

LOUISVILLE & JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT DISPARITY STUDY

EXECUTIVE SUMMARY

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MASON TILLMAN
ASSOCIATES, LTD



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Executive Summary

I. Study Overview

A. Study Team

Mason Tillman Associates, Ltd. (Mason Tillman), a public policy consulting firm based in Oakland, California, performed the 2018 Disparity Study (Study) for the Louisville and Jefferson County Metropolitan Sewer District (MSD). Local subconsultants Ellington Management Services, SRL Consulting, New Age Communications, and The Voice of Your Customer assisted Mason Tillman in the performance of the Study. The subconsultants collected data, conducted anecdotal interviews, and helped facilitate business community meetings.

MSD's Procurement Manager Sharise Horne and Legal Director Paula Middleton Purifoy managed the Study. The management team was instrumental in facilitating Mason Tillman's access to the procurement and contract data needed to perform the Study. Rita McNeil Danish, a partner at Taft Stettinius & Hollister, LLP, provided legal guidance for the Study's methodology.

B. Study Purpose

The purpose of the Study was to determine if minority- and women-owned business enterprises (M/WBEs) were underutilized in the award of MSD's prime contracts and subcontracts at a statistically significant level during the July 1, 2010, to June 30, 2015, study period. Under a fair and equitable system of awarding contracts, the proportion of contract¹ dollars awarded to M/WBEs should be relatively close to the proportion of available M/WBEs² in the relevant market area. If either the available M/WBE prime contractors or the available M/WBE subcontractors are underutilized, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event which is less probable. Thus, a test is performed to determine if any finding of underutilization is statistically significant.

C. Industries Studied

The analyzed purchase orders were classified into four industries, defined as follows:

- ***Construction*** includes all aspects of building, altering, repairing, or improving any public structure or building, or other public improvements of any kind to any public real property. Construction also includes the demolition, destruction, dismantling, or removal of public structures, buildings, and other public improvements and the clearing of land. It does not



¹ The term "contracts" are hereinafter referred to as purchase orders.

² Availability is defined as the number of ready, willing and able firms. The methodology for determining willing and able firms is detailed in Chapter 6.

include the routine operation, repair, or maintenance of existing structures, buildings, or real property.

- **Construction-related Services** include the routine operation, maintenance, repair and/or replacement of existing public facilities, structures, buildings, and real property and other services necessary to construction, such as construction management services. Construction-related services do not include services within the definition of construction or the definition of engineering and professional services.
- **Engineering and Professional Services** include services requiring specialized knowledge and skill and formal licensing and/or certification under state law, such as licensed professional engineer, architect, attorney, physician, psychiatrist, psychologist, certified public accountant, registered nurse, or educational specialist. Professional services also include the services of a technician, such as a plumber, electrician, carpenter, or mechanic, or an artist, such as a sculptor, aesthetic painter, or musician. Engineering and professional services do not include the services of architects or engineers providing construction management services in lieu of professional architect or engineering services.
- **Materials, Commodities, and Services** include all personal property and/or products including, but not limited to, equipment, fuel, leases on real property, printing, and insurance and necessarily associated services. Materials and commodities do not include land or any permanent interest in land.

D. Ethnic and Gender Groups Studied

The data in the Study are disaggregated into seven ethnic and gender groups, which are listed in Table 1.

Table 1: Business Ethnic and Gender Groups

Ethnicity and Gender Category	Definition
African Americans	Businesses owned by male and female African Americans
Asian-Pacific Americans	Businesses owned by male and female Asian-Pacific Americans
Asian-Indian Americans	Businesses owned by male and female Asian-Indian Americans
Hispanic Americans	Businesses owned by male and female Hispanic Americans
Native Americans	Businesses owned by male and female Native Americans
Caucasian Females	Businesses owned by Caucasian females
Non-minority Males	Businesses owned by Caucasian males ³

³ This group also includes businesses that could not be identified as minority or Caucasian female-owned. See *Section II: Prime Contractor Purchase Order Data Sources* for the methodology employed to identify the ethnicity and gender of MSD’s utilized prime contractors.



