

WORKSHOP

Workshop Providing an Overview of the Minority, Women, and Small Business Enterprise Programs

Tuesday, October 27, 2015

1:30 – 3:00 p.m.

**Leon County Board of County Commissioners' Chambers
Leon County Courthouse, 5th Floor**

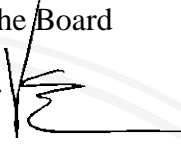
**Leon County
Board of County Commissioners**

Notes for Workshop

Leon County Board of County Commissioners Workshop Cover Sheet

October 27, 2015

To: Honorable Chairman and Members of the Board

From: Vincent S. Long, County Administrator 

Title: Workshop Providing an Overview of the Minority, Women, and Small Business Enterprise Programs and Board Consideration of Funding a Disparity Study

County Administrator Review and Approval:	Vincent S. Long, County Administrator
Department/ Division Review:	Alan Rosenzweig, Deputy County Administrator Ken Morris, Assistant County Administrator Cristina Paredes, Director of the Office of Economic Development
Lead Staff/ Project Team:	Shanea Wilks, Director of Minority, Women, and Small Business Enterprise

Fiscal Impact:

This item has been budgeted within the FY 2016 Budget in the amount of \$250,000.

Staff Recommendation:

- Option #1: Authorize the County Administrator to issue a Request for Proposals to conduct the quantitative disparity study.
- Option #2: Authorize the County Administrator to initiate discussions with the City of Tallahassee to explore collaboration efforts on a single disparity study.
- Option #3: Direct staff to bring back an agenda item for the Board's consideration on policy enhancements to the County's SBE program.

Report and Discussion

Background:

During the March 10, 2015 meeting, staff presented the Board with a status report of Minority and Women-Owned Business Enterprise Expenditures (Attachment #1). Within the report, staff indicated a budget discussion item would be brought forth during the development of the FY 2016 budget relative to a new disparity study update to the one presented in 2009 by MGT of America and County staff.

During the June 23, 2015 FY 2016 Budget Workshop, the Board provided direction to include \$250,000 for a disparity study update for the Minority Women Business Enterprise (MWBE) Program; however, prior to initiating the study, the Board directed staff to schedule a workshop in the fall (Attachment #2). The Board expressed interest in reviewing information on the certification process for the County's MWSBE Program and comparative information to other local jurisdictions and their models. Subsequently, the Board approved the scheduling of a workshop on MWSBE Programs for October 27, 2015.

Analysis:

This workshop item provides an analysis on the following:

- I. Leon County's MWSBE Program
- II. Comparative Analysis of Other Jurisdictions Programs
- III. Programmatic Options Regarding the County's MWSBE Program

I. Leon County's Minority, Women, and Small Business Enterprise Program

Currently, Leon County operates the MWBE and SBE Programs through the MWSBE Division. The MWBE program is race/gender specific meaning that the program either directly or through partners enhances participation in County procurements to achieve parity for MBEs and WBEs. Both programs have certification processes, which, if successfully completed, allow certified vendors to participate within the County's procurement opportunities. Both are currently administered based upon the 2009 MGT Disparity Study, which is the latest study to review the MWBE Program.

Co-located with the Purchasing Division for operational efficiencies, the MWSBE Division operates separately based upon the recommendation of the 2000 Disparity Study, an earlier study conducted by MGT of America. The Study commended the County for elevating the MWBE Program to division level to improve the internal and external perception of the County's commitment to the Program's success; and for the co-location of the Divisions facilitating greater interaction and creating synergies of operations. The MWSBE Program is composed of two, separate program areas:

1. The MWBE component focuses on firms owned and operated by minorities and women; and,
2. The SBE component focuses on businesses that meet the small business criteria in terms of their size and net worth, regardless of the owner's gender or ethnicity.

This section provides the Board with the following:

- Historical Background
- Certification Process
- Aspirational Targets
- Policy Coordination with City of Tallahassee

Historical Background

The County adopted an MWBE policy in 1987. The program has been successful in providing opportunities for minority/women owned businesses to secure business with the County that may not have occurred without the program. Through certification, training and outreach, the program continues to have a positive impact on the targeted community. The MWBE Program is a race/gender specific program whereby utilization of certified minority and women owned businesses is achieved through the identification of procurement opportunities for MWBEs within Leon County projects. The MWBE Program's overall objective is to promote parity of MWBE firms in Leon County procurement activities through the utilization of aspirational targets.

The 2009 Disparity Study Update, prepared by MGT of America (the "MGT Study"), was accepted by the Board during its October 27, 2009 meeting, subsequent to its October 13, 2009 workshop regarding the draft report (Attachment #3). Disparity studies are performed to serve as the evidentiary basis for continued race/gender based programs. The overall objective for the disparity study update in 2009 was to determine if data supported a "compelling interest" for the County to maintain a program to provide minority- and woman-owned business enterprises greater opportunities to participate in County procurement activities as goods and services providers. To meet the requirements of the U.S. Supreme Court's ruling in *City of Richmond v. J.A. Croson Co.*; narrow tailoring under the *Croson* standard requires that remedial goals be in line with measure availability. The Supreme Court in *Croson* recognized statistical measures of disparity that compared the number of qualified and available MWBEs with the rate of municipal construction dollars actually awarded to MWBEs in order to demonstrate disparity. MWBE programs must be limited in their geographical scope to the boundaries of the enacting government's market place.

In order for the County to comply with the U.S. Supreme Court's ruling, the County must demonstrate a compelling governmental interest for minority and gender-based goals, which would include evidence of prior discrimination in the field/industry, and the goals must be narrowly tailored to remedy the effects of the prior discrimination. The MGT Study states that, generally, utilization ratios of "80 percent or higher – indicating close to full participation" is not significant demonstration of discrimination, noting the court referenced the Equal Employment Opportunity Commission's (EEOC) "80 percent rule", which establishes this rule as the threshold for determining a prima facie (at first look) case of discrimination. In other words, the EEOC's "80 percent" rule assists in determining whether a company's selection system was having an "adverse impact" on a minority group. The "80 percent" rule is not intended as a legal definition, but is a practical means of keeping the attention of the enforcement agencies on serious discrepancies in rates of hiring, promotion and other selection decisions.

The MGT Study further noted there is no standard measurement to evaluate levels of utilization within a procurement context; however, in the context of employment discrimination, an employment disparity ratio below 80 percent indicates a “substantial disparity” meaning that overall selection process has an adverse impact, the adverse impact of the individual selection procedure should be analyzed.

The 2009 MGT Disparity Study Update identified the number of available MWBEs within the market area, and categorized these firms by business category, race, and gender. Businesses classified as MWBEs were firms that were at least 51% owned and controlled by members of one of the following race/gender groups, whether or not they were county-certified MWBEs (African Americans, Hispanic Americans, Asian Americans, Native Americans, and Nonminority Women). Based on statistical disparities between the percentage of funds expended with MWBEs in the market area and the number of available MWBEs, the MGT Study provided evidence to support a narrowly tailored program to promote the County’s utilization of MWBEs. The 2009 Disparity Study Update included proposed MWBE aspirational targets, which the Board incorporated in Policy No. 96-1, “Purchasing and Minority/Women Business Enterprise Policy” (Attachment #4).

MWBE Program Overview

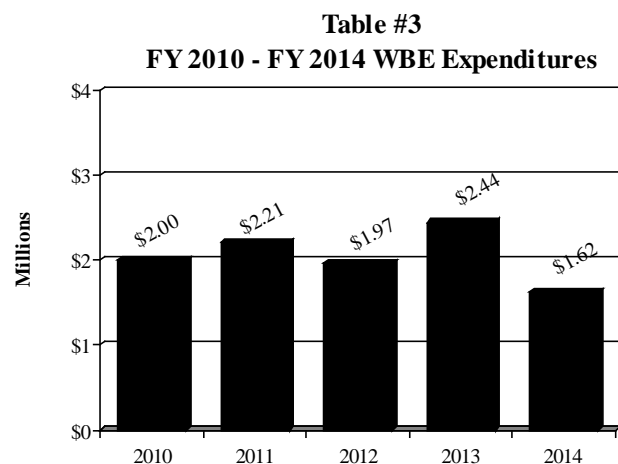
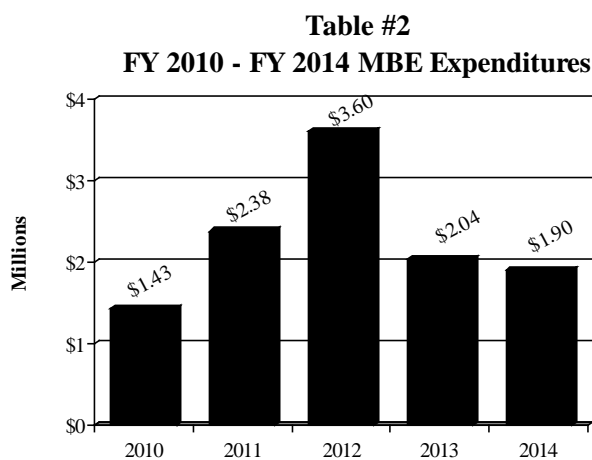
The County utilizes aspirational targets, not requirements, in order to establish levels of participation by certified M/WBEs in procurement of goods and services. As prescribed in the recommendations by MGT of America, aspirational targets should vary by project, reflect realistic MWBE availability and vendors should demonstrate a good faith effort to meet these aspirational targets. Procurement categories, rather than population, establish aspirational targets in order to remedy the areas of underutilization and substantial underutilization among MWBE businesses and to reflect the market. When aspirational targets are present in solicitations, staff encourages prime contractors/consultants to utilize MWBE businesses to reach the parity levels as recommended by MGT of America and demonstrate a good faith effort to include MWBE businesses. The use of aspirational targets promotes relationship development between larger (primes) and smaller (subcontractors) businesses in the local market area (Leon, Gadsden, Jefferson, and Wakulla Counties); therefore, providing mentoring opportunities for smaller companies can provide an opportunity to enhance their business practices. Table #1 lists the County’s MWBE Aspirational Targets based on the most recent 2009 Disparity Study Update.

Table #1: Aspirational Targets – Policy No. 96-1

<i>Procurement Category</i>	<i>Aspirational MBE Target</i>	<i>Aspirational WBE Target</i>
Construction Prime Contractors	8%	5%
Construction Subcontractors	17%	9%
Architecture & Engineering	12%	14%
Professional Services	7%	15%
Other Services	10%	8%
Materials and Supplies	1%	6%

Aspirational targets are considered to be the minimum level of MWBE participation expected for a particular procurement/project with consideration given to subcontracting opportunities and the availability of MWBEs in the market area that are capable of performing the work. Aspirational targets for individual bids/request for proposals (RFPs) may be lower than the participation level identified in Table #1 depending upon scope of work, which allows staff to identify the associated procurement category and the number of certified firms within the market area available to perform the services identified. Non-certified firms, even if owned by minority or woman, do not count towards participation. It must be noted, projects that receive state and federal funding the County's aspirational targets are superseded for state and federal procurement policies. Therefore, the aspirational targets identified within Table #1 cannot apply.

Tables #2 and #3 reflect the expenditure activity associated with MBE and WBE vendors for the previous five fiscal years. As part of the County's regular reporting process, the MWBE expenditure activity for these fiscal was presented in agenda items to the Board on March 10, 2015 (FY 2014 and 2013), January 21, 2014 (FY 2012 and 2011), and August 23, 2011 (FY 2010). The reported expenditures consist of expenditures from the County's Annual Operating Budget and Capital Improvement Program (CIP). There is a variation between FY 2012 and 2013, due to major construction projects being completed such as the Public Safety Complex, library construction/renovation projects, and jail renovations. The average MBE percentage of total expenditures for the period is 10.5%; WBE's is 9.6%; and, 79.9% expended with Non-MWBEs. For FY 2010 – 2014 the average MBE aspirational target for FY was 9.2% and the average WBE aspirational target was 9.5%. More detailed information regarding the MBE and WBE expenditures for the six procurement categories and the aspiration targets for the past five fiscal years can be found in Attachment #1 and Attachment #5.



In addition, County funded projects often utilize FDOT Prequalification and is another factor in limiting MWBE opportunities. This standard is mainly applied to County-funded projects involving road construction, bridge construction, and stormwater improvements and limits the opportunities for MWBE's, which are not prequalified, to bid as a prime contractor or potentially participate as a subcontractor. Contractor prequalification is the annual certification process, utilized by FDOT for construction contractors, which establishes the approved work classes and maximum capacity rating for which they are approved to bid and perform on any contract in excess of \$250,000.

FDOT does not require prequalification to bid on projects funded at \$250,000 or less, to bid as a subcontractor in any amount, to bid on building projects (general contractor licensure is required), nor to bid on maintenance contracts. The County utilizes the FDOT Prequalification Certification and other licensures issued by the State of Florida, as Contractor Qualification standards due to the State of Florida being the regulatory authority for the provision of services requiring state licensure and/or certifications. Currently, one WBE is FDOT prequalified and no MBEs.

According to County policy, aspirational targets should reflect realistic MWBE availability and capability of performing the work for a particular project; and, for where there are opportunities for exemptions based upon Good Faith Efforts. The MWSBE Director, Purchasing representative, and an appropriate division or department representative shall review each proposed project or bid to determine the potential for subcontracting and for MWSBE utilization considering the scope of work, available and capable MWSBEs to potentially perform the work and opportunities for multiple bids. Based upon these and other reasonable factors, the MWSBE Director shall determine the recommended aspirational targets. If the recommended aspirational targets are lower than the applicable participation levels, the County Administrator is notified of the recommended modified aspirational targets and reasoning for such recommendations. The County Administrator then advises the Board, via email, and Commissioners have five business days to request a delay for the issuance of the bid/RFP and an agenda item regarding the recommended aspirational targets. This request for delay and further discussion can be effectuated by an individual Commissioner. If no Commissioner requests an agenda item within the five business days, staff is authorized to release the bid/RFP. During FY 2015, two requests were made by staff to lower the recommended aspirational targets due to the specialized nature of the work and vendor availability.

Leon County's Small Business Enterprise

During June 2006, the Board approved the establishment of the Small Business Enterprise (SBE) Program. The County currently operates a limited SBE Program. The purpose of the SBE Program is foster growth in Leon County's economy by affording small businesses an opportunity to gain experience, knowledge, and training to compete and secure contracts with Leon County. Unlike the MWBE Program, the SBE Program is race and gender neutral. To qualify as an SBE business must have a net worth of no more than \$2 million, employ 50 or fewer full/part-time employees, and the majority owner and the business must reside in Leon, Gadsden, Jefferson or Wakulla Counties. The SBE Program is structured to reserve procurement opportunities for exclusive competition among SBE's when at least three SBE's are certified in the relevant procurement category and are available to compete for the procurement opportunity. According to County policy, the projects that are released through the SBE program have an estimated contract cost of \$100,000 or less which varies across business categories as shown in Table #2.

Table #2: SBE Contract Cost Thresholds

Business Category	Estimated Contract Cost
Construction: Prime Contractor	\$100,000 or less
Professional Services	\$50,000 or less
Other Services	\$25,000 or less
Materials & Supplies	\$25,000 or less

Through the SBE Program, RFPs and Bids will be reserved only for certified SBE's when at least three SBE's are certified in the commodity or service requested in the RFP and/or Bid. Small businesses participating in this program will be given the opportunity to develop and enhance their business; therefore increasing their ability to compete effectively in procurement arenas. It should be noted that a limited number of projects are currently being identified for the SBE Program, which results in limited opportunities for these certified businesses. Increasing the threshold categories within the SBE Program policy may address the limited number of projects being identified for the program. Staff recommends prepare a future agenda item on policy enhancements to the County's SBE program.

Certification Process

The County's certification process provides vendors with the opportunity to participate or compete for projects that have been identified as feasible for MWBE or SBE participation. Currently, applicants may obtain MBE, WBE, and SBE certifications. In addition, MWBE vendors may also receive dual certification for an SBE when applicable. Staff has worked diligently to provide a streamline process for certifications and provide dual certification when applicable. Applicants interested in certification have the capability of applying via paper application or through the County's online Contract Compliance Monitoring System. Supporting documentation must also be provided for determination of certification eligibility by all MBE, WBE, and SBE applicants (Attachment #5). Finally, site visits are conducted for final certification determination. The certifications are good for a period of two years before a vender must file for recertification.

Leon County and the City of Tallahassee share an Interlocal Agreement (February 2010), which encourages full participation by local MWBE's in the County's procurement processes and fosters more economic development throughout the community. The Agreement enables the County and the City to streamline the certification process for the MWBE applicants in the local market area, which consists of Leon, Gadsden, Jefferson, and Wakulla counties. Leon County and the City MWBE Offices act as a one-stop shop, thus eliminating the need for multiple certifications. In addition, both jurisdictions mutually recognize the MWBE certifications of the other for the purposes of procurement opportunities.

Currently, SBE's are not included within the Interlocal Agreement; however, staff continues discussions with City staff to ensure all programs align. County and City staff continue to meet to ensure, as much as possible, continuity and consistency exists between the two programs. These meetings continue to explore opportunities relative to the City's SBE Program, its implementation, and inclusion within the Interlocal Agreement.

MWSBE Program Summary

The MWSBE Program provides access and opportunities to certified vendors to compete for projects identified as feasible for MWBE or SBE participation. Two factors often provide challenges for MWBE opportunities within the Program: 1) projects that receive federal and state funding resulting in the County's aspirational targets being superseded by federal and state regulations and 2) the availability of large capital improvement projects (CIP). CIP Projects provide a significant number of opportunities for MWBE and SBE vendors versus other County procurement opportunities (i.e. professional services, materials and supplies, and other services).

Based upon the aforementioned narrative, there have been opportunities provided for all vendors engaging in Leon County's procurement processes. However, a disparity study update may identify areas that are recommended for modification and efficiency improvements. A disparity study update may also provide a review of the MWSBE Program and information as to how the County can continue to support all vendors participating within its procurement processes.

As stated previously, procurement categories, rather than population, establish aspirational targets in order to remedy the areas of underutilization and substantial underutilization among MWBE businesses and to reflect the market. In order to continue the MWBE program and minimize the threat of litigation, the Board may wish to conduct a quantitative disparity study that focuses on the factual data analysis associated with the program that is the basis for determining the aspirational targets by industry, which is included in the FY 2016 budget. The need to conduct a disparity study arises from a Supreme Court ruling that applied to federal agencies in *Adarand v. Peña*, the U.S. Commission on Civil Rights issued a report in May 2006 (Disparity Studies as Evidence of Discrimination) recommending that localities discard disparity studies conducted using data that is more than five years old, as the "results are too outdated to justify preferential awards given today." This guidance is utilized to withstand the legal challenges that may arise due to race/gender based programs that must satisfy strict scrutiny tests by showing a compelling governmental interest for maintaining such programs. This option is further discussed in Section III Programmatic Options Regarding the County's MWBE program on page 10 of the workshop.

II. Comparative Analysis of Other Jurisdiction Programs

This section provides information and analysis on programs currently being administered in other jurisdictions including MWBE (race/gender based aspirational goals), SBE (race/gender neutral goals), and DBE (social and economically disadvantaged goals).

Table #3: Comparative Analysis of Other Jurisdictional Programs

Entity	Population	Program Type			Stand Alone Office	FTE
		MWBE (Race/Gender Based Aspirational Goals)	SBE (Race/Gender Neutral Goals)	DBE (Social/Econ. Disadvantaged Goals)		
Alachua	256,309		X		Y	6
Atlanta, GA	447,841	X	X	X ¹	Y	15
Broward ²	1,838,844		X	X	Y	11
Charlotte, NC	792,862	X		X ¹	Y	9
Columbia, SC	133,358		X		N	2
Escambia*	305,817				NA	
Federal/State DOT	NA			X	NA	NA
Hillsborough	1,316,298	X	X		N	3
Leon	283,988	X	X		Y	1.75
Manatee*	342,106				NA	NA
Miami-Dade ³	2,617,176		X	X	Y	38
Orlando	255,483	X			Y	6
Palm Beach	1,372,171		X		Y	7
Pinellas	938,098		X		N	16
Sarasota	396,962				NA	NA
St. Lucie	291,028			X ¹	N	7
St. Petersburg	249,688		X		Y	1.5
Tallahassee	186,411	X	X	X	Y	3
Tampa	352,957	X	X		Y	5.5

Notes:

*Escambia and Manatee Counties do not administer an MBE, WBE, SBE, or DBE Program.

1) This DBE program operates only through the Aviation Department.

2) Broward County also utilizes a County Business Enterprise program and for businesses that have less than the maximum gross receipts (averaged over 3 years) of \$5 million, regardless of their industry.

3) Miami Dade County utilizes a Local Developing Business Program that is gender and race neutral for small businesses that have non-exclusive permits to provide general aeronautical services to commercial airlines and aircraft operators at Miami International Airport.

The programs identified as MWBE in Table #3 are race/gender based that utilize a goal setting process to enhance the opportunities for a race or gender class that has been identified to have experienced disparity in receiving procurement or contracting opportunities. The Atlanta, Charlotte, Hillsborough, Leon, Orlando, Tallahassee and Tampa jurisdictions all operate programs that are race/gender based similar to Leon County.

The programs identified as SBE in Table #3 are race/gender neutral and may be sole programs that provide small business assistance or components of larger programs that include MWBEs. Business assistance may include bonding assistance; and outreach activities such business education workshops and networking opportunities. Some jurisdiction administered the SBE Program as a sheltered market program in which projects are set aside in various procurement categories with an identified maximum project value, to allow certified SBE vendors (MWBE and non-MWBE) to bid or compete within a sheltered market. Sheltered market means certified businesses are bidding or competing against other businesses of a like size and capacity. Some jurisdictions administer their SBE Program as a sheltered market program the same as Leon County. For example, Alachua County's SBE Program does not include a sheltered market; however, bidders are awarded points for SBE utilization; Palm Beach County's SBE Program currently does not include a sheltered market. However, there is a provision within their County ordinance to utilize the sheltered market, when their 15% participation goals for SBE's are not being met on their projects; Pinellas County administers an SBE Program that is a Sheltered Market Program only; and, St. Petersburg administers an SBE Program, which includes a Sheltered Market for construction set asides on goods and services. Whereas, Columbia, South Carolina administers a SBE program without a sheltered market that provides opportunities to their local market only.

Finally, the programs identified as DBE in Table #3 are for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and control management and daily business operations. African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged. Other individuals can also qualify as socially and economically disadvantaged on a case-by-case basis. To be certified as a DBE, a firm must be a small business owned and controlled by socially and economically disadvantaged individuals. Certifiers make the determinations based upon on-site visits, personal interviews, reviews of licenses, stock ownership, equipment, bonding capacity, work completed, resume of principal owners and financial capacity. Federal law recognizes the USDOT to provide uniform criteria for certification, and establishes a ten percent goal at the national goal that is utilized as a tool in evaluating DBE opportunities to participate in DOT assisted contracts. The national ten percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent. In addition, when a DBE goal is established the contract must be awarded to only those who make good faith efforts to meet it. State and local transportation agencies that receive DOT financial assistance are required to establish goals for the participation of DBEs. Each DOT-assisted State and local transportation agency is required to establish annual DBE goals, and review the scopes of anticipated large prime contracts throughout the year and establish contract-specific DBE subcontracting goals. The overall goal for the Florida Department of Transportation's (FDOT) Disadvantaged Business Enterprise (DBE) program for FHWA assisted contracts and for FTA assisted contracts are established on a triennial basis. The overall goal for federal fiscal years 2015 -2017 has been set at 9.91% for Federal Highway Administration (FHWA) assisted contracts and 8.72% for Federal Transit Authority (FTA) assisted contracts.

As shown in Table #3, Atlanta, Broward, Charlotte, Miami-Dade, and St. Lucie operate DBE programs. It should be noted that these DBE programs are primarily utilized for airport and transportation related projects that often receive state and federal funding. The City of Tallahassee's DBE program is broader in the sense that it targets manufacturing, agriculture, state government, and educational facilities projects. While conducting a comparative analysis, staff inquired whether a program had transitioned from a race/gender specific to a race/gender neutral program. Miami Dade, Palm Beach, and St. Petersburg all indicated that their respective programs all transitioned to a race/gender neutral program. Both St. Petersburg (1999) and Palm Beach (2003) programs faced sunset provisions and transitioned into a SBE program whereas Miami Dade transitioned due to a lawsuit 10 years ago.

In addition to a traditional SBE program, Broward and Miami Dade County also utilize other local certification programs in order to increase participation of small businesses in projects as both prime contractors and subcontractors. Broward County utilizes a program referred to as County Business Enterprise (CBE) and has a cumulative goal of at least 25% participation by CBE certified firms in all County procurement contracts. All firms seeking CBE certification must have less than the maximum gross receipts (averaged over three years) of \$5 million, regardless of their industry, must be independent, have a continuing operation presence in Broward County for at one year prior, and have personal net worth under \$750,000. In Miami Dade County, Local Developing Business Program (LDB) is race/gender neutral for small businesses that have non-exclusive permits to provide general aeronautical services to commercial airlines and aircraft operators at Miami International Airport. The LDB program is designed to provide opportunities to businesses located and performing a commercially useful function in Miami-Dade County or be at least 51% owned by person(s) who reside in the County, cannot exceed a three year gross receipts of \$22.4 million, and possess required licenses to do business in the County. The certification must also be renewed annually.

III. Programmatic Options Regarding the County's MWSBE Program

This section discusses the options before the Board regarding the County's MWSBE Program including: A) maintaining a race/gender specific program and proceeding forward with the disparity study update, B) transitioning to a SBE or race gender neutral program or C) other options to consider such as a DBE program.

A. Disparity Study Update for the MWBE Program

The County must demonstrate a compelling governmental interest for minority and gender-based goals in order to comply with the U.S. Supreme Court's ruling in *City of Richmond v. J.A. Croson*. Disparities studies are performed to serve as the evidentiary basis for continued race/gender based programs and the goals must be narrowly tailored to remedy the effects of the prior discrimination. Currently, the County MWBE program operates under the recommendations made in the MGT October 15, 2009 Disparity Study Update, which includes statistical analysis of the differences between expenditures with MWBEs (utilization) and the proportionate share of qualified contractors within the market area which are qualified, willing and able to perform a particular service for the County and provides the legal basis for the program.

Following *Richmond v. Croson* and a similar Supreme Court ruling that applied to federal agencies in *Adarand v. Peña*, the U.S. Commission on Civil Rights issued a report in May 2006 (Disparity Studies as Evidence of Discrimination) recommending that localities discard disparity studies conducted using data that is more than five years old, as the “results are too outdated to justify preferential awards given today.” This guidance is utilized to withstand the legal challenges that may arise due to race/gender based programs that must satisfy strict scrutiny tests by showing a compelling governmental interest for maintaining such programs.

The findings and recommendations by the U.S. Commission on Civil Rights does not legally compel the County to perform a disparity study update but it will ensure that the County’s MWBE program is based on timely and legally sufficient market information. An updated study may also serve as a deterrent to unnecessary procurement litigation. In order to continue the MWBE program and minimize the threat of litigation, the Board may wish to conduct a quantitative disparity study that focuses on the factual data analysis associated with the program that is the basis for determining the aspirational targets by industry, which is included in the FY 2016 budget. The following narrative details the components of a quantitative disparity study, should the Board wish to continue with a race gender specific program.

Quantitative Disparity Study

A quantitative disparity study is statistically focused in nature and designed to establish or maintain the legal validity of an MWBE program. In September 2008, the Board directed staff to engage MGT of America to prepare an update to the County’s aspirational targets related to minority and women-owned businesses. The overall objective of the disparity study was to determine if data supports a “compelling interest” for the County to maintain a program to provide minority and women-owned business enterprises greater opportunities to participate in County procurement activities as goods and services providers. The study was based upon MGT’s review of the County’s contractual and procurement data for the period of October 1, 2004 through September 30, 2008. The final report was completed and presented to the Board on October 15, 2009 and is referred to as the 2009 Disparity Study Update.

The 2009 Disparity Study Update focused primarily on statistical analysis (utilization and availability, disparity, and private sector utilization and disparity analyses); and, included a legal and programmatic review. It was conducted for a total cost of \$110,000. The FY 2016 budget includes \$250,000 for a quantitative disparity study.

Considerations

If the Board wishes to continue with a race gender specific program, staff recommends moving forward with funding of a quantitative disparity study update. The FY 2016 Budget includes \$250,000 toward conducting a disparity study. This recommendation is based upon a 2006 U.S. Commission on Civil Rights report recommends that localities discard disparity studies conducted using data that is more than five years old. It must be noted, projects that receive state and federal funding the County’s aspirational targets are superseded for state and federal procurement policies as stated previously.

The City of Tallahassee has also included funding for a disparity study within its FY 2016 Budget. If the Board approves the proceeding with a quantitative disparity study, it may also wish to consider exploring collaboration efforts with the City of Tallahassee for a joint study.

The Board has funded a joint disparity previously. In 1994, a final report of a joint study was distributed to Leon County and Leon County Schools by MGT of America.

B. Small Business Enterprise (SBE) Program

Another option for the Board's consideration is transitioning from the MWSBE program to a race/gender neutral program or SBE program. As mentioned previously, the purpose of the County's SBE program is to foster growth in Leon County's economy by affording small businesses an opportunity to gain experience, knowledge, and training to compete and secure contracts. Unlike the MWBE Program, the SBE Program is race and gender neutral so it is not required to be supported by a disparity study. SBE programs offered by state and local governments focus on small businesses interested in maximizing their procurement opportunities with those governmental entities.

Previously, the Board contemplated transitioning to an SBE Program during the development of the FY 2012 budget (Attachment #6). The Board was presented with a report that contained information relative to the MWSBE Program, the differences between MWSBE goals and SBE goals, a listing of the few jurisdictions in the state that continue to use race and gender specific goals, and recommended policy revisions if the Board wished to transition to an SBE Program. While most urbanized Florida counties and cities offer race and gender neutral small business programs, very few jurisdictions have continued to utilize race and gender specific programs like the County's MWBE Program.

Ultimately, the Board accepted staff's report as presented. Should the Board choose to consider transitioning to an SBE-only program, staff will bring forth an agenda item analyzing components and best practices of SBE programs across the state as well as revisions to the SBE policy. In addition, the Board may wish to consider hiring a consultant to ensure the program functionality is consistent with SBE trends; and, to address the revisions to Policy 96-1, Purchasing and Minority, Women, and Small Business Enterprise Policy that will be necessary. However, if the Board wishes to continue with a race gender specific program, staff recommends that an agenda item be brought to the Board for consideration on policy enhancements to the County's SBE program.

C. Other Options for Consideration

As demonstrated in the Section II, several other programs are utilized by cities and counties to provide opportunities for minority, women-owned, and small businesses. Most notability is the federal and state disadvantaged business enterprise program.

As previously stated, a DBE Program is a race-conscious program in which DBEs are for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and control management and daily business operations. African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged. Other individuals can also qualify as socially and economically disadvantaged on a case-by-case basis. To be certified as a DBE, a firm must be a small business owned and controlled by socially and economically disadvantaged individuals. Certifiers make the determinations based upon on-site visits, personal interviews, reviews of licenses, stock ownership, equipment, bonding capacity, work completed, resume of principal owners and financial capacity.

It should be noted that a majority of DBE programs are primarily utilized for airport and transportation related projects that often receive state and federal funding. Leon County's MWBE Program only allows for certification (participation) of minorities and non-minority women. Should the Board choose to consider transitioning, staff recommends hiring a consultant to ensure the program functionality is consistent with DBE trends by examining best practices; and, to address the revisions to Policy 96-1, Purchasing and Minority, Women, and Small Business Enterprise Policy that will be necessary.

Conclusion

In summary, the County continues to demonstrate its support of the local business community, including the minority, women-owned, and small business owners interested in participating in the organization's procurement opportunities, through the MWSBE Division. Due to the importance that the Board places on supporting small business, organizational support is demonstrated throughout the County's 2015 Strategic Plan.

Should the Board wish to continue the race and gender specific program, then staff would recommend that the Board continue with the current MWBE program and proceed with issuing an RFP for a quantitative disparity study in coordination with the City (Options #1 & #2). Currently, the FY 2016 budget includes \$250,000 for this purpose; however, this amount could be less if it is determined that the County and the City can collaborate on a single disparity study for our community. The Board has the option to issue a RFP to conduct the disparity study or to waive the formal bid process and direct staff to come back with an Agreement with MGT of America for a disparity study update as it has done in the past. It must be noted, projects that receive state and federal funding the County's aspirational targets are superseded for state and federal procurement policies as stated previously. If the Board agrees to continue with the current County program, staff recommends that an agenda item be brought to the Board for consideration on policy enhancements to the County's SBE program.

Should the Board choose to consider transitioning to a race/gender neutral program or DBE program, the Board may wish to consider hiring a consultant to ensure the program functionality is consistent with SBE trends by examining best practices; and, to address the revisions to Policy 96-1, Purchasing and Minority, Women, and Small Business Enterprise Policy that will be necessary.

Options:

1. Authorize the County Administrator to issue a Request for Proposals to conduct the quantitative disparity study.
2. Authorize the County Administrator to initiate discussions with the City of Tallahassee to explore collaboration efforts on a single disparity study.
3. Direct staff to bring back an agenda item for the Board's consideration on policy enhancements to the County's SBE program.
4. Waive the formal bid process and bring back to the Board an agreement with MGT of America for the recommended disparity study.
5. Approve the transition to a race and gender neutral program and direct staff to bring back an agenda item to consider hiring a consultant to recommend SBE best practices, policy revisions, and to ensure that the program is consistent with current SBE trends.
6. Board direction.

Recommendation:

Options #1, #2, and #3.

Attachments:

1. Agenda Item: March 10, 2015 Status Report on FY 2013 and FY 2014 MWBE Program Expenditures Agenda Item #15
2. June 23, 2015 Budget Workshop Item: Consideration of Conducting a Disparity Study Update for the Minority, Women, and Small Business Enterprise Program
3. 2009 Disparity Study Update
4. Policy 96-1 Purchasing and Minority, Women and Small Business Enterprise Policy Adopted January 27, 2015
5. Agenda Item: January 21, 2014 Status Report on MWBE Expenditures and August 23, 2011 Status Report on MWBE Expenditures
6. MWSBE Program Certification Criteria
7. March 17, 2011 Budget Discussion Item #4

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Leon County

Board of County Commissioners

Cover Sheet for Agenda #15

March 10, 2015

To:	Honorable Chairman and Members of the Board
From:	Vincent S. Long, County Administrator
Title:	Acceptance of the Status Report on FY 2013 and FY 2014 Minority and Women-Owned Business Enterprise Program Expenditures

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County Administrator Review and Approval:	Vincent S. Long, County Administrator
Department/Division Review and Approval:	Alan Rosenzweig, Deputy County Administrator Ken Morris, Assistant County Administrator Cristina Paredes, Director of Economic Vitality
Lead Staff/ Project Team:	Shanea Wilks, Director of Minority, Women, & Small Business Enterprise

Fiscal Impact:

This item has no fiscal impact to the County.

Staff Recommendation:

Option #1: Accept the status report on FY 2013 and FY 2014 Minority and Women-Owned Business Enterprise (MWBE) Program expenditures (Attachments #1 and #2).

Report and Discussion**Background:**

This item provides a report on the County's FY 2013 and FY 2014 expenditures through the Minority and Women-Owned Business Enterprise (MWBE) Program. The following narrative provides a background on the 2009 MGT Disparity Study Update, which serves as a guiding document for the County's MWBE Program (Attachment #3).

The Disparity Study Update, prepared by MGT of America (the "MGT Study"), was accepted by the Board during its October 27, 2009 meeting, subsequent to its October 13, 2009 workshop regarding the draft report. The overall objective for the disparity study was to determine if data supported a "compelling interest" for the County to maintain a program to provide minority- and woman-owned business enterprises greater opportunities to participate in County procurement activities as goods and services providers.

To meet the requirements of the U.S. Supreme Courts rules in *City of Richmond v. J.A. Croson Co.*; narrow tailoring under the *Croson* standard requires that remedial goals be in line with measure availability. The Supreme Court in *Croson* recognized statistical measures of disparity that compared the number of qualified and available MWBEs with the rate of municipal construction dollars actually awarded to MWBEs in order to demonstrate disparity. MWBE programs must be limited in their geographical scope to the boundaries of the enacting government's market place. In order for the County to comply with the U.S. Supreme Court's ruling, the County must demonstrate a compelling governmental interest for minority and gender-based goals, which would include evidence of prior discrimination in the field/industry, and the goals must be narrowly tailored to remedy the effects of the prior discrimination.

The MGT Study states that, generally, utilization ratios of "80 percent or higher – indicating close to full participation – are not significant", noting the court referenced the Equal Employment Opportunity Commission's (EEOC) "80 percent rule", which establishes this rule as the threshold for determining a *prima facie* (at first look) case of discrimination. The MGT Study further noted there is no standard measurement to evaluate levels of utilization within a procurement context; however, in the context of employment discrimination, an employment disparity ratio below 80 percent indicates a "substantial disparity."

The MGT Disparity Study Update identified the number of available MWBEs within the market area, and categorized these firms by business category, race, and gender. Businesses classified as MWBEs were firms that were at least 51% owned and controlled by members of one of the following race/gender groups, whether or not they were county-certified MWBEs (African Americans, Hispanic Americans, Asian Americans, Native Americans, and Nonminority Women).

Based on statistical disparities between the percentage of funds expended with MWBEs in the market area and the number of available MWBEs, the MGT Study provided evidence to support a narrowly tailored program to promote the County's utilization of MWBEs. The 2009 Disparity Study Update included proposed MWBE aspirational targets, which the Board incorporated in Policy No. 96-1, "Purchasing and Minority/Women Business Enterprise Policy" (Attachment #4) and are illustrated in the analysis section under Table #1.

Analysis:

In accordance with the Purchasing and MWSBE Policy 96-1, the MWSBE Director evaluates relevant expenditures and contracting data to determine the performance and progress of the MWBE Program. This report conveys the expenditure evaluation, performed by the Director, to determine the amount of minority, women and non-MWBE businesses participation that exists in the County's procurement processes when aspirational targets are present and when aspirational targets are absent. As prescribed in the recommendations by MGT of America, aspirational targets should vary by project and reflect realistic MWBE availability.

Targets are established by procurement category, rather than population, to remedy the areas of underutilization and substantial underutilization among MWBE businesses in order to reflect the market. When aspirational targets are present in solicitations, staff encourages prime contractors/consultants to utilize MWBE businesses in order for the County to become closer to parity levels as recommended by MGT of America. The use of aspirational targets promotes relationship development between larger (primes) and smaller (subcontractors) businesses in the local market area (Leon, Gadsden, Jefferson, and Wakulla Counties); therefore, providing mentoring opportunities for smaller companies to be afforded an opportunity to enhance their business practices. Table #1 illustrates the County's MWBE Aspirational Targets based on the 2009 Disparity Study Update:

Table #1: Aspirational Targets – Policy No. 96-1

Procurement Category	Aspirational MBE Target	Aspirational WBE Target
Construction Prime Contractors	8%	5%
Construction Subcontractors	17%	9%
Architecture & Engineering	12%	14%
Professional Services	7%	15%
Other Services	10%	8%
Materials and Supplies	1%	6%

Aspirational targets are considered to be the minimum level of MWBE participation expected for a particular procurement/project with consideration given to subcontracting opportunities and the availability of MWBEs in the market area that are capable of performing the work. Aspirational targets for individual bids/request for proposals (RFPs) may be higher or lower than the participation level identified in Table #1 depending upon scope of work, which allows staff to identify the associated procurement category and the number of certified firms within the market area available to perform the services identified. Non-certified firms (MWBE and non-MWBE) do not count towards participation.

If the recommended aspirational targets for an individual solicitation are lower than the applicable participation levels identified in Table #1, the County Administrator is notified of the recommended modified aspirational targets and reasoning for such recommendations.

The County Administrator then advises the Board, via email, and Commissioners have five business days to request a delay for the issuance of the bid/RFP and an agenda item regarding the recommended aspirational targets. This request for delay and further discussion can be effectuated by an individual Commissioner. If no Commissioner requests an agenda item within the five business days, staff is authorized to release the bid/RFP.

During the last two fiscal years, five requests, out of 118 solicitations, were made by staff and subsequently released after the five-day period to lower the recommended aspirational targets due to the specialized nature of the work and vendor availability.

MWBE Expenditure Analysis

The expenditure evaluation process involves data being extracted from the County's financial system and processed in a manner consistent with the methodology utilized for the MGT Study; records not relevant to the report were excluded. Examples of expenditure activity excluded from the analysis includes: expenditures outside of the market area (Leon, Gadsden, Jefferson and Wakulla Counties), expenditures with nonprofit agencies, associations or councils, governmental entities, including universities, utilities, telephones, gasoline, p-cards, real estate, office rent, postage, and hospitals; travel-related expenses, including hotels, car rental, and conference fees and grants to various entities.

The following are brief summaries for each procurement category:

Architecture and Engineering (A&E) Prime Consultants: The activities associated with this category are professional services provided for the proper planning of special elements, and for ensuring an adequate response to the various site, civil, structural, mechanical, plumbing, and electrical requirements for the current building codes. Projects under A&E are distributed on an equitable basis to provide all firms with a reasonable opportunity for work assignments based on their area of expertise identified by the awarded firm.

Construction Prime Contractors: MWBE vendors must be the prime contractor submitting the actual bid to the County or be part of a joint venture, in order for the associated expenditures to apply to this category. Historically, staff has utilized Small Business Enterprise (SBE) vendors for small construction-related projects, which included housing rehabilitation, housing replacements, septic tank repair, and other small construction projects through the SBE Program (Attachment #5). Staff is continually seeking to identify opportunities for MWBE vendors to participate as prime contractors.

