

# **City of Milwaukee Disparity Study Findings and Recommendations Presentation**

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**December 13, 2010**



**Wilson Consulting Group, LLC**

# Consultant Qualifications

- Management Consulting Firm specializing in MBE/DBE Programs and Disparity Studies
- 20 Years of Disparity Study experience
- Over 60 Disparity Studies
- State Agencies
- Local Governments
- State Universities and Community Colleges
- Multi-Agency Consortia

# Review of Phase I

- Objectives of Phase I was to determine:
  1. If a statistically significant disparity exists between the number of minority-owned and women-owned business enterprises that are ready, willing, and able to provide goods and services to the City and the number of minority-owned and women-owned businesses that were actually providing goods and services to the City during calendar years 2005, 2006, 2007 and 2008.
  2. The extent to which minority and women-owned business participate in the procurement of contracts with the City of Milwaukee in construction services, professional services and goods and services.
  3. Whether minority and women-owned business participation is representative of the availability of minority and women owned businesses ready, willing and able to participate in contracts within the City of Milwaukee.

# Phase II

- Objectives of Phase II were to determine:
  4. The effectiveness of any race/gender neutral initiatives that have been used by the City and MMSD in eliminating discrimination and/or increasing minority and women participation in public procurement.
  5. If discrimination exists, does anecdotal evidence show specific instances of discrimination and/or patterns and practices of the City and MMSD in the procurement of goods and services.
  6. If discrimination exists, recommend and/or identify narrowly tailored race/gender based activities to remedy the effects of any discrimination identified.

# Regression Analysis

- From the business survey data, an analysis was conducted using various business characteristics to estimate a firm's ability to be successful and if race or gender of the owner had an impact on the firm's success.
- The overall results of the logistic regression models show that race and gender do not have a consistent statistically significant impact on winning a contract with the exception of being African American. Overall, the results show a negative relationship with the variables White Female, Native American, African American and Hispanic American.

# Anecdotal Analysis

- The collection of personal accounts of incidents of discrimination and the analysis of this anecdotal information are important components of this Disparity Study. This information and analytical data in the Study provides a better understanding of the contracting culture within the City of Milwaukee (“City”) and the Milwaukee Metropolitan Sewerage District (“MMSD”).
- The Courts have addressed the adequacy of anecdotal evidence in constitutionally supporting the need for race-based remedial programs. The court decisions in the Ninth Circuit provide examples of both acceptable and unacceptable forms of anecdotal evidence.
- Nowhere in the *Coral Construction* opinion did the Court address the need to ensure that the information provided by the affiants be verified for accuracy. In the Ninth Circuit, the Court accepted the anecdotal data as evidence that discrimination may have occurred within the King County construction industry.

# Anecdotal Analysis

- The following is the methodology utilized to identify and analyze specific anecdotal instances of discrimination and/or patterns and practices of the City and MMSD in the procurement of goods and services:
  - As a requirement to participate in the Business Survey or Personal Interviews, business owners must have done business with or attempted to do business with the City and/or MMSD as a prime contractor or subcontractor.
  - All participants were located within the Milwaukee Metropolitan Statistical Area and when required, maintained a Wisconsin business license.
  - 743 completed online business surveys.
  - Conducted sixty-two (62) one-on-one personal interviews.

# Summary

- The results of the statistical analysis that were conducted in the Study find that there is significant disparity between utilization and availability of minority-owned firms in construction, professional services and goods & services.
- The Anecdotal Analysis supports the statistical analyses finding that available M/WBEs in the relevant market area of the City and the MMSD are significantly underutilized and have encountered significant levels of disparity and inference of discrimination.
- The anecdotal evidence supports the conclusion that the City's race neutral Emerging Business Enterprise Program goals do not appear to adequately address the underutilization of specific/ethnic and gender groups in the areas of construction and goods and services.

# Summary

- The City of Milwaukee should amend its EBE Program to set race/gender-specific annual participation goals for construction subcontracts for the following EBE-owned firms:
  - African American-owned firms
  - Asian American-owned firms
  - Non-minority Women-owned firms
- The City of Milwaukee should amend its EBE Program to set race/gender-specific annual participation goals for goods & services subcontracts for the following EBE-owned firms:
  - Native American-owned firms
  - Hispanic American-owned firms
  - Non-minority Women-owned firms

# Findings and Recommendations

## FINDING 1: Relevant Market Area

The Relevant Market Areas for the City are:

### Construction

County, State	# of Contracts	% of Contracts	# of Firms	% of Firms	Dollars	% of Dollars	Cum%
MILWAUKEE, WI	119	45.95%	36	52.17%	\$37,731,556.40	40.12%	40.12%
WAUKESHA, WI	90	34.75%	19	27.54%	\$31,974,730.55	34.00%	74.12%
WASHINGTON, WI	34	13.13%	2	2.90%	\$12,241,457.05	13.02%	87.14%