E. Prime Contractor Data

The prime contractor data consist of purchase orders issued during the July 1, 2010, to June 30, 2015, study period. The datasets were extracted from MSD's Systems, Applications and Products (SAP) database. Each purchase order was classified into one of the four industries, and the assignment of industry classifications was reviewed and approved by MSD.

Research was conducted to verify the ethnicity and gender of each prime contractor. The prime contractor's name was cross-referenced with certification lists, chambers of commerce directories, and trade organization membership directories. Prime contractors' websites were also reviewed for the ethnicity and gender of the business owner. Prime contractors whose ethnicity and gender could not be verified through a published source were contacted by telephone.

F. Subcontractor Data

Extensive research was undertaken to compile a comprehensive dataset of construction and engineering and professional services subcontract records. Initially, Mason Tillman received subcontract records from MSD's Finance and Engineering Divisions with the prime contract dataset. The dataset included prime purchase orders with some subcontract records, which were primarily M/WBE subcontractors. A number of additional steps were conducted to reconstruct the subcontract records. A threshold was set for both industries to exclude small contracts that were least likely to have subcontractors. The construction threshold was set at \$1,000,000 and greater and the engineering and professional services threshold was set at \$500,000 and greater. The steps taken to reconstruct the subcontract records included the following:

- Scanning MSD subcontract records from contract and project files
- Dissemination of a letter from MSD's executive director encouraging prime contractors to Provide their subcontract records
- On-site data collection at MSD
- Prime contractor expenditure survey
- Subcontractor expenditure survey

The phased data collection process identified M/WBE subcontractors and non-M/WBE subcontractors that were not in MSD's electronic prime contract dataset. Despite the scope of the research to reconstruct the subcontract data, there were large prime contracts for which the research did not identify any non-M/WBE subcontractors. The reconstructed engineering and professional services subcontract data were too limited to perform a meaningful statistical analysis. Therefore, the subcontractor utilization analysis was limited to construction services.



G. Contract Thresholds

1. Informal Threshold

The informal threshold for analysis consists of MSD's small purchases that are valued \$10,001 to \$20,000 for all four industries.⁴ The informal thresholds are defined in accordance with MSD's procurement regulations.

2. Formal Threshold

The formal threshold, as defined in MSD's Procurement Regulations, includes purchase orders greater than \$20,000. The formal threshold for each industry was capped to remove purchase orders that constituted outliers.

Outliers are data points that obscure the measures of the central tendency of the data. In other words, very large data points distort the distribution of data and, in turn, the disparity analysis. Including the outliers in the analysis does not allow for a mathematically sound analysis because of their tendency to distort. The upper bound that created a cut-off point for purchase orders was calculated using three standard deviations as the benchmark. Approximately 89% of the purchase orders would fall within this range. Thus, any dollar value above the 89th percentile was defined as an outlier and excluded from the analysis.

Limiting the formal purchase order analysis to those valued at and below the 89th percentile also ensures that the available businesses enumerated in the availability analysis possess the capacity to provide the goods and services subject to the disparity analysis. The formal purchase order threshold derived for each industry is listed in Table 2.

Table 2: Formal Purchase Order Thresholds by Industry

Industry	Formal Purchase Order Threshold
Construction	\$20,001 to \$1,710,000
Construction-related Services	\$20,001 to \$500,000
Engineering and Professional Services	\$20,001 to \$460,000
Materials, Commodities, and Services	\$20,001 to \$350,000



⁴ Louisville and Jefferson County Metropolitan Sewer District Procurement Regulations, Procurement Methods § 2E-1 (December 21, 2015).

II. Methodology

A. Legal Framework

The United States Supreme Court ruling in *City of Richmond v. J.A. Croson Co.*⁵ (*Croson*) and related case law provide the legal framework for conducting the Disparity Study. Specifically, *Croson* set the standard by which federal courts review both local and state government minority business enterprise programs. The Court affirmed the longstanding legal precedent that programs employing racial classification would be subject to “strict scrutiny,” which is the highest legal standard. Government agencies such as MSD, under *Croson*, may adopt race-conscious programs only as a remedy for discrimination identified as statistically significant, and the remedy must impose a minimal burden upon unprotected classes. The Court held that an inference of discrimination can be made *prima facie* if the disparity is statistically significant.⁶ For this Disparity Study, this analysis was applied to M/WBEs by ethnicity and gender within the four industries. The following critical components were performed for MSD’s Disparity Study.