Construction Subcontractors: Construction subcontracting opportunities are achieved through solicitation when aspirational targets are present. Due to the presence of these aspirational targets and the implementation of the B2GNow Contract Compliance Monitoring System, staff continues to see strong MWBE subcontracting participation. Historically, the majority of MWBE participation has been realized through the Construction Subcontracting category. This category has provided project participation experience to certified MWBE vendors. However, project management experience is essential to strengthening the Construction Prime Category and the bonding capacity of MWBE vendors.

Materials and Supplies: The commodities purchased under this category (i.e. office supplies, equipment, miscellaneous building materials, and computers) are mainly based on the necessity of the departmental operating needs. Due to the types of services provided under this category, opportunities can be limited for MWBE vendors.

Other Services: Include services such as janitorial and repair services, uniform guard services etc. As noted in the tables below, the County exceeded the aspirational targets in this category.

Professional Services Prime Consultants: Include services such as auditing services, insurance services, legal services, advertising, and surveying. Based upon the nature of Professional Services contracts and the specificity of this category, staff continues to reach out to local agencies in order to identify additional firms in order to increase MWBE participation.

FY 2013 Minority and Women-Owned Business Expenditures

The following narrative is the analysis of FY 2013 Board expenditures with MWBEs. The reported expenditure activity is a combination of expenditures from the County's Annual Operating Budget and Capital Improvement Program. The MWBE FY 2013 MWBE expenditures are associated with the following County projects or services:

- Stormwater, drainage, and sewer projects including:
 - Apalachee Regional Park Ball Fields Water Mitigation
 - Killearn Lakes Drainage Phase 1B
 - Edinburg Estates Drainage Improvements
 - Lafayette Street Phase II, Stormwater Improvements
 - Miscellaneous stormwater maintenance and eco-restoration projects
- Community park improvements in the Chaires and Miccosukee communities.
- Sidewalk construction and improvements - continuing services.

- Miscellaneous projects involving building renovations, roof repairs, parking lot improvements; and elevator repairs and upgrades at various County facilities.
- Janitorial, printing, real estate, and other miscellaneous services.

Table #2 provides the FY 2013 MBE Expenditures within the County's Operating Budget and Capital Improvement Program (CIP).

Table #2: FY 2013 Minority Business Enterprise (MBE) Expenditures

Category	FY 2013 MBE Expenditures by Category	FY 2013 Total Expenditures by Category	FY 2013 MBE Expenditure % by Category	Aspirational Target %
Architecture & Engineering	\$291,192	\$1,753,149	16.6%	12%
Construction Prime Contractors	\$155,805	\$10,530,157	1.5%	8%
Construction Reported Subcontractors	\$961,213	\$1,595,106	60.3%	17%
Materials and Supplies	\$9,029	\$2,523,455	.4%	1%
Other Services	\$605,024	\$3,039,347	19.9%	10%
Professional Services	\$18,926	\$646,486	2.9%	7%
Total	\$2,041,189	\$20,087,700	10.2%	N/A

Table #3 provides the WBE Expenditures for FY 2013 within the Board's Operating Budget and Capital Improvement Program (CIP).

Table #3: FY 2013 Women Business Enterprise (WBE) Expenditures

Category	FY 2013 WBE Expenditures by Category	FY 2013 Total Expenditures by Category	FY 2013 WBE Expenditure % by Category	Aspirational Target %
Architecture & Engineering	\$73,083	\$1,753,149	4.2%	14%
Construction Prime Contractors	\$793,745	\$10,530,157	7.5%	5%
Construction Reported Subcontractors	\$578,402	\$1,595,106	36.3%	9%
Materials and Supplies	\$455,144	\$2,523,455	18.0%	6%
Other Services	\$496,969	\$3,039,347	16.4%	8%
Professional Services	\$44,184	\$646,486	6.8%	15%
Total	\$2,441,527	\$20,087,700	12.2%	N/A

During FY 2013, MWBE expenditures continued to be strong in several categories and the combined aggregate amounts of MWBE expenditures were \$4,482,716 or an estimated 22.4%. It is important to note that these expenditures discussed above do not include

MWBE Expenditures associated with the Public Safety Complex, which is explained in the following section. While the County continues to be strong in several categories, historical trend of limited opportunities continues in certain expenditure categories, which is discussed in further detail:

- *MBE Expenditures:* For the category of MBE prime contractor, most procurement opportunities and the associated project size requires bonding, insurance, and experience that are historically found among larger sized companies the majority of the certified MBEs are small businesses with limited resources. As mentioned in the description of procurement categories, the opportunities for MBE vendors can be limited in the Materials and Supplies category due to the fact that commodities purchased under this category are mainly based on the necessity of departmental operating needs (i.e. office supplies, computers, and miscellaneous building materials). Professional Services opportunities are limited, even though staff has been able to identify firms in the areas of accounting and auditing, consulting, and legal services. Professional Services opportunities are often associated with continuing services agreements, which historically impact opportunities on an annual basis because of automatic renewal of agreements.
- *WBE Expenditures:* Opportunities are limited within the Architecture & Engineering category due to the small number of certified firms available. Departmental projects, requiring these services, are distributed on an equitable basis to provide all firms a reasonable opportunity based upon a firm's expertise. As stated above, continuing services agreements historically have impacted the Professional Services category because of the automatic renewal of agreements.

Public Safety Complex: MWBE Expenditures

The construction of the Public Safety Complex was accomplished through a joint agreement between Leon County and the City of Tallahassee. The total project budget was \$47.5 million with roughly \$30 million invested in construction and \$7 million in information technology. The remaining dollars were spent on engineering design, furnishings, etc. Approximately 86% of construction dollars were kept in the local economy and more than 25% of the project was completed by certified Minority-Owned Business Enterprises or Women-Owned Business Enterprises.

In order to realize a cost savings on the project, the City and the County purchased the materials associated with the project. These expenditures are not reflected in the FY 2013 MBE Expenditure table or the FY 2013 WBE Expenditure tables, due to these expenditures being associated with cash payments and the purchase of materials. The joint venture of Ajax Construction and Construction Support Southeast were hired for Construction Management Services; and, MBE and WBE participation was included within the project at 17% and 9% respectively. Expenditures are reported based upon an aggregate total of labor plus cash to provide the composite MWBE expenditures and participation percentages.

During FY 2012, there was \$1,659,276 in total subcontractor reported payment activity for the project. The reported MBE total expenditures for labor and materials are estimated as \$364,079 or 22%. The reported WBE total expenditures for labor and materials are estimated as \$151,342 or 9%. The total MWBE expenditure amount for FY 2012 is \$515,421 or approximately 31%.

During FY 2013, the majority of the project was completed. The reported MBE total expenditures for labor and materials are estimated as \$4,705,888 or 16%. The reported WBE total expenditures for labor and materials are estimated as \$2,913,550 or 10%. The total Non-Minority Male Expenditures (Prime and Reported Subcontractor categories) are estimated as \$8,621,814 or 29%. This amount is inclusive of an estimated \$2,255,262 in payments to the Prime Contractor and Reported Construction Subcontractor payments of \$6,366,552.

The project was completed at the estimated Guaranteed Maximum Price (GMP) of \$29,994,543. The aggregate MWBE expenditures for the project are an estimated \$8,134,859 or approximately 27%; and the aggregate Non-Minority Male Expenditures for the project are estimated as \$10,439,429 or 35%. The balance of the expenditures associated with the project are comprised of miscellaneous expenditures for materials, supplies, and adjustments within the project. As mentioned above, expenditures associated with the project are not reflected in the FY 2013 MWBE Report of Expenditures.

FY 2014 Minority and Women-Owned Business Expenditures

The following narrative is the analysis of FY 2014 Board expenditures with MWBEs. The reported expenditure activity is a combination of expenditures from the County's Annual Operating Budget and Capital Improvement Program. The MWBE for FY 2014 expenditures are associated with the following County projects or services:

- Stormwater, drainage, and sewer projects including:
 - Louvinia Drive/Portsmouth Circle Drainage Improvements
 - Killearn Lakes Unit 3 Drainage Improvements
 - Deer Lane Drain age Improvements
- Building and Roof Improvements including:
 - Bank of America
 - Fred George Greenway Museum and Nature Center
 - Lake Jackson Town Center
 - Leon County Jail Renovations
- Road resurfacing and stabilization - continuing services
- Miscellaneous projects involving minor repairs and painting at various County facilities.
- Janitorial, printing, real estate, and other miscellaneous services

Table #4 provides the MBE expenditures associated with projects included within Leon County's Operating Budget and Capital Improvement Program.

Table #4: FY 2014 Minority Business Enterprise (MBE) Expenditures

Category	FY 2014 MBE Expenditures by Category	FY 2014 Total Expenditures by Category	FY 2014 MBE Expenditure % by Category	Aspirational Target %
Architecture & Engineering	\$93,859	\$1,169,416	8.0%	12%
Construction Prime Contractors	\$76,357	\$10,132,618	0.8%	8%
Construction Reported Subcontractors	\$1,014,634	\$2,452,910	41.4%	17%
Materials and Supplies	\$0	\$453,269	0%	1%
Other Services	\$703,442	\$2,495,129	28.2%	10%
Professional Services	\$16,388	413,107	4.0%	7%
Total	\$1,904,680	\$17,116,449	11.1%	N/A

Table #5 provides the WBE expenditures associated with projects included within Leon County's Operating Budget and Capital Improvement Program.

Table #5: FY 2014 Women Business Enterprise (WBE) Expenditures

Category	FY 2014 WBE Expenditures by Category	FY 2014 Total Expenditures by Category	FY 2014 WBE Expenditure % by Category	Aspirational Target %
Architecture & Engineering	\$0	\$1,169,416	0.0%	14%
Construction Prime Contractors	\$225,603	\$10,132,618	2.2%	5%
Construction Reported Subcontractors	\$660,678	\$2,452,910	26.9%	9%
Materials and Supplies	\$145,006	\$453,269	31.9%	6%
Other Services	\$586,639	\$2,495,129	23.5%	8%
Professional Services	\$3,956	413,107	1.0%	15%
Total	\$1,621,882	\$17,116,449	9.5%	N/A

During FY 2014, MWBE expenditures continued to be strong in several categories and the combined aggregate amounts of MWBE expenditures were \$3,526,562 or 20.6%. A total of five MWBE expenditure categories met and/or exceeded the aspirational target; however, the historical trend of limited opportunities continues in certain expenditure categories, which is discussed in further detail below:

- *MBE Expenditures*: MBE expenditures will be impacted on an annual basis, in part, due to the A& E Continuing Services Agreement, which allows for the distribution of projects on an equitable basis to provide all firms a reasonable opportunity based upon

their expertise. There was only one certified MBE included within the County's A&E Agreement during FY 2014. For the category of MBE prime contractor, most procurement opportunities and the associated project size requires bonding, insurance, and experience that are historically found among larger sized companies the majority of the certified MBEs are small businesses with limited resources. As mentioned in the description of procurement categories, the opportunities for MBE vendors can be limited in the Materials and Supplies category due to the fact that commodities purchased under this category are mainly based on the necessity of departmental operating needs (i.e. office supplies, computers, and miscellaneous building materials). Professional Services opportunities are limited, even though staff has been able to identify firms in the areas of accounting and auditing, consulting, and legal services. Professional Services opportunities are often associated with continuing services agreements, which historically impact opportunities on an annual basis because of automatic renewal of agreements.

- *WBE Expenditures*: Opportunities are limited within the Architecture & Engineering category due to the small number of certified firms available. Departmental projects, requiring these services, are distributed on an equitable basis to provide all firms a reasonable opportunity based upon a firm's expertise. As stated above, continuing services agreements historically have impacted the Professional Services category because of the automatic renewal of agreements.

Disparity Study Update

Disparities studies are performed to serve as the evidentiary basis for continued race/gender based programs. In September 2008, the Board directed staff to engage MGT of America (MGT) to prepare an update to the County's aspirational targets related to minority and women-owned businesses. The overall objective of the disparity study was to determine if data supports a "compelling interest" for the County to maintain a program to provide minority and women-owned business enterprises greater opportunities to participate in County procurement activities as goods and services providers. This report was completed and presented to the Board on October 15, 2009.

Currently, the County M/WSBE program operates under the recommendations made in the MGT October 15, 2009 Disparity Study Update, which includes statistical analysis of the differences between expenditures with MWBEs (utilization) and the proportionate share of qualified contractors within the market area which are qualified, willing and able to perform a particular service for the County and provides the legal basis for the program. A May 2006, U.S. Commission on Civil Rights report recommends that localities discard disparity studies conducted using data that is more than five years old, as the "results are too outdated to justify preferential awards given today." Staff anticipates bringing forth a budget discussion item during the development of the FY 2016 budget to provide recommendations to the Board regarding a new disparity study and the MWSBE program. In the meantime, staff is working with the MWSBE Citizens Advisory Committee on revisions to the Purchasing and Minority, Women and Small Business Enterprise Policy (Policy 96-1), which will be included in the FY 2016 budget discussion item for the Board's consideration.

Conclusion

For the past two fiscal years, the County continues to meet or exceed the aspirational targets in a number of categories; in particular, the Aspirational Target for the Construction Subcontracting category has been greatly exceeded (\$1.97 million or 34%). The 2009 Disparity Study Update states that two narrowly tailored goal-setting features of an MWBE Program includes the reduction of the use of MWBE contract goals if the County determines that its goal is being exceeded and the reduction of contract goals for the following year, if the County exceeds MWBE goals with contract goals for two years. Staff is not recommending Board action at this time relative to the reduction of contract goals. However, staff will continue to promote M/WSBE utilization to ensure the County comes closer to attaining parity levels in those categories where the aspirational targets have not been met; and, as recommend by MGT, through the Small Business Enterprise Program where applicable.

Staff will continue to seek opportunities to strengthen participation within County projects for minority-owned and women-owned businesses by continuing to develop partnerships to help improve MW/SBE's business operations to increase success in procurement opportunities. This includes seeking partnerships with organizations that can aid in the provision of business development assistance and training in areas based upon MW/SBE vendor interest. In addition, staff will continuing to provide networking opportunities for MW/SBEs to develop new business relationships through co-sponsorship of the annual local observations of Small Business Week and the local observation of Minority Enterprise Development (MED) Week events. Finally, staff will continue to notify certified MWBE firms of the County's procurement opportunities.

Options:

1. Accept the status report on FY 2013 and FY 2014 Minority and Women-Owned Business Enterprise (MWBE) Program expenditures.
2. Do not accept the status report on FY 2013 and FY 2014 Minority and Women-Owned Business Enterprise (MWBE) Program expenditures.
3. Board direction.

Recommendation:

Option #1.

Attachments:

1. [FY 2013 Report of MWBE Expenditures](#)

2. [FY 2014 Report of MWBE Expenditures](#)
3. [2009 Disparity Study Update](#)
4. [Policy No. 96-1: Purchasing and Minority/Women Business Enterprise Policy](#)
5. [Small Business Enterprise Program](#)

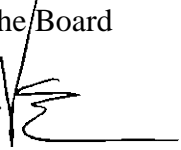
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Leon County Board of County Commissioners

Budget Workshop Item #9

June 23, 2015

To: Honorable Chairman and Members of the Board

From: Vincent S. Long, County Administrator 

Title: Consideration of Conducting a Disparity Study Update for the Minority, Women, and Small Business Enterprise (MWSBE) Program

County Administrator Review and Approval:	Vincent S. Long, County Administrator
Department/ Division Review:	Alan Rosenzweig, Deputy County Administrator Ken Morris, Assistant County Administrator Scott Ross, Director, Office of Financial Stewardship
Lead Staff/ Project Team:	Cristina Paredes, Director of the Office of Economic Vitality Shanea Wilks, Director, Minority, Women, and Small Business Enterprise Division

Fiscal Impact:

This item has been budgeted within the FY 2016 Tentative Budget in the amount of \$250,000.

Staff Recommendation:

Option #1: Approve \$250,000 for a quantitative disparity study for the MWSBE Program.

Option #2: Direct staff to issue a Request for Proposals to conduct the quantitative disparity study.

Report and Discussion

Background:

The 2009 Disparity Study Update, prepared by MGT of America (the “MGT Study”), was accepted by the Board during its October 27, 2009 meeting, subsequent to its October 13, 2009 workshop regarding the draft report (Attachment #1). Disparities studies are performed to serve as the evidentiary basis for continued race/gender based programs. The overall objective for the disparity study update in 2009 was to determine if data supported a “compelling interest” for the County to maintain a program to provide minority- and woman-owned business enterprises greater opportunities to participate in County procurement activities as goods and services providers.

To meet the requirements of the U.S. Supreme Court’s ruling in *City of Richmond v. J.A. Croson Co.*; narrow tailoring under the *Croson* standard requires that remedial goals be in line with measure availability. The Supreme Court in *Croson* recognized statistical measures of disparity that compared the number of qualified and available MWBEs with the rate of municipal construction dollars actually awarded to MWBEs in order to demonstrate disparity. MWBE programs must be limited in their geographical scope to the boundaries of the enacting government’s market place. In order for the County to comply with the U.S. Supreme Court’s ruling, the County must demonstrate a compelling governmental interest for minority and gender-based goals, which would include evidence of prior discrimination in the field/industry, and the goals must be narrowly tailored to remedy the effects of the prior discrimination.

The MGT Study states that, generally, utilization ratios of “80 percent or higher – indicating close to full participation – are not significant”, noting the court referenced the Equal Employment Opportunity Commission’s (EEOC) “80 percent rule”, which establishes this rule as the threshold for determining a prima facie (at first look) case of discrimination. The MGT Study further noted there is no standard measurement to evaluate levels of utilization within a procurement context; however, in the context of employment discrimination, an employment disparity ratio below 80 percent indicates a “substantial disparity.”

The 2009 MGT Disparity Study Update identified the number of available MWBEs within the market area, and categorized these firms by business category, race, and gender. Businesses classified as MWBEs were firms that were at least 51% owned and controlled by members of one of the following race/gender groups, whether or not they were county-certified MWBEs (African Americans, Hispanic Americans, Asian Americans, Native Americans, and Nonminority Women).

Based on statistical disparities between the percentage of funds expended with MWBEs in the market area and the number of available MWBEs, the MGT Study provided evidence to support a narrowly tailored program to promote the County’s utilization of MWBEs. The 2009 Disparity Study Update included proposed MWBE aspirational targets, which the Board incorporated in Policy No. 96-1, “Purchasing and Minority/Women Business Enterprise Policy” (Attachment #2).

This budget discussion item is essential to the Strategic Initiatives that the Board approved during its January 27, 2015 meeting, as a part of 2012 – 2016 Strategic Plan:

- **(EC2)** - Support business expansion and job creation, including: the implementation of the Leon County 2012 Job Creation Action Plan, to include evaluating the small business credit program. (2012)
- **(EC7)** - Promote the local economy by protecting jobs and identifying local purchasing, contracting and hiring opportunities. (2013)
- **(G1)** - Sustain a culture of transparency, accessibility, accountability, civility, and the highest standards of public service. (rev. 2013)
- **(G2)** – Sustain a culture of performance, and deliver effective efficient services that exceed expectations and demonstrate value.
- **(G3)** – Sustain a culture that respects, engages, and empowers citizens in important decisions facing the community. (2012)
- **(G5)** – Exercise responsible stewardship of County resources, sound financial management, and ensure that the provision of services and community enhancements are done in a fair and equitable manner.

Analysis:

This budget discussion item seeks Board direction on the future of the Minority, Women, and Small Business Enterprise Programs. During the March 10, 2015 meeting, staff presented the Board with a status report of Minority and Women-Owned Business Enterprise Expenditures. Within the report, staff indicated a budget discussion item would be brought forth during the development of the FY 2016 budget. In addition, the Board would be provided with options relative to a new disparity study update to the one presented in 2009 by MGT of America and County staff.

The remainder of the analysis section addresses the following:

- An overview of the County's MWSBE Program
- Disparity Studies
- Small Business Enterprise Program

Leon County's Minority, Women, and Small Business Enterprise Program

Currently, Leon County operates the Minority and Women-Owned Business Enterprise (MWBE) and Small Business Enterprise (SBE) Programs through the MWSBE Division. Both programs have certification processes which, if successfully completed, allow for certified vendors to participate within the County's procurement opportunities. Both are currently administered based upon the 2009 MGT Disparity Study, which is the latest study to review the MWSBE Program.

Minority/Women Business Enterprise (MWBE) Program

The County adopted an MWBE policy in 1987. The program has been successful in providing opportunities for minority/women owned businesses to secure business with the County that may not have occurred without the program. Through certification, training and outreach, the program continues to have a positive impact on the targeted community.

Leon County's MWBE Program is a race/gender specific program whereby utilization of certified minority and women owned businesses is achieved through the identification of procurement opportunities for MWBEs within Leon County projects. The MWBE Program's

overall objective is to promote parity of MWBE firms in Leon County procurement activities through the utilization of aspirational targets and other means.

While co-located with the Purchasing Division, the MWSBE Division operates separately based upon the recommendation of the 2000 Disparity Study, an earlier study conducted by MGT of America. The Study also commended the County for elevating the MWBE Program to division level to improve the internal and external perception of the County's commitment to the Program's success; and for the co-location of the Divisions facilitating greater interaction and creating synergies of operations. The MWSBE Program is composed of two, separate program areas:

1. The MWBE component focuses on firms owned and operated by minorities and women; and,
2. The SBE component focuses on businesses that meet the small business criteria in terms of their size and net worth, regardless of the owner's gender or ethnicity.

In addition, the County and the City of Tallahassee share an Interlocal Agreement which encourages full participation by local MWBE's in the County's procurement processes and fosters more economic development throughout the community. The Agreement enables the County and the City to streamline the certification process for the MWBE applicants in the local market area, which consists of: Leon, Gadsden, Jefferson, and Wakulla counties. Leon County and the City MWBE Offices act as a one-stop shop, thus eliminating the need for multiple certifications. In addition, both jurisdictions mutually recognize the certifications of the other for the purposes of procurement opportunities. The current Agreement was approved by the Board on February 9, 2010.

Leon County's Small Business Enterprise (SBE) Program

During June 2006, the Board approved the establishment of the Small Business Enterprise (SBE) Program. The County currently operates a limited SBE Program. The purpose of the SBE Program is foster growth in Leon County's economy by affording small businesses an opportunity to gain experience, knowledge, and training to compete and secure contracts with Leon County. Unlike the MWBE Program, the SBE Program is race and gender neutral. The SBE Program is structured to reserve procurement opportunities for exclusive competition among SBE's when at least three SBE's are certified in the relevant procurement category and are available to compete for the procurement opportunity. According to County policy, the projects that are released through the SBE program have an estimated contract cost of less than \$100,000 (which varies across the business categories). Attachment #3 lists the criteria for procurement opportunities for SBE projects. A project cannot be recommended for the SBE Program if these criteria are not met. These requirements allow local certified businesses an opportunity to compete with companies of similar size, capacity, and net worth.

Policy Coordination with the City of Tallahassee's SBE Policy

County MWSBE staff and City of Tallahassee staff meet periodically to discuss policy changes and potential impacts to programs administered by both jurisdictions based upon the current executed Interlocal Agreement. The City of Tallahassee made several policy changes in January 2014; however, not all changes have been implemented to date, including a new City SBE Program. County and City staff continue to meet to ensure, as much as possible, continuity, and

consistency exists between the two programs. These meetings will include discussion relative to the City's SBE Program, its implementation, and inclusion within the Interlocal Agreement.

Disparity Study Update for the MWSBE Program

As previously stated, the County must demonstrate a compelling governmental interest for minority and gender-based goals in order to comply with the U.S. Supreme Court's ruling in *City of Richmond v. J.A. Croson*. Disparities studies are performed to serve as the evidentiary basis for continued race/gender based programs and the goals must be narrowly tailored to remedy the effects of the prior discrimination. Currently, the County MWSBE program operates under the recommendations made in the MGT October 15, 2009 Disparity Study Update, which includes statistical analysis of the differences between expenditures with MWBEs (utilization) and the proportionate share of qualified contractors within the market area which are qualified, willing and able to perform a particular service for the County and provides the legal basis for the program. Following *Richmond v. Croson* and a similar Supreme Court ruling that applied to federal agencies in *Adarand v. Peña*, **the U.S. Commission on Civil Rights issued a report in May 2006 (Disparity Studies as Evidence of Discrimination) recommending that localities discard disparity studies conducted using data that is more than five years old, as the "results are too outdated to justify preferential awards given today." This guidance is utilized to withstand the legal challenges that may arise due to race/gender based programs that must satisfy strict scrutiny tests by showing a compelling governmental interest for maintaining such programs.**

The findings and recommendations by the U.S. Commission on Civil Rights does not legally compel the County to perform a disparity study update but it will ensure that the County's MWBE program is based on timely and legally sufficient market information. An updated study may also serve as a deterrent to unnecessary procurement litigation. In order to continue the MWBE program and minimize the threat of litigation, the Board may wish to conduct a quantitative disparity study that focuses on the factual data analysis associated with the program which is the basis for determining the aspirational targets by industry. The following narrative details the components of a quantitative disparity study recommended for the continuance of the MWBE Program.

Quantitative Disparity Study

A quantitative disparity study is statistically focused in nature and designed to establish or maintain the legal validity of an MWBE program. In September 2008, the Board directed staff to engage MGT of America to prepare an update to the County's aspirational targets related to minority and women-owned businesses. The overall objective of the disparity study was to determine if data supports a "compelling interest" for the County to maintain a program to provide minority and women-owned business enterprises greater opportunities to participate in

County procurement activities as goods and services providers. The study was based upon MGT's review of the County's contractual and procurement data for the period of October 1, 2004 through September 30, 2008. The final report was completed and presented to the Board on October 15, 2009 and is referred to as the 2009 Disparity Study Update.

The 2009 Disparity Study Update focused primarily on statistical analysis (utilization and availability, disparity, and private sector utilization and disparity analyses); and, included a legal and programmatic review. It was conducted for a total cost of \$110,000. The current estimated costs associated with a quantitative disparity study ranges from \$250,000 to \$300,000.

Considerations for Next Steps:

As mentioned previously, a 2006 U.S. Commission on Civil Rights report recommends that localities discard disparity studies conducted using data that is more than five years old. Based upon this recommendation and the concern for unnecessary litigation, the Board may wish to consider moving forward with funding of a quantitative disparity study update. The tentative FY 2016 budget includes \$250,000 toward conducting a disparity study. A quantitative disparity study update is estimated to cost between \$250,000 and \$300,000.

Small Business Enterprise (SBE) Program

Another option for the Board's consideration is transitioning from the MWSBE program to an SBE program. As mentioned previously, the purpose of the County's SBE program is to foster growth in Leon County's economy by affording small businesses an opportunity to gain experience, knowledge, and training to compete and secure contracts. Unlike the MWBE Program, the SBE Program is race and gender neutral so it is not required to be supported by a disparity study. SBE programs offered by state and local governments focus on small businesses interested in maximizing their procurement opportunities with those governmental entities.

Previously, the Board contemplated transitioning to an SBE Program during the development of the FY 2012 budget (Attachment #4). The Board was presented with a report that contained information relative to the MWSBE Program, the differences between MWSBE goals and SBE goals, a listing of the few jurisdictions in the state that continue to use race and gender specific goals, and recommended policy revisions if the Board wished to transition to an SBE Program. While most urbanized Florida counties and cities offer race and gender neutral small business programs, very few jurisdictions have continued to utilize gender specific programs like the County's MWBE Program. Below is a listing of Florida local governments that still have race and gender specific programs similar to Leon County:

- Hillsborough County
- City of Hollywood
- City of Tallahassee
- City of Tampa
- Orange County
- Osceola County
- City of Orlando
- Polk County
- City of Jacksonville

Ultimately, the Board accepted staff's report as presented; and, directed staff to continue to review the SBE Program and its policies to increase small business participation. Should the Board choose to consider transitioning to an SBE-only program; staff will bring forth an agenda item analyzing components and best practices of SBE programs across the state as well as revisions to the SBE policy. In addition, the Board may wish to consider hiring a consultant to ensure the program functionality is consistent with SBE trends; and, to address the revisions to Policy 96-1, Purchasing and Minority, Women, and Small Business Enterprise Policy that will be necessary.

Conclusion

In summary, the County continues to demonstrate its support of the local business community, including the minority, women-owned, and small business owners interested in participating in the organization's procurement opportunities, through the MWSBE Division. Due to the importance that the Board places on supporting small business, organizational support is demonstrated throughout the County's 2015 Strategic Plan. If the Board chooses to proceed with an update to the 2009 Disparity Study, staff would then recommend engaging in a quantitative disparity study, estimated to cost \$250,000 to \$300,000. Historically, MGT of America has conducted disparity studies for the County. The Board has the option to issue a Request for Proposals (RFP) to conduct the disparity study or to waive the formal bid process and direct staff come back with an Agreement with MGT of America for a disparity study update as it has done in the past. Should the Board wish to continue the MWBE program and ensure its legal validity, staff recommends issuing an RFP for a quantitative disparity study update (Options #1 & #2).

Should the Board choose to consider transitioning to an SBE-only program, the Board may wish to consider hiring a consultant to ensure the program functionality is consistent with SBE trends by examining best practices; and, to address the revisions to Policy 96-1, Purchasing and Minority, Women, and Small Business Enterprise Policy that will be necessary.

Options:

1. Approve \$250,000 for a quantitative disparity study for the MWSBE Program.
2. Direct staff to issue a Request for Proposals to conduct the quantitative disparity study.
3. Waive the formal bid process and bring back to the Board an agreement with MGT of America for the recommended disparity study.
4. Approve the transition to an SBE-only program and direct staff to bring back an agenda item to consider hiring a consultant to recommend SBE best practices, policy revisions, and to ensure that the program is consistent with current SBE trends.
5. Board Direction.

Recommendation:

Options #1 and #2 are included in the tentative FY2016 budget.

Attachments:

1. 2009 Disparity Study Update
2. Purchasing and Minority, Women and Small Business Enterprise Policy (Policy 96-1)
3. SBE Program Overview
4. Budget Discussion Item #4, March 17, 2011 Budget Hearings

Final Report

Leon County
Board of County
Commissioners

Disparity Update Study



October 15, 2009



*Leon County Board of County
Commissioners*

Disparity Update Study

FINAL REPORT

Submitted to:
Mr. Parwez Alam
County Administrator
County Administrator's Office
Leon County Courthouse
Tallahassee, Florida 32301



2123 Centre Pointe Boulevard
Tallahassee, Florida 32308-4930
(850) 386-3191

October 15, 2009

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1.0 INTRODUCTION

1.0 INTRODUCTION

In October 2008, the Board of Commissioners for Leon County, Florida (County) contracted MGT of America, Inc. (MGT), to conduct a minority- and woman-owned business enterprise (M/WBE) program study update. The study consisted of fact finding to determine whether the M/WBE program had eliminated active discrimination; to determine the effects of past discrimination in County procurement and contracting, and to what extent; and to evaluate various options for future program development if discrimination existed.

1.1 Objective

The purpose of the disparity study was to:

- Examine what, if any, barriers may have resulted in disparities in the utilization of available M/WBEs and non-M/W/Bes, and examine and summarize related findings from other similar studies that encompass the County's relevant marketplace.
- Identify from the most accurate sources the availability of M/WBEs that are ready, willing, and able to do business with the County in the relevant market area.
- Analyze the contracting and expenditure data of the County to determine its utilization of M/WBEs.
- Determine the extent to which any identified disparities in the utilization of available M/WBEs by the County might be impacted by discrimination.
- Recommend programs to remedy the effects of any discrimination identified, and to reduce or eliminate any other marketplace barriers that adversely affect the contract participation of such minority-, woman-, and small-business enterprises (M/W/SBEs) and non-M/W/SBEs.

Governmental entities like the County have authorized disparity studies in response to the *City of Richmond v. J. A. Croson Co.*¹ (*Croson*) decision to determine whether there is a compelling interest for remedial procurement programs. Recommendations resulting from such studies are used to narrowly tailor any resulting programs to specifically address findings of underutilization attributable to unfair business practices.

The results of the County's study are found in this report. Throughout the chapters that follow, MGT presents its findings, analyses, and recommendations. This chapter summarizes the objectives for the study, the technical approach used to accomplish the objectives, the major tasks undertaken, and an overview of the organization of the report.

¹ *City of Richmond v. J. A. Croson, Co.*, 488 U.S. 469 (1989).

1.2 Technical Approach

In conducting the study and preparing recommendations, MGT followed a carefully designed work plan that allowed MGT study team members to fully analyze availability, utilization, and disparity with regard to M/WBE participation. MGT's approach has been tested in over 129 jurisdictions and proven reliable to meet the study's objectives. The work plan consisted of, but was not limited to, the following major tasks:

- Conducting a legal review.
- Establishing data parameters and finalizing a work plan.
- Reviewing policies, procedures and programs.
- Conducting utilization analyses.
- Determining the availability of qualified firms.
- Analyzing the utilization and availability data for disparity analyses.
- Conducting disparity analyses of the relevant private market.
- Providing information on best practices in small and M/WBE business development.
- Identifying narrowly tailored race- and gender-based and race- and gender-neutral remedies.
- Preparing the final report for this study.

1.3 Report Organization

In addition to this introductory chapter, this report contains the following sections which provide MGT's findings as to the presence, or absence, of disparity in the County's procurement and contracting practices. The study reviewed County contract and procurement data from the period of October 1, 2003, through September 30, 2008. The overview of each chapter is as follows:

- **Chapter 2.0** presents an overview of controlling legal precedents that impact remedial procurement programs.
- **Chapter 3.0** presents a review of the County's procurement policies and procedures and an analysis of its M/WBE program and race- and gender-neutral efforts.
- **Chapter 4.0** presents the methodology used to determine the County's relevant market area and statistical analysis of vendor utilization by the County as well as the availability of firms for procurement activities.

- **Chapter 5.0** provides a discussion of the levels of disparity for prime contractors and subcontractors and a review of the multivariate analysis for the County.
- **Chapter 6.0** presents an analysis of the presence of disparity in the private sector and its effect on the ability of firms to win procurement contracts from the County.
- **Chapter 7.0** presents an overview of the program design and practices of M/W/SBE and DBE programs for federal, state, and local governments.
- **Chapter 8.0** provides a summary of the findings presented in this report with conclusions, commendations, and recommendations.²

MGT recommends reading the report in its entirety to understand the basis for the recommendations presented in **Chapter 8.0**.

² **Chapter 8.0** is designed to provide a summary of the overall report, conclusions drawn from the study and MGT's recommendations. **Chapter 8.0** serves as an Executive Summary for the Study.

2.0 LEGAL REVIEW

2.0 LEGAL REVIEW

2.1 Introduction

This chapter provides legal background for Leon County. The material that follows does not constitute legal advice to Leon County on minority- and woman-owned business (M/WBE) programs, affirmative action, or any other matter. Instead, it provides a context for the statistical and anecdotal analyses that appear in subsequent chapters of this report.

The Supreme Court decision in *City of Richmond v. J.A. Croson Company (Croson)*¹ and later cases have established and applied the constitutional standards for an affirmative action program. This chapter identifies and analyzes those decisions, summarizing how courts evaluate the constitutionality of race- and gender-specific programs. Decisions of the Eleventh Circuit, which includes Leon County, offer the most directly binding authority, but where those decisions leave issues unsettled, the review considers decisions from other circuits.

By way of a preliminary outline, the courts have determined that an affirmative action program involving governmental procurement of goods or services must meet the following standards:

- A remedial, race-conscious program is subject to strict judicial scrutiny under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
 - Strict scrutiny has two basic components: a compelling governmental interest in the program and narrow tailoring of the program.
 - To survive the strict scrutiny standard, a remedial, race-conscious program must be based on a compelling governmental interest.
 - * “Compelling interest” means the government must prove past or present racial discrimination requiring remedial attention.
 - * There must be a specific “strong basis in the evidence” for the compelling governmental interest.
 - * Statistical evidence is preferred and possibly necessary as a practical matter; anecdotal evidence is permissible and can offer substantial support, but it more than likely cannot stand on its own.
 - A program designed to address the compelling governmental interest must be narrowly tailored to remedy the identified discrimination.
 - * “Narrow tailoring” means the remedy must fit the findings.
 - * The evidence showing compelling interest must guide the tailoring very closely.

¹ 488 U.S. 469 (1989).

- * Race-neutral alternatives must be considered first.
- A lesser standard, intermediate judicial scrutiny, applies to programs that establish gender preferences.
- * To survive the intermediate scrutiny standard, a remedial, gender-conscious program must serve important governmental objectives and be substantially related to the achievement of those objectives.
- * The evidence does not need to be as strong and the tailoring does not need to be as specific under the lesser standard.

2.2 Standards of Review for Race- and Gender-Specific Programs

2.2.1 Race-Specific Programs: The Croson Decision

Croson established the framework for testing the validity of programs based on racial discrimination. In 1983, the Richmond City Council (the Council) adopted a Minority Business Utilization Plan (the Plan) following a public hearing in which citizens testified about historical societal discrimination. In adopting the Plan, the Council also relied on a study indicating that “while the general population of Richmond was 50 percent black, only 0.67 percent of the City’s prime construction contracts had been awarded to minority businesses in the 5-year period from 1978 to 1983.”²

The evidence before the Council also established that a variety of state and local contractor associations had little or no minority business membership. The Council relied on statements by a Council member whose opinion was that “the general conduct of the construction industry in this area and the State, and around the nation, is one in which race discrimination and exclusion on the basis of race is widespread.”³ There was, however, no direct evidence of race discrimination on the part of the City in its contracting activities, and no evidence that the City’s prime contractors had discriminated against minority-owned subcontractors.⁴

The Plan required the City’s prime contractors to subcontract at least 30 percent of the dollar amount of each contract to one or more minority-owned business enterprise (MBE). The Plan did not establish any geographic limits for eligibility. Therefore, an otherwise qualified MBE from anywhere in the United States could benefit from the 30 percent set-aside.

J.A. Croson Company, a non-MBE mechanical plumbing and heating contractor, filed a lawsuit against the city of Richmond alleging that the Plan was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment. After a considerable record of litigation and appeals, the Fourth Circuit struck down the Richmond Plan and the Supreme Court affirmed this decision.⁵ The Supreme Court determined that strict scrutiny was the appropriate standard of judicial review for MBE programs, so that a race-conscious program must be based on a compelling governmental interest and be narrowly tailored to

² Id. at 479-80.

³ Id. at 480.

⁴ Id.

⁵ Id. at 511.

achieve its objectives. This standard requires a firm evidentiary basis for concluding that the underutilization of minorities is a product of past discrimination.⁶

2.2.2 Gender-Specific Programs

The Supreme Court has not addressed the specific issue of a gender-based classification in the context of a woman-owned business enterprise (WBE) program. *Croson* was limited to the review of an MBE program. In evaluating gender-based classifications, the Court has used what some call “intermediate scrutiny,” a less stringent standard of review than the “strict scrutiny” applied to race-based classifications. Intermediate scrutiny requires that classifying persons on the basis of sex “must carry the burden of showing an exceedingly persuasive justification for the classification.”⁷ The classification meets this burden “only by showing at least that the classification serves ‘important governmental objectives and that the discriminatory means employed’ are ‘substantially related to the achievement of those objectives.’”⁸

Several federal courts have applied intermediate scrutiny to WBE programs and yet have found the programs to be unconstitutional.⁹ Nevertheless, in *Coral Construction v. King County*, the Ninth Circuit upheld a WBE program under the intermediate scrutiny standard.¹⁰ Even using intermediate scrutiny, the court in *Coral Construction* noted that some degree of discrimination must be demonstrated in a particular industry before a gender-specific remedy may be instituted in that industry. As the court stated, “the mere recitation of a benign, compensatory purpose will not automatically shield a gender-specific program from constitutional scrutiny.”¹¹ Indeed, one court has questioned the concept that it might be easier to establish a WBE program than it is to establish an MBE program.¹²

More recently, the Tenth Circuit, on the second appeal in *Concrete Works of Colorado v. City of Denver (Concrete Works IV)*,¹³ approved the constitutionality of a WBE program based on evidence comparable to that supporting an MBE program that the court also upheld in the same decision. Unlike *Coral Construction*, however, *Concrete Works IV* offered no independent guidance on the level of evidence required to support a WBE program.

⁶ Id. at 493.

⁷ *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982) (quoting *Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981)); see also *United States v. Virginia*, 518 U.S. 515, 531 (1996), *Tuan Anh Nguyen v. INS*, 533 U.S. 53, 60 (2001).

⁸ *Mississippi Univ. for Women*, *supra*, at 724 (quoting *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 150 (1980)); see also *Virginia*, *supra*, at 533, *Nguyen*, *supra*, at 60.

⁹ See *Assoc. Util. Contrs. v. Baltimore*, 83 F. Supp. 2d 613 (D Md 2000); *Eng’g Contrs. Ass’n of S. Florida, Inc. v. Dade County*, 122 F.3d 895 (11th Cir. 1997); *Builders Ass’n of Greater Chicago v. County of Cook*, 256 F.3d 642 (7th Cir. 2001). The Eighth Circuit did not address the application of intermediate scrutiny to WBE participation in the federal DBE program in *MnDOT*, 345 F.3d 964 (8th Cir. 2003); cert. denied, 158 L.Ed. 2d 729 (2004) – 541 U.S. 1041 *Sherbrooke Turf, Inc. v.*

¹⁰ *Coral Constr. Co. v. King County*, 941 F.2d 910 (9th Cir. 1991), cert. denied, 502 U.S. 1033 (1992).

¹¹ Id. at 932.

¹² *Builders Ass’n of Greater Chicago*, 256 F.3d at 644. See also *States Paving Co. v. Washington State DOT*, 407 F.3d 983, 991, n.6 (9th Cir. 2005) (rejecting need for separate analysis of WBE program under intermediate scrutiny).

¹³ 321 F.3d 950 (10th Cir. 2003).