# Findings and Recommendations

## FINDING 1: (continued)

### Professional Services

County, State	# of Contracts	% of Contracts	# of Firms	% of Firms	Dollars	% of Dollars	Cum%
MILWAUKEE, WI	65	52.85%	46	48.42%	\$3,705,760.25	32.99%	32.99%
WAUKESHA, WI	10	8.13%	8	8.42%	\$2,188,211.30	19.48%	52.47%
WASHINGTON, WI	1	0.81%	1	1.05%	\$365,000.00	3.25%	55.72%
COOK, IL	7	5.69%	5	5.26%	\$169,040.20	1.50%	57.22%
DANE, WI	4	3.25%	4	4.21%	\$196,399.10	1.75%	58.97%
DU PAGE, IL	2	1.63%	2	2.11%	\$387,118.30	3.45%	62.41%
KANE, IL	3	2.44%	2	2.11%	\$262,300.00	2.33%	64.75%
SAN DIEGO, CA	2	1.63%	2	2.11%	\$212,503.40	1.89%	66.64%
LOS ANGELES, CA	2	1.63%	2	2.11%	\$68,009.00	0.61%	67.25%
DALLAS, TX	2	1.63%	2	2.11%	\$35,724.24	0.32%	67.56%
PIMA, AZ	2	1.63%	2	2.11%	\$32,955.00	0.29%	67.86%
SPOKANE, WA	1	0.81%	1	1.05%	\$2,000,000.00	17.80%	85.66%

# Findings and Recommendations

## FINDING 1 (continued):

### Goods & Services

County, State	# of Contracts	% of Contracts	# of Firms	% of Firms	Dollars	% of Dollars	Cum%
MILWAUKEE, WI	78	53.79%	59	50.86%	\$14,645,545.50	55.88%	55.88%
WAUKESHA, WI	28	19.31%	24	20.69%	\$3,937,131.85	15.02%	70.90%
OZAUKEE, WI	1	0.69%	1	0.86%	\$139,085.00	0.53%	71.43%
COOK, IL	9	6.21%	7	6.03%	\$1,837,823.47	7.01%	78.44%

# Findings and Recommendations

## RECOMMENDATION 1:

- The City should limit its EBE program to the Metropolitan Statistical Area.

## FINDING 2: Disparity Analysis - Construction

- The statistical analysis identified disparity for several EBE groups as follows:
  - Construction
    - African Americans, Asian Americans and nonminority Women were significantly underutilized with disparity indices of 52.86, 0.00. and 30.95 respectively

# Findings and Recommendations

## RECOMMENDATION 2.1:

- The City of Milwaukee should amend its EBE Program to set race/gender-specific annual participation goals for construction subcontracts for the following EBE-owned firms:
  - African American-owned firms
  - Asian American-owned firms
  - Nonminority Women-owned firms

# Findings and Recommendations

## RECOMMENDATION 2.2:

- The City of Milwaukee should closely monitor on a quarterly basis the utilization of all EBEs to ensure that their utilization on construction contracts does not fall below their availability or they do not become overutilized using race/gender-specific goals. If either situation occurs, the City should adjust its annual participation goals by including only the groups who continue to be underutilized.

# Findings and Recommendations

## RECOMMENDATION 2.3:

- The City should review the utilization of EBE firms on a quarterly basis and report to the Common Council.

# Findings and Recommendations

## **FINDING 3: Disparity Analysis - Goods & Services**

### Goods & Services

- Native Americans, Hispanic Americans and nonminority Women were significantly underutilized with disparity indices of 0.00, 17.18, 0.72 respectively
- African Americans were underutilized with a disparity index of 86.97

# Findings & Recommendations

## RECOMMENDATION 3.1:

- The City of Milwaukee should amend its EBE Program to set race/gender-specific annual participation goals for goods & services subcontracts for the following EBE-owned firms:
  - Native American-owned firms
  - Hispanic American-owned firms
  - Nonminority Women-owned firms

## RECOMMENDATION 3.2:

- The City of Milwaukee should closely monitor on a quarterly basis the utilization of all EBEs to ensure that their utilization on goods & services contracts does not fall below their availability or they do not become overutilized. If either situation occurs, the City should adjust its annual participation goals by including only the groups who continue to be underutilized.

# Findings & Recommendations

## FINDING 4: Professional Services Contracts

- Professional Services

- 101 Professional Services contracts were included in the sample analyzed
- Prime Contractor EBE participation included African American, Asian American and nonminority Women owned firms
- Subcontractor EBE participation included an African American owned firm

# Findings & Recommendations

## **RECOMMENDATION 4.1:**

- All City Departments should review professional service contracts to identify subcontracting opportunities.

## **RECOMMENDATION 4.2:**

- The City should implement an Outreach Program to make women and minority-owned businesses aware of subcontracting opportunities.