Disparity Study Critical Components

1. Legal Framework
2. Contracting and Procurement Policies
3. Utilization Analysis
4. Geographic Market Area Identification
5. Availability Analysis
6. Disparity Analysis
7. Anecdotal Evidence
8. Regression Analysis
9. Recommendations

A legal review was the **first component** in the disparity study. **Component two** consisted of a review of MSD’s procurement policies to determine the contracting processes employed. Utilization records were collected in **component three** to determine the extent to which MSD and its prime contractors procured construction, construction-related services, engineering and professional services, and materials, commodities, and services from M/WBEs and non-M/WBEs. Identification of MSD’s market area was determined in **component four**. Prime contractor utilization records were used to determine the market area in which prime contractors were located. In **component five**, the availability analysis, businesses in the market area willing and able to provide construction, construction-related services, engineering and professional services, and materials, commodities, and services procured by MSD and its prime contractors were identified. In **component six** an

analysis was conducted to determine if a statistically significant underutilization of M/WBEs existed within each of the industries. In **component seven**, the anecdotal analysis, describes the contemporary experiences of business owners in MSD’s market area. **Component eight**, the regression analysis, determined whether socioeconomic factors in the market area may have affected the availability and utilization of M/WBEs. Finally, in **component nine**, recommendations of best practices to enhance MSD’s current business practices and ways to remedy any identified disparity are presented.

⁵ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

⁶ *Id.*



B. Structure of the Report

The Disparity Study findings are presented in 11 chapters as briefly described below.

- *Chapter 1: Legal Review* presents the case law applicable to business affirmative action programs and the required methodology based on the relevant law.
- *Chapter 2: Procurement Practices and Procedures Analysis* summarizes MSD's procurement policies and practices.
- *Chapter 3: Prime Contractor Utilization Analysis* presents the distribution of prime contractor purchase orders by industry, ethnicity, and gender.
- *Chapter 4: Subcontractor Utilization Analysis* presents the distribution of subcontracts by industry, ethnicity, and gender.
- *Chapter 5: Market Area Analysis* presents the legal basis for determining the geographic market area and defines MSD's market area.
- *Chapter 6: Prime Contractor and Subcontractor Availability Analysis* presents the distribution of available businesses in MSD's market area.
- *Chapter 7: Prime Contract Disparity Analysis* presents prime contractor utilization as compared to prime contractor availability by industry, ethnicity, and gender and evaluates the statistical significance of any underutilization.
- *Chapter 8: Subcontract Disparity Analysis* presents subcontractor utilization compared to subcontractor availability by industry, ethnicity, and gender and evaluates the statistical significance of any underutilization.
- *Chapter 9: Anecdotal Analysis* presents the business community's perceptions of barriers and exemplary practices encountered in contracting or attempting to contract with MSD.
- *Chapter 10: Regression Analysis* presents an examination of private sector economic indicators of discrimination in MSD's market area that could impact M/WBE formation and development.
- *Chapter 11: Recommendations* presents race and gender-conscious and race and gender-neutral remedies to enhance MSD's Interim Supplier Diversity Policy and its contracting with M/WBEs and other small businesses.



III. Notable Findings

A. Utilization Analysis

MSD’s utilization of M/WBE and non-M/WBE prime contractors and subcontractors by industry, ethnicity, and gender for the study period was documented.

1. Prime Contractor Utilization Analysis

MSD issued 2,342 purchase orders during the July 1, 2010, to June 30, 2015, study period. The 2,342 purchase orders included 593 for construction, 406 for construction-related services, 597 for engineering and professional services, and 746 for materials, commodities and services.

The payments made by MSD during the study period totaled \$660,792,360 for all 2,342 prime purchase orders. Payments included \$429,527,279 for construction, \$59,860,817 for construction-related services, \$105,579,670 for engineering and professional services, and \$65,824,594 for materials, commodities and services.

Table 3 summarizes the prime contractor utilization analysis by the percent of prime contract dollars awarded to each ethnic and gender group. The formal thresholds by industry are \$20,001 to \$1,710,000 for construction, \$20,001 to \$500,000 for construction-related services, \$20,001 to \$460,000 for engineering and professional services, and \$20,001 to \$350,000 for materials, commodities, and services purchase orders. The informal threshold is \$10,001 to \$20,000 for all four industries.