2.2.3 An Overview of the Applicable Case Law

Croson did not find a compelling justification for a complete MBE program. *Croson* found the city of Richmond's evidence to be inadequate as a matter of law. Nevertheless, more recent cases in other federal circuits have addressed applications of the law that were not considered in *Croson*. Thus, it becomes necessary to look to the decisions of other federal circuits to predict what level of evidence might be required to establish an affirmative action program.

The discussion in this review will also attend closely to the most relevant decisions in the area of government contracting. Justice O'Connor, distinguishing her majority opinion on affirmative action in law school admissions from her opinions in government contracting cases, wrote:

*Context matters when reviewing race-based governmental action under the Equal Protection Clause. . . . 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 decision maker for the use of race in that particular context.*¹⁴

Further, some caution must be exercised in relying upon opinions of the federal district courts, which make both findings of fact and holdings of law. As to holdings of law, the district courts are ultimately subject to rulings by their circuit courts. As to matters of fact, their decisions depend heavily on the precise record before them, in these cases frequently including matters such as evaluations of the credibility and expertise of witnesses. Such findings are not binding precedents outside of their districts, even if they indicate the kind of evidence and arguments that might succeed elsewhere.

Finally, the ways in which municipalities participate in national disadvantaged business enterprise (DBE) programs is a specialized issue distinct from that of supporting municipal programs, even if the same kinds of evidence and same levels of review apply. In *Adarand Constructors, Inc. v. Peña*,¹⁵ the Supreme Court did decide that federal DBE programs should be examined by the same strict scrutiny standard that *Croson* mandated for state and local programs. Nevertheless, cases considering national DBE programs have many important distinctions from cases considering municipal programs, particularly when it comes to finding a compelling governmental interest.¹⁶ The national DBE cases have somewhat more application in determining whether a local program is narrowly tailored (to be discussed in Section 2.6).¹⁷

¹⁴ *Grutter v. Bollinger*, 539 U.S. 306, 327 (2003).

¹⁵ *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200-227 (1995).

¹⁶ See *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147-1165 (10th Cir. 2000), cert. granted in part sub nom., *Adarand Constructors, Inc. v. Mineta*, 532 U.S. 967 (2001); cert. dismissed as improvidently granted, 534 U.S. 103 (2001); *Sherbrooke Turf*, 345 F.3d at 970-1.

¹⁷ Recently the Ninth Circuit ruled in *Western States Paving Co. v. Washington State DOT* that specific evidence of discrimination was necessary at a state level in order for the implementation of race-conscious goals to be narrowly tailored. *States Paving Co.*, 407 F.3d at 997-8. In *Northern Contracting v. Illinois DOT*, the district court, while not striking down the program, also required the Illinois DOT to develop local evidence of discrimination sufficient to justify the imposition of race-conscious goals. In this sense, for these cases narrow tailoring still requires factual predicate information to support race-conscious program elements in a DBE program. *N. Contr. v. Illinois*, No. 00 4515 (ND IL 2004), decided 3/3/04 (2004 U.S. Dist. LEXIS 3226) 139-160.

Thus, the majority of this review will be based on decisions of the federal circuit courts applying *Croson* to city or county programs designed to increase participation by M/WBEs in government contracting. This is not a large body of case law. While other cases are useful as to particular points, only a small number of circuit court cases have reviewed strictly local M/WBE programs and given clear, specific, and binding guidance about the adequacy of a complete factual record including thorough, local disparity studies with at least some statistical analysis. Further, in one of the three directly applicable circuit court cases, the Third Circuit evaded the issue of compelling justification after lengthy discussion, holding that the Philadelphia M/WBE program was unconstitutional because it was not narrowly tailored.¹⁸

Ultimately, only two circuit court decisions since *Croson* have passed definitively on thorough, strictly local disparity studies: *Engineering Contractors Association of South Florida, Inc.*,¹⁹ and *Concrete Works IV*.²⁰ In *Engineering Contractors*, the Eleventh Circuit ultimately upheld the district court finding that Dade County's disparity studies were not adequate to support an M/WBE program, at least in the face of rebuttal evidence.²¹ By contrast, in *Concrete Works IV*, the Tenth Circuit, after holding that the district court had used an improper standard for weighing the evidence, went on to evaluate the evidence and determine that it was adequate as a matter of law to establish a compelling justification for Denver's program. The Supreme Court refused to hear the appeal in *Concrete Works IV*,²² although the refusal in itself has no precedential effect. The dissent to that denial, written by Justice Scalia with the Chief Justice joining, argues that these cases may mark a split in approach among the circuits that will need to be reconciled.

2.3 To Withstand Strict Scrutiny, an MBE Program Must Be Based on Thorough Evidence Showing a Compelling Governmental Interest

For government contracting programs, courts have yet to find a compelling governmental interest for affirmative action other than remedying discrimination in the relevant marketplace. In other arenas, diversity has served as a compelling governmental interest for affirmative action. For example, the Ninth Circuit upheld race-based admission standards at an experimental elementary school in order to provide a more real world education experience.²³ More recently, in *Petit v. City of Chicago*, the Seventh Circuit relied on *Grutter v. Bollinger* in stating that urban police departments had "an even more compelling need for diversity" than universities and upheld the Chicago program "under the *Grutter* standards."²⁴ The recent holding that other compelling interests may support affirmative action does not yet appear to have any application to public contracting.²⁵

¹⁸ *Contractors Ass'n of E. Penn. Inc. v. City of Philadelphia*, 91 F.3d 586, 605 (3rd Cir. 1996).

¹⁹ 122 F.3d 895.

²⁰ 321 F.3d 950.

²¹ Compare *Cone Corp. v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990), an earlier decision of the Eleventh Circuit reversing summary judgment against an MBE program where more limited statistical evidence was found adequate to require a trial on the merits in the face of a relatively weak challenge.

²² *Concrete Works of Colo. v. City of Denver*, Scalia, J. dissenting, 540 U.S. 1027, 1027-35 (2003).

²³ *Hunter v. Regents of the Univ. of Cal.*, 190 F.3d 1061 (9th Cir. 1999).

²⁴ *Petit v. City of Chicago*, 352 F.3d 1111, 1114 (7th Cir. 2003).

²⁵ *Grutter v. Bollinger*, 539 U.S. 306 (2003). For an argument that other bases could serve as a compelling interest in public contracting, see Michael K. Fridkin, "The Permissibility of Non-Remedial Justifications for Racial Preferences in Public Contracting," 24 *N. Ill. U. L. Rev.* 509-510 (Summer 2004).

Croson identified two necessary factors for establishing racial discrimination sufficiently to demonstrate a compelling governmental interest in establishing an M/WBE program. First, there needs to be identified discrimination in the relevant market.²⁶ Second, “the governmental actor enacting the set-aside program must have somehow perpetuated the discrimination to be remedied by the program,”²⁷ either actively or at least passively with the “infusion of tax dollars into a discriminatory industry.”²⁸

Although the Supreme Court in *Croson* did not specifically define the methodology that should be used to establish the evidentiary basis required by strict scrutiny, the Court did outline governing principles. Lower courts have expanded the Supreme Court’s *Croson* guidelines and have applied or distinguished these principles when asked to decide the constitutionality of state, county, and city programs that seek to enhance opportunities for minorities and women.

2.3.1 Post-Enactment Evidence

The Supreme Court in *Croson* found pre-enactment evidence of discrimination insufficient to justify the program. The defendant in *Croson* did not seek to defend its program based on post-enactment evidence. However, following *Croson*, a number of circuits did defend the use of post-enactment evidence to support the establishment of a local public affirmative action program.²⁹ Some cases required both pre-enactment and post-enactment evidence.³⁰

The Supreme Court case in *Shaw v. Hunt*³¹ raised anew the issue of post-enactment evidence in defending local public sector affirmative action programs. *Shaw* involved the use of racial factors in drawing voting districts in North Carolina. In *Shaw*, the Supreme Court rejected the use of reports providing evidence of discrimination in North Carolina because the reports were not developed before the voting districts were designed. Thus, the critical issue was whether the legislative body believed that discrimination had existed before the districts were drafted.³² Following the *Shaw* decision, two districts courts rejected the use of post-enactment evidence in the evaluation of the constitutionality of local minority business programs.³³

2.3.2 Agency Evidence

An agency contemplating an M/WBE program should have evidence expressly and specifically linked to the agency itself. The Fifth Circuit criticized the city of Jackson for commissioning a disparity study but not adopting the findings of the study.³⁴ A district court in New Jersey struck down a set-aside involving New Jersey casino licenses that was

²⁶ *Croson*, 488 U.S. at 492.

²⁷ *Coral Construction*, 941 F.2d at 916.

²⁸ *Id.*

²⁹ See *Eng’g Contrs. Ass’n of S. Florida, Inc. v. Dade County*, 122 F.3d 895, 911 (11th Cir. 1997); *Contrs. Ass’n of E. Philadelphia v. Philadelphia*, 6 F.3d 990, 1009 n.18 (2nd Cir. 1993); *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1521 (10th Cir. 1994).

³⁰ See *Coral Construction Co. v. King County*, 941 F.2d 910-920 (9th Cir. 1991).

³¹ *Shaw v. Hunt*, 517 U.S. 899 (1996).

³² *Id.* at 910.

³³ *AUC v. Baltimore*, 83 F. Supp. 2d 613, 620-22 (D. Md. 2000); *West Tenn. ABC v. Memphis City Schools*, 64 F. Supp. 2d 714, 718-21 (W.D. Tenn. 1999).

³⁴ *Scott v. City Of Jackson*, 199 F.3d 206, 218 (1999).

based on the factual predicate study for the state of New Jersey M/WBE program, which did not cover the casino industry.³⁵

2.3.3 Outreach Programs

There is some debate about whether or not outreach programs are subject to strict scrutiny. In *Peightal v. Metropolitan Dade County*, the Eleventh Circuit treated recruiting and outreach efforts as “race-neutral” policies.³⁶ Other lower court cases have stated that expanding the pool disadvantages no one and thus a distinction should be made between inclusive and exclusive outreach.³⁷ Similarly, in *Allen v. Alabama State Bd. Of Education*, a case involving teacher certification examinations, the Eleventh Circuit stated that the,

*Board must be conscious of race in developing the examination, choosing test items to minimize any racially disparate impact within the framework of designing a valid and comprehensive teaching examination. Nothing in Adarand requires the application of strict scrutiny to this sort of race-consciousness.*³⁸

However, in *Virdi v. DeKalb County School District*, litigation involving a minority vendor program (MVP), the Eleventh Circuit stated that,

*It is well settled that “all racial classifications imposed by government must be analyzed by a reviewing court under strict scrutiny”. Grutter v. Bollinger, 539 U.S. 306, 326, 123 S. Ct. 2325, 2337 (2003) (quoting Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 227, 115 S.Ct. 2097, 2113 (1995)). To the extent that Defendants argue that the MVP did not contain racial classifications because it did not include set-asides or mandatory quotas, we note that strict scrutiny applies to all racial classifications, not just those creating binding racial preferences. The MVP includes racial classifications. It is therefore subject to strict scrutiny.*³⁹

2.3.4 Disabled Business Enterprise

Disabled business enterprise programs are quite common in federal, state, and local government. Section 15(g) of the Small Business Act provides for a goal of not less than 3 percent utilization of service-disabled veteran businesses in federal contracting.⁴⁰ Section 36 of that Act grants the authority to set-aside for service-disabled veteran-owned businesses.⁴¹ These policies were strengthened and reaffirmed in October 2004, in Executive Order 13360. The U.S. Army alone projects \$1.8 billion in set-asides to service-disabled veteran-owned businesses in FY 2008.⁴²

³⁵ *Ass’n. for Fairness in Business, Inc. v. New Jersey*, 82 F. Supp. 2d 353, 361 (D.N.J. 2000).

³⁶ 26 F.3d 154, 1557-58 (11th Cir. 1994).

³⁷ *Shuford v. Alabama State Bd. of Educ.*, 897 F. Supp. 1535, 1551-52 (M.D. Ala. 1995).

³⁸ . 164 F.3d 1347, 1352 (11th Cir.1999).

³⁹ 135 Fed. Appx. 262, 267, 2005 U.S. App. LEXIS 11203 (11th Cir. 2005).

⁴⁰ 15 U.S.C. 644(g).

⁴¹ 15 U.S.C. 657f.

⁴² U.S. Army Office of Small Business Programs, www.vetbiz.gov/library/Army.pdf

Disabled business enterprise programs are also common at the state and local government level and are often a component of an M/WBE program.⁴³ Some local government agencies, in particular California and Connecticut, also set aside government contracts for disabled business enterprises or disabled veteran's business enterprises. California follows the federal program with a 3 percent disabled goal.⁴⁴ The state of Connecticut set aside 25 percent of its project for SBEs and then 25 percent of the SBE program is for certified M/WBEs. Disabled firms are classified as minority firms for purposes of the rule.⁴⁵ There are also state laws granting preferences of some sort to the disabled, and particularly the service disabled veterans.⁴⁶

While there has been an extensive body of case law involving the Americans for Disabilities Act, there have been no federal court cases challenging the constitutionality of disabled business enterprises under the Equal Protection clause. There are at least two reasons for this absence of a court record. First, at the state and local government level, these programs are typically very small, having only a handful of participants. Second, and more importantly, the U.S. Supreme Court has not ruled that the disabled are a suspect class and thus government programs addressing the disabled are not subject to strict scrutiny, or even intermediate scrutiny.⁴⁷ Instead programs both favoring and hampering the disabled are subject to the rational relationship test, the lowest level of judicial scrutiny. Nevertheless, this report will separately analyze data on disabled business enterprises.

2.4 Sufficiently Strong Evidence of Significant Statistical Disparities Between Qualified Minorities Available and Minorities Utilized Will Satisfy Strict Scrutiny and Justify a Narrowly Tailored M/WBE Program

The Supreme Court in *Croson* stated that "where gross statistical disparities can be shown, they alone in a proper case may constitute *prima facie* proof of a pattern or practice of discrimination."⁴⁸ But the statistics must go well beyond comparing the rate of minority presence in the general population to the rate of prime construction contracts awarded to MBEs. The Court in *Croson* objected to such a comparison, indicating that the proper statistical evaluation would compare the percentage of qualified MBEs in the relevant market with the percentage of total municipal construction dollars awarded to them.⁴⁹

⁴³ See North Carolina, Executive Order #150 and General Statutes 143-48 & 143-128.2(g)(1)(2)(3), Philadelphia, Executive Order 05 Relating To The Participation Of Minority, Women And Disabled Businesses In City Contracts, March 2005; Rhode Island GL 37-2.2-3, (procurement of Goods and services are available from certified Rhode Island Disability Business Enterprises (dbes) whose workforce consists of more than 75% persons with disabilities or certified nonprofit rehabilitation facilities); The regional Texas certification agencies certify for disabled business enterprises.

⁴⁴ California Executive Order D-43-01, June 22, 2001. California Disabled Veteran Business Enterprise Set Aside Program (establishes a goal for state entities to award at least 3% of their contracts for materials, supplies, equipment, alterations, repairs, or improvements to disabled veteran business enterprises. A 2001 act (Assembly Bill 941) requires the departments subject to this goal to appoint disabled veteran business enterprise advocates).

⁴⁵ Executive Order D-37-1

⁴⁶ See Fl. Stat. §295.07(1) (1991) (exempting disabled veterans from specific hiring procedures and employment exams for state jobs); Fl. Stat. §196.031 (1991) (hiring preferences for disabled veterans).

⁴⁷ *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985) (no rational basis for discriminatory application of special use permit for group home for mentally disabled).

⁴⁸ *Croson*, 488 U.S. at 501, quoting *Hazelwood School Division v. United States*, 433 U.S. 299, 307-308 (1977).

⁴⁹ *Id.* at 502.

To meet this more precise requirement, courts have accepted the use of a disparity index.⁵⁰ The Supreme Court in *Croson* recognized statistical measures of disparity that compared the number of qualified and available M/WBEs with the rate of municipal construction dollars actually awarded to M/WBEs in order to demonstrate discrimination in a local construction industry.⁵¹ The Ninth Circuit has stated, “In our recent decision [*Coral Construction*] we emphasized that such statistical disparities are ‘an invaluable tool’ in demonstrating the discrimination necessary to establish a compelling interest.”⁵²

2.4.1 Determining Availability

To perform proper disparity analysis, the government must determine “availability”—the number of qualified minority contractors willing and able to perform a particular service for the municipality. In *Croson*, the Court stated:

*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.*⁵³

An accurate determination of availability also permits the government to meet the requirement that it “determine the precise scope of the injury it seeks to remedy” by its program.⁵⁴ Following *Croson*’s statements on availability, lower courts have considered how legislative bodies may determine the precise scope of the injury sought to be remedied by an MBE program. Nevertheless, the federal courts have not provided clear guidance on the best data sources or techniques for measuring M/WBE availability.

Different forms of data used to measure availability give rise to particular controversies. Census data have the benefit of being accessible, comprehensive, and objective in measuring availability. In *Contractors Ass’n of Eastern Pennsylvania, Inc.*, the Third Circuit, while noting some of the limitations of census data, acknowledged that such data could be of some value in disparity studies.⁵⁵ In that case, the city of Philadelphia’s consultant calculated a disparity using data showing the total amount of contract dollars awarded by the City, the amount that went to MBEs, and the number of African American construction firms. The consultant combined these data with data from the Census Bureau on the number of construction firms in the Philadelphia Standard Metropolitan Statistical Area.⁵⁶ Despite the district court’s reservations about mixing data sources, the Third Circuit appeared to have been prepared to accept such data had it ruled on the showing of a compelling interest.

⁵⁰ See *Engineering Contractors Ass’n of South Florida, Inc.*, 122 F.3d at 914; *Concrete Works IV*, 321 F.3d at 964-69.

⁵¹ *Croson*, 488 U.S. at 503-504.

⁵² *Ass’d. General Contrs. of California, Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1414 (9th Cir. 1991) (*AGCC II*) citing *Coral Construction*, 941 F.2d at 918; see also *Croson*, 488 U.S. at 509.

⁵³ *Croson*, 488 U.S. at 509 (emphasis added).

⁵⁴ *Id.* at 498.

⁵⁵ *Contractors Assn v. Philadelphia*, 91 F.3d 586, 604 (3rd Cir 1996).

⁵⁶ *Contractors Association of Eastern Pennsylvania, Inc.*, 91 F.3d at 604.

At least one commentator has suggested using bidder data to measure M/WBE availability,⁵⁷ but *Croson* does not require the use of bidder data to determine availability. In *Concrete Works*, in the context of the plaintiffs' complaint that the city of Denver had not used such information, the Tenth Circuit noted that bid information also has its limits.⁵⁸ Firms that bid may not be qualified or able, and firms that do not bid may be qualified and able, to undertake agency contracts.

2.4.2 Racial Classifications

In determining availability, choosing the appropriate racial groups to consider becomes an important threshold interest.⁵⁹ In *Croson*, the Supreme Court criticized the city of Richmond's inclusion of "Spanish speaking, Oriental, Indian, Eskimo, or Aleut persons" in its affirmative action program.⁶⁰ These groups had not previously participated in City contracting and "The random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggests that perhaps the City's purpose was not in fact to remedy past discrimination."⁶¹ To evaluate availability properly, data must be gathered for each racial group in the marketplace. The Federal Circuit has also required that evidence as to the inclusion of particular groups be kept reasonably current.⁶²

2.4.3 Relevant Market Area

Another issue in availability analysis is the definition of the relevant market area. Specifically, the question is whether the relevant market area should be defined as the area from which a specific percentage of purchases is made, the area in which a specific percentage of willing and able contractors may be located, or the area determined by a fixed geopolitical boundary.

The Supreme Court has not yet established how the relevant market area should be defined, but some circuit courts have done so, including the Tenth Circuit in *Concrete Works II*, the first appeal in the city of Denver litigation.⁶³ *Concrete Works of Colorado*, a non-M/WBE construction company, argued that *Croson* precluded consideration of discrimination evidence from the six-county Denver Metropolitan Statistical Area (MSA), so Denver should use data only from within the city and county of Denver. The Tenth Circuit, interpreting *Croson*, concluded, "The relevant area in which to measure discrimination . . . is the local construction market, but that is not necessarily confined by jurisdictional boundaries."⁶⁴ The court further stated, "It is important that the pertinent data closely relate to the jurisdictional area of the municipality whose program we scrutinize, but here Denver's contracting activity, insofar as construction work is concerned, is closely related to the Denver MSA."⁶⁵

⁵⁷ LaNoue, George R., "Who Counts? Determining the Availability of Minority Businesses for Public Contracting After *Croson*," 21 *Harv. J. L. and Pub. Pol.* 793, 833-834 (1998).

⁵⁸ *Concrete Works IV*, 321 F.3d at 983-84.

⁵⁹ Racial groups, as the term is used herein, include both racial and ethnic categories.

⁶⁰ 488 U.S. at 506.

⁶¹ *Id.*

⁶² *Rothe Development Co. v. U.S. Dept. of Defense*, 262 F.3d 1306, 1323 (Fed. Cir. 2003).

⁶³ *Concrete Works II*, 36 F.3d at 1520.

⁶⁴ *Id.*

⁶⁵ *Id.*

The Tenth Circuit ruled that because more than 80 percent of Denver Department of Public Works construction and design contracts were awarded to firms located within the Denver MSA, the appropriate market area should be the Denver MSA, not the city and county of Denver alone.⁶⁶ Accordingly, data from the Denver MSA were “adequately particularized for strict scrutiny purposes.”⁶⁷

2.4.4 Firm Qualifications

Another availability consideration is whether M/WBE firms are qualified to perform the required services. In *Croson*, the Supreme Court noted that although gross statistical disparities may demonstrate *prima facie* proof of discrimination, “when special qualifications are required to fill particular jobs, comparisons to the general population (rather than to the smaller group of individuals who possess the necessary qualifications) may have little probative value.”⁶⁸ The Court, however, did not define the test for determining whether a firm is qualified.

Considering firm qualifications is important not only to assess whether M/WBEs in the relevant market area can provide the goods and services required, but also to ensure proper comparison between the number of qualified M/WBEs and the total number of similarly qualified contractors in the marketplace.⁶⁹ In short, proper comparisons ensure the required integrity and specificity of the statistical analysis. For instance, courts have specifically ruled that the government must examine prime contractors and subcontractors separately when the M/WBE program is aimed primarily at one or the other.⁷⁰

2.4.5 Willingness

Croson requires that an “available” firm must be not only qualified but also willing to provide the required services.⁷¹ In this context, it can be difficult to determine whether a business is willing. Courts have approved including businesses in the availability pool that may not be on the government’s certification list. In *Concrete Works II*, Denver’s availability analysis indicated that while most MBEs and WBEs had never participated in City contracts, “almost all firms contacted indicated that they were interested in [municipal work].”⁷² In *Contractors Association of Eastern Pennsylvania, Inc.*, the Third Circuit explained, “[i]n the absence of some reason to believe otherwise, one can normally assume that participants in a market with the ability to undertake gainful work will be ‘willing’ to undertake it.”⁷³ The court went on to note:

[P]ast discrimination in a marketplace may provide reason to believe the minorities who would otherwise be willing are discouraged from trying to secure the work. . . . [I]f there has been discrimination in City contracting, it is to be expected that [African American] firms may be discouraged from applying, and the low numbers [of African American firms seeking to

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ *Croson*, 488 U.S. at 501 (quoting *Hazelwood School Dist. v. United States*, 433 U.S. 299, 308, n.13 (1977)).

⁶⁹ See *Hazelwood School Dist.*, 433 U.S. at 308; *Contractors Ass’n*, 91 F.3d at 603.

⁷⁰ *W. H. Scott Constr. Co. v. City of Jackson*, 199 F.3d 206, 218 (5th Cir.1999).

⁷¹ *Croson*, 488 U.S. at 509.

⁷² *Concrete Works II*, 36 F.3d at 1529, quoting, *Appellant’s Appendix*.

⁷³ *Contractors Association of Eastern Pennsylvania, Inc.*, 91 F.3d at 603 (in original quotation marks).

prequalify for City-funded contracts] may tend to corroborate the existence of discrimination rather than belie it.⁷⁴

Even so, the strongest possible disparity study would also present information about the willingness of M/WBEs to perform the required services.

2.4.6 Ability

Another availability consideration is whether the firms being considered are able to perform a particular service. Those who challenge affirmative action often question whether M/WBE firms have the “capacity” to perform particular services.

The Eleventh Circuit accepted a series of arguments that firm size has a strong impact on “ability” to enter contracts, that M/WBE firms tend to be smaller, and that this smaller size, not discrimination, explains the resulting disparity.⁷⁵ By contrast, the Tenth Circuit in *Concrete Works II* and *IV* recognized the shortcomings of this treatment of firm size.⁷⁶ *Concrete Works IV* noted that the small size of such firms can itself be a result of discrimination.⁷⁷ The Tenth Circuit acknowledged the city of Denver’s argument that a small construction firm’s precise capacity can be highly elastic.⁷⁸ Under this view, the relevance of firm size may be somewhat diminished. Further, the Eleventh Circuit was dealing with a statute which itself limited remedies to M/WBEs that were smaller firms by definition.⁷⁹

2.4.7 Statistical Evidence of Discrimination in Disparity Studies

While courts have indicated that anecdotal evidence may suffice without statistical evidence, no case without statistical evidence has been given serious consideration by any circuit court. In practical effect, courts require statistical evidence. Further, the statistical evidence needs to be held to appropriate professional standards.⁸⁰

The Eleventh Circuit has addressed the role of statistical significance in assessing levels of disparity in public contracting. Generally, disparity indices of 80 percent or higher—indicating close to full participation—are not considered significant.⁸¹ The court referenced the Equal Employment Opportunity Commission’s disparate impact guidelines, which establish the 80 percent test as the threshold for determining a *prima facie* case of discrimination.⁸² According to the Eleventh Circuit, no circuit that has explicitly endorsed using disparity indices has held that an index of 80 percent or greater is probative of discrimination, but they have held that indices below 80 percent indicate “significant disparities.”⁸³

⁷⁴ Id. at 603-04.

⁷⁵ *Eng’g. Contr. of S. Florida, Inc.* 122 F.3d at 917-18, 924.

⁷⁶ *Concrete Works II*, 36 F.3d at 1528-29; *Concrete Works IV*, 321 F.3d at 980-92.

⁷⁷ *Concrete Works IV*, 321 F.3d at 982.

⁷⁸ Id. at 981

⁷⁹ *Eng’g Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d at 900.

⁸⁰ See *Contrs. Ass’n of E. Pennsylvania, Inc.*, 91 F.3d at 599-601.

⁸¹ *Eng’g Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d at 914.

⁸² Id. at 914, citing 29 C.F.R. § 1607.4D (concerning the disparate impact guidelines and threshold used in employment cases).

⁸³ *Eng’g Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d at 914, citing *Contrs. Ass’n of E. Pennsylvania, Inc.*, 6 F.3d at 1005 (crediting disparity index of 4 percent) and *Concrete Works II*, 36 F.3d at 1524 (crediting disparity indices ranging from 0 percent to 3.8 percent).

In support of the use of standard deviation analyses to test the statistical significance of disparity indices, the Eleventh Circuit observed that “[s]ocial scientists consider a finding of two standard deviations significant, meaning there is about one chance in 20 that the explanation for the deviation could be random and the deviation must be accounted for by some factor other than chance.”⁸⁴ With standard deviation analyses, the reviewer can determine whether the disparities are substantial or statistically significant, lending further statistical support to a finding of discrimination. On the other hand, if such analyses can account for the apparent disparity, the study will have little if any weight as evidence of discrimination.

Further, the interpretations of the studies must not assume discrimination has caused the disparities, but must account for alternative explanations of the statistical patterns.⁸⁵ The Third and Fifth Circuits have also indicated that statistics about prime contracting disparity have little, if any, weight when the eventual M/WBE program offers its remedies solely to subcontractors.⁸⁶

2.4.8 Anecdotal Evidence of Discrimination in Disparity Studies

Most disparity studies present anecdotal evidence along with statistical data. The Supreme Court in *Croson* discussed the relevance of anecdotal evidence and explained: “[E]vidence 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.”⁸⁷ Although *Croson* did not expressly consider the form or level of specificity required for anecdotal evidence, the Ninth Circuit has addressed both issues.

In *Coral Construction*, the Ninth Circuit addressed the use of anecdotal evidence alone to prove discrimination. Although King County’s anecdotal evidence was extensive, the court noted the absence in the record of any statistical data in support of the program. Additionally, the court stated, “While anecdotal evidence may suffice to prove individual claims of discrimination, rarely, if ever, can such evidence show a *systemic pattern of discrimination necessary for the adoption of an affirmative action plan*.”⁸⁸ The court concluded, by contrast, that “the combination of convincing anecdotal and statistical evidence is potent.”⁸⁹

Regarding the appropriate form of anecdotal evidence, the Ninth Circuit in *Coral Construction* noted that the record provided by King County was “considerably more extensive than that compiled by the Richmond City Council in *Croson*.”⁹⁰ The King County record contained “affidavits of at least 57 minority or [female] contractors, each of whom complain[ed] in varying degree[s] of specificity about discrimination within the local construction industry.”⁹¹ The *Coral Construction* court stated that the M/WBE affidavits “reflect[ed] a broad spectrum of the contracting community” and the affidavits “certainly

⁸⁴ *Eng’g Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d at 914 quoting *Peightal v. Metropolitan Dade County*, 26 F.3d 1545, 1556 n.16 (11th Cir. 1994) (quoting *Waisome v. Port Authority*, 948 F.2d 1370, 1376 (2nd Cir. 1991)).

⁸⁵ *Eng’g Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d at 922.

⁸⁶ *Contrs. Ass’n of E. Pennsylvania, Inc.*, 91 F.3d at 599 (3rd Cir.); *W.H. Schott Constr. Co.*, 199 F.3d at 218 (5th Cir.)

⁸⁷ *Croson*, 488 U.S. at 509.

⁸⁸ *Coral Construction*, 941 F.2d at 919 (emphasis added).

⁸⁹ *Id.* See also *AGCC II*, 950 F.2d at 1414-1415.

⁹⁰ *Coral Construction*, 941 F.2d at 917.

⁹¹ *Id.* at 917-18.

suggest[ed] that ongoing discrimination may be occurring in much of the King County business community.”⁹²

In *Associated General Contractors of California v. Coalition for Economic Equity (AGCC II)*, the Ninth Circuit discussed the specificity of anecdotal evidence required by *Croson*.⁹³ Seeking a preliminary injunction, the contractors contended that the evidence presented by the city of San Francisco lacked the specificity required by both an earlier appeal in that case and by *Croson*.⁹⁴ The court held that the City’s findings were based on substantially more evidence than the anecdotes in the two prior cases, and “were clearly based upon dozens of specific instances of discrimination that are laid out with particularity in the record, as well as significant statistical disparities in the award of contracts.”⁹⁵

The court also ruled that the City was under no burden to identify specific practices or policies that were discriminatory.⁹⁶ Reiterating the City’s perspective, the court stated that the City “must simply demonstrate the existence of past discrimination with specificity; there is no requirement that the legislative findings specifically detail each and every instance that the legislative body ha[d] relied upon in support of its decision that affirmative action is necessary.”⁹⁷

Not only have courts found that a municipality does not have to specifically identify all the discriminatory practices impeding M/WBE utilization, but the Tenth Circuit in *Concrete Works IV* also held that anecdotal evidence collected by a municipality does not have to be verified. The court stated:

*There is no merit to [the plaintiff’s] argument that witnesses’ accounts must be verified to provide support for Denver’s burden. Anecdotal evidence is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perceptions...Denver was not required to present corroborating evidence and [the 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.*⁹⁸

2.5 The Governmental Entity or Agency Enacting an M/WBE Program Must Be Shown to Have Actively or Passively Perpetuated the Discrimination

In *Croson*, the Supreme Court stated, “It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that *public* dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of *private* prejudice.”⁹⁹ *Croson* provided that the government “can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the

⁹² Id.

⁹³ *AGCC II*, 950 F.2d at 1414-1415.

⁹⁴ See *AGCC II*, 950 F.2d at 1403-1405.

⁹⁵ *AGCC II*, 950 F.2d at 1416. This evidence came from 10 public hearings and “numerous written submissions from the public.” Id. at 1414.

⁹⁶ Id. at 1416, n.11.

⁹⁷ Id. at 1416.

⁹⁸ *Concrete Works IV*, 321 F.3d at 989.

⁹⁹ *Croson*, 488 U.S. at 492 (emphasis added).

Fourteenth Amendment.”¹⁰⁰ The government agency’s active or passive participation in discriminatory practices in the marketplace may show the compelling interest. Defining passive participation, *Croson* stated:

*Thus, if the city could show that it had essentially become a “passive participant” in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the city could take affirmative steps to dismantle such a system.*¹⁰¹

The Tenth Circuit decision in *Adarand* concluded that evidence of private sector discrimination provided a compelling interest for a DBE program.¹⁰² Later cases have reaffirmed that the government has a compelling interest in avoiding the financing of private discrimination with public dollars.¹⁰³

Relying on this language in *Croson*, a number of local agencies have increased their emphasis on evidence of discrimination in the private sector. This strategy has not always succeeded. In the purest case, Cook County did not produce a disparity study but instead presented anecdotal evidence that M/WBEs were not solicited for bids in the private sector.¹⁰⁴ Cook County lost the trial and the resulting appeal.¹⁰⁵ Similarly, evidence of private sector discrimination presented in litigation was found inadequate in the Philadelphia and Dade County cases.¹⁰⁶ The Third Circuit stated, in discussing low MBE participation in a local contractors association in the city of Philadelphia, that “racial discrimination can justify a race-based remedy only if the city has somehow participated in or supported that discrimination.”¹⁰⁷ Nevertheless, recently in *Concrete Works IV*, the Tenth Circuit upheld the relevance of data from the private marketplace to establish a factual predicate for M/WBE programs.¹⁰⁸ That is, courts mainly seek to ensure that M/WBE programs are based on findings of active or passive discrimination in the government contracting marketplace, and not simply attempts to remedy general societal discrimination.

Courts also seek to find a causal connection between a statistical disparity and actual underlying discrimination. In *Engineering Contractors*, one component of the factual predicate was a study comparing entry rates into the construction business for M/WBEs and non-M/WBEs.¹⁰⁹ The analysis provided statistically significant evidence that minorities and women entered the construction business at rates lower than would be expected, given their numerical presence in the population and human and financial capital variables. The study argued that those disparities persisting after the application of appropriate statistical controls were most likely the result of current and past discrimination. Even so, the Eleventh Circuit criticized this study for reliance on general census data and for the lack of particularized

¹⁰⁰ *Croson*, 488 U.S. at 492. See generally Ayres, Ian and Frederick E. Vars, “When Does Private Discrimination Justify Public Affirmative Action?” 98 *Columbia Law Review* 1577 (1998).

¹⁰¹ *Croson*, 488 U.S. at 492.

¹⁰² *Adarand Contrs., Inc.*, 228 F.3d at 1155, 1164-65.

¹⁰³ *Associated Gen. Contrs. of Ohio, Inc. v. Drabik*, 214 F.3d 730, 734-35 (6th Cir. 2000). See also *Concrete Works II*, 36 F.3d at 1529; *Coral Constr. Co.*, 941 F.2d at 916.

¹⁰⁴ *Builders Ass’n of Greater Chicago v. County of Cook*, 123 F. Supp. 2d 1087, 1117 (N.D. I.L. 2000).

¹⁰⁵ *Builders Ass’n of Greater Chicago v. County of Cook*, 123 F. Supp. 2d 1087 (N.D. I.L. 2000); 256 F.3d 642, 648 (7th Cir. 2001).

¹⁰⁶ *Contrs. Ass’n of E. Pennsylvania, Inc.*, 91 F.3d at 599-602; *Engineering Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d at 920-926.

¹⁰⁷ *Contrs. Ass’n of E. Pennsylvania, Inc.*, 91 F.3d at 602; see also *Webster v. Fulton County*, 51 F. Supp. 2d 1354, 1363 (N.D. G.A. 1999).

¹⁰⁸ *Concrete Works IV*, 321 F.3d at 976.

¹⁰⁹ *Engineering Contractors Ass’n of South Florida, Inc.*, 122 F.3d at 921-22.

evidence of active or passive discrimination by Dade County, holding that the district court was entitled to find that the evidence did not show compelling justification for an M/WBE program.¹¹⁰

The Seventh Circuit has perhaps set a higher bar for connecting private discrimination with government action. The trial court in the Cook County case extensively considered evidence that prime contractors simply did not solicit M/WBEs as subcontractors and considered carefully whether this evidence on solicitation served as sufficient evidence of discrimination, or whether instead it was necessary to provide further evidence that there was discrimination in hiring M/WBE subcontractors.¹¹¹ The Seventh Circuit held that this evidence was largely irrelevant.¹¹² Beyond being anecdotal and partial, evidence that contractors failed to solicit M/WBEs on Cook County contracts was not the same as evidence that M/WBEs were denied the opportunity to bid.¹¹³ Furthermore, such activities on the part of contractors did not necessarily implicate the county as even a passive participant in such discrimination as might exist because there was no evidence that the county knew about it.¹¹⁴

Interestingly, some courts have been willing to see capital market discrimination as part of the required nexus between private and public contracting discrimination, even if capital market discrimination could arguably be seen as simply part of broader societal discrimination. In *Adarand v. Slater*, the Tenth Circuit favorably cited evidence of capital market discrimination as relevant in establishing the factual predicate for the federal DBE program.¹¹⁵ The same court, in *Concrete Works IV*, found that barriers to business formation were relevant insofar as this evidence demonstrated that M/WBEs were “precluded from the outset from competing for public construction contracts.”¹¹⁶ Along related lines, the court also found a regression analysis of census data to be relevant evidence showing barriers to M/WBE formation.¹¹⁷

Courts have come to different conclusions about the effects of M/WBE programs on the private sector evidence itself. For instance, is M/WBE participation in public sector projects higher than on private sector projects simply because the M/WBE program increases M/WBE participation in the public sector, or is such a pattern evidence of private sector discrimination? The Seventh Circuit raised the former concern in the recent Cook County litigation.¹¹⁸ *Concrete Works IV*, however, expressly cited as evidence of discrimination that M/WBE contractors used for business with the city of Denver were not used by the same prime contractors for private sector contracts.¹¹⁹

Finally, is evidence of a decline in M/WBE utilization following a change in or termination of an M/WBE program relevant and persuasive evidence of discrimination? The Eighth Circuit in *Sherbrooke Turf* and the Tenth Circuit in *Concrete Works IV* did find that such a decline in

¹¹⁰ *Id.* at 922.

¹¹¹ *Builders Ass’n of Chicago*, 123 F.Supp. 2d at 1112-1116.

¹¹² *Builders Ass’n of Greater Chicago*, 256 F.3d at 645.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Adarand Contrs., Inc.*, 228 F.3d at 1169-70.

¹¹⁶ *Concrete Works IV*, 321 F.2d at 977. The district court had rejected evidence of credit market discrimination as adequate to provide a factual predicate for an M/WBE program. *Concrete Works of Colorado, Inc. v. City of Denver*, 86 F.Supp. 2d 1042, 1072-73 (D Co. 2000) (*Concrete Works III*).

¹¹⁷ *Id.* at 967.

¹¹⁸ *Builders Ass’n of Greater Chicago*, 256 F.3d at 645.

¹¹⁹ *Concrete Works IV*, 321 F.3d at 984-85.

M/WBE utilization was evidence that prime contractors were not willing to use M/WBEs in the absence of legal requirements.¹²⁰ Other lower courts have arrived at similar conclusions.¹²¹

2.6 To Withstand Strict Scrutiny, an M/WBE Program Must Be Narrowly Tailored to Remedy Identified Discrimination

The discussion of compelling interest in the court cases has been extensive, but narrow tailoring may be the more critical issue. Many courts have held that even if a compelling interest for the M/WBE program can be found, the program has not been narrowly tailored.¹²² Moreover, *Concrete Works IV*,¹²³ a case that did find a compelling interest for a local M/WBE program, did not consider the issue of narrow tailoring. Instead, the Tenth Circuit held that the plaintiffs had waived any challenge to the original ruling of the district court¹²⁴ that the program was narrowly tailored.

Nevertheless, the federal courts have found that the DBE program established pursuant to federal regulations (49 CFR, Part 26) and issued under the Transportation Equity Act (TEA-21) (1998) has been narrowly tailored to serve a compelling interest.¹²⁵ The federal courts had previously ruled that there was a factual predicate for the federal Department of Transportation (DOT) DBE program, but that in its earlier versions the program was not narrowly tailored.¹²⁶ The more recent rulings provide some guidance as to what program configurations the courts will judge to be narrowly tailored. The Eleventh Circuit in particular has identified the following elements of narrow tailoring: (1) the necessity for the relief and the efficacy of alternative remedies; (2) the flexibility and duration of the relief, including the availability of waiver provisions; (3) the relationship of numerical goals to the relevant labor market; and (4) the impact of the relief on the rights of innocent third parties.¹²⁷

2.6.1 Race-Neutral Alternatives

Concerning race-neutral alternatives, the Supreme Court in *Croson* concluded that a governmental entity must demonstrate that it has evaluated the use of race-neutral means to increase MBE participation in contracting or purchasing activities. In upholding the narrow tailoring of federal DBE regulations, the Eighth Circuit noted that those regulations “place strong emphasis on ‘the use of race-neutral means to increase minority business participation in government contracting’.”¹²⁸ The Tenth Circuit had noted that the DBE regulations provided that “if a recipient can meet its overall goal through race-neutral means, it must implement its program without the use of race-conscious contracting

¹²⁰ *Concrete Works IV*, 321 F.3d at 985; *Sherbrooke Turf, Inc.*, 345 F.3d at 973.

