are perpetuated by government employees and none are ever held accountable by managers. (DES 2019, page 129)

Absolutely women and minorities are still facing barriers and it's the small businesses also, but very specifically women and minorities. If the program was reduced or eliminated or changed to be any way they could get out of using us, I think they often would. And it's not because we're not great at doing our jobs, they just want to perform the work and play with the people that they would play with normally who might also not be women and minorities. So, we definitely still face barriers. (WSDOT 2024, page 226)

I've got friends at WSDOT and I try to approach them, and the word that came back was, "You've essentially hit the boys club within the construction office and you can't get beyond that." And that's the barrier ahead. And once you hit that barrier, because a national contractor is involved, WSDOT will do all the writing and the aspirational goals and all of that, but they won't take it to the next level [and actually use a DBE design firm for a large design build project]....I got all kinds of you know, attorneys approached us, the media approached us to go public and all of this. You know, I have been raised the Christian way and my dad told me, "you'll never bite the hand that feeds you." So, I did not want to rock the boat on this. (WSDOT 2024, page 223)

Oftentimes we are treated as if we are only there because primes need to meet their DBE goals. They don't treat us with the same respect and professionalism they treat larger non-DBE firms with. It also seems as if there is a lack of an interest in developing a relationship with us. They are only using us because they have to. As soon as they are done with us, that is that. They won't bother communicating with us anymore. (King County, page 264)

I'm always questioning [WSDOT staff], and they are insulted that I'm questioning them. The prime contractor's insulted that I'm questioning them. (WSDOT 2017, page 120)

The barrier here is the contracting culture [with] some of the smaller airports. The agency staff just wants you to do what they're comfortable with....They just hang out with [these consultants] at golf courses, in bars. (FAA Airports 2019, page130)

We have been trying to get a line of credit with local and national banks – it has been very difficult. We need a [letter of credit] to hire and grow. Banks have been asking for collateral – and we didn’t want to involve our houses with business. I think SBA and the banks should give a chance to the entrepreneurs. (King County, page 264)

You need to know who to contact. Who the decision maker’s going to be when it comes to putting together your team, or putting together the ultimate proposal. You need to know who that lead is, who that project manager is, who that decisionmaker is, because if you’re talking to anybody else, you’re wasting your time. (WSDOT 2017, page 123)

Creating unpleasant or unwelcoming environments, experiences, this can prevent access for diverse firms and individuals. Industry associations that organize these gathering places are sponsored by large companies that serve as board members, officers who can exercise significant bias for their own business interests. (WSDOT 2024, page 266)

I will not be given all the resources needed to perform the service while other firms will be given ample resources to perform the service. (DES 2019, page 129)

As a black man I would like to have a fair opportunity to compete for government contracts the same as larger companies without discriminatory barriers. (WSDOT 2024, page 260)

Where I have sometimes the most gender [issues] is with WSDOT employees....If you can get your foot in the door and then keep working with [the general contractors] and showing them that you can do a good job. I think they get beyond that gender. (FAA Airports 2019, page 128)

In some trades, minority contractors cannot get the certifications to install certain products and materials. They simply are not allowed because the supplier wants to limit competition, which results in whites having the advantage. (DES 2019, page 130)

Most of the time we can’t get funding due to prior or the fact that they know the system is betting on us to lose not win! It’s the system, that’s why we can’t walk into a bank without two co-signors and collateral. (WSDOT 2024, page 267)

C. Obtaining Work on an Equal Basis

Respondents reported that institutional and discriminatory barriers continue to exist in Washington State area marketplaces. They were in almost unanimous agreement that M/WBE contract goals remain necessary to level the playing field and equalize opportunities. Everyday difficulties were sometimes compounded by the global pandemic. Race- and gender-neutral approaches alone are viewed as inadequate and unlikely to ensure equal opportunity.

I'd be back at a larger firm [without the DBE program] and subordinate to White men who always want to be "the man". (FAA Airports 2019, page 130)

There are deals that are made on the backside but because we are not part of the good ol' boys network we are not part of the special pricing. (King County, page 265)

Without goals there wouldn't be these businesses in the room. (WSDOT 2017, page 123)

I will tell you that for prime contracts, the scope of the contracts are generally too large for a small business to bid on as a prime. It would be very helpful to see maybe some things carved out of the larger contracts that are more suitable to niche small businesses that we can bid on those independently. (WSDOT 2024, page 224)

Probably 80% of [firm] business is on contracts where primes need to meet a goal, and the same case where if there's not a goal, they don't call and when there's a goal they call. It's every major contractor that operates in this region. (WSDOT 2017, pages 123-124)

Sometimes the agency doesn't really realize how much they're asking for and how much it's going to cost. So, what happens is we are on a team that wins a project and then some of the smallest subs end up getting cut at the end because it just turns out there wasn't actually the money to do the work that the agency had requested in the RFP. (WSDOT 2024, page 225)

Continued paradigm shift (e.g. remote work business/hybrid work, new hire "remote" expectations and loss of new hires over the remote work issue). Hiring shortages, changes in customer project/goals in dropping or revising work, loss of executive-level time and effort to tracking, training and revising COVID-related mandates and safety rules. (King County, page 268)

Loss of work force, disruption of business activities, insecure downtown environment. (King County, page 268)

Work force has been difficult to come by and employees do not want to move and prefer remote work. (King County, page 267)

The only chance we have here in this room is if there's a goal, they'll call you. Otherwise, they never call you. (WSDOT 2017, page 124)

Other companies that are predominantly "non-white" receive more contracts because they are classified as a "disadvantaged" business when the selection process should have everything to do with merit, quality control, and customer satisfaction. (WSDOT 2024, page 270)

If the goals are not mandatory, forget it. They're not going to work with us. Because they're going to make more money by spending less going with another company that has more resources. I do not have an asphalt plant. So, I'm at a huge disadvantage financially if they go with me than if they go with them. (WSDOT 2024, page 226)

Unless there's a head shift and they start to see the benefit of the program, the benefit of diversity, the benefit of having different values and different backgrounds and how that can actually make their project more efficient and better, this is going to continue to be a conversation. (WSDOT 2017, page 119)

I have done work where I was paid half of what my competitors made on the same job. (WSDOT 2024, page 269)

My credentials and business insurance/qualifications had excessive scrutiny that other male subcontractors did not experience. (WSDOT 2024, page 267)

It's kind of like a license to hunt. I might not catch anything, but it gave me that license and I get to get out there and do it. (FAA Airports 2019, page 130)

They don't keep use on the projects to learn the work so then our crews are limited to scope and capacity. It's systemic of preventing African Americans and Island people from working on projects. (WSDOT 2024, page 266)