Table 3: Prime Contractor Utilization Summary

Prime Contractor Utilization by Percent of Dollars				
Ethnicity	Construction	Construction-related Services	Engineering and Professional Services	Materials, Commodities and Services
All Prime Purchase Orders				
African Americans	0.61%	3.17%	1.48%	0.31%
Asian-Pacific Americans	0.10%	0.47%	0.03%	1.01%
Asian-Indian Americans	0.00%	1.39%	1.82%	0.34%
Hispanic Americans	0.22%	0.97%	1.21%	0.28%
Native Americans	0.08%	2.57%	0.00%	0.00%
Caucasian Females	3.64%	5.71%	6.37%	1.48%
Non-minority Males	95.36%	85.71%	89.08%	96.58%
Formal Purchase Orders				
African Americans	3.59%	5.90%	2.97%	0.51%



Prime Contractor Utilization by Percent of Dollars				
Ethnicity	Construction	Construction-related Services	Engineering and Professional Services	Materials, Commodities, and Services
Formal Purchase Orders				
Asian-Pacific Americans	0.28%	0.91%	0.05%	2.31%
Asian-Indian Americans	0.00%	2.69%	2.07%	0.89%
Hispanic Americans	1.43%	1.86%	1.40%	0.10%
Native Americans	0.32%	4.50%	0.00%	0.00%
Caucasian Females	14.53%	6.68%	10.02%	1.07%
Non-minority Males	79.86%	77.46%	83.50%	95.12%
Informal Purchase Orders				
African Americans	11.96%	3.52%	1.61%	1.54%
Asian-Pacific Americans	9.80%	0.00%	0.58%	1.79%
Asian-Indian Americans	0.00%	0.00%	2.91%	0.00%
Hispanic Americans	0.72%	0.00%	3.66%	3.12%
Native Americans	5.41%	7.30%	0.00%	0.00%
Caucasian Females	3.43%	27.85%	18.51%	2.85%
Non-minority Males	68.68%	61.33%	72.73%	90.69%

2. Subcontractor Utilization Analysis

A total of 1,664 construction subcontracts were analyzed, representing \$164,018,486 expended during the July 1, 2010, to June 30, 2015, study period. Table 4 summarizes the subcontractor utilization by the percent of subcontract dollars received by each ethnic and gender group.

Table 4: Subcontract Utilization Summary

Ethnicity	Construction
African Americans	7.67%
Asian-Pacific Americans	2.92%
Asian-Indian Americans	0.09%
Hispanic Americans	7.64%
Native Americans	0.80%
Caucasian Females	11.90%
Non-minority Males	68.97%



B. Market Area Analysis

Under *Croson*, MSD cannot rely on society-wide discrimination as the basis for a race-based program. MSD is required to identify any discrimination within its own contracting market area.⁷ During the study period, MSD awarded 2,342 prime purchase orders valued at \$660,792,361. A total of 59.52% of the prime purchase orders and 56.73% of the dollars were awarded to businesses located in Jefferson County. Given the distribution of the awarded purchase orders and the applicable case law, Jefferson County was defined as the market area. The distribution of all prime purchase orders awarded, and dollars received by all firms domiciled inside and outside of the market area are listed in Table 5.

Table 5: Market Area Analysis

Market Area	Number of Purchase Orders	Total Dollars	Percent of Purchase Orders	Percent of Dollars
All Industries				
Market Area	1,394	\$374,839,416	59.52%	56.73%
Outside Market Area	948	\$285,952,945	40.48%	43.27%
Total	2,342	\$660,792,361	100.00%	100.00%

C. Availability Analysis

Mason Tillman used four sources to identify businesses in the market area that provide the goods and services that MSD procures.

- MSD’s records, including vendors lists
- Government certification directories
- Business association membership lists
- Lists of attendees of business community meetings conducted as part of the Study

Only businesses determined to be “willing” were added to the availability list. Any business identified as “willing” from more than one source was counted only once in an industry. A business that was willing to provide goods or services in more than one industry was listed uniquely in each relevant industry’s availability list. Tables 6 and 7 summarize the prime and subcontractor availability analyses.