¹²¹ See *Northern Contracting, Inc. v. Illinois*, No. 00 4515 (ND IL 2004) – 2004 U.S. Dist. LEXIS 3226 150-1.

¹²² *Contrs. Ass’n of E. Pennsylvania, Inc.*, 91 F.3d at 606; *Eng’g Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d at 926-929; *Verdi v. DeKalb County Sch. Dist.*, 135 Fed. Appx. 262, 268, 2005 WL 38942 (11th Cir. 2005).

¹²³ *Concrete Works IV*, 321 F.3d at 992-93.

¹²⁴ *Concrete Works of Colo., Inc. v. City of Denver*, 823 F.Supp. 821, 844-845 (D.Co. 1993) (*Concrete Works I*).

¹²⁵ *Adarand Constrs., Inc.*, 228 F.3d at 1158, 1187; *Sherbrooke Turf Inc.*, 345 F.3d at 968-969, 974; *W. States Paving Co. v. Wash. State DOT*, 407 F.3d 983 (9th Cir. 2005).

¹²⁶ *In re Sherbrooke Sodding*, 17 F. Supp. 2d 1026, 1034-35, 1037 (D.Minn. 1998) (*Sherbrooke I*) (finding the program was not narrowly tailored). In 1996, before the new DBE regulations, the district court in Colorado, upon remand from the 1995 U.S. Supreme Court, had made a similar ruling in *Adarand Constrs., Inc. v. Peña*, 965 F. Supp. 1556, 1581 (D.Co. 1997).

¹²⁷ *Engineering Contractors*, 122 F.3d at 973 (citing *Ensley Branch*, 31 F.3d at 1569).

¹²⁸ *Sherbrooke Turf, Inc.*, 345 F. 3d at 972, quoting *Adarand Constrs., Inc.*, 515 U.S. at 237-38.

measures, and enumerate a list of race-neutral measures.”¹²⁹ Those measures included “helping overcome bonding and financing obstacles, providing technical assistance, [and] establishing programs to assist start-up firms.”¹³⁰

Strict scrutiny does not mandate that every race-neutral measure be considered and found wanting. The Eighth Circuit also affirmed that “Narrow tailoring does not require exhaustion of every conceivable race neutral alternative,” but it does require “serious, good faith consideration of workable race-neutral alternatives.”¹³¹

2.6.2 Flexibility and Duration of the Remedy

The Eighth Circuit also found that “the revised DBE program has substantial flexibility.”¹³²

*A State may obtain waivers or exemptions from any requirement and is not penalized for a good faith failure to meet its overall goal. In addition, the program limits preferences to small businesses falling beneath an earnings threshold, and any individual whose net worth exceeds \$ 750,000 cannot qualify as economically disadvantaged.*¹³³

DBE and M/WBE programs achieve flexibility by using waivers and variable project goals to avoid merely setting a quota. *Croson* favorably mentioned the contract-by-contract waivers in the federal DOT DBE program.¹³⁴ Virtually all successful MBE programs have this waiver feature in their enabling legislation. As for project goals, the approved DBE provisions set aspirational, nonmandatory goals; expressly forbid quotas; and use overall goals as a framework for setting local contract goals, if any, based on local data. All of these factors have impressed the courts that have upheld the constitutionality of the revised DOT DBE program.¹³⁵

With respect to program duration, in *Adarand Constructors, Inc. v. Peña*, the Supreme Court wrote that a program should be “appropriately limited such that it will not last longer than the discriminatory effects it is designed to eliminate.”¹³⁶ The Eighth Circuit also noted the limits in the DBE program, stating that “the DBE program contains built-in durational limits,” in that a “State may terminate its DBE program if it meets its annual overall goal through race-neutral means for two consecutive years.”¹³⁷ The Eighth Circuit also found durational limits in the fact that “TEA-21 is subject to periodic congressional reauthorization. Periodic legislative debate assures all citizens that the deviation from the norm of equal treatment of all racial and ethnic groups is a temporary matter, a measure taken in the service of the goal of equality itself.”¹³⁸

¹²⁹ *Adarand Constrs., Inc.*, 228 F.3d. at 1179 (parentheses removed).

¹³⁰ *Id.*

¹³¹ *Sherbrooke Turf, Inc.*, 345 F. 3d at 972, quoting *Grutter*, 123 S. Ct. at 2344-45. See also *Coral Constr. Co.*, 941 F.2d at 923; *AGCC II*, 950 F.2d at 1417.

¹³² *Sherbrooke Turf, Inc.*, 345 F. 3d at 972.

¹³³ *Id.* at 972, citing, 49 C.F.R. § 26.67(b).

¹³⁴ *Croson*, 488 U.S. at 488-489. *Coral Constr. Co.*, 941 F.2d at 924-925.

¹³⁵ See *Coral Constr. Co.*, 941 F. 2d at 924-925.

¹³⁶ 515 U.S. at 238 (internal quotations and citations omitted).

¹³⁷ *Sherbrooke Turf, Inc.*, 345 F. 3d at 972, citing 49 C.F.R. § 26.51(f)(3).

¹³⁸ *Id.*, quoting, *Grutter*, 123 S. Ct. at 2346.

Other appellate courts have noted several possible mechanisms for limiting program duration: such as required termination if goals have been met,¹³⁹ decertification of MBEs who achieve certain levels of success, or mandatory review of MBE certification at regular, relatively brief periods.¹⁴⁰ Governments thus have some duty to ensure that they update their evidence of discrimination regularly enough to review the need for their programs and to revise programs by narrowly tailoring them to fit the fresh evidence.¹⁴¹ It is still an open question whether all of these provisions are necessary in every case.

2.6.3 Relationship of Goals to Availability

Narrow tailoring under the *Croson* standard requires that remedial goals be in line with measured availability. Merely setting percentages without a carefully selected basis in statistical studies, as the city of Richmond did in *Croson* itself, has played a strong part in decisions finding other programs unconstitutional.¹⁴²

By contrast, the Eighth, Ninth, and Tenth Circuits have approved the goal-setting process for the DOT DBE program, as revised in 1999.¹⁴³ The approved DOT DBE regulations require that goals be based on one of several methods for measuring DBE availability.¹⁴⁴ The Eighth Circuit noted that the “DOT has tied the goals for DBE participation to the relevant labor markets,” insofar as the “regulations require grantee States to set overall goals based upon the likely number of minority contractors that would have received federally assisted highway contracts but for the effects of past discrimination.”¹⁴⁵ The Eighth Circuit acknowledged that goal setting was not exact, but nevertheless, the exercise...

*requires the States to focus on establishing realistic goals for DBE participation in the relevant contracting markets. This stands in stark contrast to the program struck down in Croson, which rested upon the completely unrealistic assumption that minorities will choose a particular trade in lockstep proportion to their representation in the local population.*¹⁴⁶

Moreover, the approved DBE regulations use built-in mechanisms to ensure that DBE goals are not set excessively high relative to DBE availability. For example, the approved DBE goals are to be set-aside if the overall goal has been met for two consecutive years by race-neutral means. The approved DBE contract goals also must be reduced if overall goals have been exceeded with race-conscious means for two consecutive years. The Eighth Circuit courts found these provisions to be narrowly tailored, particularly when implemented according to local disparity studies that carefully calculate the applicable goals.¹⁴⁷

2.6.4 Burden on Third Parties

¹³⁹ *Sherbrooke Turf, Inc.*, 345 F.3d at 972.

¹⁴⁰ *Adarand Constrs. Inc.*, 228 F.3d at 1179-1180.

¹⁴¹ *Rothe Dev. Co.*, 262 F.3d at 1323-1324 (commenting on the possible staleness of information after seven, 12, and 17 years).

¹⁴² See *Builders Ass'n of Greater Chicago*, 256 F.3d at 647; *Kohlbeck*, 447 F.3d at 556-557.

¹⁴³ *Adarand Constrs. Inc.*, 228 F.3d at 1181-1182; *Sherbrooke Turf, Inc.*, 345 F.3d at 971-973. *W. States Paving Co.*, 407 F.3d at 994-995.

¹⁴⁴ 49 C.F.R., § 26.45 (2006).

¹⁴⁵ *Sherbrooke Turf, Inc.*, at 972, 345 F. 3d citing, 49 C.F.R. § 26.45(c)-(d) (Steps 1 and 2).

¹⁴⁶ *Id.* at 972, quoting, *Croson*, 488 U.S. at 507.

¹⁴⁷ *Id.* at 973-974.

Narrow tailoring also requires minimizing the burden of the program on third parties. The Eight Circuit stated the following with respect to the revised DBE program:

*Congress and DOT have taken significant steps to minimize the race based nature of the DBE program. Its benefits are directed at all small businesses owned and controlled by the socially and economically disadvantaged. While TEA21 creates a rebuttable presumption that members of certain racial minorities fall within that class, the presumption is rebuttable, wealthy minority owners and wealthy minority-owned firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage. Thus, race is made relevant in the program, but it is not a determinative factor.*¹⁴⁸

Waivers and good faith compliance are also tools that serve this purpose of reducing the burden on third parties.¹⁴⁹ The DOT DBE regulations have also sought to reduce the program burden on non-DBEs by avoiding DBE concentration in certain specialty areas.¹⁵⁰ These features have gained the approval of the only circuit court to have discussed them at length as measures of lowering impact on third parties.¹⁵¹

2.6.5 Over-Inclusion

Narrow tailoring also involves limiting the number and type of beneficiaries of the program. As noted above, there must be evidence of discrimination to justify a group-based remedy, and over-inclusion of uninjured individuals or groups can endanger the entire program.¹⁵² Federal DBE programs have succeeded in part because regulations covering DBE certification do not provide blanket protection to minorities.¹⁵³

Critically, the MBE program must be limited in its geographical scope to the boundaries of the enacting government's marketplace. The Supreme Court indicated in *Croson* that a local agency has the power to address discrimination only within its own marketplace. One fault of the Richmond MBE programs was that minority firms were certified from around the United States.¹⁵⁴

In *Coral Construction*, the Ninth Circuit concluded that the King County MBE program failed this part of the narrow tailoring test because the definition of MBEs eligible to benefit from the program was overbroad. The definition included MBEs that had had no prior contact with King County if the MBE could demonstrate that discrimination occurred "in the particular geographic areas in which it operates."¹⁵⁵ This MBE definition suggested that the program was designed to eradicate discrimination not only in King County but also in the particular area in which a non-local MBE conducted business. In essence, King County's program focused on the eradication of societywide discrimination, which is outside the

¹⁴⁸ *Sherbrooke Turf, Inc.* 345 F. 3d at 972-73, citing, *Grutter*, 123 S. Ct. at 2345-46; *Gratz v. Bollinger*, 123 S. Ct. 2411, 2429 (2003)

¹⁴⁹ See 49 CFR, § 26.53 (2006).

¹⁵⁰ See 49 CFR, § 26.33 (2006).

¹⁵¹ *Adarand Constrs. Inc.*, 228 F.3d at 1183.

¹⁵² See *Builders Ass'n of Greater Chicago*, 256 F.3d at 647-648.

¹⁵³ *Sherbrooke Turf, Inc.*, 345 F.3d 972-73.

¹⁵⁴ *Croson*, 488 U.S. at 508.

¹⁵⁵ *Coral Constr. Co.*, 941 F. 2d at 925 (internal modifications and citations omitted).

power of a state or local government. “Since the County’s interest is limited to the eradication of discrimination within King County, the only question that the County may ask is whether a business has been discriminated against in King County.”¹⁵⁶

In clarifying an important aspect of the narrow tailoring requirement, the court defined the issue of eligibility for MBE programs as one of participation, not location. For an MBE to reap the benefits of an affirmative action program, the business must have been discriminated against in the jurisdiction that established the program.¹⁵⁷ As a threshold matter, before a business can claim to have suffered discrimination, it must have attempted to do business with the governmental entity.¹⁵⁸ It was found significant that “if the County successfully proves malignant discrimination within the King County business community, an MBE would be presumptively eligible for relief if it had previously sought to do business in the County.”¹⁵⁹

To summarize, according to the Ninth Circuit, the presumptive rule requires that the enacting governmental agency establish that systemic discrimination exists within its jurisdiction and that the MBE is, or has attempted to become, an active participant in the agency’s marketplace.¹⁶⁰ Since King County’s definition of an MBE permitted participation by those with no prior contact with King County, its program was overbroad. By useful contrast, *Concrete Works II* held that the more extensive but still local designation of the entire Denver MSA constituted the marketplace to which the programs could apply.¹⁶¹

2.7 Personal Liability For Implementing An M/WBE Program

One lower court decision in the Eleventh Circuit, *Herschell Gill Consulting v. Miami-Dade County*,¹⁶² held that Dade County and its Commissioners were held jointly and severally liable for nominal damages and attorney’s fees for implementing a M/WBE program in violation of constitutional rights under Section 1983.

In general government officials have absolute immunity for legislative acts, but not for administrative acts. Thus, government officials are immune from personal liability for adopting a M/WBE program but can be personally liable for applying specific policies to particular contracts. Government officials are entitled to “qualified immunity” if their actions did not violate “clearly established statutory or constitutional rights of which a reasonable person would have known.”¹⁶³ In *Herschell Gill*, there was no recent disparity study, there was parity in contracting, the previous program had been struck down by the same federal court, there was no substantial consideration of race neutral alternatives and the County had not followed its own ordinance in adjusting goals.

2.8 DBE Programs: The “As Applied” Challenge in Western States Paving

¹⁵⁶ Id. (emphasis omitted).

¹⁵⁷ Id.

¹⁵⁸ Id.

¹⁵⁹ Id.

¹⁶⁰ Id.

¹⁶¹ *Concrete Works II*, 36 F.3d at 1520.

¹⁶² 2004 WL 1924812 (S.D.Fla. 2004).

¹⁶³ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

The Washington DOT DBE program was struck down not in *Western States Paving* because the federal DBE program had no factual predicate and not because the federal DBE program lacked narrow tailored program features. Instead, the Ninth Circuit ruled that the Washington DOT DBE program was not narrowly tailored “as applied.”¹⁶⁴ While a state does not have to independently provide a factual predicate for its DBE program the Ninth Circuit found that, “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.”¹⁶⁵ In effect, while Washington DOT was not required to produce a separate factual predicate for a DBE program, it was still required to produce a factual predicate (of sorts) to justify race-conscious elements in the local implementation of its DBE program.

While Washington DOT conceded that it had no studies of discrimination in highway contracting, it argued that there was evidence of discrimination in the fact that DBEs received 9 percent of subcontracting dollars on state-funded projects where there were no DBE goals and 18 percent of federal funded projects where there were DBE goals. But the Ninth Circuit stated that, “even in States in which there has never been discrimination, the proportion of work that DBEs receive on contracts that lack affirmative action requirements will be lower than the share that they obtain on contracts that include such measures because minority preferences afford DBEs a competitive advantage.”¹⁶⁶

In contrast, the Eighth Circuit in *Sherbrooke Turf* and the Tenth Circuit in *Adarand v. Slater* found that a decline in DBE utilization following a change in or termination of a DBE program was relevant evidence of discrimination in subcontracting.¹⁶⁷ The Tenth Circuit stated that while this evidence “standing alone is not dispositive, it strongly supports the government’s claim that there are significant barriers to minority competition in the public subcontracting.”¹⁶⁸

The Ninth Circuit also dismissed the disparity between the proportion of DBE subcontractors and the proportion of DBE dollars on state-funded contracts, because “DBE firms may be smaller and less experienced than non-DBE firms (especially if they are new businesses started by recent immigrants) or they may be concentrated in certain geographic areas of the State, rendering them unavailable for a disproportionate amount of work.”¹⁶⁹ The Ninth Circuit quoted the DC Circuit in *O’Donnell* to the effect that:

Minority firms may not have bid on . . . construction contracts because they were generally small companies incapable of taking on large projects; or they may have been fully occupied on other projects; or the District’s contracts may not have been as lucrative as others available in the Washington metropolitan area; or they may not have had the expertise

¹⁶⁴ The Ninth Circuit distinguished a previous case which did not involve an “as applied” challenge to the federal DBE program. *Milwaukee County Pavers Ass’n v. Fiedler*, 922 F.2d 419 (7th Cir. 1991). The Seventh Circuit disagreed with the Ninth Circuit’s reading of *Milwaukee County Pavers*. See *Northern Contracting*, at fn 4.

¹⁶⁵ *Western States Paving*, 407 F. 3d at 998.

¹⁶⁶ *Western States Paving*, 407 F. 3d at 1000.

¹⁶⁷ *Sherbrooke Turf*, 345 F.3d at 973.

¹⁶⁸ *Adarand v. Slater*, 228 F.3d at 1174; see also *Concrete Works IV*, 321 F.3d at 985.

¹⁶⁹ *Western States Paving*, at 1001.

*needed to perform the contracts; or they may have bid but were rejected because others came in with a lower price.*¹⁷⁰

The Ninth Circuit noted further that “if this small disparity has any probative value, it is insufficient, standing alone, to establish the existence of discrimination against DBEs.” The Ninth Circuit contrasted this minor disparity with the Ninth Circuit’s decision in *Associated General Contractors of California, Inc. v. Coalition for Economic Equity (AGCCII)* where “discrimination was likely to exist where minority availability for prime contracts was 49.5 percent but minority dollar participation was only 11.1 percent.”¹⁷¹

2.9 Small Business Procurement Preferences

Small business procurement preferences have existed since the 1940s. The first small business program had its origins in the Smaller War Plants Corporation (SWPC), established during World War II.¹⁷² The SWPC was created to channel war contracts to small business. In 1947, Congress passed the Armed Forces Procurement Act, declaring that “[i]t is the policy of Congress that a fair proportion of the purchases and contracts under this chapter be placed with small business concerns.”¹⁷³ Continuing this policy, the 1958 Small Business Act requires that government agencies award a “fair proportion” of procurement contracts to small business concerns.¹⁷⁴

Section 8(b)(11) of the Small Business Act authorizes the Small Business Administration (SBA) to set-aside contracts for placement with small business concerns. The SBA has the power:

*to make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, to insure that a fair proportion of Government contracts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share materials, supplies, and equipment to small-business concerns.*¹⁷⁵

Every acquisition of goods and services anticipated to be between \$3,000 and \$100,000 is set aside exclusively for small business unless the contracting officer has a reasonable expectation of fewer than two bids by small businesses.¹⁷⁶

There has been only one constitutional challenge to the long-standing federal small business enterprise (SBE) programs. In *J.H. Rutter Rex Manufacturing Co. v. United*

¹⁷⁰ Id. (quoting *O'Donnell Constr. Co.*, 963 F.2d at 426).

¹⁷¹ *Western States Paving*, at 1001. (Quoting *Associated Gen. Contractors of Cal., Inc. v. Coalition for Econ. Equity*, 950 F.2d 1401, 1414 (9th Cir. 1991).

¹⁷² See, generally, Hasty III, Thomas J., “Minority Business Enterprise Development and the Small Business Administration’s 8(a) Program: Past, Present, and (Is There a) Future?” 145 Mil. L. Rev. I.

¹⁷³ 10 U.S.C. § 2301 (1976) quoting, *J.H. Rutter Rex Mfg. Co. v. United States*, 706 F. 2d 702, 704 (5th Cir. 1983).

¹⁷⁴ 15 USC 631(a).

¹⁷⁵ 15 U.S.C. § 637(b)(11).

¹⁷⁶ 18 C.F.R. § 19.502-2 (2006).

States,¹⁷⁷ a federal vendor unsuccessfully challenged the Army's small business set-aside program as in violation of the due process clause of the Fifth Amendment to the U.S. Constitution, as well as the Administrative Procedures Act and the Armed Forces Procurement Act.¹⁷⁸ The court held that classifying businesses as small was not a "suspect classification" subject to strict scrutiny. Instead the court ruled:

*Since no fundamental rights are implicated, we need only determine whether the contested socio-economic legislation rationally relates to a legitimate governmental purpose. Our previous discussion adequately demonstrates that the procurement statutes and the regulations promulgated thereunder are rationally related to the sound legislative purpose of promoting small businesses in order to contribute to the security and economic health of this Nation.*¹⁷⁹

A large number of state and local governments have maintained small business preference programs for many years.¹⁸⁰ No district court cases were found overturning a state or local small business reference program. One reason for the low level of litigation in this area is that there is significant organizational opposition to SBE programs. There are no reported cases of Associated General Construction (AGC) litigation against local SBE programs. And the legal foundations that have typically sued M/WBE programs have actually promoted SBE procurement preference programs as a race-neutral substitute for M/WBE programs.

There has been one state court case in which an SBE program was struck down as unconstitutional. The Cincinnati SBE program called for maximum practical M/WBE participation and required bidders to use good faith effort requirements to contract with M/WBEs up to government-specified M/WBE availability. Failure to satisfy good faith effort requirements triggered an investigation of efforts to provide opportunities for M/WBE subcontractors. In *Cleveland Construction v. Cincinnati*,¹⁸¹ the state court ruled that the Cincinnati SBE program had race and gender preferences and had deprived the plaintiff of constitutionally protected property interest without due process of law. The city acknowledged that it had not offered evidence to satisfy strict scrutiny because it felt that it had been operating a race-neutral program.

2.10 Local Business Preferences

The constitutional analysis of local business preferences is somewhat less clear than SBE programs. Again, local business preferences are widespread and some have been in place for almost two decades (for example, the City of Oakland Local Business Enterprise (LBE) program started in 1979).¹⁸² More common is the preference for small local businesses,

¹⁷⁷ 706 F.2d 702 (5th Cir. 1983), cert. denied, 464 U.S. 1008 (1983).

¹⁷⁸ *J.H. Rutter Rex Mfg. Co. v. United States*, 534 F. Supp. 331, 332 (E.D. La. 1982), app'd 706 F. 2d 702 ("Administrative Procedures Act, 5 U.S.C. §§ 552(a)(1)(E) (1976) and the "fair proportion" language of the Armed Forces Procurement Act, 10 U.S.C. § 2301 et seq. (1976), and the Small Business Act, 15 U.S.C. § 631 et seq. (1976)").

¹⁷⁹ *J.H. Rutter Rex Mfg. Co.*, 706 F.2d at 713 (internal citations omitted and emphasis added). See also *Dandridge v. Williams*, 397 U.S. 471, 485-86 (1970).

¹⁸⁰ See Fla. Stat. § 287.001 et seq. (starting small business program in 1985); Minn. Stat. § 137.31 (Univ. of Minn. Started in 1979); N.J. Stat. § 52:32-17 et seq. (small business program started in 1983).

¹⁸¹ See instead *Cleveland Constr. Inc. v. Cincinnati*, 2006 Ohio App. LEXIS 6410, *P1-*P19 (Ohio Ct. App. Dec. 8, 2006).

¹⁸² See, e.g., City of Detroit's Detroit-Based Business Program (Executive Order No. 2003-4), City of San

which is an even more widespread practice. While called small business programs, these programs often set-aside contracts for bidding by local SBEs.

There are no federal court cases expressly stating that local business preference programs are unconstitutional. However, local business preferences should be distinguished from preferences for hiring local residents, which have been struck down on constitutional grounds. But LBE programs could be subject to some doubt on constitutional grounds. The three bases for constitutional challenges are the Equal Protection Clause, Dormant Commerce Clause and the Privileges and Immunities Clause.

2.10.1 Equal Protection Clause

A challenge to an LBE program under the Equal Protection Clause is straightforward. The content of the Equal Protection Clause has been discussed above. All challenges to local purchasing preferences based on the Equal Protection Clause have failed. Federal courts have ruled that programs to favor local companies do not involve a suspect classification, and can be justified as having a rational basis under the Equal Protection Clause. For example, Pennsylvania enacted a statute requiring the purchase of Pennsylvania steel.¹⁸³ A challenge was made to the Pennsylvania Steel Products Procurement Act, as a "blatant attempt at economic protectionism," in violation of the Equal Protection Clause. But the federal court found that Pennsylvania's distinction between domestic and foreign steel products was "rationally related to a legitimate governmental purpose," that is, to support a struggling industry that contributed significant employment and tax revenue to the agency.

2.10.2 The Dormant Commerce Clause

The next objection to LBE programs comes from the Commerce Clause. Article One of the Constitution confers upon Congress the power to regulate interstate commerce.¹⁸⁴ The Supremacy Clause of the Constitution grants to the federal government the power to preempt state laws that conflict with federal laws. The Supreme Court has found implicit in the Constitution "a self-executing limitation on the power of the States to enact laws imposing substantial burdens on such commerce."¹⁸⁵ Consequently a state statute is unconstitutional under what has become known as the Dormant Commerce Clause if it poses undue burdens on interstate commerce.¹⁸⁶ It follows that under the Dormant Commerce Clause, "discrimination against interstate commerce in favor of local business or investment is *per se* invalid, save in a narrow class of cases in which the municipality can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest."¹⁸⁷

The Dormant Commerce Clause has been justified on both economic and political grounds. On economic grounds the Dormant Commerce Clause "prohibits economic

Francisco Minority/Women Local Business Enterprise Program (San Francisco Ordinance, CHAPTER 12D), City of Oakland Local Business Enterprise Program (City Ordinance 9739), City of New York Local Business Enterprise Program (New York Administrative Code § 6-108.1program).

¹⁸³ *Trojan Technologies v. Pennsylvania*, 916 F.2d 903 (3d Cir 1990).

¹⁸⁴ U.S. Const., art. I., 8 (reading, "Congress shall have Power ... to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes ...").

¹⁸⁵ *S.-C. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 87 (1984); see also *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273 (1988).

¹⁸⁶ See *Big Country Foods, Inc. v. Bd. of Educ. Anchorage Sch. Dist.*, 952 F.2d 1173, 1177 (9th Cir. 1992).

¹⁸⁷ *C & A Carbone v. Town of Clarkstown*, 511 U.S. 383, 392 (1994).

protectionism."¹⁸⁸ From a political standpoint a state law that only harms interests from other states "is not likely to be subjected to those political restraints which are normally exerted on legislation where it affects adversely some interests within the state."¹⁸⁹

Historically the Supreme Court employed a two-part test for the Dormant Commerce Clause: (1) does the state regulation discriminate against interstate commerce on its face; or, (2) are the burdens imposed on interstate commerce excessive relative to the alleged local benefits.¹⁹⁰ A statute that fails either part of this test (the "Pike test") is invalid under the Dormant Commerce Clause. LBE programs facially discriminate against interstate commerce and thus should fail the Pike test.

But there is an important exception to the Dormant Commerce Clause relevant to an LBE program. The "Market Participant" doctrine allows an agency to pass 'protectionist' legislation so long as an agency is participating in the market as a buyer or seller of goods and services, rather than regulating the market.¹⁹¹ Thus the Commerce Clause was not intended to prohibit an agency from favoring its own citizens over others when acting as a market participant. The U.S. Supreme Court has ruled that governments enjoy unrestricted ability to select their trading partners.¹⁹² Indeed, in light of "the long recognized right of trader or manufacturer, engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal"...and that "when acting as proprietors, States should similarly share existing freedoms from federal constraints, including the inherent limits of the Commerce Clause."¹⁹³

The U.S. Supreme Court has clarified, however, that the Market Participant doctrine does not allow an agency to impose conditions "that have a substantial regulatory effect outside of that particular market."¹⁹⁴ Note that the line between market participant and market regulator has not always been clear. Nevertheless, under the Market Participant Exception LBE programs should pass constitutional hurdles.

Finally under the Commerce Clause the U.S. Supreme Court has ruled that when local preferences are required under federal grants there is no Dormant Commerce Clause issue, ruling that "where state or local government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with interstate commerce."¹⁹⁵

Given these results it is not surprising that no federal court case was found overturning, or even challenging, an LBE program under the Dormant Commerce Clause.

2.10.3 Privileges and Immunities Clause

The most serious risk to an LBE program comes from the Privileges and Immunities Clause. The U.S. Supreme Court has identified the original purpose of the Privileges and Immunities Clause as prohibiting discrimination on the basis of state citizenship. Historically the U.S.

¹⁸⁸ *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 274 (1988).

¹⁸⁹ *S.C. St. Hwy. Dept. v. Barnwell Bros., Inc.*, 303 U.S. 177, 185, n. 2 (1938).

¹⁹⁰ *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

¹⁹¹ *S.-C. Timber Dev., Inc.*, 467 U.S. at 93 (holding that "if a state is acting as a market participant, rather than as a market regulator, the dormant Commerce Clause places no limitation on its activities").

¹⁹² *Perkins v. Lukens Steel*, 310 U.S. 113, 127 (1940).

¹⁹³ *Reeves, Inc. v. Stake*, 447 U.S. 429, 439 (1980).

¹⁹⁴ *S.-C. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 97 (1984).

¹⁹⁵ *White v. Massachusetts Council of Construction Employers, Inc.* 460 U.S. 204, 213 (1983).

Supreme Court has applied a two-part test under the Privileges and Immunities Clause: (1) did the state or local government agency violate a fundamental right, and (2) did the state or local government agency have a substantial reason for doing so.¹⁹⁶

While similar and interrelated with the Dormant Commerce Clause, the Immunities Clause and the Commerce Clause provide different constitutional protections. The Dormant Commerce Clause is a judicially-created doctrine designed to prevent economic protectionism while the Privileges and Immunities Clause is a Constitutional provision created to protect individual rights.

A clarification of the application of the Immunities Clause to a local preference came in *United Building & Constr. Trades v. Camden*.¹⁹⁷ In *Camden* a municipal ordinance required that at least 40 percent of the employees of contractors and subcontractors working on city construction projects be Camden residents. The Court devised a three-part test to evaluate the constitutionality of such an ordinance under the Privileges and Immunities Clause:

- The jurisdiction must document "substantial reason" for the preference;
- The jurisdiction must demonstrate that non-residents can be held partly responsible for the documented problem; and
- The proposed remedy must be narrowly tailored.

The U.S. Supreme Court held that the Camden ordinance might be unconstitutional and remanded the case for consideration under the specified legal standard. There were three significant element of the Court's holding. First, the *Camden* Court ruled that the Market Participant exception does not apply to Privileges and Immunities analysis. Second, the Court ruled that the Immunities Clause does apply to laws that discriminate on the basis of municipal residency, not simply state residency. Third, the Court ruled that only those rights fundamental to interstate harmony were protected by the Immunities clause. In *Camden* the Court found that employment was a fundamental right under the Immunities Clause, but direct public employment was not.¹⁹⁸ Hence employment by a city vendor was a fundamental right while employment by the city itself was not a fundamental right. All of these results would seem to operate against a constitutional finding sustaining a LBE program.

The application of *Camden* can be seen in *Hudson County Building and Construction v. Jersey City*,¹⁹⁹ which involved a program requiring city vendors to make good faith efforts to hire 51 percent city residents. The district court again noted that there is no fundamental right to direct government employment, but there is a fundamental right to private employment with government contractors. Consequently the program did unduly burden out-of-state residents. While Jersey City provided data on unemployment and poverty in Jersey City, the evidence did not show "that out-of-state workers [were] a cause of unemployment and poverty within its borders." Thus just reciting data on unemployment and poverty will not be enough to overcome an Immunities Clause challenge.

¹⁹⁶ *Toomer v. Witsell*, 334 U.S. 385, 395-96 (1948).

¹⁹⁷ *United Building & Constr. Trades v. Camden*, 465 U.S. 208 (1984).

¹⁹⁸ *McCarthy v. Philadelphia Civil Service Commission*, 424 U.S. 645 (1976) (upholding a municipal ordinance that required all Philadelphia city government employees to be residents of the city).

¹⁹⁹ 960 F.Supp. 823, 831 (Dist Ct D NJ 1996)

But note that *Camden* involved a preference for hiring city residents, not a local business enterprise program. Arguably there should be no distinction between public contracting and direct government hiring under the Privileges and Immunities Clause; that is, public contracts are like public jobs, public works and other government benefits that are owned by the residents. Public contracts are not a fundamental right for Immunities Clause analysis.

In addition, while local hiring programs may face challenge under the Immunities Clause, the Supreme Court has held that the Privileges and Immunities Clause does not protect corporations.²⁰⁰ Consequently a Immunities challenge should only arise relative to an individual seeking to contract with a local government. But local contracting programs can and should have a clear statement of the economic basis of the program to protect it from challenge by an individual vendor on the basis of the Immunities Clause.

It is worth observing that no case was found overturning, or even challenging, an LBE program based upon the Immunities clause.²⁰¹ Only municipal resident hiring programs have been challenged on Immunities Clause grounds.

2.10.4 Implications for LBE Program

In conclusion, no constitutional challenges have been succeeded with regard to an LBE program. A LBE program should survive: (1) a challenge under the Equal Protection Clause because LBE programs generally have a rational basis for their existence, (2) a challenge under the Dormant Commerce Clause based upon the Market Participant exception, and (3) a challenge under the Immunities Clause, because the clause does not apply to corporations, public contracts are not a fundamental right and an agency should be able to provide economic justification for an LBE program.

2.11 Conclusions

As summarized earlier, when governments develop and implement a contracting program that is sensitive to race and gender, they must understand the case law that has developed in the federal courts. These cases establish specific requirements that must be addressed so that such programs can withstand judicial review for constitutionality and prove to be just and fair. Under the developing trends in the application of the law, local governments must engage in specific fact-finding processes to compile a thorough, accurate, and specific evidentiary foundation to determine whether there is, in fact, discrimination sufficient to justify an affirmative action plan. Further, local governments must continue to update this information and revise their programs accordingly.

While the Supreme Court has yet to return to this exact area of law to sort out some of the conflicts, the circuit courts have settled on the core standards. Though there are differences among the circuits in the level of deference granted to the finder of fact, these differences do not appear to be profound. The differences in the individual outcomes have been overwhelmingly different in the level of evidence, mostly concerning the rigor with which

²⁰⁰ *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 177, 181 (1869). This result was reaffirmed by the Supreme Court in *Western & Southern Life Ins. Co. v. State Bd. of Equalization*, 451 U.S. 648 (1981).

²⁰¹ One state court case challenging an LBE program, argued that an Illinois School Board did not have the authority under state statutes to authorize an LBE program. *Best Bus Joint Venture v. The Board of Education of the City of Chicago*, First District Appellate Court No. 1-96-2927 (May 9, 1997).

disparity studies have been conducted and then used as the foundation for narrowly tailored remedies. Most significantly, nationally the DBE program has been consistently upheld as a narrowly tailored remedial program. Ultimately, MBE and WBE programs can withstand challenges if local governments comply with the requirements outlined by the courts.

3.0 REVIEW OF POLICIES, PROCEDURES, AND PROGRAMS

3.0 REVIEW OF POLICIES, PROCEDURES, AND PROGRAMS

This chapter focuses on the policies, procedures, and programs used by the Leon County Board of County Commissioners (County) to purchase goods and services and engage in construction projects. This chapter provides a brief description of the procurement and contracting environment in which minority-, woman-owned, and small business enterprises (M/W/SBE) operate. This chapter also provides background for the data analysis and foundation for the report recommendations. Finally, it discusses the remedial efforts undertaken by the County with regard to procurement in the categories of construction, architecture and engineering, professional services, other services, goods and equipment. The period of study for this review was October 1, 2004, through September 30, 2008. The research presented in this chapter also considered changes in policies and programs instituted through March 31, 2009.

This chapter includes the following sections:

- 3.1 Methodology
- 3.2 County Organizational Structure and Purchasing Function
- 3.3 Methods of Procurement
- 3.4 M/W/SBE Program
- 3.5 Conclusions

3.1 Methodology

This section discusses the steps taken to summarize the County's contracting and purchasing policies, procedures, and programs; race- and gender-based programs; and race- and gender-neutral programs. MGT's review focused on elements of the purchasing process, including remedial programs that might impact M/W/SBE utilization. The analysis included the following steps:

- Collection, review, and summarization of County contracting and purchasing policies currently in use. Discussions with staff and officials about the changes that contracting and purchasing policies underwent during the study period and their effects on the remedial programs.
- Development of questionnaire utilized to interview key County contracting and purchasing staff and officials to determine how existing contracting and purchasing policies have been implemented. Interviews were conducted with County management and staff regarding the application of policies, discretionary use of policies, exceptions to written policies and procedures, and impact of policies on key users.
- Review of applicable County ordinances, regulations, resolutions, and policies that guide the remedial programs. This included discussing with County personnel the operations, policies, and procedures of the remedial programs and any remedial policy changes over time.

Finally, MGT collected and reviewed copies of previous studies of minority business development conducted by the County and performed a cursory review of race- and gender-neutral programs.

In July 2004, MGT issued a disparity study update¹ which included an assessment of the County's purchasing policies, procedures, and practices since the previously presented report in December 2000.² MGT leveraged the data and findings from the 2004 report as a starting point for this analysis. Therefore, the inquiries for this current study centered on changes that occurred in the County's policies and procedures since the July 2004 study and the impact of those changes on firms interested in doing business with the County.

With the assistance of the County's contract manager for this project, MGT identified appropriate County personnel to interview concerning changes to procurement policies and procedures since MGT's last review. Overall, 11 interviews were conducted with current County staff and representatives and one interview with the Executive Director of the Florida Agriculture & Mechanical University Small Business Development Center (FAMU SBDC). These interviews occurred during the months of April and May 2009. Accordingly, MGT met with the following:

- Senior Assistant to the County Administrator;
- Purchasing Director;
- Purchasing Agent
- Minority/Women/Small Business Enterprise Director;
- Minority/Women/Small Business Enterprise Analyst;
- Director of Public Works;
- Director of Engineering Services;
- Director of Facilities Management;
- Director of Parks and Recreation;
- Senior Assistant County Attorney;
- Health & Human Services Division Director.

In addition, MGT reviewed the documents and sources shown in **Exhibit 3-1**.

¹ MGT of America, Inc., *Leon County Board of County Commissioners Disparity Study*, July 21, 2004.

² MGT of America, Inc., *Purchasing Policy and MBE Program Review for Leon County Board of County Commissioners*, December 12, 2000.

EXHIBIT 3-1 DOCUMENTS AND SOURCES REVIEWED DURING POLICY AND PROCEDURE REVIEW

Index	Description
1	Board of County Commissioners, Leon County Purchasing and Minority/Women Business Enterprise Policy, Revised June 14, 2006.
2	Board of County Commissioners, Leon County Purchasing and Minority/Women Business Enterprise Policy, Revised July 30, 2002.
3	Board of County Commissioners, Purchasing Card Policy, Revised June 14, 2006.
4	Board of County Commissioners, Policy for Purchases of Food, Beverages, and Supplies, October 27, 2004.
5	Board of County Commissioners, Procurement of Paper Products, Revised August 28, 1996
6	Board of County Commissioners, Leon County, Florida, Agenda Item Executive Summary, Thursday, February 26, 2009; Approval of Fast Tracking Program for Public Sector Projects
7	State of Florida, "Procurement of Personal Property and Services," Florida Statutes, Chapter 287.
8	MGT of America, Leon County Board of County Commissioners Disparity Study, Final Report, July 21, 2004.
9	Leon County Board of County of Commissioners, Diversity: "The Cornerstone of Creativity" 2006 Annual Report.
10	Board of County Commissioners Agenda Request 13, submitted June 7, 2006; Approval of a Performance Agreement between Leon County and Florida Agriculture & Mechanical University for Small Business Training through its Small Business Development Center.
11	Board of County Commissioners, Agenda Request 26, Acceptance of Status Report Regarding County Utilization of Minority and Women-Owned Businesses, Submitted December 5, 2007
12	Board of County Commissioners Agenda Request 31, submitted August 27, 2008; Acceptance of Report on Race/Gender Target in Policy No. 96-1, "Purchasing and Minority Women Small Business Enterprise Policy", Submitted August 27, 2008.
13	2008 Leon County Annual Report
14	Minority and Women Business Enterprise (MWBE) Participation Plan Requests For Proposals (RFP)
15	Board of County Commissioners, Leon County, Florida, Agenda Item Executive Summary, Thursday, February 26, 2009; Approval of Agreement to Award Bid to Panacea Coastal
16	www.leoncountyfl.gov
17	www.sbdcatfamou.org
18	www.fbbib.com
19	www.fshcc.com
20	www.accessfloridafinance.com

3.2 County Organizational Structure and Purchasing Function

The County is governed by a home rule charter in accordance with the provisions of Chapter 125 of the Florida Statutes. The Leon County Board of Commissioners consists of five elected members who serve specific commission districts and two elected members who serve at large. A County Administrator is appointed by the Board to

oversee all functions, directives and policies. Other elected County officials include the Judiciary, State Attorney, Public Defender, Clerk of the Court, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector.³ The County's organizational structure is shown in **Exhibit 3-2**.