# Findings and Recommendations

## FINDING 5: Data Collection and Tracking

- The City of Milwaukee utilizes the following methodologies/processes to track procurement activity:
  - City's Financial Management Information System (prime contractor payments)
  - BusinessSense System (EBE tracking)

# Findings and Recommendations

## RECOMMENDATION 5.1:

- The City should track all contract awards and payments to prime and subcontractors. All records should be maintained in a database that captures the data variables requested during the data collection process of the study. This process should include all business categories.

# Findings and Recommendations

## RECOMMENDATION 5.2:

- The City of Milwaukee should implement the following:
  - Identify one (1) tracking system to collect and monitor all procurement activity, including contractors and subcontractors for all projects awarded;
  - Establish and implement strict guidelines by type of procurement activity that includes pertinent information from requisition to final payment or completion of project;
  - The tracking system should be maintained for accuracy with quality control checks; and
  - The tracking system must include all awards and payments to all (EBE and non-EBE) contractors/vendors.

# Findings and Recommendations

## **FINDING 6: Contract Compliance - Verification and Follow-up**

- During many personal interviews with M/WBEs, business owners noted lack of verification and follow up of reported EBE participation. Prime contractors reported payments to the City that were never made to EBE firms, EBE firms reported that they did not participate or know that they were listed as subcontractors on certain contracts with the City. EBE firms agreed upon levels of participation are not verified.

# Findings and Recommendations

## RECOMMENDATION 6.1:

- The City should conduct random audits of prime contractors payments to EBE owned firms that requires documented proof of payments.
- The City should follow-up with EBE firms to ensure that they have been paid and participated in the contracting process.

# Findings and Recommendations

## **FINDING 7: Contract Compliance - Payment Practices**

- Numerous M/WBE owned firms voiced concerns regarding delayed payments or a reduction in the negotiated and agreed upon price for work performed. M/WBE businesses are generally small and nonpayment and/or late payment produces significant cash flows. They often do not have the cash reserves or access to capital necessary to maintain their business operations when they do not receive payments timely. Therefore, M/WBEs are disparately impacted by a prime contractor's failure to make prompt payments.

# Findings and Recommendations

## **FINDING 7: Contract Compliance - Payment Practices (continued)**

- The City currently requires that prime contractors make payment to subcontractors for work performed within ten (10) days of receipt of their payment from the City;
- MMSD currently requires that prime contractors make payment to subcontractors for work performed within seven (7) days of receipt of their payment from MMSD.
- Prime contractors invoices that are submitted to the City must be paid within sixty (60) days of receipt, this timeframe could ultimately result in a subcontractor receiving payment seventy (70) days after completion of work.
- MMSD must pay prime contractor invoices within thirty (30) days of receipt, resulting in the possibility of a subcontractor receiving payment thirty-seven (37) days after completion of work.

# Findings and Recommendations

## RECOMMENDATION 7.1:

- The City and MMSD should ensure that prime contractors are making timely and accurate subcontractor payments to M/WBE and non-M/WBE owned firms. This can be accomplished by reviewing and enhancing the current process for tracking payments made by primes to subcontractors.

# Findings and Recommendations

## RECOMMENDATION 7.2:

- The City should consider adopting MMSDs payment policies for both prime contractors and subcontractors.

# Findings and Recommendations

## **FINDING 8: Barriers to Contract Bidding**

- There are several barriers to contract participation that exist because the procedures in place to ensure compliance with M/WBE requirements are not strictly enforced or monitored. During the interviews, several M/WBE firms reported that prime contractors do not allow sufficient time for submission of subcontracting quotes. This bidding practice allows prime contractors to submit the required documentation showing that they attempted to obtain M/WBE participation. This results in the prime contractor obtaining a waiver of the City's and MMSDs M/WBE requirements. Another barrier to contract participation is bid shopping. M/WBEs will submit bid quotes to a prime contractor; the prime will pressure them to lower their bid because they have shopped around and indicate that they can get the job done for a specific lower price or the prime will submit a bid with a specific subcontractor, win the bid and try to pressure the subcontractor to lower the original bid.

# Findings and Recommendations

## FINDING/COMMENDATION:

- The City's EBE Program and MMSD's SMWBE Program have participation requirements that must be submitted at the time of bid submission. Prime contractor reporting requirements are also in place after contract award.

Some of these include:

- EBE Participation Form that must be submitted at time of bid submission
- EBE Monthly Report Form that must be submitted by the 20<sup>th</sup> of the Month
- EBE Subcontractor Payment Certification
- MMSD provides administrative and on-site monitoring to ensure that promised participation is achieved

# Findings and Recommendations

## RECOMMENDATION 8.1:

- The City and MMSD should conduct an audit of their current compliance processes to determine their effectiveness and make modifications based on the findings. The audit should include validation of the information received from both prime and subcontractors.

# Questions and Answers