⁷ *Croson*, 488 U.S. at 497 (1989).

Table 6: Prime Contractor Availability Analysis

Ethnicity	Construction	Construction-related	Engineering and Professional Services	Materials, Commodities and Services
African Americans	30.37%	22.47%	13.33%	10.14%
Asian-Pacific Americans	2.62%	0.56%	1.33%	1.09%
Asian-Indian Americans	1.57%	0.56%	3.11%	0.36%
Hispanic Americans	3.66%	2.81%	4.44%	1.09%
Native Americans	1.05%	0.56%	0.44%	0.36%
Caucasian Females	18.32%	21.91%	25.33%	19.93%
Non-minority Males	42.41%	51.12%	52.00%	67.03%

Table 7: Subcontractor Availability Analysis

Ethnicity	Construction
African Americans	18.23%
Asian-Pacific Americans	1.42%
Asian-Indian Americans	1.99%
Hispanic Americans	1.99%
Native Americans	0.57%
Caucasian Females	14.81%
Non-minority Males	60.97%

IV. Disparity Findings

A disparity analysis was performed on prime purchase orders within the thresholds listed in Table 8 and on all subcontracts awarded during the study period. Disparity was found at both the prime contractor and subcontractor levels for several ethnic and gender groups.

A. Prime Purchase Orders

The disparity analysis of prime purchase orders by industry, ethnicity, and gender during the July 1, 2012, to June 30, 2015, study period is described in Table 8. All instances of statistically significant disparity are noted as “disparity.” The phrase “no disparity” includes cases where a disparity was found but was not statistically significant.



Table 8: Prime Purchase Order Disparity Summary

Ethnicity/Gender	Construction	Construction-related Services	Engineering and Professional Services	Materials, Commodities and Services
	Purchase Orders Valued \$10,001 to \$20,000			
African Americans	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	No Disparity	No Disparity	No Disparity	No Disparity
Asian-Indian Americans	No Disparity	No Disparity	No Disparity	No Disparity
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>	No Disparity	No Disparity
Native Americans	No Disparity	No Disparity	No Disparity	No Disparity
Caucasian Females	<i>Disparity</i>	No Disparity	<i>Disparity</i>	<i>Disparity</i>
Ethnicity/Gender	\$20,001 to \$1,710,000	\$20,001 to \$500,000	\$20,001 to \$460,000	\$20,001 to \$350,000
African Americans	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	No Disparity	<i>Disparity</i>	No Disparity
Asian-Indian Americans	<i>Disparity</i>	No Disparity	No Disparity	No Disparity
Hispanic Americans	<i>Disparity</i>	No Disparity	<i>Disparity</i>	No Disparity
Native Americans	No Disparity	No Disparity	No Disparity	No Disparity
Caucasian Females	No Disparity	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>

B. Subcontracts

The disparity analysis of construction subcontracts by ethnicity and gender during the July 1, 2012, to June 30, 2015, study period is described below in Table 9.

Table 9: Subcontract Disparity Summary

Ethnicity / Gender	Construction
African Americans	<i>Disparity</i>
Asian-Pacific Americans	No Disparity
Asian-Indian Americans	<i>Disparity</i>
Hispanic Americans	No Disparity
Native Americans	No Disparity
Caucasian Females	Underutilized



C. Anecdotal Findings

The importance of anecdotal evidence in assessing the presence of discrimination in a geographic market area was identified in the landmark *Croson* case.⁸ The Court held that a pattern of individual discriminatory acts can explain the statistical disparity findings.⁹ However, such acts cannot be used to determine the presence of discrimination in a government’s contracting process. The anecdotal testimony collected from business owners describing their perceptions of barriers in the market area which will be used to define best management practices to improve M/WBEs’ access to MSD contracts.

Extensive efforts were undertaken to conduct 40 one-on-one interviews. Potential interviewees were identified from contract and certification records, business community meetings, and outreach. Potential interviewees were pre-screened to determine if they operated a business within the market area during the study period and were willing to commit to the interview process. All the interviewees were business owners whose businesses were located within MSD’s market area and provided construction, construction-related services, engineering and professional services, or materials, commodities, and services.