The County's procurement of goods and services is grouped into the following business categories:

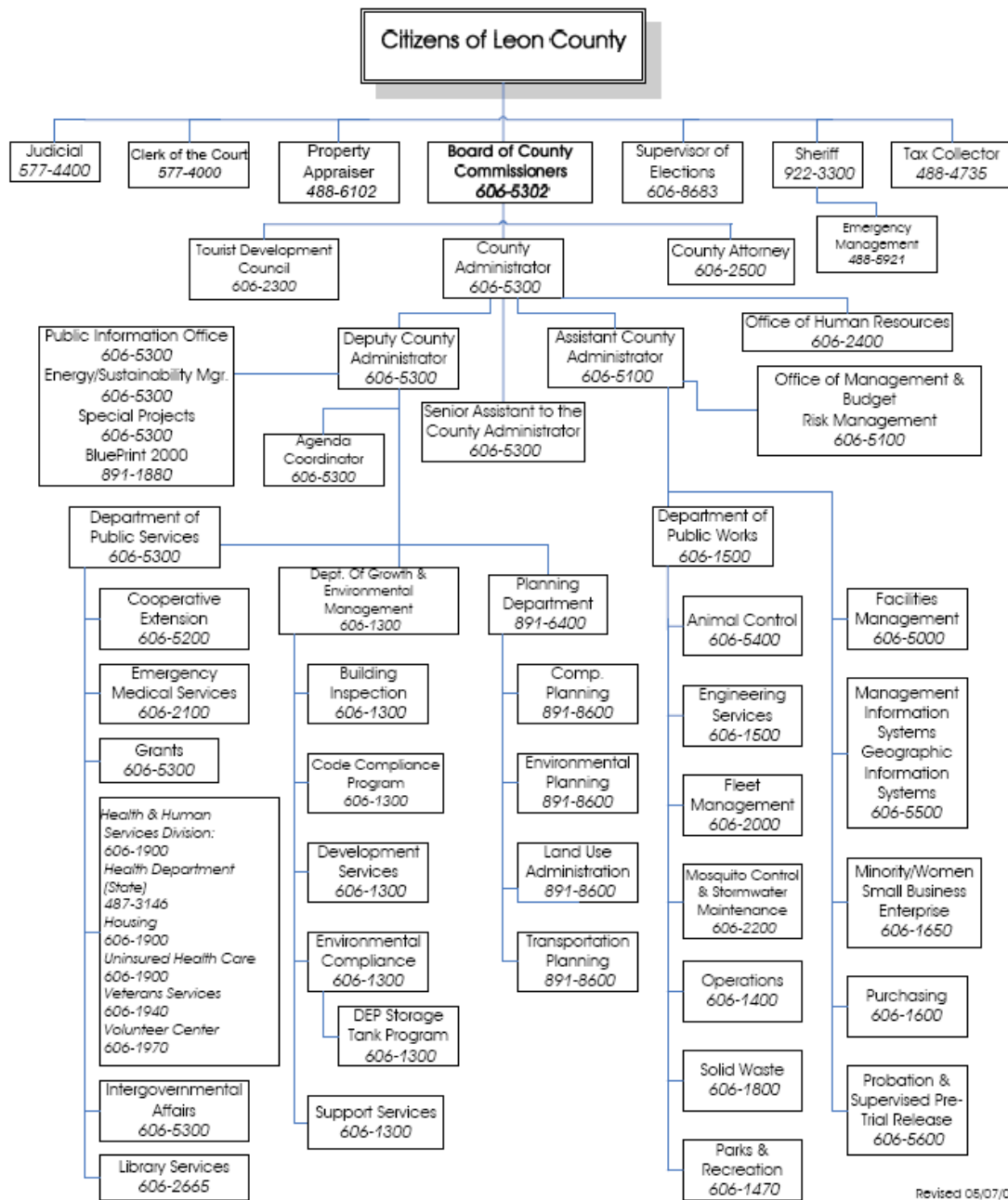
- Construction;
- Professional Services;
- Other Services;
- Materials and Supplies; and
- Purchases.

The procurement function in Leon County is governed by applicable federal and state regulations, such as Chapter 287, Florida Statutes as well as Federal Acquisition Regulation, Part 45 and others. In addition to federal and state guidelines, the Board of County Commissioners approved the revised "Purchasing and Minority/Women Business Enterprise Policy" on June 14, 2006 (hereinafter referred to as "policy") to provide specific directives about the County's procurement function.

The Purchasing Division is responsible for the procurement of supplies, equipment and services for all departments under the Leon County Board of Commissioners, and to a limited extent certain constitutional departments, such as the Sheriff's Department, the Court Administrator, and the Supervisor of Elections. As a part of the procurement function, the Purchasing Division operates a warehouse facility, office supply store, and a delivery system for the issuance of supplies and materials to user agencies at wholesale prices. The County has a combination of centralized and decentralized procurement processes. Centralization occurs when departments purchase goods and services for their entire organization. Decentralization is described as when various units within an organization have their own purchasing authority. Leon County has a degree of decentralized purchasing, especially as it relates to the purchasing cards authority that has a spending limit up to \$1,000; and departments can purchase goods and supplies up to \$1,000 as well as obtain bids and quotes for goods and services under \$20,000. However, the Purchasing Department is still involved in ensuring the proper number of quotes, M/WBE solicitation, etc. The County has stringent control measures in place in most cases. The policies and procedures are written and widely available on the internet for purchasing personnel and other users. With the exception of field purchase orders and purchasing cards, which may be used to purchase incidental and/or emergency materials or services, only the Purchasing Division is authorized to act as an agent in awarding, executing, modifying, or canceling purchase orders or contracts. The County does not have a formal vendor registration or a formal prequalification process. However, the County may do prequalification on a project by project basis. Staff has access to the M/W/SBE databases through the internet.

³ Leon County Internet Web site <http://www.co.leon.fl.us/aboutus.asp>.

EXHIBIT 3-2 LEON COUNTY ORGANIZATION CHART



Revised 05/07/09

Source: Leon County Internet Web Site, May 2009.

The procurement policy in effect during the study period is the “Purchasing and Minority Women Small Business Enterprise Policy” which was adopted by the Board of Commissioners on June 13, 2006. This policy superseded Policy No 96-1, which was adopted on December 13, 2005. The revision resulted “from the County’s formation of a Small Business Enterprise (SBE) component to continue its focus of narrowly tailoring its effort to promote M/WBES and to encourage the growth and development of local small

businesses”⁴ and included revision of aspirational targets with separation of race conscious and race neutral targets. The framework for the SBE program was ratified by the Leon County Board of Commissioners on June 28, 2005; however, staff was instructed to further develop the SBE policies which were updated during the County’s Local Economic Development workshop held on March 28, 2006.

The Purchasing Director is the central purchasing officer for Leon County. Per the policy, the Purchasing Director:

- Develops and administers operational procedures governing the internal functions of the Division of Purchasing.
- Purchases or supervises the purchase of supplies, services, materials, equipment, and construction services defined in the County’s policy.
- Operates a central warehouse.
- Delegates his/her purchasing authority as allowed by law or rule.
- Assists the M/WBE Director in implementing, monitoring, and enforcing the County’s M/WBE program policy.

The Purchasing Director has authority to approve procurements in amounts up to \$20,000. Purchases greater than \$20,001, but less than \$50,000, require the additional approval of the County Administrator. Procurements in amounts greater than \$20,000 must be approved by the Leon County Board of County Commissioners. The revised policy did not modify these approved levels of authority.

3.3 Methods of Procurement

The procurement processes for Leon County include the purchasing categories shown in **Exhibit 3-3**.

⁴ Board of County Commissioners Agenda Request 12, submitted June 7, 2006.

**EXHIBIT 3-3
 LEON COUNTY BOARD OF COUNTY COMMISSIONERS
 PURCHASING CATEGORIES**

Purchasing Categories	Dollar Limits
Petty Cash Reimbursements	Not to exceed \$100
Field Purchase Orders	\$1 to \$500
Small Purchase Orders	\$1 to \$1,000
Warehouse Operations	\$1 to \$5,000
Blanket Purchase Orders:	
Non-contractual basis	\$1,000 to \$5,000
Contractual basis	not to exceed \$100,000
Field Quotes	\$1,000 to \$5,000
Purchasing Quotes	\$5,001 to \$20,000
Informal Bid Process	\$20,001 to \$50,000
Competitive Sealed Bids	\$20,001 and above
Competitive Sealed Proposals:	
Approved by County Administrator	\$20,001 and \$50,000
Approved by the Board of County Commissioners	\$50,001 and above

Source: Board of County Commissioners, Leon County - Purchasing and Minority Women Small Business Enterprise Policy. Adopted June 13, 2006.

The revised policy increased the dollar limits for petty cash transactions from \$50 to \$100. The policy also increased the dollar limit for field purchase orders from \$200 to \$500. The increases were made for administrative convenience and have no material impact either positively or negatively on the inclusion of M/WBEs in the County's procurement process.

On February 26, 2009, Leon County staff submitted to the Leon County Board of Commissioners for approval a Fast Tracking Program for Public Sector Projects through development review, permitting, procurement and right-of-way (ROW) acquisition processes. According to staff interviews, the main objectives of the fast track program is the following: reduce the average purchasing and contract administrative timelines, thus reducing the timeline from solicitation to contract execution; change award and signature thresholds for competitive sealed bids and proposals, thus reducing the number of procurements requiring Board approval; and reduce the turnaround time for such items, authorize the Purchasing Director to release Request for Proposals (RFPs) expected to result in cost no greater than \$100,000 and authorize the County Administrator or his designee to release all RFPs. "Staff may authorize the release of RFPs and when the procurement process results in costs within the Contract Award and Signature Authority Thresholds, staff may award the work and execute the agreement in a form approved by the County Attorney's Office."⁵ This process would also release contractors to begin performance of a contract while the County is completing its internal contract execution process. The Board directed staff to consider changing preference points for Local Preference and M/WBE Participation. Staff recommended no changes be made to the

⁵ Board of County Commissioners Leon County, Florida, Agenda Item Executive Summary, Thursday, February 26, 2009, page 7.

current percentage points of 5 percent for Local Preference and 10 percent of total available points for M/WBE participation.

**EXHIBIT 3-4
 LEON COUNTY BOARD OF COUNTY COMMISSIONERS
 FAST TRACK PROGRAM THRESHOLD AND SIGNATURE CHANGES**

Table 1 - Purchasing Process Thresholds		
Procurement Method	Current Threshold	Proposed Threshold
Petty Cash/Reimbursement (Section 5.01 of the Purchasing and M/W/SBE Policy)	Not to exceed \$100	*Not to exceed \$100
Field Purchase Order (Section 5.02)	\$1 to \$500	*\$1 to \$500
Small Purchase Procedures (Section 5.03)	\$1 to \$1,000	*\$1 to \$1,000
Warehouse Operations (Section 5.031)	\$1 to \$5,000	*\$1 to \$5,000
Blanket Purchase Orders (Section 5.04)		
Non-contractual Basis	\$1,000 to \$5,000	*\$1,000 to \$5,000
Contractual Basis	Not to exceed \$100,000	*Not to exceed \$100,000
Field Quotes (Section 5.05)	\$1,000 to \$5,000	*\$1,000 to \$5,000
Purchasing Quotes	\$5,001 to \$20,000	*\$5,001 to \$20,000
Bid - Informal Bid Process (requires seeking 3+ written quotes; Section 5.06)	\$20,001 to \$50,000	\$20,001 to \$100,000
Bid - Competitive Sealed Bids (Section 5.08)	\$50,001 and above	\$100,001 and above
RFP - Competitive Sealed Proposals (Section 5.09)	Requires Board Approval to Release RFP; County Administrator authorized to award up to \$50,000.	Purchasing Director –Authorized to Release RFPs Expected to Result in Costs No Greater than \$100,000; County Administrator Authorized to all RFPs
*No change recommended		
Table 2 - Contract Award and Signature Authority Thresholds		
Entity	Current	Recommend
Purchasing Director	Purchase Orders and Agreements up to \$20,000	*Procurement Agreements up to \$100,000 (correlates with the recommended Informal Bid Process threshold)
County Administrator	Procurement Agreements \$20,000 up to \$50,000	* **Procurement Agreements greater than \$100,000 and no greater than \$250,000
Board Chairman	Procurement Agreements \$50,001+	*Procurement Agreements greater than \$250,000
*All contracts will be in a form approved by the County Attorney's Office prior to execution.		
**Correlates with the City of Tallahassee's Manager's Purchasing Authority		

Source: <http://www.leoncountyfl.gov/admin/Agenda/view2.asp?id=9113>.

3.3.1 Blanket Purchase Orders

Blanket purchase orders are used for repeated and/or multiple purchases of goods or services. Non-contractual blanket purchase orders may be issued in cases where the total value of the purchase order is \$5,000 or less. Contractual blanket purchase orders accommodate repeated and/or multiple purchases up to \$100,000.

MGT's research for the 2000 and 2004 review of the County's purchasing policy indicated that blanket purchase orders provide a convenient mechanism for repetitive purchases. It was noted during the 2004 study that there were concerns as to whether blanket purchase orders created the potential for exclusion, since this is selection-based procurements without competition. The interviews conducted for this current study did not find these same concerns; however, most interviewees recommended that MGT collect information regarding blanket purchase orders from the Purchasing Director.

M/WBEs were not categorically excluded in the earlier policy nor are they excluded in the revised version. User divisions and departments are advised of M/WBE availability to provide goods and services under blanket purchase orders, which is unchanged from the earlier purchasing procedure. Therefore, policy updates had no material impact on the utilization of M/WBEs by the County on blanket purchase orders.

3.3.2 Field Quotes and Purchasing Quotes

County procurements for amounts greater than \$501 and less than \$5,000 require competitive Field Quotes to support the purchase in the form of three written or verbal price quotations from potential vendors. County procurements in amounts greater than \$5,001 and less than \$20,000 must be supported by at least three written Purchasing Quotes from potential vendors. Vendor selection for field quotes and purchasing quotes is ultimately determined by the requesting department.

The policy encourages County decision makers to "seek out and utilize certified minority and women-owned business enterprises in these purchases." During MGT's policy review, MGT learned that the Purchasing Division requires that at least one of the three written quotes come from a certified M/WBE in order to comply with current policy requirements.

3.3.3 Informal Bid Process

According to the policy, procurements in amounts greater than \$20,000, but less than \$50,000, may be procured by the Informal Bid Process. In this process:

The Purchasing Director shall secure, whenever possible, a minimum of three written quotations which shall be the result of written specifications transmitted by mail, by electronic format, or by facsimile. When such quotations are received by facsimile the purchasing agent will immediately seal and label the quotations until the time set for opening bids. In those instances where the securing of three quotations is not

practicable, the Purchasing Director shall provide written justification of such.⁶

The current policy further states that the County's Purchasing Division will seek out and encourage certified M/WBE participation in this process. The inclusion of this language in the current policy serves to emphasize the County's intent to consider M/WBEs in the procurement process. Inclusion of specific language in the policy documents eliminates ambiguity as to the need for user departments/divisions to solicit M/WBE involvement in the informal bid process, which is a revision of the earlier 2000 policy. This serves to diminish an earlier identified barrier regarding M/WBE participation.

Typically, the informal bid process does not include advertising of the procurement opportunity. Vendors wishing to be notified of informal bid opportunities have the option to subscribe to the *DemandStar.com* service (see Section 3.3.7 of this chapter), contact the Purchasing Division, or check the Purchasing Division's Internet Web Site to learn of these opportunities.

3.3.4 Competitive Sealed Bids

The County uses Competitive Sealed Bids for procurements of \$50,000 or more. The steps in this process include:

- Determining the bid specifications and requirements of the requesting department or division.
- Forwarding bid specifications and other supporting documentation to the Purchasing Division for packaging.
- Advertising the Invitation to Bids (ITB).

Projects expected to cost more than \$200,000 must be advertised publicly at least once in a newspaper of general circulation in the County. This advertisement must be posted for at least 21 days prior to the established bid opening date, and at least five days prior to any scheduled pre-bid conference. Projects expected to cost more than \$500,000 must be advertised publicly at least once, at least 30 days prior to the bid opening and five days prior to the scheduled pre-bid conference. The M/W/SBE Director reviews intended solicitations before publication to maximize the potential for M/WBE response.

The revised policy includes language requiring the M/W/SBE Director, Purchasing representative and a user department representative to review proposed projects and bids in order to determine potential utilization of M/WBEs. If certified M/WBEs are available to perform as subcontractors on pending bids, the M/W/SBE Director will add an M/WBE participation aspirational target requirement to the bid specification. If certified M/WBEs cannot be identified, the M/W/SBE Director advises the procurement representative to include language in the bid specifications that encourages the prime contractor to include M/WBE subcontractors in the submitted bids. This process increases the level of awareness concerning the need to consider M/WBEs for competitive bids.

⁶ Section 5.07, Board of County Commissioners - Leon County Purchasing and Minority/Women Business Enterprise Policy, Revised July 30, 2002.

On the predetermined date, bids are opened publicly and are unconditionally accepted. The opened bids are reviewed for compliance with the requirements listed in the request for bids. The Purchasing Division tabulates the bids and presents a Bid Report to the appropriate department or division. Based on the Bid Report, the requesting department or division head makes the determination as to the successful respondent. This recommendation will ultimately be submitted as a Board agenda item. However, prior to the submission of the recommendation to the County Administrator for inclusion on the Board agenda, the department or division head submits its recommendation to the Purchasing Director and M/WBE Director for review. Afterwards, the recommendation is forwarded to the County Administrator and then to the Board of Leon County Commissioners for approval.

Per the policy, “the contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid.” Section 16(F) further states that “for contracts of \$100,000 or less, where there is a disparity of 1 percent or less between the total of the base bid and all recommended alternates of a 100 percent owned and operated MBE, WBE or SBE and the apparent low bid which is from a non-minority, woman, or small business enterprise, and all other purchasing requirements have been met, the contract may be awarded to the MBE, WBE or SBE to help achieve race/gender neutral targets or race/gender conscious target, where otherwise permissible.” The County has maintained a similar bid price allowance since 1991.

Section 5.08(M) contains local preference provisions whereby the County may allow special consideration for local businesses in purchasing goods or services where pricing is the major consideration. This provision was included with other policy additions in the 2002 and 2005 revisions. The inclusion of the local preference provision is intended to create a slight advantage for local firms that compete for County contracts. The local preference allowance is 5 percent of the bid price for purchases under \$250,000, and 2 percent of the bid price for purchases of \$250,000 and above. The local preference allowance is capped at \$20,000. No opinions were expressed during MGT’s interviews if the local preference provisions have had a significant impact on the utilization of M/WBEs in County procurements.

3.3.5 Competitive Sealed Proposals

Competitive sealed proposals are used by the County when the Director of Purchasing “determines that the use of competitive sealed bidding is either not practical or not advantageous to the County.” Generally, this procurement process is used for professional, architectural, engineering, landscape architectural, and land surveying services. The competitive sealed proposals process begins with the determination of the project requirements by the requesting department or division in the County. Next:

- The Purchasing Director, or designee, reviews the scope of the project requirements.
- The Purchasing Director, or designee, also reviews the scope of work for the project to determine if revisions to—or clarifications of—the scope of work are required prior to advertising the procurement opportunity. The M/WBE Director also reviews the project scope and the request for proposals to identify opportunities to facilitate M/WBE participation. If project scope

modifications are needed, the Purchasing Director interacts with the requesting department to make the changes to the scope of work.

- Projects are placed on the County's Web site and listed in the local newspaper.
- If the County receives indications of interest from less than three persons, the Purchasing Director may reissue the request for proposals.

Section 16(E) lists the requirements for fulfilling Race/Gender Neutral (R/N) Targets, Race/Gender Conscious (R/C) Target and Aspirational Targets for Specific Procurement Opportunities. R/C Targets shall be the upper limit for Aspirational Targets set by the M/W/SBE Division for MBE and/or WBE participation in a single procurement opportunity. The R/N Target shall be the upper limit for Aspirational Targets set by M/W/SBE Division for SBE participation in a single procurement, unless such procurement opportunity is specifically identified for competition only between SBEs. The M/W/SBE Director shall coordinate and promote the process of meeting R/N and R/C targets by taking active steps to encourage full participation by certified, capable, and competitive MBE, WBE and SBE businesses and by keeping staff informed of M/W/SBE availabilities.

The selection committee⁷ usually comprised of staff evaluates and ranks submitted proposals with regard to the responsiveness of the proposal to the County's needs. The County Administrator, or designee, determines whether a three-member or five-member selection committee is best suited for the evaluative process based on the complexity and anticipated expense of the requested services.

Staff recommends the top ranked firms in order and requests permission to negotiate with the top ranked firm and, if negotiations fail, to negotiate with the next ranked firms in order. Contract negotiations shall be conducted by the Purchasing Director or his designee or by a negotiation committee. A contract negotiation committee shall consist of the Purchasing Director (shall serve as chair), the head of the primary using department or agency, and the County Attorney. Negotiation committee members may designate alternates to serve in their capacity on the committee.

Section 5.091(A) (7) of the policy allows "a local preference of not more than five percent (5%) of the total score" as part of the evaluation criteria for local businesses that submit proposals for competitive sealed bids. The current revised policy did not contain major changes to the County's competitive sealed proposals process from the 2005 process. As a selection based process, the county has few options to directly encourage M/W/SBE participation as prime contractor respondents. Those opportunities include the determination of the number of evaluation points ascribed to M/W/SBE project involvement and participation in the voting process as part of the selection of the successful respondent.

⁷ The selection committee makeup for procurement is different than the selection committee process for employment, because of due process requirements the County elected that the M/W/SBE Director not be a member of the selection committee.

3.3.6 Protested Solicitations and Awards

The 2006 revised policy contains modified language specifying rights to protest decisions regarding the County's Invitations to Bid and Request for Proposals, as did the County's earlier policy. Appeals of the Purchasing Director's decisions are to be heard by a Procurement Appeals Board composed of a chairperson, and two other members. The Appeals Board members are appointed by the County Administrator. The revised policy changed the term of the members to three years for the chairperson and each member. Previously, the Chairperson served a term of three years. One member served for a two-year term and the remaining member served an initial term of one year. Thereafter, members were appointed for three year terms such that one member was appointed annually. Section 5.13(E) specifies the procurement appeals process.

3.3.7 DemandStar.com

In 1999, the County contracted DemandStar.com, Inc. to maintain information and vendor data about pending procurements. As a part of the County's procurement efforts this service was seen as an opportunity to reach more firms⁸. The Purchasing Division provides bid and RFP information to DemandStar.com for notification to their vendor subscriber list. This list categorizes each vendor by commodity codes for the specific goods or services offered by the vendor. Subscribers are notified by fax or e-mail whenever a formal sealed bid has been issued for the commodity or service offered by the vendor.

A second feature of the DemandStar.com system is the maintenance of vendor data. For an annual subscription fee, businesses may register the commodities and services they wish to sell, and receive emailed information about related County procurements that includes the following:

- Legal advertisements.
- Bid/RFP addenda.
- Bid tabulation sheets.
- Procurement listings.
- Requests for proposals.
- Current award recommendations and current Board agenda items.

3.3.8 Other Procurement Methods

The County's purchasing and M/W/SBE policy provide for the following procurement methods for non-routine purchases.

- Sole Source Purchases—for a supply, services, material equipment or construction item(s) where there is a determination that there is only one available source. (Section 5.10)
- Emergency Purchases—when a situation requires the immediate purchase of goods, equipment or services without competitive bidding. (Section 5.11)

⁸ The County uses legal notices and the County Web site as its primary means for informing vendors on County opportunities.

- Cooperative Purchasing—from authorized vendors on state contracts, or Federal Supply Schedules or when the County joins with other units of government in cooperative purchasing ventures. (Section 5.12)

3.3.9 General Purchasing Provisions

Insurance Requirements

MGT's review of the County's policy and staff interviews showed no change in the County's policy on insurance since the 2004 study. Policy requires that County contractors purchase and maintain insurance to protect it from claims under Worker's Compensation laws, disability benefit laws and other similar damages and liabilities.⁹ The required levels of coverage are determined by the provisions of the Risk Management Policy. Insurance requirements, like bonding requirements, are a necessary component of contractual relationships that serve both parties.

Bonding

The State of Florida requires payment and performance bonds by persons entering into a formal contract with the state or any county, city, or political subdivision "for the prosecution and completion of a public work, or for repairs upon a public building or public work."¹⁰ The state provision allows an exemption from the bonding requirement for work done for any county, city, political subdivision or public authority in amounts less than \$200,000.

MGT's review of the County's policy and staff interviews showed no change in the County's policy on bonding since the 2004 study. County bid documents identify procurements that require bonding on behalf of the successful offeror and County policy specifies the types of bonds that may be required as indicated below:

- A. Combination Payment and Performance Bond - This type of bond is required for repairs, renovations, new construction, and other public works costing in excess of \$50,000. For projects less than that amount, it may be required at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. When a payment and performance bond is required, the bond will be requested in the bid document. No work in connection with the fulfillment of a contract shall commence until the payment and performance bond is accepted by the County.
- B. Performance Bond - For a project of an estimated value less than \$50,000, requirement of a performance bond will be at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. For projects estimated to be \$50,000 or more, such bond will be required to insure that a contract is carried out in accordance with the applicable specifications and at the agreed contract price.

⁹ Section 12, "Insurance Requirements", Board of County Commissioners – Leon County, *Purchasing and Minority/Women Business Enterprise Policy*, Revised June 13, 2006.

¹⁰ State of Florida Statutes, Title XVIII, Chapter 255, Section 255.05.

- C. **Payment and Material Bond** - For a project of an estimated value less than \$50,000, requirement of a payment and material bond will be at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. For projects estimated to be \$50,000 or more, such bond will be required to protect the County from suits for non-payment of debts which might be incurred by a contractor's performance for the County.
- D. **Warranty Bonds** - At the discretion of the Purchasing Director, after consultation with user departments, a Warranty Bond may be required from a successful bidder to insure warranty provisions are fulfilled.
- E. **Guaranty of Good Faith Deposit (Bid Deposit)** - For projects estimated to be less than \$40,000, requirement of a bid bond will be at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. For purchases where it is determined by the Purchasing Director to be in the best interest of the County, and projects estimated to be \$40,000 or more, bidders will be required to submit with their bid or proposal a guaranty of good faith deposit.

When in the best interest of the County, it is recommended by the Purchasing Director and approved by the County Administrator or his designee, these requirements may be waived.

- A. **Return of Bond.** Such deposit may not be withdrawn until a specified time after the proposals are opened and awards made. The deposit of the bond shall be retained by the Finance Officer of the Board until the Purchasing Director is satisfied that the Contractor's obligations have been satisfactorily completed.
- B. **Substitutes.** In lieu of a surety bid bond, contractor may submit a certified check, cashier's check or treasurer's check, on any national or state bank. Such deposits shall be in the same percentage amounts as the bond. Such deposits shall be retained by the Finance Officer of the Board until all provisions of the contract have been complied with.
- C. **Irrevocable Letter of Credit.** Upon approval of the Purchasing Director, a contractor may present an Irrevocable Letter of Credit from a national or state chartered bank in lieu of any of the foregoing bonds for the same face value as required for the bond. The letter of credit shall be for a period of time not less than three months beyond the scheduled completion date of the purchase of the contracted services or materials.
- D. **Retention of Payments.** The County may require the payment for a project, or a portion thereof, be withheld until the project has been completed as a method of protecting the County's interest. Retention may also be used in lieu of the above listed bonds. The solicitation documents shall specifically state if retention of any portion or all of the payment for the project is to be done.

County policy further defines the amount of the bond or deposit required.

- 1) **Performance Bond:** 100 percent of contract price.

- 2) Payment Bond: 100 percent of contract price.
- 3) Payment and Performance Bond: 100 percent of contract price.
- 4) Guaranty of Good Faith Deposit (Bid Deposit or Bond): The bid deposit will be 5 percent of the price bid by the vendor.

Any of the above listed bonds may be required at another amount recommended by the Purchasing Director and approved by the County Administrator or his designee when in the best interest of the County.

3.4 Remedial Program

3.4.1 Historical Background

The establishment of the County's M/WBE Program dates back to 1987. The purpose of the program was to "enhance the participation of qualified minority and women-owned businesses in providing goods and services and construction contracts required by the Board of County Commissioners." The County conducted disparity studies in 2000 and in 2005. The County was receptive to recommendations from the previous studies to enhance its purchasing and M/WBE programs. In 2005, the County accepted the disparity study update conducted by MGT. To strengthen its support of M/W/SBEs and its efforts to narrowly tailor its M/WBE program the County accepted recommendations included in the study to revise race-gender conscious and race-neutral targets and the formation of a small business enterprise (SBE) component. The purpose of the revised and newly created M/W/SBE Program is to "effectively communicate Leon County procurement and contracting opportunities, through enhanced business relationships, to end disparity and to increase participation opportunities for certified minority and women-owned business enterprises and small business enterprises in a competitive environment."¹¹

To reflect the addition of the SBE component, the title of the Policy 96-1 was changed to Purchasing and Minority, Women, Small Business (MWSBE) Policy. Consistent with the previous policy section 16, a business will be certified as a MBE, WBE or SBE however an MBE and WBE can also be certified as a SBE.

The following definitions were included in Section 16 to reflect the addition of the SBE component and for clarification of previous terms:

- **Affiliate or Affiliation** – Shall mean when an eligible either directly or indirectly controls or has the power to control the other; a third party or parties controls or has the power to control both; or other relationships between or among parties exist such that affiliation may be found. A business enterprise is an affiliate of an eligible owner when the eligible owner has possession, direct or indirect of either: (i) the Ownership of or ability to direct the voting of as the case may be more than fifty percent (50%) of the equity interest, value or voting power of such business, or (ii) the power to direct or cause the direction

¹¹ Board of County Commissioners Leon County, Florida, Policy No. 96-1 Purchasing, Minority, Women, and Small Business Enterprise Policy, June 14, 2006.

of the management and policies of such business whether through the Ownership of voting securities by contract or otherwise. In determining whether a business is an Affiliate with another business or with an Owner, consideration shall be given to all appropriate factors including but not limited to common Ownership, common management, contractual relationship and shared facilities.,

- Commercial useful function - Shall mean a business that: (a) is responsible for the execution of a distinct element of work or services; (b) carries out its obligation by actually performing, managing, or supervising the work involved; (c) performs work that is normal for its business, services and function; and (d) is not further Subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices. A Contractor, Subcontractor, Vendor or Supplier shall not be considered to perform a Commercially Useful Function if the Contractor's, Subcontractor's, Vendor's or Supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of M/W/SBE participation.,
- Joint venture - Shall mean a legal organization that takes the form of a short term partnership in which the parties jointly undertake for a transaction, for which they combine their property, capital, efforts, skills, and knowledge. Generally, each party shall contribute assets and share risks. Joint Ventures can involve any type of business transaction and the parties involved can be individuals, groups of individuals, companies or corporations.
- Race/gender neutral - Shall mean that component of the M/W/SBE Program that seeks to increase participation of MBEs, WBEs, or SBEs in procurements and contracts through means other than setting MBE or WBE (Race/Gender Conscious) Aspirational Targets. Such Race- Neutral means include, but are not limited to, the SBE Program and the coordination and outreach with/to programs and/or agencies whose purpose is to serve and assist businesses regardless of their race or gender, such as the Florida Agricultural & Mechanical University Small Business Development Center, Florida State University Jim Moran Institute, the Small Business Administration, the State of Florida Commission on Minority Economics and Business Development/Minority Business Advocacy and Assistance Office, Tallahassee Chamber of Commerce Economic Development Council and the Capital City Chamber of Commerce .
- Small business enterprise - Shall mean a business whose SBE certification is recognized, effective and accepted by Leon County's M/W/SBE Program.

3.4.1 Staffing and Responsibilities

In further support of M/W/SBEs, the County renamed the M/WBE office to M/W/SBE Division. The M/W/SBE Director's responsibilities include:

- Establish written procedures to implement the M/W/SBE Program, including the certification of businesses as SBEs, MBEs and WBEs.

- Assess the certification of applications for the M/W/SBE program, and coordinate certifications with partner agencies.
- Establish realistic aspirational targets and identify procurement opportunities for competition among SBEs.
- Identify and work to eliminate barriers that inhibit M/W/SBE participation in Leon County's procurement process.
- Establish realistic targets to increase M/W/SBE utilization.
- Provide information and assistance to M/W/SBEs regarding procurement opportunities with Leon County.
- Maintain a database of certified M/W/SBEs- and provide information to County departments and divisions in identifying M/W/SBEs for anticipated procurements.
- Monitor the utilization of M/W/SBEs and the progress of the M/W/SBE Program to ensure M/W/SBEs have opportunities to participate in the County's procurement process.
- Implement mechanisms and procedures for monitoring M/W/SBE compliance by prime contractors and staff.
- Perform outreach by networking with state and local governments and others, participate in conventions and seminars sponsored and widely attended by M/W/SBEs.
- Implement mechanisms to evaluate the program's progress.

Staffing for the County's M/W/SBE program consists of two full time positions - the program director and an analyst. After the 2000 disparity study the M/WBE office was comprised of one person. The budget for the M/W/SBE Program for fiscal year 2008 is more than \$300,000. This budget includes a one-time fee for an M/W/SBE tracking program, contracted from B₂G Now and staff salaries. The budget was also adjusted by deducting the contract dollars for the SBE training component with the SBDC at Florida Agricultural & Mechanical University.

Per Section 16 of the policy, staff responsibilities include recommending modifications to the County's M/W/SBE aspirational targets; coordinating steps to encourage full participation by M/WSBEs in the County's procurement processes and fostering more economic development in Leon County. In addition to establishing specific M/W/SBE aspirational targets for County procurements, the M/W/SBE program division provides technical assistance and other race-neutral program components, such as outreach activities and maintaining a directory of certified M/WBEs to promote the utilization of these firms.

3.4.2 M/W/SBE Classifications and Aspirational Targets

Minority-, woman-, and small-owned businesses that wish to be recognized as M/W/SBE vendors in the County's procurement process must apply for M/W/SBE certification through the program office. M/WBEs are businesses that are at least 51 percent owned and controlled by, and whose management functions are at least 51 percent performed by, persons who are:

- African Americans - All persons having origins in any of the Black African racial groups not of Hispanic origins and having community identification as such.
- Hispanic Americans - All persons (Mexican, Puerto Rican, Cuban, Central or South American, or Spanish Culture or origin, regardless of race) who were reared in a Hispanic environment, whose surname is Hispanic and who have community identification as such.
- Asian Americans - All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands and having community identification as such.
- American Indians, Alaskan Natives, and American Aleuts - All persons having origins in any of the original people of North America, maintaining identifiable tribal affiliations through membership and participation and having community identification as such.
- Women – All women who are non-Hispanic white females. Minority women were included in their respective minority category.
- Small – shall mean a business whose SBE certification is recognized, effective and accepted by Leon County's M/W/SBE Program.

M/WBEs that wish to be certified by the County as such must meet the criteria as shown in **Exhibit 3-5**.

**EXHIBIT 3-5
 LEON COUNTY, FLORIDA
 M/W/SBE CERTIFICATION ELIGIBILITY CRITERIA**

CERTIFICATION ELIGIBILITY CRITERIA	Type of Certification (must meet ALL marked criteria)		
	MBE	WBE	SBE
Majority Owner(s) must be a Minority or Minorities who manage and Control the business. In the case of a publicly owned business at least 51% of all classes of the stock which is owned shall be owned by one or more of such persons.	X		
Majority Owner(s) must be a Woman or Women who manage and Control the business. In the case of a publicly owned business, at least 51% of all classes of the stock which is owned shall be owned by one or more of such persons.		X	
Majority Ownership in the business shall not have been transferred to a woman or minority, except by descent or a bona fide sale within the previous two years.	X	X	
Majority owner(s) must reside in Leon, Gadsden, Jefferson or Wakulla County Florida.	X	X	X
Majority owner(s) must be a United States citizen or lawfully admitted permitted resident of the United States	X	X	X
Business must be legally structured either as a corporation, organized under the laws of Florida, or a partnership, sole proprietorship, limited liability, or any other business or professional entity as required by Florida law.	X	X	X
Business must be independent and not an affiliate, front, façade, broker, or pass through.	X	X	X
Business must be a for-profit business concern.	X	X	X
Business must be currently located within market area.	X	X	X

**EXHIBIT 3-5
 LEON COUNTY, FLORIDA
 M/W/SBE CERTIFICATION ELIGIBILITY CRITERIA (CONTINUED)**

CERTIFICATION ELIGIBILITY CRITERIA	Type of Certification (must meet ALL marked criteria)		
	MBE	WBE	SBE
Business must have all license required by local, state and federal law.	X	X	X
Business must currently be licensed and engaging in commercial transactions typical of the filed, with customers in the Local Market Area other than state or government agencies, for each specialty area in which certification is sought. Further, if a Supplier, business must be making sales regularly from goods maintained in stock.	X	X	X
Business must have expertise normally required by the industry for the field for which certification is sought.	X	X	X
Business must have a net worth of no more than \$2 million.	X	X	X
Business must employ 50 or fewer full- or part-time employees, including leased employees.	X	X	X
Annual gross receipts on average, over the immediately preceding three (3) year period, shall not exceed: - For business performing construction - \$2,000,000/year. - For businesses providing Other Services or Materials & Supplies - \$2,000,000/year - For businesses providing Professional Services - \$1,000,000/year	X	X	X

Source: <http://www.leoncountyfl.gov/bcc/policy/pdf/12-02.pdf>.

3.4.2.1 M/W/SBE Certification

The M/W/SBE certification process includes the following steps.

- Submission of a Certification Application Package
- Review and evaluation of the submitted application data and determination of disposition within 30 days of submission.
- Vendors deemed certifiable are notified in writing of the certification.
- If an applicant cannot be determined certifiable based on information provided, the County provides written notification stating the reasons for denial. If the M/W/SBE certification is denied the applicant may not reapply for certification for a period of six months after the notice of the date of denial.
- Certification denials may be appealed in writing to the M/W/SBE Director within 10 working days after receipt of the denial of certification letter. Failing a satisfactory determination, firms denied certification may appeal to the M/W/SBE Citizen Advisory Committee.
- Certification is valid for two years other provided otherwise.

The M/W/SBE Program may accept MBE and WBE certifications from parties to The M/WBE inter-local agreement (such parties currently include the City of Tallahassee, Leon County, and the Leon County School Board; however, such parties may change from time to time without notice or revision to this policy). Further, the M/W/SBE Division reserves the right to review the certification process and documentation utilized by an outside certifying agency; request clarification or additional information from the certified business; to delay acceptance of certification while it is being reviewed; and to deny certification any time during the Certification period.

The certification directory for Leon County and the City of Tallahassee are available on their respective Web sites. As of April 2009, the County directory included 73 M/W/SBE certified firms. The City of Tallahassee directory included more than 200 firms of which 13 were certified by Leon County.

3.4.2.2 Aspirational Targets

The County uses aspirational targets to establish levels of participation by M/WBEs in the County's procurement of goods and services. **Exhibit 3-6** shows the M/WBE aspirational targets:

**EXHIBIT 3-6
 LEON COUNTY BOARD OF COUNTY COMMISSIONERS**

FISCAL YEAR RACE AND GENDER NEUTRAL TARGETS												
Targets	Construction		Construction Subcontracting		Professional Services Consultants		Professional Services Subconsultants		Other Services Vendors		Material and Supplies Vendors	
	MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE
Race/Gender Neutral (SBE, etc.)	1%	1%	15%	3%	6%	5%	3%	5%	6%	6%	1%	5%
Race/Gender Neutral Total	2%		18%		11%		8%		12%		6%	
FISCAL YEAR RACE AND GENDER CONSCIOUS TARGETS												
Targets	Construction		Construction Subcontracting		Professional Services Consultants		Professional Services Subconsultants		Other Services Vendors		Material and Supplies Vendors	
	MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE
Race/Gender Neutral (SBE, etc.)	5%	1%	3%	N/A	N/A	N/A	18%	9%	N/A	NA	1%	N/A
Race/Gender Neutral Total	6%		3%		N/A		27%		N/A		1%	

Source: Board of County Commissioners - Leon County, Purchasing and Minority/Women Business Enterprise Policy, Revised June 14, 2006.

3.4.2.3 M/W/SBE Incentives

As mentioned in Section 3.3 of this chapter, for contracts of \$100,000 or less, where there is a disparity of 1 percent or less between the total of the base bid and all recommended alternates of a 100 percent owned and operated MBE, WBE or SBE and the apparent lowest bid which is from a business that is not a MBE, or SBE, and all other purchasing requirements have been met, the Contract may be awarded to the MBE, WBE or SBE to help achieve Race/Gender Neutral Targets, unless such procurement

opportunity is selected for completion only among SBEs.. On selection based procurements, The County's Purchasing Director or representative, M/W/SBE Director and representatives from user departments shall review each proposed project or bid to determine the potential for subcontracting and the utilization of M/W/SBEs considering the scope of work, available and capable M/W/SBEs to potentially perform the work, and opportunities for multiple bids. Based upon these factors the M/W/SBE Director or designee shall determine the Aspirational targets. Further the M/W/SBE Director shall determine the Race/Gender Conscious targets or Race/Gender Neutral targets, unless such procurement opportunity is selected for completion only among SBEs.

3.4.2.4 Participation Plans

Bidders are to submit a Participation Plan when the procurement opportunity contains Aspirational Targets. Participation Plans shall identify the M/WBEs and non M/WBEs to be utilized, their percentage of utilization, and the commercially useful function they will be providing, consistent with the commodities or services for which they are certified. The participation plan is to be analyzed by the M/W/SBE Director prior to submission to the Board for approval of award.

3.4.2.5 Good Faith Efforts and Substitutions

Prime contractors that are unable to meet the stated M/WBE aspirational targets may submit evidence to the County with bid documents demonstrating the level of effort to attract M/WBE participation. Evidence of good faith efforts include, but are not limited to:

- Submission of proof of M/WBE certification for the M/WBEs that are being used on the project.
- Proof of advertising for bids from M/W/SBEs in non-minority and minority publications in the Leon County, Florida, area.
- Proof that ample time was allowed for M/W/SBE subcontractors to respond to bid opportunities.
- Submission of a list of M/W/SBEs that were directly contacted by the prime contractor.
- Telephone logs demonstrating proof of follow-up calls to M/W/SBEs.
- Information regarding the availability of bid specifications and blueprints to M/W/SBEs.
- Documentation showing the sound basis for rejecting M/W/SBEs as unqualified or unacceptable.
- Documentation showing that the County's M/W/SBE Director was contacted regarding a problem meeting M/W/SBE aspirational targets.
- Any other documentation further proving good faith efforts.

When a proposal is submitted, the M/W/SBE Director reviews the M/WBE Participation Plan to determine if the M/WBE participation levels are met according to a point scale, which is presented in the RFP. If the M/W/SBE Director determines the Bidder with subcontracting and supplier opportunities have not made a Good Faith Effort to meet the aspirational target the M/W/SBE Director shall refer the matter to the Good Faith Effort Committee. The good faith documentation is reviewed by the County's "Good Faith Committee," which consists of the Management Services Director (currently vacant), Purchasing Director or designee, and chair of the M/W/SBE Citizens Advisory Committee and may include others appointed at the discretion of the County Administrator or the County Administrator's designee.

Policy permits substitution of M/W/SBEs after contract award with prior approval of the M/W/SBE Director with assistance from technical staff. Grounds for M/W/SBE substitution include poor work performance, lack of success in improving the work performance level of the M/W/SBE, and withdrawal request by the M/W/SBE.

3.4.3 M/WBE Reporting

The County is required to submit an update to the Board on its performance on meeting its Aspirational targets. According to the M/W/SBE status report of December 11, 2007 the expenditure data was pulled from the County's financial system. Expenses are manually adjusted to eliminate certain costs such as staff, land acquisitions, telephone, utilities, local travel reimbursements, office rent, expenditures with government agencies and expenses outside the market area. Verified subcontractor expenditures were deducted from the prime contractor's expenditures and reported as subcontractor expenditures. Contractors expenditures with subcontractors was only required to be reported on those contractors with M/WBE aspirational targets; therefore, subcontractor expenses with non-minority owned and other business may not have been identified for adjustment and remain in a higher level of classification based on contract type.¹²

Exhibit 3-7 summarizes expenditure data by race and gender for fiscal year 2004/2005 and 2005/2006. The "Total Expenditures" column reflects the actual estimated expenditures by the race and gender of the major business owner. The "Estimated Parity Minus Estimated Expenditures" column reflects the amount the expenditures with each race and gender group is above or below what would be expected if parity were achieved, based on that group's availability in the local market area.

¹² Board of County Commissioners Agenda Request 26, Acceptance of Status Report Regarding County Utilization of Minority and Women-Owned Businesses, December 11, 2007.

**EXHIBIT 3-7
 LEON COUNTY BOARD OF COUNTY COMMISSIONERS
 M/WBE REPORTING
 FISCAL YEAR 2004/2005 TO FISCAL YEAR 2005/2006**

Summary Across All Business Categories						
Race/Gender	Differences between Actual Estimated Expenditures and Estimated Parity					
	Total Expenditures			Est. Parity Minus Est. Expenditures		
	FY 04/05	FY 05/06	Both Years	FY 04/05	FY 05/06	Both Years
African Americans	\$ 2,933,432.00	\$ 3,625,204.00	\$ 6,558,636.00	\$ 876,022.00	\$ (708,896.00)	\$ 167,126.00
Hispanic Americans	\$ 37,654.00	\$ 35,894.00	\$ 73,548.00	\$ (179,317.00)	\$ (542,971.00)	\$ (722,288.00)
Asian Americans	\$ 55,355.00	\$ 63,609.00	\$ 118,964.00	\$ 2,512.00	\$ (21,782.00)	\$ (19,270.00)
Native Americans	\$ 44,880.00	\$ 68,354.00	\$ 113,234.00	\$ (19,405.00)	\$ (114,604.00)	\$ (134,009.00)
Non-minority Women	\$ 2,128,631.00	\$ 7,568,233.00	\$ 9,696,864.00	\$ 997,672.00	\$ 5,466,523.00	\$ 6,464,195.00
Non-minority	\$ 16,337,284.00	\$ 35,310,829.00	\$ 51,648,113.00	\$ (1,677,485.00)	\$ (4,078,270.00)	\$ (5,755,755.00)
¹ Total All Categories	\$ 21,537,236.00	\$ 46,672,123.00	\$ 68,209,359.00	\$ (1.00)	\$ -	\$ (1.00)
¹ Total difference from parity does not equal zero due to rounding.						

Source: M/WBE Reporting, Fiscal Year 2004/2005 to Fiscal Year 2005/2006.

The status report also included a plan for continued success and enhancement opportunities to be performed by the M/W/SBE Division:

- Improve its tracking system to monitor and provide feedback for M/WBE and nonminority procurement activities.
- Continue to inform MBEs about procurement opportunities with the County and encourage managers to utilize MBEs.
- Continue its on-going efforts to identify barriers that prevent procurement opportunities for M/WBEs and eliminate such to enhance the utilization of the available firms.
- Review the Tax Collectors' records to identify and encourage MBEs to become certified for procurement opportunities in areas where there is underutilization.
- Direct M/WBEs to use the services of the Small Business Development Center at Florida Agricultural & Mechanical University to improve the operation of their businesses, thereby enhancing their chances of winning procurement opportunities.

3.5 Conclusions

MGT's research, summarized in this chapter, showed that the County has made significant strides in its commitment to level the playing field for businesses desiring to provide goods and services to the County. The County has been receptive to earlier recommendations to enhance its purchasing and M/WBE programs. For instance, MGT were told of improved levels of cooperation between the Purchasing Division, M/W/SBE Division, and other County departments and divisions. MGT was also told that recently M/W/SBE and nonminority subcontracting participation is being tracked now. The County has also improved the accessibility of information through its Web site, consolidated its purchasing policy and M/W/SBE participation policy and collaborated with the local outreach efforts put forth through the Small Business Enterprise Week and MEDWeek activities with the City of Tallahassee and the Small Business Development Center at Florida Agricultural & Mechanical University.

The consolidation of the purchasing policy and the M/WBE participation policy provided a stronger basis for user departments to involve M/WBE firms in County procurements. Interviewees directed MGT to the Purchasing Department for responses to questions on policy changes and to the M/W/SBE Division to answer questions on M/W/SBE program requirements. The revised policy is clearer on the County's intent to provide competitive opportunities to all vendors and administrative steps (e.g., one of three quotes should be from an M/W/SBE) to facilitate competition. From an organizational perspective, the County elevated the M/W/SBE program to division level, which improves the internal and external perception of the County's commitment to the program's success. The County's suspension of the training criteria for SBE certification until the completion of the disparity study update is viewed as positive by staff.

4.0 UTILIZATION AND AVAILABILITY ANALYSIS

4.0 UTILIZATION AND AVAILABILITY ANALYSES

This study for the Board of County Commissioners of Leon County (County) documents and analyzes the participation of minority, women, and nonminority businesses in the County's procurements. This chapter describes the County's market area and analyzes the utilization and availability of minority, women, and nonminority firms. The results of the analyses ultimately determine whether minority, women, or nonminority businesses were underutilized or overutilized in these procurements.

This chapter consists of the following sections:

- 4.1 Methodology
- 4.2 Construction
- 4.3 Architecture and Engineering Services¹
- 4.4 Professional Services
- 4.5 Other Services
- 4.6 Materials and Supplies
- 4.7 Summary

4.1 Methodology

This section presents the methodology for the collection of data and analysis of market areas, utilization, and availability of minority-owned, woman-owned, and nonminority-owned firms. The description of business categories and minority- and woman-owned business enterprise (M/WBE) classifications are also presented in this section, as well as the process used to determine the geographical market areas, utilization, and availability of firms.

4.1.1 Business Categories

The County's mark area, utilization and availability of M/WBE firms and non-M/WBE firms were analyzed for five business categories: construction, architecture and engineering, professional services, other services, and goods, equipment, and supplies.

These categories were consistent with the County's classification of contracts awarded and payments made by the County during the four-year study period. Each contract vendor payment or subcontractor award was grouped into one of the above categories by MGT with assistance from County staff knowledgeable about the contracts and payments. A description of each business category follows.

Architecture and Engineering

Architecture and engineering refers to any architecture or engineering services, including but not limited to:

¹ For the purpose of this study, architecture and engineering services were analyzed separately. In the 2004 Disparity Study, architecture and engineering services were included in the professional services business category.

- Architectural design.
- Professional engineering.
- Environmental consulting.
- Inspections.
- Soil testing.
- Surveying.

Construction

Construction refers to any building and highway construction-related services, including but not limited to:

- General building contractors engaged primarily in the construction of buildings.
- General contracting in the construction of roadways, bridges, sewers, and heavy construction.
- Construction-special trade services, such as electrical work; carpentry, air conditioning repair, maintenance, and installation; plumbing; and renovation.
- Other related services such as water-lining and maintenance, asbestos abatement, drainage, dredging, grading, hauling, landscaping (for large construction projects such as boulevards and highways), paving, and toxic waste clean up.

Professional Services

This category covers services provided by a person or firm that are of a professional nature and require special licensing, educational degrees, and/or highly specialized expertise, including:

- Consulting services.
- Legal services.
- Educational services.
- Computer services.
- Other professional services.

Other Services

This category includes any service that is labor intensive and neither professional nor construction related, including, but not limited to:

- Janitorial and repair services.
- Uniformed guard services.
- Certain job shop services.
- Graphics or photographic services.
- Other nontechnical professional services.

Materials and Supplies

This business category includes vendors that provide the following, but not limited to:

- Office goods
- Supplies
- Equipment
- Miscellaneous building materials
- Computers

Certain transactions were excluded from analysis in this study. Examples include:

- Administrative items such as utility payments, leases for real estate, and insurance or banking transactions.
- Salary and fringe benefits, payments for food or parking; or conference fees.
- Payments to government entities including nonprofit local organizations, state agencies, and federal agencies.

Firms were assigned to a particular business category based on the County's payment description obtained from the County's financial system. However, based on feedback from the County, certain payments were reclassified according to vendor name rather than the type of payment received and/or payment description.

4.1.2 M/WBE Classifications

In this study, businesses classified as M/WBEs are firms at least 51 percent owned and controlled by members of one of five groups: African Americans, Hispanic Americans, Asian Americans, Native Americans, and nonminority women. These groups were defined according to the United States Census Bureau as follows:

- **African Americans:** U.S. citizens or lawfully admitted permanent residents having an origin in any of the black racial groups of Africa.
- **Hispanic Americans:** U.S. citizens or lawfully admitted permanent residents of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese cultures or origins regardless of race.
- **Asian Americans:** U.S. citizens or lawfully admitted permanent residents who originate from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- **Native Americans:** U.S. citizens or lawfully admitted permanent residents who originate from any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.
- **Nonminority Women:** U.S. citizens or lawfully admitted permanent residents who are non-Hispanic white females. Minority women were included in their respective minority category.

The M/WBE determinations reflected in this report were based on the source data discussed below in **Section 4.1.3**. If the business owner classification was unclear in the source data, MGT of America, Inc. (MGT), conducted additional research to determine the proper business owner classification. This included requesting assistance from cognizant County representatives to identify the proper business owner classification. Firms that were identified in the source data as non-M/WBEs were considered to be nonminority-owned firms in the analysis conducted for this study.

4.1.3 Collection and Management of Data

To determine the most appropriate data for our use in the analysis of the County's procurement activity and to identify data sources, MGT conducted interviews with key staff knowledgeable about the County's procurement processes. The decision was made by the County and MGT that procurement data for construction would be extracted from electronic expenditure data, as well as contract award data and contract files. Data for architecture and engineering, professional services, other services and materials supplies would be extracted from electronic expenditure, purchase order, and purchasing card (Pcard) data.

Contract and Subcontract Data Collection

Once the sources of data for the contract award data was defined and obtained, MGT designed a data collection plan to collect contract data from the hard copy files. Expenditure, purchase order, and Pcard transaction data would be provided in electronic format. The following data were provided:

- Financial Expenditure Data: a file extracted from the County's Banner financial system containing payments made to vendors during the study period.
- List of Agreements: a file containing awards granted to vendors during the study period.
- Vendor List Data: a file extracted from the County's Banner financial system containing vendors that were paid or have registered to do business with the County.
- Permit Data: a file containing commercial construction permits let to prime contractors and subcontractors during the study period.²
- Purchase Order Data: a file containing invoices made to vendors during the study period.
- Pcard Transactions Data: a file containing small dollar payments made to vendors during the study period.

Upon further review and discussions with the County, it was agreed that the list of awarded agreements would be used to develop the data collection plan for on-site data collection activities. These list of agreements were used as the primary source to ensure that the onsite data collection team reviewed contract files based on this list within the

² Please refer to **Chapter 6.0, Private Sector Analysis**, for a detailed discussion of this data set.

study period in order to obtain subcontractor and bidder data. The financial expenditure data would be used to analyze payments made to vendors, which would be the primary data source for the prime contractor/consultant utilization analyses. Each electronic list provided the following data that we used for analysis:

- Name of firm awarded and/or paid.
- Award and/or payment amount of the transaction.
- Contract and/or payment post date of the award and/or payment.
- A description of the contract and/or payment from which the business category of the procurement could be derived.

Once collected and entered or transferred into the MGT database, the data were processed as follows:

- Exclusion of records not relevant to the study. Examples of procurement activity excluded from analysis include duplicate procurement records; contracts out of the time frame of the study; contracts awarded or payments made to nonprofits and government entities; and utility payments such as water, gas, and electricity.
- Identification of the county in which the vendor operated. To accomplish this, the zip code of the vendor was matched against an MGT zip code database of all United States counties.
- Identification of the prime contractor's business category.

MGT designed a data collection plan (based on the list of awarded agreements provided by the County) to collect contract from hard copy contract files and the County's verification reports, which are sent to prime contractors requesting subcontracting activity. The hard copy data was collected by MGT employees and firm area firm, Oppenheim Research. The data collection team were trained on the disparity study data collection techniques and County hard copy files in order to ensure accuracy. Once collected and transferred into the MGT database, the data were processed as follows:

- Exclusion of records not relevant to the study. Examples of procurement activity excluded from analysis include duplicate procurement records; contracts out of the time frame of the study; contracts awarded to nonprofits and government entities; and utility payments such as water, gas, and electricity.
- Identification of the county in which the vendor operated. To accomplish this, the ZIP code of the vendor was matched against an MGT ZIP code database of all United States counties.
- Identification of the prime contractor's business category.

Availability (Vendor) Data Collection

Determining the availability of firms is a critical element in developing disparity analyses. Therefore, MGT analyzes the availability of firms at the prime and subcontractor level.

For the purposes of this study, MGT defines prime contractors as firms that (1) have performed prime contract work for the County; (2) have bid on awarded³ prime contract work for the County in the past (within the study period); or (3) are construction, architecture and engineering, professional services, other services, or materials and supplies firms that were in the County's Banner system. These firms are considered to be available because they have either performed or indicated their willingness to perform prime contract work for the local Leon County market area. These firms are defined as available contractors because they have either performed work or have indicated their willingness to perform work for the County. MGT also used other availability measures, including U.S. Census data for comparison purposes, which will be referenced in **Appendix D**.

For the subcontractor availability, MGT defines subcontractor availability as firms that (1) are considered prime contractors and consultants; (2) firms that have been awarded a contract by prime contractor; and (3) firms that were proposed to be used by an unsuccessful prime contractor bidder on awarded prime contracts.

This process generated a listing of 13,886 entries; however, a number of the entries were names of nonprofit organizations, governmental agencies, and duplicate entries. As a result, our availability analyses were based on a pool of 8,452 firms. Approximately 6,652 entries (records) of the approximately 13,886 were excluded from the availability analyses. The most common reasons for exclusion were: duplicate records (i.e., unique vendors who appeared in multiple vendor databases provided by the County); no business category (i.e., vendors who were not utilized, a business type was not provided, or a business type could not be identified from their name); nonprofit agencies, associations, or councils; governmental agencies, including schools and universities; travel-related businesses, including hotels, car rental, and conference fees; real estate; and utilities, postage, and hospitals.

Data for Analysis

The total number of expenditure records analyzed for the study period is shown below in **Exhibit 4-1**. The number of records for construction, architecture and engineering, professional services, other services, and materials supplies represents expenditure data.

³ In addition, based on subsequent discussions with cognizant County staff, the availability pool of firms for the business category of architecture and engineering includes the count of a firm that submitted a bid as a prime contractor and won the project. However, this contract ultimately was not awarded, thus not listed in the list of awarded agreements.

**EXHIBIT 4-1
 LEON COUNTY
 NUMBER OF ANALYZED RECORDS
 OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Business Category	# of Records
Construction	3,059
Architecture & Engineering	1,278
Professional Services	3,209
Other Services	11,213
Materials and Supplies	16,940

Source: Expenditure activity compiled from the County's Banner financial data system.

As far as hard copy files, the data collection plan presented a total of 358 contracts to be reviewed and entered while on-site. A total of 654⁴ contracts were reviewed and/or entered while on-site.

4.1.4 Market Area Methodology

In order to establish the appropriate geographic boundaries for the statistical analysis, market areas were determined for each of the business categories included in the study. First, the overall market area was determined and then the relevant market area was established.

Overall Market Area

A United States county is the geographical unit of measure selected for determining market area. The use of counties as geographical units is based on the following considerations:

- The courts have accepted counties as a standard geographical unit of analysis in conducting equal employment opportunity and disparity analysis.
- County boundaries are externally determined and thus free from any researcher bias that might result from any arbitrary determinations of geographical units of analysis.
- Census and other federal and state data are routinely collected and reported by county.

The counties that constituted the County's overall market area were determined by evaluating the total dollars expended by the County in each business category. The results were then summarized by county according to the location of each firm that provided goods or services to the County.

⁴ This increase in number includes the contracts for the housing and rehabilitation projects which were not listed as part of the list of agreements.

4.1.5 Utilization Methodology

The utilization analyses of construction, architecture and engineering, professional services, other services, and materials and supplies firms were based on information derived from County's financial system for activity occurring between October 1, 2004 and September 30, 2008. The analysis was based on firms located in the following: Leon County, Florida; Gadsden County, Florida; Wakulla County, Florida, and Jefferson County, Florida.

4.1.6 Availability Methodology

To evaluate disparate impact, if any, it is necessary to identify available M/WBEs in the local area for each business category. This determination, referred to as "availability," has been an issue in recent court cases. If the availability of minority- and woman-owned firms is overstated or understated, a distortion of the disparity determination will result. This distortion occurs because the quantitative measure of disparity is a direct ratio between utilization and availability.

Several methodologies may be used to determine availability, including analysis of vendor data and bidder data. The use of vendor data is preferable to bidder data because it considers firms that have expressed a readiness, willingness, and ability to provide goods and/or services to procuring entities, even when they have not been successful in doing so. Discriminatory barriers may, under certain circumstances, preclude such firms from submitting bids. For MGT's analysis, MGT used vendor data, as well as firms who bid on County projects in the past for the prime level availability analysis.

For the subcontractor availability, MGT defines subcontractor availability as firms that (1) are considered prime contractors and consultants; (2) firms that have been awarded a contract by prime contractor; and (3) firms that were proposed to be used by an unsuccessful prime contractor bidder.

As indicated previously in this chapter, MGT utilized various sources to determine prime and subcontractor availability in order to develop the appropriate availability data within the market area.

4.2 Construction

This section presents MGT's analysis of the County's utilization in the construction business category, as well as the utilization and availability of firms.

4.2.1 Utilization Analysis

For firms located in the Leon County market area, the following analysis was conducted:

- Utilization analysis of all M/WBE and non-M/WBE prime contractors' expenditures by year for the study period.

- Utilization analysis of the number of individual prime contractors paid those dollars, according to race/ethnicity/gender classifications.
- Utilization analysis of all identified M/WBE and non-M/WBE subcontractors' awards for the study period.

The utilization analysis of prime construction contractors in the County's market area is shown in **Exhibit 4-2**. M/WBEs were paid more than 16 percent (16.3%) of the total prime construction dollars expended by the County during the study period. The County paid \$73.86 million for construction services during the study period. Nonminority women-owned firms received \$9.5 million, accounting for 12.9 percent of the 16.3 percent paid to M/WBEs. Among M/WBEs, African American-owned firms were paid \$2.6 million, accounting for 3.5 percent of the 16.3 percent paid to M/WBEs. Firms owned by Hispanic Americans, Native Americans and Asian Americans were not utilized at the prime construction level, during the study period, thus not receiving any payments.

**EXHIBIT 4-2
CONSTRUCTION
UTILIZATION ANALYSIS OF PAYMENTS
IN THE LEON COUNTY MARKET AREA
DOLLARS AND PERCENTAGE OF TOTAL DOLLARS PAID
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS
OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Calendar Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Dollars Paid
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$
2005	\$640,584.74	6.11%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$255,838.18	2.44%	\$896,422.92	8.55%	\$9,589,981.55	91.45%	\$0.00	0.00%	\$10,486,404.47
2006	\$638,580.17	1.80%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$3,944,142.43	11.13%	\$4,582,722.60	12.93%	\$30,846,862.43	87.07%	\$0.00	0.00%	\$35,429,585.03
2007	\$811,002.66	4.91%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$1,942,082.56	11.75%	\$2,753,085.22	16.66%	\$13,776,179.56	83.34%	\$0.00	0.00%	\$16,529,264.78
2008	\$463,039.50	4.06%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$3,357,186.47	29.40%	\$3,820,225.97	33.46%	\$7,598,684.80	66.54%	\$0.00	0.00%	\$11,418,910.77
Total	\$2,553,207.07	3.46%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$9,499,249.64	12.86%	\$12,052,456.71	16.32%	\$61,811,708.34	83.68%	\$0.00	0.00%	\$73,864,165.05

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Percentage of total dollars paid annually to prime contractors.

The utilization of firms in the prime construction business category has changed since the 2004 Disparity Study. In the previous study, which was based on contract awards, there was less than 2 percent (\$479,980) of the \$29.9 million awarded going to M/WBEs. The utilization of African American-owned firms has increased from 0.37 percent (\$110,385) to 3.5 percent (\$2.6 million). The utilization of nonminority women-owned firms has increased from 1.15 percent (\$344,350) to 12.9 percent (\$9.5 million).

Exhibit 4-3 shows the number of prime construction firms utilized over the entire the study period. In **Exhibit 4-3**, MGT shows that 15 M/WBE firms (18.9%) were paid for construction projects at the prime contractor level. In comparison, 64 non-M/WBEs were paid during the same period.

**EXHIBIT 4-3
CONSTRUCTION
NUMBER OF INDIVIDUAL PRIME CONTRACTORS
UTILIZED IN THE LEON COUNTY MARKET AREA
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS
OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Calendar Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Firms ¹
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#
2005	4	9.30%	0	0.00%	0	0.00%	0	0.00%	5	11.63%	9	20.93%	34	79.07%	0	0.00%	43
2006	4	9.76%	0	0.00%	0	0.00%	0	0.00%	4	9.76%	8	19.51%	33	80.49%	0	0.00%	41
2007	5	12.82%	0	0.00%	0	0.00%	0	0.00%	2	5.13%	7	17.95%	32	82.05%	0	0.00%	39
2008	4	10.26%	0	0.00%	0	0.00%	0	0.00%	3	7.69%	7	17.95%	32	82.05%	0	0.00%	39
Individual Firms over Four Years ²	7	8.86%	0	0.00%	0	0.00%	0	0.00%	8	10.13%	15	18.99%	64	81.01%	0	0.00%	79

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Percentage of Total Firms.

² "Individual Firms" counts a firm only once for each year it receives work. Since a firm could be used in multiple years, the "Individual Firms" for the entire study period may not equal the sum of all years.

Construction Subcontractor Analysis

As stated previously, MGT attempted to collect subcontractor data from hard copy files and County verification reports data maintained by the County. It should be noted that the analysis would have been heavily weighted towards M/WBEs because those were the data most readily available.

Because the data are so heavily weighted towards M/WBE firms, we provide in **Exhibit 4-4** an analysis of subcontracting utilization based on an estimated subcontracting level. We had the distribution of the number of M/WBE subcontracts by race and gender, but needed to know construction subcontracts awarded to non-M/WBEs in order to establish a reasonable basis to determine the relative proportion of construction subcontract dollars to overall construction contracts.

Our experience has shown that subcontracting generally represents 20 to 30 percent of the prime construction contract amounts. Census data support the applicability of this rule of thumb for this project. The "2002 Census of Construction – Geographic Area Summary Findings" shows that the cost of construction work subcontracted out in the state of Florida was 25.1 percent. Assuming that the County's construction spending pattern is similar to the overall patterns in the state of Florida, we would conclude that subcontractors received at least 20 percent of the dollars associated with construction prime contracts and as much as 25.1 percent of prime level dollars.

Using the corresponding prime dollars for the four years for which M/WBE subcontracting data were available, we calculate the overall construction subcontract dollars to have been \$18.5 million (25 percent) in the market area (see **Exhibit 4-2**). Accordingly, **Exhibit 4-4** shows the estimated construction subcontracting utilization percentages under these assumptions.

Based on the analysis, non-M/WBE firms received 87 percent (\$16.1 million of \$18.5 million) of the construction subcontract dollars awarded during the study period. M/WBE firms received 12.9 percent, with African American-owned firms receiving 10.1 percent (\$1.9 million of \$18.5 million).

**EXHIBIT 4-4
CONSTRUCTION
UTILIZATION ANALYSIS OF SUBCONTRACTORS
IN THE LEON COUNTY MARKET AREA
DOLLARS AND PERCENTAGE OF TOTAL ESTIMATED DOLLARS
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS
OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Year	Total Construction \$ ¹	Subcontract Dollars ²	African American		Hispanic American		Asian American		Native American		Nonminority Women		Total M/WBE		Total Non-M/WBEs ³		Total M/WBE	
			%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$
2005	\$10,486,404.47	\$ 2,621,601.12	41.86%	\$ 1,097,457.43	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	2.13%	\$55,963.24	44.00%	\$1,153,420.67	56.00%	\$1,468,180.45	44.00%	\$ 1,153,420.67
2006	\$35,429,585.03	\$ 8,857,396.26	3.39%	\$ 299,890.00	2.44%	\$216,200.00	0.00%	\$0.00	0.00%	\$250.00	0.42%	\$36,998.00	6.25%	\$553,338.00	93.75%	\$8,304,058.26	6.25%	\$ 553,338.00
2007	\$16,529,264.78	\$ 4,132,316.20	9.00%	\$ 372,076.00	0.43%	\$17,579.70	0.00%	\$0.00	0.23%	\$9,542.00	2.35%	\$97,260.00	12.01%	\$496,457.70	87.99%	\$3,635,858.50	12.01%	\$ 496,457.70
2008	\$11,418,910.77	\$ 2,854,727.69	3.48%	\$ 99,416.65	2.41%	\$68,800.00	0.00%	\$0.00	0.00%	\$0.00	0.82%	\$23,540.00	6.72%	\$191,756.65	93.28%	\$2,662,971.04	6.72%	\$ 191,756.65
Total	\$ 73,864,165.05	\$ 18,466,041.26	10.12%	\$ 1,868,840.08	1.64%	\$302,579.70	0.00%	\$0.00	0.05%	\$9,792.00	1.16%	\$213,761.24	12.97%	\$2,394,973.02	87.03%	\$16,071,068.24	12.97%	\$ 2,394,973.02

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Actual dollar amounts based on expenditure amounts to prime contractors.

² Percentage of the total estimated subcontractor dollars awarded.

³ Calculated as estimated subcontract dollars less M/WBE subcontract dollars.

4.2.2 Availability

The availability of construction firms was derived from the list of overall firms included in MGT's database. However, the availability analysis is based only on firms located within the Leon County market area. As shown in **Exhibit 4-5**, M/WBEs accounted for more than 16 percent of prime construction contractors available to do business with the County at the prime construction level. Among M/WBEs, African American-owned firms were the largest group, accounting for 9.7 percent of the total construction contractors.

**EXHIBIT 4-5
CONSTRUCTION
AVAILABILITY OF PRIME CONTRACTORS
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS**

	African Americans ¹		Hispanic Americans ¹		Asian Americans ¹		Native Americans ¹		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Firms
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
Total	18	9.73%	0	0.00%	1	0.54%	0	0.00%	12	6.49%	31	16.76%	154	83.24%	0	0.00%	185

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Minority male and female firms are included in their respective minority classifications.

Exhibit 4-6 displays availability percentages for subcontractors. M/WBEs accounted for 32.3 percent of construction subcontractors available to do business. Among M/WBEs, African American-owned firms were the largest group, accounting for 18.8 percent of the total M/WBE construction contractors. The data for subcontractors was based on readily available data collected from hard copy files, which included firms who were awarded work at a subcontractor level, as well as firms who were proposed to be utilized by a prime contractor. For M/WBE subcontractor availability, by individual race/ethnicity/gender classifications, African American firms represented 18.75 percent, Hispanic American firms 1.56 percent; Asian American firms 0.52 percent, Native American firms 0.69 percent, and nonminority women firms 10.76 percent.

**EXHIBIT 4-6
CONSTRUCTION
AVAILABILITY OF SUBCONTRACTORS
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS
OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

	African Americans ¹		Hispanic Americans ¹		Asian Americans ¹		Native Americans ¹		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Total Firms	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Total	108	18.75%	9	1.56%	3	0.52%	4	0.69%	62	10.76%	186	32.29%	390	67.71%	576	

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Minority male and female firms are included in their respective minority classifications.

4.3 Architecture and Engineering

This section presents MGT's analysis for the architecture and engineering business category. This analysis is based on County payments to firms providing architectural and engineering services. In this section, MGT shows the results of the utilization and availability analysis of M/WBEs and non-M/WBEs as architecture and engineering consultants, within the County market area.

4.3.1 Utilization Analysis

Exhibit 4-7 presents the utilization analysis of architecture and engineering prime consultants in the County's market area and shows that M/WBEs received over \$1.1 million (14.6%) of the architecture and engineering payment dollars. Non-M/WBEs accounted for more than \$6.1 million of the architecture and engineering dollars expended by the County over the study period, receiving 85.4 percent of the dollars.

**EXHIBIT 4-7
ARCHITECTURE AND ENGINEERING
UTILIZATION ANALYSIS OF PAYMENTS
IN THE LEON COUNTY MARKET AREA
DOLLARS AND PERCENTAGE OF TOTAL DOLLARS PAID
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS
OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Calendar Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Dollars Paid
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$
2005	\$82,183.00	5.67%	\$0.00	0.00%	\$56,035.00	3.87%	\$0.00	0.00%	\$8,649.30	0.60%	\$146,867.30	10.14%	\$1,301,953.15	89.86%	\$0.00	0.00%	\$1,448,820.45
2006	\$117,864.97	6.36%	\$0.00	0.00%	\$64,867.50	3.50%	\$0.00	0.00%	\$50,872.02	2.74%	\$233,604.49	12.60%	\$1,619,850.93	87.40%	\$0.00	0.00%	\$1,853,455.42
2007	\$206,002.65	8.15%	\$0.00	0.00%	\$62,249.00	2.46%	\$0.00	0.00%	\$133,750.14	5.29%	\$402,001.79	15.91%	\$2,124,160.92	84.09%	\$0.00	0.00%	\$2,526,162.71
2008	\$131,213.11	9.58%	\$0.00	0.00%	\$13,157.50	0.96%	\$0.00	0.00%	\$126,841.52	9.26%	\$271,212.13	19.80%	\$1,098,551.33	80.20%	\$0.00	0.00%	\$1,369,763.46
Total	\$537,263.73	7.46%	\$0.00	0.00%	\$196,309.00	2.73%	\$0.00	0.00%	\$320,112.98	4.45%	\$1,053,685.71	14.64%	\$6,144,516.33	85.36%	\$0.00	0.00%	\$7,198,202.04

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Percentage of total dollars paid annually to prime consultants.

Exhibit 4-8 shows the number of prime architecture and engineering firms utilized over the entire the study period. In **Exhibit 4-8**, MGT shows that 12 M/WBE firms (38.7%) were paid for architecture and engineering services at the prime consultant level. In comparison, 19 non-M/WBEs were paid during the same period.

**EXHIBIT 4-8
ARCHITECTURE AND ENGINEERING
NUMBER OF INDIVIDUAL PRIME CONSULTANTS
UTILIZED IN THE LEON COUNTY MARKET AREA
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS
OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Calendar Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Firms ¹
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#
2005	2	9.52%	0	0.00%	2	9.52%	0	0.00%	3	14.29%	7	33.33%	14	66.67%	0	0.00%	21
2006	3	12.50%	0	0.00%	2	8.33%	0	0.00%	4	16.67%	9	37.50%	15	62.50%	0	0.00%	24
2007	4	15.38%	0	0.00%	2	7.69%	0	0.00%	4	15.38%	10	38.46%	16	61.54%	0	0.00%	26
2008	3	13.64%	0	0.00%	2	9.09%	0	0.00%	5	22.73%	10	45.45%	12	54.55%	0	0.00%	22
Individual Firms over Four Years ²	4	12.90%	0	0.00%	2	6.45%	0	0.00%	6	19.35%	12	38.71%	19	61.29%	0	0.00%	31

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Percentage of Total Firms.

² "Individual Firms" counts a firm only once for each year it receives work. Since a firm could be used in multiple years, the "Individual Firms" for the entire study period may not equal the sum of all years.

The comparison of utilization of firms in the prime architecture and engineering business category was not conducted since this service was previously categorized in professional services.

4.3.2 Availability

The availability of architecture and engineering firms was derived from the list of overall firms included in MGT's database. As shown in **Exhibit 4-9**, M/WBEs accounted for more than 30 percent of architecture and engineering firms available to do business with the County at the prime level. Among M/WBEs, nonminority women-owned firms were the largest group, accounting for 17.2 percent of the total M/WBE architecture and engineering firms.

**EXHIBIT 4-9
ARCHITECTURE AND ENGINEERING
AVAILABILITY OF PRIME CONSULTANTS
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS**

	African Americans ¹		Hispanic Americans ¹		Asian Americans ¹		Native Americans ¹		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Firms
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
Total	4	8.51%	1	2.13%	2	4.26%	0	0.00%	8	17.02%	15	31.91%	32	68.09%	0	0.00%	47

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Minority male and female firms are included in their respective minority classifications.

4.4 Professional Services

This section presents MGT's analysis for the professional services business category. This analysis is based on County payments to firms providing professional services. In this section, MGT shows the results of the utilization and availability analysis of M/WBEs and non-M/WBEs as professional services prime consultants, within the County market area.

4.4.1 Utilization Analysis

Exhibit 4-10 presents the utilization analysis of professional services prime consultants in the County's market area and shows that M/WBEs received over \$719,300 (16.1%) of the professional services payment dollars. Non-M/WBEs accounted for more than \$3.7 million of the professional services dollars expended by the County over the study period, receiving 83.9 percent of the dollars.

**EXHIBIT 4-10
PROFESSIONAL SERVICES
UTILIZATION ANALYSIS OF PAYMENTS
IN THE LEON COUNTY MARKET AREA
DOLLARS AND PERCENTAGE OF TOTAL DOLLARS PAID
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS
OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Calendar Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Dollars
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	
2005	\$44,172.11	3.06%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$220,646.61	15.30%	\$264,818.72	18.36%	\$1,177,461.95	81.64%	\$0.00	0.00%	\$1,442,280.67
2006	\$55,888.25	4.91%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$203,911.61	17.92%	\$259,799.86	22.83%	\$878,396.89	77.17%	\$0.00	0.00%	\$1,138,196.75
2007	\$52,857.25	5.09%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$109,314.42	10.53%	\$162,171.67	15.62%	\$875,764.85	84.38%	\$0.00	0.00%	\$1,037,936.52
2008	\$28,512.00	3.30%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$4,075.00	0.47%	\$32,587.00	3.77%	\$831,526.33	96.23%	\$0.00	0.00%	\$864,113.33
Total	\$181,429.61	4.05%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$537,947.64	12.00%	\$719,377.25	16.05%	\$3,763,150.02	83.95%	\$0.00	0.00%	\$4,482,527.27

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Percentage of total dollars paid annually to prime consultants.

Exhibit 4-11 shows the number of prime professional services firms utilized over the entire the study period. In **Exhibit 4-11**, MGT shows that 22 M/WBE firms (32.4%) were paid for professional services at the prime consultant level. In comparison, 46 non-M/WBEs were paid during the same period.

**EXHIBIT 4-11
PROFESSIONAL SERVICES
NUMBER OF INDIVIDUAL PRIME CONSULTANTS
UTILIZED IN THE LEON COUNTY MARKET AREA
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS
OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Calendar Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Firms ¹
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
2005	4	9.30%	0	0.00%	0	0.00%	0	0.00%	10	23.26%	14	32.56%	29	67.44%	0	0.00%	43
2006	2	5.88%	0	0.00%	0	0.00%	0	0.00%	8	23.53%	10	29.41%	24	70.59%	0	0.00%	34
2007	2	6.25%	0	0.00%	0	0.00%	0	0.00%	7	21.88%	9	28.13%	23	71.88%	0	0.00%	32
2008	1	4.17%	0	0.00%	0	0.00%	0	0.00%	5	20.83%	6	25.00%	18	75.00%	0	0.00%	24
Individual Firms over Four Years ²	5	7.35%	0	0.00%	0	0.00%	0	0.00%	17	25.00%	22	32.35%	46	67.65%	0	0.00%	68

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Percentage of Total Firms.

² "Individual Firms" counts a firm only once for each year it receives work. Since a firm could be used in multiple years, the "Individual Firms" for the entire study period may not equal the sum of all years.

The comparison of utilization of firms in the prime professional services business category was not conducted since architecture and engineering services was previously categorized in professional services.

4.4.2 Availability

The availability of professional services firms was derived from the list of overall firms included in MGT's database. However, the availability analysis is based only on firms located within the Leon County market area. As shown in **Exhibit 4-12**, M/WBEs accounted for more than 27 percent of professional services firms available to do business with the County at the prime level. Among M/WBEs, nonminority women-owned firms were the largest group, accounting for 18.2 percent of the total M/WBEs.

**EXHIBIT 4-12
PROFESSIONAL SERVICES
AVAILABILITY OF PRIME CONSULTANTS
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS**

	African Americans ¹		Hispanic Americans ¹		Asian Americans ¹		Native Americans ¹		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Firms
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
Total	8	8.08%	1	1.01%	0	0.00%	0	0.00%	18	18.18%	27	27.27%	72	72.73%	0	0.00%	99

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Minority male and female firms are included in their respective minority classifications.

4.5 Other Services

This section presents MGT's analysis for the other services business category. This analysis is based on County payments to firms providing other services. In this section, MGT shows the results of the utilization and availability analysis of M/WBEs and non-M/WBEs as other services firms, within the County market area.

4.5.1 Utilization Analysis

Exhibit 4-13 presents the utilization analysis of other services firms, in the County's market area and shows that M/WBEs received over \$3.4 million (53.8%) of the other services payment dollars. Non-M/WBEs accounted for more than \$2.9 million of the other services dollars expended by the County over the study period, receiving 46.4 percent of the dollars.

**EXHIBIT 4-13
OTHER SERVICES
UTILIZATION ANALYSIS OF PAYMENTS
IN THE LEON COUNTY MARKET AREA
DOLLARS AND PERCENTAGE OF TOTAL DOLLARS PAID
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS
OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Calendar Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Dollars Paid
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$
2005	\$208,003.57	14.46%	\$25,871.76	1.80%	\$420.00	0.03%	\$3,696.37	0.26%	\$379,951.03	26.41%	\$617,942.73	42.96%	\$820,575.79	57.04%	\$0.00	0.00%	\$1,438,518.52
2006	\$234,253.76	14.04%	\$33,739.90	2.02%	\$1,345.80	0.08%	\$0.00	0.00%	\$652,018.22	39.09%	\$921,357.68	55.24%	\$746,620.92	44.76%	\$0.00	0.00%	\$1,667,978.60
2007	\$256,595.23	15.29%	\$48,199.94	2.87%	\$435.00	0.03%	\$0.00	0.00%	\$653,888.27	38.95%	\$959,118.44	57.14%	\$719,526.61	42.86%	\$0.00	0.00%	\$1,678,645.05
2008	\$118,763.45	7.53%	\$211,276.72	13.40%	\$1,471.00	0.09%	\$0.00	0.00%	\$578,024.31	36.66%	\$909,535.48	57.69%	\$667,098.26	42.31%	\$0.00	0.00%	\$1,576,633.74
Total	\$817,616.01	12.85%	\$319,088.32	5.02%	\$3,671.80	0.06%	\$3,696.37	0.06%	\$2,263,881.83	35.59%	\$3,407,954.33	53.57%	\$2,953,821.58	46.43%	\$0.00	0.00%	\$6,361,775.91

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Percentage of total dollars paid annually to prime consultants.

Exhibit 4-14 shows the number of other services firms utilized over the entire the study period. In **Exhibit 4-14**, MGT shows that 56 M/WBE firms (26.4%) were paid for other services by the County. In comparison, 156 non-M/WBEs were paid during the same period.

**EXHIBIT 4-14
OTHER SERVICES
NUMBER OF INDIVIDUAL FIRMS
UTILIZED IN THE LEON COUNTY MARKET AREA
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS
OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Calendar Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Firms ¹
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
2005	16	14.68%	3	2.75%	1	0.92%	1	0.92%	12	11.01%	33	30.28%	76	69.72%	0	0.00%	109
2006	18	16.07%	2	1.79%	1	0.89%	0	0.00%	14	12.50%	35	31.25%	77	68.75%	0	0.00%	112
2007	15	14.42%	2	1.92%	1	0.96%	0	0.00%	16	15.38%	34	32.69%	70	67.31%	0	0.00%	104
2008	12	13.33%	2	2.22%	1	1.11%	0	0.00%	11	12.22%	26	28.89%	64	71.11%	0	0.00%	90
Individual Firms over Four Years ²	27	12.74%	3	1.42%	1	0.47%	1	0.47%	24	11.32%	56	26.42%	156	73.58%	0	0.00%	212

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Percentage of Total Firms.

² "Individual Firms" counts a firm only once for each year it receives work. Since a firm could be used in multiple years, the "Individual Firms" for the entire study period may not equal the sum of all years.

The utilization of firms in the other services business category has changed since the 2004 Disparity Study. In the previous study, which was based on purchase order awards, there was less than 30 percent (\$3.3 million) of the \$11.1 million awarded going to M/WBEs. As far as percentages, the utilization of M/WBE firms has increased from 30 percent to 53.6 percent. As far as percentages and dollars, the utilization of nonminority women-owned firms has increased from 11.8 percent (\$1.3 million) to 35.6 percent (\$2.3 million).