Two focus groups were also convened in January 2017 to accommodate business owners who were reluctant either to participate in an anecdotal interview or to comment publicly during business community meetings. A total of 13 business owners participated in the two focus groups.

The interviewee accounts and focus group discussions identified:

- Barriers created by MSD managers and inspectors
- Bid shopping
- “Good old boy” network
- Difficulty meeting bonding and insurance requirements
- Difficulty obtaining financing
- Late payments by MSD and prime contractors
- Comments about MSD’s Supplier Diversity Program
- Exemplary practices of MSD
- Recommendations to enhance MSD’s procurement standards

V. Recommendations

The disparity analysis compares the utilization of M/WBEs with their availability in MSD’s geographic market area. The race and gender-conscious recommendations are based on the documented findings of statistically significant disparity. The race and gender-neutral



⁸ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

⁹ *Id.*

recommendations are offered to maximize the use of M/WBEs on MSD's contracting opportunities.

A. Prime Contractor Race- and Gender-Conscious Remedies

1. Bid Discounts on Construction Services

A 10% bid discount on construction prime purchase orders should be implemented to reduce the eligible M/WBE bidders' prices by 10%. The maximum discount should not exceed \$50,000. The groups that would be eligible for the bid discount are African Americans, Hispanic Americans, Asian-Pacific Americans, Asian-Indian Americans, and Caucasian females.

2. Bid Discount to Construction-related Services

A 10% bid discount on construction-related prime purchase orders should be implemented to reduce eligible M/WBE bidders' prices by 10%. The maximum discount should not exceed \$50,000. The groups that would be eligible for the bid discount are African Americans, Hispanic Americans, and Caucasian females.

3. Incentive Credits for Engineering and Professional Services

A 10% credit for eligible M/WBEs should be applied on engineering and professional services prime purchase orders when the evaluation is based on qualifications. The groups that would be eligible for the evaluation points are African Americans, Hispanic Americans, Asian-Pacific Americans, and Caucasian females.

4. Bid Discount on Materials, Commodities and Services

A 10% bid discount on materials, commodities, and services prime purchase orders should be implemented to reduce eligible M/WBE bidders' prices by 10%. The maximum discount should not exceed \$50,000. The groups that would be eligible for the bid discount are African Americans and Caucasian females.

B. Subcontractor Race- and Gender-conscious Remedies

1. M/WBE Subcontract Goals on Construction Purchase Orders

A M/WBE subcontractor goal should be set on construction prime purchase orders. To meet the legal standard that race and gender-conscious remedies be narrowly tailored, the goal should be based on the availability levels for each eligible ethnic or gender group presented in Table 10.



Table 10: M/WBE Construction Subcontractor Availability

Ethnicity/Gender	Construction
African Americans	18.23%
Asian-Indian Americans	1.99%
Caucasian Females	14.81%

C. Enhancements to MSD Procurement Procedures to Implement Race- and Gender-conscious Remedies

Specific programmatic procedures are needed to effectively implement the recommended prime and subcontractor race and gender-conscious remedies.

1. Goal Attainment at Bid Opening

Evidence of attainment of the M/WBE subcontract goal should be submitted with the bid or proposal.

2. Commercially Useful Function Criteria

The criteria for counting M/WBE participation should include a commercially useful function standard.

3. Substitution of Listed M/WBE Subcontractors

MSD's Interim Supplier Diversity Policy should include specific standards for M/WBE subcontractor substitution.

4. M/WBE Subcontract Participation

MSD should require each prime contractor to complete a subcontractor utilization form listing all subcontractors, suppliers, and truckers to be used on the contract.

5. Augment Supplier Diversity Staff

MSD should augment the Supplier Diversity Program staff to include professionals who can perform contract compliance responsibilities and an ombudsperson to mediate disputes to fulfill the proposed Policy objectives.



6. M/WBE Advisory Council

MSD should establish a M/WBE Advisory Council to support the administration of the Supplier Diversity Policy and serve as an advocate for M/WBEs and other small businesses.

7. Supplier Diversity Program Training Manual

A *Supplier Diversity Program Training Manual* should be developed to standardize the application of the Program across all divisions.

8. Division-wide Supplier Diversity Training

Training for all MSD staff should be conducted when the Interim Supplier Diversity Policy is updated.