4.5.2 Availability

The availability of other services firms was derived from the list of overall firms included in MGT's database. However, the availability analysis is based only on firms located within the Leon County market area. As shown in **Exhibit 4-15**, M/WBEs accounted for more than 24 percent of other services firms available to do business with the County at the prime level. Among M/WBEs, African American-owned firms were the largest group, accounting for 11.6 percent of the total firms.

**EXHIBIT 4-15
 OTHER SERVICES
 AVAILABILITY OF FIRMS
 BY RACE/ETHNICITY/GENDER CLASSIFICATIONS**

	African Americans ¹		Hispanic Americans ¹		Asian Americans ¹		Native Americans ¹		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Firms
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
Total	30	11.63%	3	1.16%	1	0.39%	1	0.39%	27	10.47%	62	24.03%	181	70.16%	15	5.81%	258

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Minority male and female firms are included in their respective minority classifications.

4.6 Materials and Supplies

This section presents MGT's analysis for the materials and supplies business category. This analysis is based on County payments to firms providing other services. In this section, MGT shows the results of the utilization and availability analysis of M/WBEs and non-M/WBEs as materials and supplies firms, within the County market area.

4.6.1 Utilization Analysis

Exhibit 4-16 presents the utilization analysis of materials and supplies firms, in the County's market area and shows that M/WBEs received over \$1.6 million (13.8%) of the materials and supplies payment dollars. Non-M/WBEs accounted for more than \$10 million of the materials and supplies dollars expended by the County over the study period, receiving 86.2 percent of the dollars.

**EXHIBIT 4-16
MATERIALS AND SUPPLIES
UTILIZATION ANALYSIS OF PAYMENTS
IN THE LEON COUNTY MARKET AREA
DOLLARS AND PERCENTAGE OF TOTAL DOLLARS PAID
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS
OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Calendar Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Dollars Paid
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	
2005	\$73,865.75	3.42%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$410,216.65	18.98%	\$484,082.40	22.40%	\$1,676,722.18	77.60%	\$0.00	0.00%	\$2,160,804.58
2006	\$17,710.00	0.49%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$435,346.85	11.94%	\$453,056.85	12.42%	\$3,194,080.90	87.58%	\$0.00	0.00%	\$3,647,137.75
2007	\$4,100.00	0.16%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$339,654.85	13.66%	\$343,754.85	13.83%	\$2,142,570.53	86.17%	\$0.00	0.00%	\$2,486,325.38
2008	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$324,213.93	9.73%	\$324,213.93	9.73%	\$3,006,335.46	90.27%	\$0.00	0.00%	\$3,330,549.39
Total	\$95,675.75	0.82%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$1,509,432.28	12.98%	\$1,605,108.03	13.81%	\$10,019,709.07	86.19%	\$0.00	0.00%	\$11,624,817.10

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Percentage of total dollars paid annually to prime consultants.

Exhibit 4-17 shows the number of materials and supplies firms utilized over the entire the study period. In **Exhibit 4-17**, MGT shows that 20 M/WBE firms (11.3%) were paid for materials and supplies by the County. In comparison, 157 non-M/WBEs were paid during the same period.

**EXHIBIT 4-17
MATERIALS AND SUPPLIES
NUMBER OF INDIVIDUAL FIRMS
UTILIZED IN THE LEON COUNTY MARKET AREA
BY RACE/ETHNICITY/GENDER CLASSIFICATIONS
OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Calendar Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Firms ¹
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#
2005	3	2.54%	0	0.00%	0	0.00%	0	0.00%	13	11.02%	16	13.56%	102	86.44%	0	0.00%	118
2006	1	0.88%	0	0.00%	0	0.00%	0	0.00%	8	7.02%	9	7.89%	105	92.11%	0	0.00%	114
2007	2	1.89%	0	0.00%	0	0.00%	0	0.00%	8	7.55%	10	9.43%	96	90.57%	0	0.00%	106
2008	0	0.00%	0	0.00%	0	0.00%	0	0.00%	8	8.42%	8	8.42%	87	91.58%	0	0.00%	95
Individual Firms over Four Years ²	5	2.82%	0	0.00%	0	0.00%	0	0.00%	15	8.47%	20	11.30%	157	88.70%	0	0.00%	177

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Percentage of Total Firms.

² "Individual Firms" counts a firm only once for each year it receives work. Since a firm could be used in multiple years, the "Individual Firms" for the entire study period may not equal the sum of all years.

The utilization of firms in the materials and supplies business category has changed since the 2004 Disparity Study. In the previous study, which was based on purchase order awards, there was slightly more than 16 percent (\$2.7 million) of the \$17.1 million awarded going to M/WBEs. As far as percentages, the utilization of M/WBE firms has decreased from 16 percent to 13.8 percent.

4.6.2 Availability

The availability of materials and supplies firms was derived from the list of overall firms included in MGT's database. However, the availability analysis is based only on firms located within the Leon County market area. As shown in **Exhibit 4-18**, M/WBEs accounted for slightly more than 10 percent of materials and supplies firms available to do business with the County at the prime level. Among M/WBEs, nonminority women-owned firms were the largest group, accounting for 8 percent of the total firms.

**EXHIBIT 4-18
 MATERIALS AND SUPPLIES
 AVAILABILITY OF FIRMS
 BY RACE/ETHNICITY/GENDER CLASSIFICATIONS**

	African Americans ¹		Hispanic Americans ¹		Asian Americans ¹		Native Americans ¹		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Unknown		Total Firms
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
Total	4	1.45%	1	0.36%	1	0.36%	0	0.00%	22	8.00%	28	10.18%	247	89.82%	0	0.00%	275

Source: MGT developed a vendor and expenditure database for the County covering the period from October 1, 2004 through September 30, 2008.

¹ Minority male and female firms are included in their respective minority classifications.

4.7 Summary

Exhibit 4-19 summarizes the analysis results presented in this chapter. The utilization and availability data presented in these exhibits are further analyzed in **Chapter 5.0** of this report.

EXHIBIT 4-19 SUMMARY OF M/WBE UTILIZATION BY BUSINESS CATEGORY

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women	Total M/WBE
Construction Prime Contractors						
Utilization Dollars	\$2,553,207	\$0	\$0	\$0	\$9,499,250	\$12,052,457
Utilization Percent	3.46%	0.00%	0.00%	0.00%	12.86%	16.32%
Availability Percent	9.73%	0.00%	0.54%	0.00%	6.49%	16.76%
Construction Subcontractors (Overall Subcontractor Level)						
Utilization Dollars	\$0	\$0	\$0	\$0	\$0	\$0
Utilization Percent	66.64%	10.79%	0.00%	0.35%	7.62%	85.40%
Availability Percent	18.75%	1.56%	0.52%	0.69%	10.76%	32.29%
Architecture and Engineering Prime Consultants						
Utilization Dollars	\$537,264	\$0	\$196,309	\$0	\$320,113	\$1,053,686
Utilization Percent	7.46%	0.00%	2.73%	0.00%	4.45%	14.64%
Availability Percent	8.51%	2.13%	4.26%	0.00%	17.02%	31.91%
Professional Services Prime Consultants						
Utilization Dollars	\$181,430	\$0	\$0	\$0	\$537,948	\$719,377
Utilization Percent	4.05%	0.00%	0.00%	0.00%	12.00%	16.05%
Availability Percent	8.08%	1.01%	0.00%	0.00%	18.18%	27.27%
Other Services Firms						
Utilization Dollars	\$817,616	\$319,088	\$3,672	\$3,696	\$2,263,882	\$3,407,954
Utilization Percent	12.85%	5.02%	0.06%	0.06%	35.59%	53.57%
Availability Percent	11.63%	1.16%	0.39%	0.39%	10.47%	24.03%
Materials and Supplies Vendors						
Utilization Dollars	\$95,676	\$0	\$0	\$0	\$1,509,432	\$1,605,108
Utilization Percent	0.82%	0.00%	0.00%	0.00%	12.98%	13.81%
Availability Percent	1.45%	0.36%	0.36%	0.00%	8.00%	10.18%

Source: Results from Chapter 4.0 Analysis of Utilization and Availability Results

5.0 DISPARITY ANALYSIS

5.0 DISPARITY ANALYSIS

This chapter examines the issue of disparity within each business category of procurement. Disparity, in this context, is the analysis of the differences between the utilization of minority- and women-owned business enterprises (M/WBEs) and the availability of those firms. Accordingly, MGT of America, Inc. (MGT), used disparity indices to examine whether M/WBEs received a proportional share of dollars based on the availability of M/WBEs in the relevant market area.

This chapter consists of the following sections:

- **Section 5.1** describes the methodology used by MGT to test for the presence or absence of disparity in each of the business categories.
- **Section 5.2** applies the disparity indices to the business categories and determines the presence or absence of disparity in the County's procurement activity.
- **Section 5.3** summarizes the chapter and presents our conclusions

5.1 Methodology

MGT used the availability and utilization information presented in **Chapter 4.0** of this report as the basis to determine if M/WBEs received a proportional share of payments by the Board of County Commissioners of Leon County (County). This determination is made primarily through the disparity index calculation which compares the availability of firms with the utilization of those firms. The disparity index also provides a value that can be given a commonly accepted substantive interpretation.

The underlying assumption of this approach is that, absent discrimination, the proportion of dollars received by a particular M/WBE group should approximate that group's proportion of the relevant population of vendors. To determine if disparity exists M/WBEs and non-M/WBEs within a specific business category, MGT compared the utilization of each group to its respective availability within each of the relevant market areas.

5.1.1 Disparity Index

MGT pioneered the use of disparity indices as a means of quantifying the disparity in utilization relative to availability. The use of a disparity index for such calculations is supported by several post-*Croson* cases, most notably *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*.¹ Although a variety of similar indices could be utilized, MGT's standard for choosing its particular index methodology is that it must yield a value that is easily calculable, understandable in its interpretation, and universally comparable such that a disparity in utilization within M/WBE categories can be assessed with reference to the utilization of non-M/WBEs.

¹ *Contractors Association of Eastern Pennsylvania, Inc. v. City of Philadelphia*, 91 F 3d at 603.

For this study, the ratio of the percentage of utilization² to the percentage of availability multiplied by 100 serves as the measure of choice, as shown in the formula:

$$(1) \text{ Disparity Index} = \frac{\%Um_1p_1}{\%Am_1p_1} \times 100$$

Where: Um_1p_1 = utilization of M/S/WBE₁ for procurement₁
 Am_1p_1 = availability of M/S/WBE₁ for procurement₁

Due to the mathematical properties involved in the calculations, a disparity index value of 0.00 for a given race, ethnicity or gender category of firm indicates absolutely no utilization and, therefore, absolute disparity. An index of 100 indicates that vendor utilization is perfectly proportionate to availability for a particular group in a given business category, indicating the absence of disparity—that is, the proportion of utilization relative to availability one would expect, all things being equal. In general, firms within a business category are considered underutilized if the disparity indices are less than 100, and overutilized if the indices are above 100.

Since there is no standardized measurement to evaluate the levels of underutilization or overutilization within a procurement context, MGT has appropriated the Equal Opportunity Commission's (EEOC) "80 percent rule" in *Uniform Guidelines on Employee Selection Procedures*. In context of employment discrimination, an employment disparity ratio below 80 indicates a "substantial disparity" in employment. The Supreme Court has accepted the use of the 80 percent rule in *Connecticut v. Teal* (*Teal*), 457 U.S. 440 (1982), and in *Teal* and other affirmative action cases, the terms "adverse impact," "disparate impact," and "discriminatory impact" are used interchangeably to characterize values of 80 and below.

5.2 Disparity Indices Results

Tables showing disparity indices for construction, architecture and engineering, professional services, other services, and goods and supplies are analyzed in this section. As mentioned before, the tables are based on the utilization and availability of M/WBEs and non-M/WBEs in the Leon County relevant market area³ as shown in **Chapter 4.0**.

5.2.1 Construction

Disparity Analysis of Construction Firms

Exhibit 5-1 shows the disparity indices for prime construction payments based on the County's expenditure data. As can be seen, during the four-year study period for the County, non-M/WBEs firms were overutilized with a disparity index of 100.53. Based on all years, WBEs were overutilized with a disparity index of 198.26. African American- and Asian American-owned firms were substantially underutilized with a disparity index of 35.53 and 0.00, respectively. Firms owned by Hispanic Americans, Native Americans,

² Percentage of utilization is based on expenditure dollars and the percentage of availability is based on the number of firms.

³ The Leon County relevant market area includes the following counties: Leon County, Florida; Gadsden County, Florida; Jefferson County, Florida, and Wakulla County, Florida.

and Asian Americans were not utilized on the prime contractor level during the four-year study period.

EXHIBIT 5-1
DISPARITY ANALYSIS OF CONSTRUCTION FIRMS
ON THE PRIME CONTRACTOR LEVEL
IN THE LEON COUNTY MARKET AREA
BY BUSINESS OWNER CLASSIFICATIONS
OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008

Business Owner Classification	% of Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
2005				
African Americans	6.11%	9.73%	62.78	* Underutilization
Hispanic Americans	0.00%	0.00%	N/A	N/A
Asian Americans	0.00%	0.54%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	2.44%	6.49%	37.61	* Underutilization
Non-MWBE Firms	91.45%	83.24%	109.86	Overutilization
2006				
African Americans	1.80%	9.73%	18.52	* Underutilization
Hispanic Americans	0.00%	0.00%	N/A	N/A
Asian Americans	0.00%	0.54%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	11.13%	6.49%	171.62	Overutilization
Non-MWBE Firms	87.07%	83.24%	104.59	Overutilization
2007				
African Americans	4.91%	9.73%	50.43	* Underutilization
Hispanic Americans	0.00%	0.00%	N/A	N/A
Asian Americans	0.00%	0.54%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	11.75%	6.49%	181.14	Overutilization
Non-MWBE Firms	83.34%	83.24%	100.12	Overutilization
2008				
African Americans	4.06%	9.73%	41.68	* Underutilization
Hispanic Americans	0.00%	0.00%	N/A	N/A
Asian Americans	0.00%	0.54%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	29.40%	6.49%	453.25	Overutilization
Non-MWBE Firms	66.54%	83.24%	79.94	* Underutilization
All Years				
African Americans	3.46%	9.73%	35.53	* Underutilization
Hispanic Americans	0.00%	0.00%	N/A	N/A
Asian Americans	0.00%	0.54%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	12.86%	6.49%	198.26	Overutilization
Non-MWBE Firms	83.68%	83.24%	100.53	Overutilization

Source: MGT developed an expenditure and vendor database for the County from October 1, 2004, through September 30, 2008.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in **Chapter 4.0**.

² The percentage of available firms is taken from the availability exhibit previously shown in **Chapter 4.0**.

³ The disparity index is the ratio of % utilization to % availability times 100.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

2004 Disparity Study Comparison

Exhibit 5-2 presents a summary comparison of the utilization, availability, and disparity findings from the 2004 and 2009 studies. In the previous study, of the M/WBEs utilized at the prime contractor construction level, all M/WBEs were substantially underutilized. The current study shows that firms owned by African Americans and Asian Americans are still being substantially underutilized. Firms owned by nonminority women have changed from substantial underutilization to overutilization with a disparity index from 38.20 to 198.26. According to both studies, firms owned by Asian Americans and Native Americans were not utilized at the prime contractor level for construction projects. Based on percentages, M/WBE utilization has increased among few groups. Utilization of African American-owned firms has increased from 0.37 percent to 3.46 percent and 1.15 percent to 12.86 percent for nonminority-women. The utilization of Hispanic Americans has decreased from 0.08 percent to no utilization.

EXHIBIT 5-2 SUMMARY OF UTILIZATION, AVAILABILITY, AND DISPARITY ANALYSIS BETWEEN 2004 STUDY AND 2009 STUDY PRIME CONSTRUCTION CONTRACTORS IN THE LEON COUNTY MARKET AREA BY M/WBE CLASSIFICATIONS

	Percent of Prime Dollars ¹		% of Available Firms ²		Disparity Index ³		Disparate Impact of Utilization	
	2004 Study	2009 Study	2004 Study	2009 Study	2004 Study	2009 Study	2004 STUDY	2009 Study
African Americans	0.37%	3.46%	6.03%	9.73%	6.12	35.53	* Underutilization	* Underutilization
Hispanic Americans	0.08%	0.00%	1.51%	0.00%	5.60	N/A	* Underutilization	N/A
Asian Americans	0.00%	0.00%	0.00%	0.54%	0.00	0.00	N/A	* Underutilization
Native Americans	0.00%	0.00%	0.50%	0.00%	0.00	N/A	* Underutilization	N/A
Nonminority Women	1.15%	12.86%	3.02%	6.49%	38.20	198.26	* Underutilization	Overutilization

Source: Leon County Board of Commissioners September 2004 Disparity Study, **Chapter 5.0**, and Leon County Board of Commissioners August 2009 Disparity Study, **Chapter 5.0**.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in **Chapter 4.0**.

² The percentage of available contractors is taken from the availability exhibit previously shown in **Chapter 4.0**.

³ The disparity index is the ratio of % utilization to % availability times 100.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

The construction subcontractor disparity analysis was based on the percentages of estimated subcontractor dollars as well as the availability of firms based on vendor data as mentioned in **Chapter 4.0**.

Exhibit 5-3 shows the construction subcontractor disparity analysis for all years of the study period is shown. Among the various M/WBE groups, utilization fluctuated between overutilization to substantial underutilization. Firms owned by African Americans were overutilized in 2005 resulting with a disparity index of 223.26. However, in subsequent years the utilization of African American-owned firms awarded to provide subcontracting services decreased, thus resulting in overall substantial underutilization with a disparity index of 53.98. Firms owned by Hispanic Americans were overutilized in 2006 and 2008 resulting in overall overutilization with a disparity index of 104.87. Excluding Hispanic American-owned firms, M/WBEs were substantially underutilized overall as subcontractors. Firms owned by Asian Americans were not awarded subcontracts during the study period, thus resulting in no utilization.

**EXHIBIT 5-3
 DISPARITY ANALYSIS OF CONSTRUCTION SUBCONTRACTORS
 IN THE LEON COUNTY MARKET AREA
 BY BUSINESS OWNER CLASSIFICATIONS
 OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Business Owner Classification	% of Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
2005				
African Americans	41.86%	18.75%	223.26	Overutilization
Hispanic Americans	0.00%	1.56%	0.00	* Underutilization
Asian Americans	0.00%	0.52%	0.00	* Underutilization
Native Americans	0.00%	0.69%	0.00	* Underutilization
Nonminority Women	2.13%	10.76%	19.83	* Underutilization
Non-M/WBE Firms	56.00%	67.71%	82.71	Underutilization
2006				
African Americans	3.39%	18.75%	18.06	* Underutilization
Hispanic Americans	2.44%	1.56%	156.22	Overutilization
Asian Americans	0.00%	0.52%	0.00	* Underutilization
Native Americans	0.00%	0.69%	0.41	* Underutilization
Nonminority Women	0.42%	10.76%	3.88	* Underutilization
Non-M/WBE Firms	93.75%	67.71%	138.47	Overutilization
2007				
African Americans	9.00%	18.75%	48.02	* Underutilization
Hispanic Americans	0.43%	1.56%	27.23	* Underutilization
Asian Americans	0.00%	0.52%	0.00	* Underutilization
Native Americans	0.23%	0.69%	33.25	* Underutilization
Nonminority Women	2.35%	10.76%	21.87	* Underutilization
Non-M/WBE Firms	87.99%	67.71%	129.95	Overutilization
2008				
African Americans	3.48%	18.75%	18.57	* Underutilization
Hispanic Americans	2.41%	1.56%	154.24	Overutilization
Asian Americans	0.00%	0.52%	0.00	* Underutilization
Native Americans	0.00%	0.69%	0.00	* Underutilization
Nonminority Women	0.82%	10.76%	7.66	* Underutilization
Non-M/WBE Firms	93.28%	67.71%	137.77	Overutilization
All Years				
African Americans	10.12%	18.75%	53.98	* Underutilization
Hispanic Americans	1.64%	1.56%	104.87	Overutilization
Asian Americans	0.00%	0.52%	0.00	* Underutilization
Native Americans	0.05%	0.69%	7.64	* Underutilization
Nonminority Women	1.16%	10.76%	10.75	* Underutilization
Non-M/WBE Firms	87.03%	67.71%	128.54	Overutilization

Source: MGT developed an expenditure and vendor database for the County from October 1, 2004, through September 30, 2008.

¹ The percentage of subcontract dollars is taken from the subcontract utilization exhibit previously shown in **Chapter 4.0**. Calculations are based on estimates of nonminority subcontractor utilization at 25.1% of the total project dollars, which is the average for the state of Florida construction projects.

² The percentage of available subcontractors is taken from the availability exhibit previously shown in **Chapter 4.0**. These percentages were calculated using vendor data.

³ The disparity index is the ratio of % utilization to % availability times 100. An asterisk is used to indicate a substantial level of disparity (index below 80.00).

2004 Disparity Study Comparison

Exhibit 5-4 presents a summary comparison of the utilization, availability, and disparity findings from the 2004 and 2009 studies. In the previous study, of the MBEs utilized at the subcontractor level, all MBEs were either underutilized or substantially underutilized. In the previous study, nonminority women-owned firms were overutilized at the subcontractor level, but the current study shows substantial underutilization of these firms with a disparity index of 10.75. Hispanic American-owned firms were not utilized in the previous study, thus resulting in underutilization. Hispanic American-owned firms were utilized in the current study resulting in a disparity index of 104.87, which resulted in overutilization overall. The utilization of Native American-owned firms at the subcontractor level has decreased in the disparate impact from underutilization to substantial underutilization with a disparity index of 87.17 to 7.64, respectively.

EXHIBIT 5-4 SUMMARY OF UTILIZATION, AVAILABILITY, AND DISPARITY ANALYSIS BETWEEN 2004 STUDY AND 2009 STUDY SUBCONTRACTOR LEVEL IN THE LEON COUNTY MARKET AREA BY M/WBE CLASSIFICATIONS

	Percent of Dollars ¹		% of Available Firms ²		Disparity Index ³		Disparate Impact of Utilization	
	2004 Study	2009 Study	2004 Study	2009 Study	2004 Study	2009 Study	2004 STUDY	2009 Study
African Americans	14.37%	10.12%	22.09%	18.75%	65.09	53.98	* Underutilization	* Underutilization
Hispanic Americans	0.00%	1.64%	1.20%	1.56%	0.00	104.87	* Underutilization	Overutilization
Asian Americans	0.00%	0.00%	0.40%	0.52%	0.00	0.00	* Underutilization	* Underutilization
Native Americans	0.35%	0.05%	0.40%	0.69%	87.17	7.64	Underutilization	* Underutilization
Nonminority Women	3.60%	1.16%	3.21%	10.76%	112.18	10.75	Overutilization	* Underutilization

Source: Leon County Board of Commissioners September 2004 Disparity Study, **Chapter 5.0**, and Leon County Board of Commissioners August 2009 Disparity Study, **Chapter 5.0**.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in **Chapter 4.0**.

² The percentage of available contractors is taken from the availability exhibit previously shown in **Chapter 4.0**.

³ The disparity index is the ratio of % utilization to % availability times 100.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

5.2.2 Architecture and Engineering

In this section, the results of the disparity analysis for the architecture and engineering business category for firms within the Leon County market area are presented.

Disparity Analysis of Architecture and Engineering Firms

Exhibit 5-5 shows the disparity indices for architecture and engineering firms at the prime level. Based on the overall study period, MBEs were overutilized. Firms owned by Asian Americans were utilized in each year of the study, resulting in underutilization with a disparity index of 62.73. Firms owned by African Americans were underutilized in each year of the study period, except for 2008, which resulted in underutilization with a disparity index of 85.83. Firms owned by nonminority women were substantially underutilized in each year of the study, resulting in substantial underutilization with a disparity index of 25.57. Firms owned by Native Americans were not utilized during the study period. Firms owned by Hispanic Americans⁴ were not utilized in each year of the study period, resulting in substantial underutilization with a disparity index of 0 .

⁴ The availability pool of firms for this category among this MBE group was based on the count of firms that submitted a bid as a prime contractor and won the project. However, this contract ultimately was not awarded, thus not listed in the list of awarded agreements.

**EXHIBIT 5-5
 DISPARITY ANALYSIS OF ARCHITECTURE AND ENGINEERING FIRMS
 IN THE LEON COUNTY MARKET AREA
 BY BUSINESS OWNER CLASSIFICATIONS
 OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Business Owner Classification	% of Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
2005				
African Americans	5.67%	8.51%	66.65	* Underutilization
Hispanic Americans	0.00%	2.13%	0.00	* Underutilization
Asian Americans	3.87%	4.26%	90.89	Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	0.60%	17.02%	3.51	* Underutilization
Non-M/WBE Firms	89.86%	68.09%	131.99	Overutilization
2006				
African Americans	6.36%	8.51%	74.72	* Underutilization
Hispanic Americans	0.00%	2.13%	0.00	* Underutilization
Asian Americans	3.50%	4.26%	82.25	Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	2.74%	17.02%	16.13	* Underutilization
Non-M/WBE Firms	87.40%	68.09%	128.36	Overutilization
2007				
African Americans	8.15%	8.51%	95.82	Underutilization
Hispanic Americans	0.00%	2.13%	0.00	* Underutilization
Asian Americans	2.46%	4.26%	57.91	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	5.29%	17.02%	31.11	* Underutilization
Non-M/WBE Firms	84.09%	68.09%	123.50	Overutilization
2008				
African Americans	9.58%	8.51%	112.56	Overutilization
Hispanic Americans	0.00%	2.13%	0.00	* Underutilization
Asian Americans	0.96%	4.26%	22.57	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	9.26%	17.02%	54.40	* Underutilization
Non-M/WBE Firms	80.20%	68.09%	117.79	Overutilization
All Years				
African Americans	7.46%	8.51%	87.70	Underutilization
Hispanic Americans	0.00%	2.13%	0.00	* Underutilization
Asian Americans	2.73%	4.26%	64.09	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	4.45%	17.02%	26.13	* Underutilization
Non-M/WBE Firms	85.36%	68.09%	125.38	Overutilization

Source: MGT developed an expenditure and vendor database for the County from October 1, 2004, through September 30, 2008.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in **Chapter 4.0**.

² The percentage of available firms is taken from the availability exhibit previously shown in **Chapter 4.0**.

³ The disparity index is the ratio of % utilization to % availability times 100.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

2004 Disparity Study Comparison

A summary comparison of the utilization, availability, and disparity findings from the 2004 and 2009 studies based on architectural and engineering services was not conducted. Architectural and engineering services were classified under professional

services in the previous study. Therefore, the comparison between both studies for professional services will be discussed in the next section.

5.2.3 Professional Services

In this section, the results of the disparity analysis for the professional services business category for firms are presented.

Disparity Analysis of Professional Services Firms

Exhibit 5-6 shows the disparity indices for professional services firms. Overall, of the firms utilized, M/WBE firms were substantially underutilized as professional services firms. African American- and nonminority women-owned firms were substantially underutilized with a disparity index of 50.09 and 66.01, respectively. Nonminority male-owned firms were overutilized with a disparity index of 115.43.

**EXHIBIT 5-6
 DISPARITY ANALYSIS OF PROFESSIONAL SERVICES FIRMS
 IN THE LEON COUNTY MARKET AREA
 BY BUSINESS OWNER CLASSIFICATIONS
 OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Business Owner Classification	% of Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
2005				
African Americans	3.06%	8.08%	37.90	* Underutilization
Hispanic Americans	0.00%	1.01%	0.00	* Underutilization
Asian Americans	0.00%	0.00%	N/A	N/A
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	15.30%	18.18%	84.14	Underutilization
Non-MWBE Firms	81.64%	72.73%	112.25	Overutilization
2006				
African Americans	4.91%	8.08%	60.76	* Underutilization
Hispanic Americans	0.00%	1.01%	0.00	* Underutilization
Asian Americans	0.00%	0.00%	N/A	N/A
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	17.92%	18.18%	98.53	Underutilization
Non-MWBE Firms	77.17%	72.73%	106.11	Overutilization
2007				
African Americans	5.09%	8.08%	63.02	* Underutilization
Hispanic Americans	0.00%	1.01%	0.00	* Underutilization
Asian Americans	0.00%	0.00%	N/A	N/A
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	10.53%	18.18%	57.93	* Underutilization
Non-MWBE Firms	84.38%	72.73%	116.02	Overutilization
2008				
African Americans	3.30%	8.08%	40.83	* Underutilization
Hispanic Americans	0.00%	1.01%	0.00	* Underutilization
Asian Americans	0.00%	0.00%	N/A	N/A
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	0.47%	18.18%	2.59	* Underutilization
Non-MWBE Firms	96.23%	72.73%	132.31	Overutilization
All Years				
African Americans	4.05%	8.08%	50.09	* Underutilization
Hispanic Americans	0.00%	1.01%	0.00	* Underutilization
Asian Americans	0.00%	0.00%	N/A	N/A
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	12.00%	18.18%	66.01	* Underutilization
Non-MWBE Firms	83.95%	72.73%	115.43	Overutilization

Source: MGT developed an expenditure and vendor database for the County from October 1, 2004, through September 30, 2008.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in **Chapter 4.0**.

² The percentage of available firms is taken from the availability exhibit previously shown in **Chapter 4.0**.

³ The disparity index is the ratio of % utilization to % availability times 100.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

2004 Disparity Study Comparison

Exhibit 5-7 presents a summary comparison of the utilization, availability, and disparity findings from the 2004 and 2009 studies. In the previous study, of the M/WBEs utilized at the prime consultant professional services level, African American-owned firms were

underutilized with a disparity index of 83.30. The current study shows substantial underutilization for African American-owned firms with a disparity index of 50.09. In both studies, firms owned by nonminority women were overutilized. .

**EXHIBIT 5-7
 SUMMARY OF UTILIZATION, AVAILABILITY, AND DISPARITY ANALYSIS
 BETWEEN 2004 STUDY AND 2009 STUDY
 PRIME CONSULTANT LEVEL PROFESSIONAL SERVICES
 IN THE LEON COUNTY MARKET AREA
 BY M/WBE CLASSIFICATIONS**

	Percent of Prime Dollars ¹		% of Available Firms ²		Disparity Index ³		Disparate Impact of Utilization	
	2004 Study	2009 Study	2004 Study	2009 Study	2004 Study	2009 Study	2004 STUDY	2009 Study
African Americans	4.69%	4.05%	5.63%	8.08%	83.30	50.09	Underutilization	*Underutilization
Hispanic Americans	0.00%	0.00%	0.00%	1.01%	0.00	0.00	N/A	*Underutilization
Asian Americans	1.30%	0.00%	0.63%	0.00%	207.72	N/A	Overutilization	N/A
Native Americans	0.00%	0.00%	0.00%	0.00%	0.00	N/A	N/A	N/A
Nonminority Women	6.25%	12.00%	5.63%	18.18%	111.15	66.01	Overutilization	*Underutilization

Source: Leon County Board of Commissioners September 2004 Disparity Study, Chapter 5.0, and Leon County Board of Commissioners August 2009 Disparity Study, Chapter 5.0.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in Chapter 4.0.

² The percentage of available contractors is taken from the availability exhibit previously shown in Chapter 4.0.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

5.2.4 Other Services

Disparity Analysis of Other Services Firms

In **Exhibit 5-8**, MGT's analysis shows that firms owned by African American, Hispanic American, and nonminority women were overutilized in each year of the study period, except 2008, resulting in overall overutilization with a disparity index of 110.53, 431.35, and 340.04, respectively. Overall, firms owned by Asian Americans and Native Americans were substantially underutilized with a disparity index of 14.89 and 14.99, respectively.

**EXHIBIT 5-8
 DISPARITY ANALYSIS OF OTHER SERVICES FIRMS
 IN THE LEON COUNTY MARKET AREA
 BY BUSINESS OWNER CLASSIFICATIONS
 OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Business Owner Classification	% of Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
2005				
African Americans	14.46%	11.63%	124.35	Overutilization
Hispanic Americans	1.80%	1.16%	154.67	Overutilization
Asian Americans	0.03%	0.39%	7.53	* Underutilization
Native Americans	0.26%	0.39%	66.29	* Underutilization
Nonminority Women	26.41%	10.47%	252.39	Overutilization
Non-M/WBE Firms	57.04%	70.16%	81.31	Underutilization
2006				
African Americans	14.04%	11.63%	120.78	Overutilization
Hispanic Americans	2.02%	1.16%	173.96	Overutilization
Asian Americans	0.08%	0.39%	20.82	* Underutilization
Native Americans	0.00%	0.39%	0.00	* Underutilization
Nonminority Women	39.09%	10.47%	373.53	Overutilization
Non-M/WBE Firms	44.76%	70.16%	63.80	* Underutilization
2007				
African Americans	15.29%	11.63%	131.46	Overutilization
Hispanic Americans	2.87%	1.16%	246.94	Overutilization
Asian Americans	0.03%	0.39%	6.69	* Underutilization
Native Americans	0.00%	0.39%	0.00	* Underutilization
Nonminority Women	38.95%	10.47%	372.22	Overutilization
Non-M/WBE Firms	42.86%	70.16%	61.10	* Underutilization
2008				
African Americans	7.53%	11.63%	64.78	* Underutilization
Hispanic Americans	13.40%	1.16%	1,152.44	Overutilization
Asian Americans	0.09%	0.39%	24.07	* Underutilization
Native Americans	0.00%	0.39%	0.00	* Underutilization
Nonminority Women	36.66%	10.47%	350.33	Overutilization
Non-M/WBE Firms	42.31%	70.16%	60.31	* Underutilization
All Years				
African Americans	12.85%	11.63%	110.53	Overutilization
Hispanic Americans	5.02%	1.16%	431.35	Overutilization
Asian Americans	0.06%	0.39%	14.89	* Underutilization
Native Americans	0.06%	0.39%	14.99	* Underutilization
Nonminority Women	35.59%	10.47%	340.04	Overutilization
Non-M/WBE Firms	46.43%	70.16%	66.18	* Underutilization

Source: MGT developed an expenditure and vendor database for the County from October 1, 2004, through September 30, 2008.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in **Chapter 4.0**.

² The percentage of available firms is taken from the availability exhibit previously shown in **Chapter 4.0**.

³ The disparity index is the ratio of % utilization to % availability times 100.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

2004 Disparity Study Comparison

Exhibit 5-9 presents a summary comparison of the utilization, availability, and disparity findings from the 2004 and 2009 studies. In the previous study, of the M/WBEs utilized, all groups were overutilized. The current study shows substantial underutilization for

Asian American- and Native American-owned firms with a disparity index of 14.89 and 14.99, respectively.

**EXHIBIT 5-9
 SUMMARY OF UTILIZATION, AVAILABILITY, AND DISPARITY ANALYSIS
 BETWEEN 2004 STUDY AND 2009 STUDY
 OTHER SERVICES
 IN THE LEON COUNTY MARKET AREA
 BY M/WBE CLASSIFICATIONS**

	Percent of Prime Dollars ¹		% of Available Firms ²		Disparity Index ³		Disparate Impact of Utilization	
	2004 Study	2009 Study	2004 Study	2009 Study	2004 Study	2009 Study	2004 STUDY	2009 Study
African Americans	13.29%	12.85%	6.93%	11.63%	191.7	110.53	Overutilization	Overutilization
Hispanic Americans	4.00%	5.02%	0.27%	1.16%	1,498.20	431.35	Overutilization	Overutilization
Asian Americans	0.65%	0.06%	0.27%	0.39%	241.90	14.89	Overutilization	*Underutilization
Native Americans	0.00%	0.06%	0.00%	0.39%	0.00	14.99	N/A	*Underutilization
Nonminority Women	11.77%	35.59%	6.93%	10.47%	169.82	340.04	Overutilization	Overutilization

Source: Leon County Board of Commissioners September 2004 Disparity Study, Chapter 5.0, and Leon County Board of Commissioners August 2009 Disparity Study, Chapter 5.0.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in Chapter 4.0.

² The percentage of available contractors is taken from the availability exhibit previously shown in Chapter 4.0.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

5.2.5 Materials and Supplies

Disparity Analysis of Materials and Supplies Firms

Exhibit 5-10 presents the disparity findings for goods and supplies firms. Firms owned by African Americans were substantially underutilized with a disparity index of 56.58. Firms owned by Hispanic Americans, Asian Americans, and Native Americans were not utilized during the study period. Firms owned by nonminority women were overutilized with a disparity index of 162.31.

**EXHIBIT 5-10
 DISPARITY ANALYSIS OF MATERIALS AND SUPPLIES FIRMS
 IN THE LEON COUNTY MARKET AREA
 BY BUSINESS OWNER CLASSIFICATIONS
 OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Business Owner Classification	% of Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
2005				
African Americans	3.42%	1.45%	235.02	Overutilization
Hispanic Americans	0.00%	0.36%	0.00	* Underutilization
Asian Americans	0.00%	0.36%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	18.98%	8.00%	237.31	Overutilization
Non-M/WBE Firms	77.60%	89.82%	86.39	Underutilization
2006				
African Americans	0.49%	1.45%	33.38	* Underutilization
Hispanic Americans	0.00%	0.36%	0.00	* Underutilization
Asian Americans	0.00%	0.36%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	11.94%	8.00%	149.21	Overutilization
Non-M/WBE Firms	87.58%	89.82%	97.51	Underutilization
2007				
African Americans	0.16%	1.45%	11.34	* Underutilization
Hispanic Americans	0.00%	0.36%	0.00	* Underutilization
Asian Americans	0.00%	0.36%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	13.66%	8.00%	170.76	Overutilization
Non-M/WBE Firms	86.17%	89.82%	95.94	Underutilization
2008				
African Americans	0.00%	1.45%	0.00	* Underutilization
Hispanic Americans	0.00%	0.36%	0.00	* Underutilization
Asian Americans	0.00%	0.36%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	9.73%	8.00%	121.68	Overutilization
Non-M/WBE Firms	90.27%	89.82%	100.50	Overutilization
All Years				
African Americans	0.82%	1.45%	56.58	* Underutilization
Hispanic Americans	0.00%	0.36%	0.00	* Underutilization
Asian Americans	0.00%	0.36%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	12.98%	8.00%	162.31	Overutilization
Non-M/WBE Firms	86.19%	89.82%	95.96	Underutilization

Source: MGT developed an expenditure and vendor database for the County from October 1, 2004, through September 30, 2008.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in **Chapter 4.0**.

² The percentage of available firms is taken from the availability exhibit previously shown in **Chapter 4.0**.

³ The disparity index is the ratio of % utilization to % availability times 100.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

2004 Disparity Study Comparison

Exhibit 5-11 presents a summary comparison of the utilization, availability, and disparity findings from the 2004 and 2009 studies. In both studies, of the MBEs utilized, all groups were substantially underutilized and nonminority women-owned firms were overutilized.

EXHIBIT 5-11 SUMMARY OF UTILIZATION, AVAILABILITY, AND DISPARITY ANALYSIS BETWEEN 2004 STUDY AND 2009 STUDY MATERIALS AND SUPPLIES IN THE LEON COUNTY MARKET AREA BY M/WBE CLASSIFICATIONS

	Percent of Prime Dollars ¹		% of Available Firms ²		Disparity Index ³		Disparate Impact of Utilization	
	2004 Study	2009 Study	2004 Study	2009 Study	2004 Study	2009 Study	2004 STUDY	2009 Study
African Americans	0.68%	0.82%	2.86%	1.45%	23.63	56.58	*Underutilization	*Underutilization
Hispanic Americans	0.07%	0.00%	0.26%	0.36%	27.90	0.00	*Underutilization	*Underutilization
Asian Americans	0.00%	0.00%	0.26%	0.36%	0.00	0.00	*Underutilization	*Underutilization
Native Americans	0.00%	0.00%	0.00%	0.00%	0.00	N/A	N/A	N/A
Nonminority Women	15.44%	12.98%	5.99%	8.00%	257.73	162.31	Overutilization	Overutilization

Source: Leon County Board of Commissioners September 2004 Disparity Study, Chapter 5.0, and Leon County Board of Commissioners August 2009 Disparity Study, Chapter 5.0.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in Chapter 4.0.

² The percentage of available contractors is taken from the availability exhibit previously shown in Chapter 4.0.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

5.2.6 Conclusions Based on Disparity Indices

This chapter used disparity indices to compare the availability and utilization findings from **Chapter 4.0**. The disparity indices for each of the business categories indicate whether disparity exists for each ethnic or gender group.

Exhibit 5-12 summarizes the findings of M/WBE underutilization.

**EXHIBIT 5-12
 SUMMARY OF M/WBE UNDERUTILIZATION
 IN THE LEON COUNTY MARKET AREA
 BY M/WBE CLASSIFICATIONS
 OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women
Construction Prime Contractors	Underutilization *	N/A	Underutilization *	N/A	Overutilization
Construction Subcontractors (Overall Subcontractor Level)	Underutilization *	Overutilization	Underutilization *	Underutilization *	Underutilization *
Architecture and Engineering Prime Consultants	Underutilization	Underutilization *	Underutilization *	N/A	Underutilization *
Professional Services Prime Consultants	Underutilization *	Underutilization *	N/A	N/A	Underutilization *
Other Services Firms	Overutilization	Overutilization	Underutilization *	Underutilization *	Overutilization
Materials and Supplies Vendors	Underutilization *	Underutilization *	Underutilization *	N/A	Overutilization

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

6.0 PRIVATE SECTOR UTILIZATION AND DISPARITY ANALYSES

6.0 PRIVATE SECTOR UTILIZATION AND DISPARITY ANALYSES

This chapter reports two sets of analyses pertaining to minority- and woman-owned business enterprise (M/WBE) utilization and availability in Leon County's (County) private sector marketplace. The first analysis examines M/WBE utilization and availability in the local market area's private commercial construction industry to determine disparities in M/WBE utilization at both the prime contractor and subcontractor level. Once the record of private sector utilization has been established, MGT will also be able to compare rates of M/WBE and non-M/WBE utilization in the private sector to their utilization by the County for public sector construction procurement.