9. Enhance M/WBE Outreach and Marketing Strategies

A comprehensive outreach campaign should be launched to communicate contracting opportunities, subcontract goals, and the objectives of the enhanced Interim Supplier Diversity Policy.

10. Expand the M/WBE Technical Assistance Initiatives

MSD's technical assistance initiatives should be expanded to increase the number of available M/WBEs and increase the capacity of the M/WBEs that submit bids to MSD. Minimally, the technical assistance programs should include a mentor protégé program and services offered through federal technical assistance programs, including the U.S. Small Business Administration's SCORE Program, Small Business Development Centers, and Women Business Centers.

11. Provide Financial Assistance to M/WBEs

MSD should leverage its banking relationships to provide financial services to mitigate the adverse impact M/WBEs experience from their limited access to capital. The financial services should include the following:

- Commitments to provide offer letters of financial capability with contingent financing commitments so M/WBEs can demonstrate that they possess the financial solvency to execute contract awards
- Start-up loan programs for M/WBEs to increase access to capital and put larger projects within reach of small businesses
- Lines of credit and capital improvement financing with interest rates, loan terms, and collateral requirements that are more favorable than available in the commercial market



D. Race and Gender-neutral Recommendations

1. Implement a Small Local Business Enterprise Program

The Interim Supplier Diversity Policy should be expanded to include a Small Local Business Enterprise (SLBE) Program. The SLBE Program will improve access to MSD contracts for small businesses within the market area. An eligible small business should be headquartered and physically located in Jefferson County. The SLBE size threshold should be set at \$500,000 or less for average annual revenues over a three-year period. Applicants should be required to submit documentation of their business size and the owner's active participation in the control, operation, and management of the business.

MSD should establish a 15% SLBE goal on construction, construction-related, engineering and professional services, and materials, commodities, and services purchase orders to increase the participation of minority, women, and other small businesses. The SLBE Program should also include a small purchases rotation component for construction, construction-related services, engineering and professional services, and materials, commodities, and services prime contracts that do not exceed \$20,000.

2. Establish a Community Benefits Program

A sewer rehabilitation Community Benefits Program (CBP) should be created to mitigate the impact on service area communities from the restoration of MSD's sewer system. The CBP should include policies and procedures to implement program initiatives that monitor and track the objectives of the program. The CBP should apply to the *Waterway Improvements Now Projects* and the *Critical Repair and Redevelopment Plan Projects*. The Community Benefits Program initiatives should provide employment, contracting, education, and community improvements for the service areas impacted by MSD's sewer system rehabilitation projects. The CBP should also include eco-friendly programs and policies that reduce environmental impacts on MSD's service areas through a community grant program.

E. Procurement Administrative Recommendations

Procurement administrative recommendations are offered to expand the responsibility of the Interim Supplier Diversity Policy to more effectively address the barriers that market area M/WBEs and other small businesses encounter while trying to do business with MSD.

1. Implement an Owner-controlled Insurance Program

MSD should implement an Owner Controlled Insurance Program to consolidate risk management costs and reduce the burden of the insurance premium for MWBEs and small business owners.



2. Uniform Procurement Regulations

MSD's procurement regulations should be updated to incorporate the proposed race and gender-conscious and race and gender-neutral recommendations affecting the solicitation, evaluation, and award of MSD purchase orders.

3. Provide Debriefing Sessions for Unsuccessful Bidders

Debriefing sessions should be made available to unsuccessful bidders.

4. Modify Change Order Requirements

Requests for change orders should not exceed 15% of the original cost of the contract. If the cost exceeds 15% the contract, the new task or scope should be awarded through MSD's competitive solicitation process.

F. Data Management Enhancements

Mason Tillman recommends several modifications to track comprehensive M/WBE and non-M/WBE prime contractor and subcontractor data:

- Cloud-based contract compliance reporting to track the participation of all subcontractors, subconsultants, suppliers, and truckers for the duration of each contract
- Subcontractor Payment Verification Program to include complete contact information for each subcontractor, and requirement that subcontractor payments be provided for the subcontracts used on the first four tiers
- Integrate MSD's financial management system to a subcontractor monitoring and tracking system





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