This chapter is organized into the following sections:

- 6.1 Methodology – Private Sector Commercial Construction Analysis
- 6.2 Collection and Management of Data
- 6.3 Private Sector Utilization Analysis by Race/Gender/Ethnicity of Business Ownership for Construction Prime Contractors and Subcontractors
- 6.4 Private Sector Availability Analysis by Race/Gender/ Ethnicity of Business Ownership for Construction Contractors
- 6.5 Analysis of Disparities in Private Sector Utilization by Race/ Gender/ Ethnicity of Business Ownership for Construction Prime Contractors and Subcontractors
- 6.6 Assessment of Disparities in Private Sector Utilization by Race/Gender/ Ethnicity of Business Ownership for Construction Prime Contractors and Subcontractors
- 6.7 Comparison of the County Utilization of M/WBE Contractors with M/WBE Utilization in the Private Sector
- 6.8 Conclusions

6.1 Methodology – Private Sector Commercial Construction Analysis

This section describes MGT's methodology for collecting data and calculating the County's relevant market area as the basis for MGT's analysis of private sector utilization of minority-, woman-, and nonminority-owned firms and their availability.

6.1.1 Private Sector Analysis – Rationale

In *Croson*, the Court established that a "municipality has a compelling government interest in redressing not only discrimination committed by the municipality itself, but also discrimination committed by private parties within the municipality's legislative jurisdiction, so long as the municipality in some way participated in the discrimination to be remedied by the program."¹ This argument was reinforced by the Court of Appeals decision in *Adarand*, concluding that there was a compelling interest for a government

¹ *Croson*, 488 U.S. 46, 109 S.Ct. at 720-21, 744-45.

DBE program, based primarily on evidence of private sector discrimination.² According to this argument, discriminatory practices found in the private sector marketplace may be indicative of government's passive or, in some cases, active participation in local discrimination. To remedy such discrimination, *Croson* provided that government "can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment."³

The purpose of this private sector analysis is to evaluate the presence or absence of discrimination in the private sector marketplace regarding difficulties M/WBEs have in securing work on private sector projects. Passive discrimination was examined in a disparity analysis of the utilization of M/WBE construction subcontractors by majority prime contractors on non-County funded projects in the County construction market. A comparison of public sector M/WBE utilization with private sector utilization allows for an assessment of the extent to which majority prime contractors have tended to hire M/WBE subcontractors only to satisfy public sector requirements. Thus, the following questions are addressed:

- Are there disparities in the utilization of M/WBEs as prime contractors for commercial, private sector construction projects relative to their availability in the relevant market area?
- Are there disparities in the utilization of M/WBEs as subcontractors for commercial, private sector construction projects relative to their availability in the relevant market area?
- To what extent are M/WBE subcontractors utilized for the County projects also utilized in private sector construction projects?

6.2 Collection and Management of Data

MGT selected two sources of data for its private sector analysis: (1) permit data (such as building, electrical, plumbing)⁴ provided by the County for commercial construction projects permitted during the period of the study and (2) permit data (such as building, electrical, plumbing) provided by the City of Tallahassee for commercial construction projects permitted during the period of the study. The value in examining permits is that they offer the most complete and up-to-date record of actual construction activity undertaken in the relevant market area.

The permit data was extracted from County's and City's Permits and Enforcement Tracking System (PETS) and transmitted electronically to MGT in Microsoft Access databases. In order to isolate commercial construction projects, public sector and residential building permit records were identified and excluded from the analysis. Permit data provided to MGT included, but was not limited to:

- Project_No
- Permit Type Code
- Permit Type Text

² *Adarand v. Slater*, 228 F.3d 1147 (10th Cir. 2000).

³ See *Richmond v. Croson*, 488 U.S. 492 (1989).

⁴ A construction permit or building permit is a permit required in most jurisdictions for new construction or adding onto pre-existing structures, and in some cases for major renovations.

- Permit Class Code
- Permit Class Text
- Permit #
- Comp_Type
- Project Description
- Scope of Work Performed
- Title
- Issued Date
- Construction Value Project
- Dollar Value of Permit
- Public Project
- Job Location
- Owner of Project
- Owner Address
- Residential Project
- Commercial Project
- Activity Number
- Primary Contractor
- Subcontractor
- Contractor
- Relationship

6.2.1 Determining Race, Ethnicity, and Gender of Business Ownership for Vendors Issued Building Permits by the County

Since permit data does not contain contractor racial, ethnic, and gender information, MGT obtained this information from its Master Vendor Database⁵ to update the vendors in the permit database for where racial, ethnic, and gender information were needed.

6.2.2 Market Area Methodology

The private sector analysis of permits data is based on the determined relevant geographic relevant market area for public construction which was the following counties within the state of Florida: Leon County, Gadsden County, Jefferson County, and Wakulla, County.

6.2.3 Availability (Vendor) Data Collection

Once counties for the County's relevant market area had been identified, MGT ascertained M/WBE availability by determining the availability of M/WBEs within these counties as reported by the U.S. Census Bureau Survey of Business Owners (SBO)⁶.

⁵ MGT used data gathered from several sources to develop a master list of firms. M/WBE lists within the relevant market area were also used to further identify the business category and ethnicity of firms.

⁶ The SBO is a consolidation of two prior surveys, the Surveys of Minority- and Women-Owned Business Enterprises (SMOBE/SWOBE), and includes questions from a survey discontinued in 1992 on Characteristics of Business Owners (CBO). The SBO is part of the Economic Census, which is conducted every five years. SBO findings are based on the characteristics of U.S. businesses by ownership category, by geographic area; by 2-digit industry sector based on the 2002 North American Industry Classification System (NAICS); and by size of firm (employment and receipts).

6.2.4 M/WBE Classifications and Business Categories

In Chapter 4.0, the five M/WBE classifications described—African American, Hispanic American, Asian American, Native American, and nonminority women—were used as the basis of MGT’s private sector analysis of utilization and disparity. However, for the business category analysis, findings reported in this chapter deal only with private sector construction for two reasons: (1) permit data, by nature, pertain only to construction activity, which is also the category for which data tend to be most extensive and reliable, and (2) in the courts, historically, construction activity in a given jurisdiction has been scrutinized more than any other business category because in both the public and the private sector it tends to have the strongest impact on a local economy, and because the courts have asserted that jurisdictions have a “compelling interest” to advance M/WBE business interests in their local markets. Accordingly, for the analysis, the data were classified according to two categories of construction contractor—prime contractor and subcontractor—based on the permit type.

6.3 Private Sector Utilization Analysis by Race/Gender/Ethnicity of Business Ownership for Construction Prime Contractors and Subcontractors

This section reports findings from the analysis of the utilization of M/WBE and non-M/WBE firms in the County’s private sector commercial construction market.

6.3.1 Permits – Prime Contracts

Permits – Leon County

Exhibit 6-1 reports permits received for prime commercial construction during the four-year study period based on Leon County permit data. The exhibit reports that for total construction dollars on prime commercial construction during the study period totaling \$23.9 million, of which non-M/WBE firms received \$23.1 million (96.66%). Permits issued to M/WBEs were valued at slightly less than \$800,000, representing more than 3 percent (3.34%) of construction values. Nonminority women-owned firms were awarded the highest share at 2.48 percent (\$592,480), followed by African American-owned firms at .86 percent (\$205,000).

**EXHIBIT 6-1
 PERMITS UTILIZATION ANALYSIS OF PRIME CONTRACTORS
 IN THE COUNTY'S RELEVANT MARKET AREA
 BASED ON LEON COUNTY COMMERCIAL PERMIT DATA
 BY RACE/ETHNICITY/GENDER CLASSIFICATION
 OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008**

Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Total Construction Values
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$
2005	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$1,908,510.00	100.00%	\$1,908,510.00
2006	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$9,066,408.00	100.00%	\$9,066,408.00
2007	\$205,000.00	4.22%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$205,000.00	4.22%	\$4,653,924.00	95.78%	\$4,858,924.00
2008	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$592,480.00	0.00%	\$592,480.00	7.39%	\$7,426,195.75	92.61%	\$8,018,675.75
Total	\$205,000.00	0.86%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$592,480.00	2.48%	\$797,480.00	3.34%	\$23,055,037.75	96.66%	\$23,852,517.75

Source: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS).

¹ Percentage of total construction valuation dollars awarded annually to prime contractors.

Exhibit 6-2 reports private commercial M/WBE prime contractor utilization by number of permits let by the County and number of individual contractors receiving permits. Of M/WBEs, one African American-owned firm (1.47% of contractors) was issued permits for four projects, which represents 3.42 percent of all permits analyzed. Of the permits analyzed, six permits were issued to M/WBE firms.

**EXHIBIT 6-2
PERMITS UTILIZATION ANALYSIS OF PRIME CONTRACTORS
IN THE COUNTY'S RELEVANT MARKET AREA
BASED ON LEON COUNTY COMMERCIAL PERMIT DATA
OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008**

**NUMBER OF COMMERCIAL PERMITS ISSUED
BY RACE/ETHNICITY/GENDER CLASSIFICATION**

Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Total Permits
	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#
2005	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	9	100.00%	9
2006	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	35	100.00%	35
2007	4	13.33%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	4	13.33%	26	86.67%	30
2008	0	0.00%	0	0.00%	0	0.00%	0	0.00%	2	4.65%	2	4.65%	41	95.35%	43
Total	4	3.42%	0	0.00%	0	0.00%	0	0.00%	2	1.71%	6	5.13%	111	94.87%	117

Source: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS).

¹ Percentage of total analyzed permits awarded annually to prime contractors.

As the following exhibit shows, three individual M/WBE firms, 4.41 percent of all individual firms were issued private commercial construction permits as prime contractors. Two nonminority women- owned firms accounted for 2.94 percent of the total firms and one individual African American-owned firm were utilized during the course of the study period at the prime contractor level, accounting for 1.47 percent

**NUMBER OF CONTRACTORS AND TOTAL OF INDIVIDUAL CONTRACTORS
BY RACE/ETHNICITY/GENDER CLASSIFICATION**

Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Total Contractors
	#	% ²	#	% ²	#	% ²	#	% ²	#	% ²	#	% ²	#	% ²	#
2005	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	9	100.00%	9
2006	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	23	100.00%	23
2007	1	4.35%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	4.35%	22	95.65%	23
2008	0	0.00%	0	0.00%	0	0.00%	0	0.00%	2	6.67%	2	6.67%	28	93.33%	30
Total Unique Contractors³	1	1.47%	0	0.00%	0	0.00%	0	0.00%	2	2.94%	3	4.41%	65	95.59%	68

Source: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS).

²Percentage of total Contractors.

³"Total Individual Contractors" counts a firm only once for each year it receives work, since a firm could be used in multiple years, the "total individual vendors" for the entire study period may not equal the sum of all years.

Permits – City of Tallahassee

Exhibit 6-3 reports permits received for prime commercial construction during the four-year study period based on City of Tallahassee commercial permit data. The exhibit reports that for total construction dollars on prime commercial construction during the study period totaling \$173.1 million, of which non-M/WBE firms received \$171.2 million (98.95%). Permits issued to M/WBEs were valued at \$1.82 million, representing slightly more than 1 percent (1.05%) of construction values. Nonminority women-owned firms were awarded the highest share at 1.02 percent (\$1.77 million), followed by African American-owned firms at .03 percent (\$55,000).

**EXHIBIT 6-3
 PERMITS UTILIZATION ANALYSIS OF PRIME CONTRACTORS
 IN THE COUNTY'S RELEVANT MARKET AREA
 BASED ON CITY OF TALLAHASSEE COMMERCIAL PERMIT DATA
 BY RACE/ETHNICITY/GENDER CLASSIFICATION
 OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008**

Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Total Construction Values
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$
2005	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$18,115.00	0.26%	\$18,115.00	0.26%	\$7,009,067.00	99.74%	\$7,027,182.00
2006	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$1,673,584.00	3.54%	\$1,673,584.00	3.54%	\$45,645,681.46	96.46%	\$47,319,265.46
2007	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$33,075.00	0.05%	\$33,075.00	0.05%	\$69,144,066.66	99.95%	\$69,177,141.66
2008	\$55,000.00	0.11%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$42,956.00	0.09%	\$97,956.00	0.20%	\$49,436,643.56	99.80%	\$49,534,599.56
Total	\$55,000.00	0.03%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$1,767,730.00	1.02%	\$1,822,730.00	1.05%	\$171,235,458.68	98.95%	\$173,058,188.68

Source: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS).

¹ Percentage of total construction valuation dollars awarded annually to prime contractors.

Exhibit 6-4 reports private commercial M/WBE prime contractor utilization by number of permits let by the City and number of individual contractors receiving commercial permits. Of M/WBEs, one African American-owned firm (0.63% of contractors) was issued permits for one project, which represents 0.19 percent of all permits analyzed. Of the permits analyzed, ten permits were issued to M/WBE firms.

**EXHIBIT 6-4
 PERMITS UTILIZATION ANALYSIS OF PRIME CONTRACTORS
 IN THE COUNTY'S RELEVANT MARKET AREA
 BASED ON CITY OF TALLAHASSEE COMMERCIAL PERMIT DATA
 OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008**

**NUMBER OF COMMERCIAL PERMITS ISSUED
 BY RACE/ETHNICITY/GENDER CLASSIFICATION**

Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Total Permits
	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#
2005	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	2.56%	1	2.56%	38	97.44%	39
2006	0	0.00%	0	0.00%	0	0.00%	0	0.00%	4	2.42%	4	2.42%	161	97.58%	165
2007	0	0.00%	0	0.00%	0	0.00%	0	0.00%	2	1.05%	2	1.05%	188	98.95%	190
2008	1	0.78%	0	0.00%	0	0.00%	0	0.00%	2	1.55%	3	2.33%	126	97.67%	129
Total	1	0.19%	0	0.00%	0	0.00%	0	0.00%	9	1.72%	10	1.91%	513	98.09%	523

Source: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS).

¹ Percentage of total analyzed permits awarded annually to prime contractors.

As the following exhibit shows, six individual M/WBE firms, 3.8 percent of all individual firms were issued private commercial construction permits as prime contractors. Five nonminority women-owned firms accounted for 3.16 percent of the total firms and one individual African American-owned firm were utilized during the course of the study period at the prime contractor level, accounting for 0.63 percent

EXHIBIT 6-4 (Continued)
PERMITS UTILIZATION ANALYSIS OF PRIME CONTRACTORS
IN THE COUNTY'S RELEVANT MARKET AREA
BASED ON CITY OF TALLAHASSEE COMMERCIAL PERMIT DATA
OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008

NUMBER OF CONTRACTORS AND TOTAL OF INDIVIDUAL CONTRACTORS
BY RACE/ETHNICITY/GENDER CLASSIFICATION

Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Total Contractors
	#	% ²	#	% ²	#	% ²	#	% ²	#	% ²	#	% ²	#	% ²	#
2005	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	3.70%	1	3.70%	26	96.30%	27
2006	0	0.00%	0	0.00%	0	0.00%	0	0.00%	4	4.65%	4	4.65%	82	95.35%	86
2007	0	0.00%	0	0.00%	0	0.00%	0	0.00%	2	2.50%	2	2.50%	78	97.50%	80
2008	1	1.54%	0	0.00%	0	0.00%	0	0.00%	2	3.08%	3	4.62%	62	95.38%	65
Total Individual Contractors³	1	0.63%	0	0.00%	0	0.00%	0	0.00%	5	3.16%	6	3.80%	152	96.20%	158

Source: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS).

²Percentage of Total Contractors.

³"Total Individual Contractors" counts a firm only once for each year it receives work, since a firm could be used in multiple years, the "total individual vendors" for the entire study period may not equal the sum of all years.

6.3.2 Permits-Subcontracts

Permits-Leon County

Exhibit 6-5 indicates permit values totaling \$61.1 million in commercial construction subcontracting projects analyzed for the four-year study period based on County permit data. Among M/WBE firms, WBEs were issued permits for projects totaling \$2.32 million (3.80% of all subcontracting projects), which was the total share to M/WBE firms.

**EXHIBIT 6-5
 PERMITS UTILIZATION ANALYSIS OF SUBCONTRACTORS
 IN THE COUNTY'S RELEVANT MARKET AREA
 BASED ON LEON COUNTY COMMERCIAL PERMIT DATA
 BY RACE/ETHNICITY/GENDER CLASSIFICATION
 OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008**

Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Total Construction Values
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$
2005	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$850,000.00	100.00%	\$850,000.00
2006	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$12,992,369.00	100.00%	\$12,992,369.00
2007	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$13,965,765.00	100.00%	\$13,965,765.00
2008	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$2,321,000.00	0.00%	\$2,321,000.00	6.97%	\$30,965,621.00	93.03%	\$33,286,621.00
Total	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$2,321,000.00	3.80%	\$2,321,000.00	3.80%	\$58,773,755.00	96.20%	\$61,094,755.00

Source: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS).

¹ Percentage of total construction valuation dollars awarded annually to contractors based on subcontractor level work.

Exhibit 6-6 reports private commercial subcontractor utilization by number of permits let by the County and number of individual contractors receiving commercial permits. The following exhibit shows that three individual (different) nonminority women-owned firms were issued permits. Of permitted subcontractor level of work, M/WBE firms accounted for more than 2 percent (2.65%) of the permits issued. Among M/WBE firms, WBEs received all of the commercial permits on the subcontractor level for the four-year study period based on the data analyzed.

EXHIBIT 6-6
PERMITS UTILIZATION ANALYSIS OF SUBCONTRACTORS
IN THE COUNTY'S MARKET AREA
OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008

NUMBER OF COMMERCIAL PERMITS ISSUED
BY RACE/ETHNICITY/GENDER CLASSIFICATION

Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Total Permits
	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#
2005	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	4	100.00%	4
2006	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	21	100.00%	21
2007	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	43	100.00%	43
2008	0	0.00%	0	0.00%	0	0.00%	0	0.00%	3	6.67%	3	6.67%	42	93.33%	45
Total	0	0.00%	0	0.00%	0	0.00%	0	0.00%	3	2.65%	3	2.65%	110	97.35%	113

Source: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS).

¹ Percentage of total permits.

The following exhibit shows that 63 individual non-M/WBE firms accounted for 95.5 percent of firms issued permits to perform subcontractor level of work.

NUMBER OF CONTRACTORS AND TOTAL OF INDIVIDUAL CONTRACTORS
BY RACE/ETHNICITY/GENDER CLASSIFICATION

Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Total Contractors
	#	% ²	#	% ²	#	% ²	#	% ²	#	% ²	#	% ²	#	% ²	#
2005	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	14.29%	1	14.29%	6	85.71%	7
2006	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	15	100.00%	15
2007	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	34	100.00%	34
2008	0	0.00%	0	0.00%	0	0.00%	0	0.00%	3	9.68%	3	9.68%	28	90.32%	31
Total Individual Contractors³	0	0.00%	0	0.00%	0	0.00%	0	0.00%	3	4.55%	3	4.55%	63	95.45%	66

Source: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS).

²Percentage of Total Contractors.

³"Total Individual Contractors" counts a firm only once for each year it receives work, since a firm could be used in multiple years, the "total individual vendors" for the entire study period may not equal the sum of all years.

Permits-City of Tallahassee

Exhibit 6-7 indicates permit values totaling \$20.7 million in commercial construction subcontracting projects analyzed for the four-year study period based on city of Tallahassee commercial permits data. Among M/WBE firms, WBEs were issued permits for projects totaling \$3.77 million (18.2% of all subcontracting projects) and firms owned by African Americans were issued less than 1 percent (0.04%).

**EXHIBIT 6-7
 PERMITS UTILIZATION ANALYSIS OF SUBCONTRACTORS
 IN THE COUNTY'S RELEVANT MARKET AREA
 BASED ON CITY OF TALLAHASSEE COMMERCIAL PERMIT DATA
 BY RACE/ETHNICITY/GENDER CLASSIFICATION
 OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008**

Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Total Construction Values
	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$	% ¹	\$
2005	\$3,500.00	0.20%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$97,800.00	5.67%	\$101,300.00	5.87%	\$1,624,689.00	94.13%	\$1,725,989.00
2006	\$5,500.00	0.08%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$3,485,500.00	49.34%	\$3,491,000.00	49.41%	\$3,573,924.50	50.59%	\$7,064,924.50
2007	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$15,100.00	0.26%	\$15,100.00	0.26%	\$5,868,218.00	99.74%	\$5,883,318.00
2008	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$168,140.00	2.77%	\$168,140.00	2.77%	\$5,894,793.00	97.23%	\$6,062,933.00
Total	\$9,000.00	0.04%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$3,766,540.00	18.16%	\$3,775,540.00	18.21%	\$16,961,624.50	81.79%	\$20,737,164.50

Source: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS).

¹ Percentage of total construction valuation dollars awarded annually to contractors based on subcontractor level work.

Exhibit 6-8 reports private commercial subcontractor utilization by number of permits let by the city of Tallahassee and number of individual contractors receiving permits. The following exhibit shows that 6 individual (different) M/WBE firms were issued permits. Of permitted subcontractor level of work, M/WBE firms accounted for more than 6 percent (6.46%) of the permits issued.

EXHIBIT 6-8
PERMITS UTILIZATION ANALYSIS OF SUBCONTRACTORS
IN THE COUNTY'S MARKET AREA
OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008

NUMBER OF PERMITS ISSUED
BY RACE/ETHNICITY/GENDER CLASSIFICATION

Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Total Permits
	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#	% ¹	#
2005	2	3.33%	0	0.00%	0	0.00%	0	0.00%	8	13.33%	10	16.67%	50	83.33%	60
2006	2	0.94%	0	0.00%	0	0.00%	0	0.00%	16	7.51%	18	8.45%	195	91.55%	213
2007	0	0.00%	0	0.00%	0	0.00%	0	0.00%	3	1.48%	3	1.48%	200	98.52%	203
2008	0	0.00%	0	0.00%	0	0.00%	0	0.00%	12	6.32%	12	6.32%	178	93.68%	190
Total	4	0.60%	0	0.00%	0	0.00%	0	0.00%	39	5.86%	43	6.46%	623	93.54%	666

Source: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS).

¹ Percentage of total permits.

The following exhibit shows that 155 individual non-M/WBE firms accounted for 96.3 percent of firms issued permits to perform subcontractor level of work based on city of Tallahassee commercial permit data.

NUMBER OF CONTRACTORS AND TOTAL OF INDIVIDUAL CONTRACTORS
BY RACE/ETHNICITY/GENDER CLASSIFICATION

Year	African Americans		Hispanic Americans		Asian Americans		Native Americans		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms		Total Contractors
	#	% ²	#	% ²	#	% ²	#	% ²	#	% ²	#	% ²	#	% ²	#
2005	2	5.71%	0	0.00%	0	0.00%	0	0.00%	2	5.71%	4	11.43%	31	88.57%	35
2006	2	2.22%	0	0.00%	0	0.00%	0	0.00%	2	2.22%	4	4.44%	86	95.56%	90
2007	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	1.16%	1	1.16%	85	98.84%	86
2008	0	0.00%	0	0.00%	0	0.00%	0	0.00%	3	3.30%	3	3.30%	88	96.70%	91
Total Individual Contractors³	3	1.86%	0	0.00%	0	0.00%	0	0.00%	3	1.86%	6	3.73%	155	96.27%	161

Source: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS).

²Percentage of Total Contractors.

³"Total Individual Contractors" counts a firm only once for each year it receives work, since a firm could be used in multiple years, the "total individual vendors" for the entire study period may not equal the sum of all years.

6.4 Private Sector Availability Analysis by Race/Gender/Ethnicity of Business Ownership for Construction Contractors

Exhibits 6-9 and **6-10** report findings based on U.S. Census Survey of Business Owners (SBO) data for the population of available contractors in the County's market area by racial/ethnic/gender category. The availability for construction was derived from those firms that have construction or construction-related services based on the NAICS Code 23.

6.4.1 Construction Availability

The availability of M/WBE and non-M/WBE prime contractors in the County's market area is displayed in **Exhibit 6-7**. M/WBEs comprised 25.68 percent of all contractors, breaking down by individual M/WBE category as follows:

- African American: 3.60 percent
- Hispanic American: 2.26 percent
- Asian American: 1.78 percent
- Native American: 0 percent
- Nonminority women: 18.05 percent

EXHIBIT 6-9 AVAILABILITY OF CONTRACTORS IN THE COUNTY'S MARKET PLACE BY RACE/ETHNICITY/GENDER CLASSIFICATION BASED ON CENSUS DATA USING NAICS 23 BASED ON PAID EMPLOYEES ONLY

	African Americans ¹		Hispanic Americans ¹		Asian Americans ¹		Native Americans ¹		Nonminority Women		M/WBE Subtotal		Non-M/WBE Firms ²		Total Firms ³
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
Total	26	3.60%	16	2.26%	13	1.78%	0	0.00%	132	18.05%	187	25.68%	543	74.32%	730

Source of Data: U.S. Census Bureau 2002, Survey of Business Owners, based on firms with paid employees only.

¹ Minority men and women firms are included in their respective minority classifications.

² Number of non-M/WBE firms derived by subtracting all M/WBE firms from total firms.

³ Total firms derived from the U.S. Census Bureau and Survey of Business Owners (SBO).

The availability analysis was also based on firms with paid and non-paid employees, which is displayed in **Exhibit 6-8**. M/WBEs comprised 44.29 percent of all contractors, differentiated by individual M/WBE category as follows:

- African American: 9.59 percent
- Hispanic American: 3.02 percent
- Asian American: 2.59 percent
- Native American: 1.25 percent
- Nonminority women: 27.84 percent

EXHIBIT 6-10
AVAILABILITY OF SUBCONTRACTORS
IN THE COUNTY'S MARKET AREA
BY RACE/ETHNICITY/GENDER CLASSIFICATION
BASED ON CENSUS DATA USING NAICS 23
BASED PAID AND NON-PAID EMPLOYEES

	African Americans ¹		Hispanic Americans ¹		Asian Americans ¹		Native Americans ¹		Nonminority Women		#REF! Subtotal		Non-M/WBE Firms ²		Total Firms ³
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
Total	278	9.59%	88	3.02%	75	2.59%	36	1.25%	808	27.84%	1,285	44.29%	1,616	55.71%	2,901

Source of Data: U.S. Bureau of the Census 2002, Survey of Business Owners, based on firms with paid and non-paid employees.

¹ Minority men and women firms are included in their respective minority classifications.

² Number of non-M/WBE firms derived by subtracting all M/WBE firms from total firms.

³ Total firms derived from the U.S. Census Bureau and Survey of Business Owners (SBO).

6.5 Analysis of Disparities in Private Sector Utilization by Race/Gender/Ethnicity of Business Ownership for Construction Prime Contractors and Subcontractors

MGT pioneered disparity indices as a means of quantifying the disparity in utilization relative to availability. The use of a disparity index for such a calculation is supported by several post-Croson cases, most notably *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*.⁷ Although a variety of similar indices could be utilized, MGT's standard for choosing its particular index methodology is that it must yield a value that is easily calculable, understandable in its interpretation, and universally comparable such that a disparity in utilization within M/WBE categories can be assessed with reference to the utilization of non-M/WBEs.

For this study, to assess disparity MGT calculated the ratio of the percentage of utilization to the percentage of availability multiplied by 100, as in the formula below:

$$(1) \text{ Disparity Index} = \frac{\%U_{m,p_1}}{\%A_{m,p_1}} \times 100$$

Where: U_{m,p_1} = utilization of M/WBE₁ for procurement₁
 A_{m,p_1} = availability of M/WBE₁ for procurement₁

The interpretation of this calculation is straightforward. In the extreme, a disparity index value of 0.00 for a given racial, ethnic or gender category of firm indicates absolutely no utilization and, therefore, absolute disparity. An index of 100 indicates that vendor utilization is perfectly proportionate to availability for a particular group in a given business category, indicating the absence of disparity—that is, a proportion of utilization relative to availability one would expect, all things being equal. In general, firms within a business category are considered underutilized if the disparity indices are less than 100, and overutilized if the indices are above 100.

⁷ *Contractors Association of Eastern Pennsylvania, Inc. v. City of Philadelphia*, 91 F 3d at 603.

Since there is no standardized measure to evaluate levels of underutilization or overutilization within a procurement context, MGT has appropriated the Equal Employment Opportunity Commission's (EEOC) "80 percent rule" in the *Uniform Guidelines on Employee Selection Procedures*. In the context of employment discrimination, an employment disparity ratio below 80 indicates a "substantial disparity" in employment. The Supreme Court has accepted the use of the 80 percent rule in *Connecticut v. Teal* (*Teal*), 457 U.S. 440 (1982), and in *Teal* and other affirmative action cases, the terms "adverse impact," "disparate impact," and "discriminatory impact" are used interchangeably to characterize values of 80 and below.

Once the record of vendor utilization was calculated from building permit data for each racial, ethnic, and gender category, it could be compared to vendor availability in these categories to derive an index of disparity in private sector utilization for a given M/WBE prime contractor and subcontractor category. Findings are reported in **Sections 6.6.1** through **6.6.3**.

6.5.1 Permits-Prime Contracts

Permits – Leon County

This section reports disparity indices for County commercial permits based on U.S. Census availability of firms within the racial, ethnic, and gender categories for firms with paid employees only.

Exhibit 6-11 presents these findings based on availability of firms with paid employees only specializing in construction and construction-related services categorized as NAICS 23. African American-, Hispanic American-, Asian American- and nonminority women-owned firms were substantially underutilized as prime contractors in private commercial construction sector based on County commercial permits data. From **Exhibit 6-11** MGT also find that:

- Hispanic American-, Asian American-, and Native American-owned firms were not utilized.
- African American-owned firms were substantially underutilized as prime contractors, with a disparity index of 23.87.
- Nonminority women firms were substantially underutilized in each year, resulting in an overall disparity index of 13.76.
- Nonminority male firms were overutilized, having a 130.05 disparity index.

Based on County commercial permits data and U.S. Census availability of firms with paid employees only, it can be concluded that of those M/WBEs being analyzed, all M/WBEs were either not utilized or substantially underutilized on commercial construction projects at the prime contractor level and that, conversely, nonminority male-owned firms were overutilized.

EXHIBIT 6-11
DISPARITY ANALYSIS OF PRIVATE SECTOR PRIME CONTRACTORS
IN THE COUNTY'S RELEVANT MARKET AREA
BASED ON CENSUS DATA NAICS CODES 23 PAID EMPLOYEES ONLY
AND LEON COUNTY COMMERCIAL PERMITS DATA
OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008

Business Owner Classification	% of Construction Value Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
2005				
African Americans	0.00%	3.60%	0.00	* Underutilization
Hispanic Americans	0.00%	2.26%	0.00	* Underutilization
Asian Americans	0.00%	1.78%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	0.00%	18.05%	0.00	* Underutilization
Non-M/WBE Firms	100.00%	74.32%	134.55	Overutilization
2006				
African Americans	0.00%	3.60%	0.00	* Underutilization
Hispanic Americans	0.00%	2.26%	0.00	* Underutilization
Asian Americans	0.00%	1.78%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	0.00%	18.05%	0.00	* Underutilization
Non-M/WBE Firms	100.00%	74.32%	134.55	Overutilization
2007				
African Americans	4.22%	3.60%	117.19	Overutilization
Hispanic Americans	0.00%	2.26%	0.00	* Underutilization
Asian Americans	0.00%	1.78%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	0.00%	18.05%	0.00	* Underutilization
Non-M/WBE Firms	95.78%	74.32%	128.88	Overutilization
2008				
African Americans	0.00%	3.60%	0.00	* Underutilization
Hispanic Americans	0.00%	2.26%	0.00	* Underutilization
Asian Americans	0.00%	1.78%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	0.00%	18.05%	0.00	* Underutilization
Non-M/WBE Firms	92.61%	74.32%	124.61	Overutilization
All Years				
African Americans	0.86%	3.60%	23.87	* Underutilization
Hispanic Americans	0.00%	2.26%	0.00	* Underutilization
Asian Americans	0.00%	1.78%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	2.48%	18.05%	13.76	* Underutilization
Non-M/WBE Firms	96.66%	74.32%	130.05	Overutilization

Source of Data: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS) and U.S. Bureau of the Census 2002, Survey of Business Owners, based on firms with paid employees.

¹ The percentage of construction valuation dollars is taken from the prime utilization exhibit shown in Section 6.3.1.

² The percentage of available contractors is taken from the availability exhibit shown in Section 6.5.1.

³ The disparity index is the ratio of percent utilization to percent availability times 100.

* An asterisk is used to indicate a substantial level of disparity (index below 80.00).

Permits – City of Tallahassee

This section reports disparity indices for city of Tallahassee commercial permits based on U.S. Census availability of firms within the racial, ethnic, and gender categories for firms with paid employees only.

Exhibit 6-12 presents these findings based on availability of firms with paid employees only specializing in construction and construction-related services categorized as NAICS 23. African American-, Hispanic American-, Asian American- and nonminority women-owned firms were substantially underutilized as prime contractors in private commercial construction sector based on city of Tallahassee commercial permits data. From **Exhibit 6-12** MGT also finds that:

- Hispanic American-, Asian American-, and Native American-owned firms were not utilized.
- African American-owned firms were substantially underutilized as prime contractors, with a disparity index of 0.88.
- Nonminority women firms were substantially underutilized in each year, resulting in an overall disparity index of 5.66.
- Nonminority male firms were overutilized, having a 133.14 disparity index.

Based on County commercial permits data and U.S. Census availability of firms with paid employees only, it can be concluded that of those M/WBEs being analyzed, all M/WBEs were either not utilized or substantially underutilized on commercial construction projects at the prime contractor level and that, conversely, nonminority male-owned firms were overutilized.

EXHIBIT 6-12
DISPARITY ANALYSIS OF PRIVATE SECTOR PRIME CONTRACTORS
IN THE COUNTY'S RELEVANT MARKET AREA
BASED ON CENSUS DATA NAICS CODES 23 PAID EMPLOYEES ONLY
AND CITY OF TALLAHASSEE COMMERCIAL PERMITS DATA
OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008

Business Owner Classification	% of Construction Value Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
2005				
African Americans	0.00%	3.60%	0.00	* Underutilization
Hispanic Americans	0.00%	2.26%	0.00	* Underutilization
Asian Americans	0.00%	1.78%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	0.26%	18.05%	1.43	* Underutilization
Non-M/WBE Firms	99.74%	74.32%	134.21	Overutilization
2006				
African Americans	0.00%	3.60%	0.00	* Underutilization
Hispanic Americans	0.00%	2.26%	0.00	* Underutilization
Asian Americans	0.00%	1.78%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	3.54%	18.05%	19.60	* Underutilization
Non-M/WBE Firms	96.46%	74.32%	129.79	Overutilization
2007				
African Americans	0.00%	3.60%	0.00	* Underutilization
Hispanic Americans	0.00%	2.26%	0.00	* Underutilization
Asian Americans	0.00%	1.78%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	0.05%	18.05%	0.26	* Underutilization
Non-M/WBE Firms	99.95%	74.32%	134.49	Overutilization
2008				
African Americans	0.11%	3.60%	3.08	* Underutilization
Hispanic Americans	0.00%	2.26%	0.00	* Underutilization
Asian Americans	0.00%	1.78%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	0.09%	18.05%	0.48	* Underutilization
Non-M/WBE Firms	99.80%	74.32%	134.29	Overutilization
All Years				
African Americans	0.03%	3.60%	0.88	* Underutilization
Hispanic Americans	0.00%	2.26%	0.00	* Underutilization
Asian Americans	0.00%	1.78%	0.00	* Underutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	1.02%	18.05%	5.66	* Underutilization
Non-M/WBE Firms	98.95%	74.32%	133.14	Overutilization

Source of Data: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS) and U.S. Bureau of the Census 2002, Survey of Business Owners, based on firms with paid employees.

¹ The percentage of construction valuation dollars is taken from the prime utilization exhibit shown in Section 6.3.1.

² The percentage of available contractors is taken from the availability exhibit shown in Section 6.5.1.

³ The disparity index is the ratio of percent utilization to percent availability times 100.

* An asterisk is used to indicate a substantial level of disparity (index below 80.00).

6.5.2 Permits – Subcontracts

Permits – Leon County

This section reports disparity indices for County commercial permits data based on U.S. Census availability of firms (paid and non-paid employees) within the racial, ethnic, and gender categories. As **Exhibit 6-14** indicates, all M/WBE groups were substantially underutilized as subcontractors in private commercial construction. From **Exhibit 6-14** MGT also finds that:

- Hispanic American-, Asian American-, and Native American-owned firms were not utilized, thus resulting in substantial underutilization as subcontractors, with a disparity index of 0.
- African American-owned firms were substantially underutilized in each year, resulting in a disparity index of 0.45.
- Nonminority women-owned firms were substantially underutilized resulting in a disparity index of 3.67.
- Nonminority male-owned firms were overutilized resulting in a 146.83 disparity index.

EXHIBIT 6-13
DISPARITY ANALYSIS OF PRIVATE SECTOR SUBCONTRACTORS
IN THE COUNTY'S MARKET AREA
BASED ON CENSUS DATA NAICS CODE 23 AND
COUNTY COMMERCIAL PERMITS DATA
OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008
BASED ON PAID AND NON-PAID EMPLOYEES

Business Owner Classification	% of Construction Value Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
2005				
African Americans	0.00%	9.59%	0.00	* Underutilization
Hispanic Americans	0.00%	3.02%	0.00	* Underutilization
Asian Americans	0.00%	2.59%	0.00	* Underutilization
Native Americans	0.00%	1.25%	0.00	* Underutilization
Nonminority Women	0.00%	27.84%	0.00	* Underutilization
Non-M/WBE Firms	100.00%	55.71%	179.51	Overutilization
2006				
African Americans	0.00%	9.59%	0.00	* Underutilization
Hispanic Americans	0.00%	3.02%	0.00	* Underutilization
Asian Americans	0.00%	2.59%	0.00	* Underutilization
Native Americans	0.00%	1.25%	0.00	* Underutilization
Nonminority Women	0.00%	27.84%	0.00	* Underutilization
Non-M/WBE Firms	100.00%	55.71%	179.51	Overutilization
2007				
African Americans	0.00%	9.59%	0.00	* Underutilization
Hispanic Americans	0.00%	3.02%	0.00	* Underutilization
Asian Americans	0.00%	2.59%	0.00	* Underutilization
Native Americans	0.00%	1.25%	0.00	* Underutilization
Nonminority Women	0.00%	27.84%	0.00	* Underutilization
Non-M/WBE Firms	100.00%	55.71%	179.51	Overutilization
2008				
African Americans	0.00%	9.59%	0.00	* Underutilization
Hispanic Americans	0.00%	3.02%	0.00	* Underutilization
Asian Americans	0.00%	2.59%	0.00	* Underutilization
Native Americans	0.00%	1.25%	0.00	* Underutilization
Nonminority Women	0.00%	27.84%	0.00	* Underutilization
Non-M/WBE Firms	93.03%	55.71%	167.00	Overutilization
All Years				
African Americans	0.00%	9.59%	0.00	* Underutilization
Hispanic Americans	0.00%	3.02%	0.00	* Underutilization
Asian Americans	0.00%	2.59%	0.00	* Underutilization
Native Americans	0.00%	1.25%	0.00	* Underutilization
Nonminority Women	2.48%	27.84%	8.92	* Underutilization
Non-M/WBE Firms	96.20%	55.71%	172.69	Overutilization

Source of Data: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS) and U.S. Bureau of the Census 2002, Survey of Business Owners, based on firms with paid and non-paid employees.

¹ The percentage of construction valuation dollars is taken from the subcontractor utilization exhibit shown in Section 6.3.1.

² The percentage of available contractors is taken from the availability exhibit shown in Section 6.5.1.

³ The disparity index is the ratio of percent utilization to percent availability times 100.

* An asterisk is used to indicate a substantial level of disparity (index below 80.00).

Permits – City of Tallahassee

This section reports disparity indices for city of Tallahassee commercial permits data based on U.S. Census availability of firms (paid and non-paid employees) within the racial, ethnic, and gender categories. As **Exhibit 6-14** indicates, all M/WBE groups were substantially underutilized as subcontractors in private commercial construction. From **Exhibit 6-14** MGT also finds that:

- Hispanic American-, Asian American-, and Native American-owned firms were not utilized, thus resulting in substantial underutilization as subcontractors, with a disparity index of 0.
- African American-owned firms were substantially underutilized in each year, resulting in a disparity index of 0.45.
- Nonminority women-owned firms were substantially underutilized in each year, resulting in a disparity index of 3.67.
- Nonminority male-owned firms were overutilized, having a 146.83 disparity index.

EXHIBIT 6-14
DISPARITY ANALYSIS OF PRIVATE SECTOR SUBCONTRACTORS
IN THE COUNTY'S MARKET AREA
BASED ON CENSUS DATA NAICS CODE 23 AND
CITY OF TALLAHASSEE COMMERCIAL PERMITS DATA
OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008
BASED ON PAID AND NON-PAID EMPLOYEES

Business Owner Classification	% of Construction Value Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
2005				
African Americans	0.20%	9.59%	2.11	* Underutilization
Hispanic Americans	0.00%	3.02%	0.00	* Underutilization
Asian Americans	0.00%	2.59%	0.00	* Underutilization
Native Americans	0.00%	1.25%	0.00	* Underutilization
Nonminority Women	5.67%	27.84%	20.36	* Underutilization
Non-M/WBE Firms	94.13%	55.71%	168.98	Overutilization
2006				
African Americans	0.08%	9.59%	0.81	* Underutilization
Hispanic Americans	0.00%	3.02%	0.00	* Underutilization
Asian Americans	0.00%	2.59%	0.00	* Underutilization
Native Americans	0.00%	1.25%	0.00	* Underutilization
Nonminority Women	49.34%	27.84%	177.23	Overutilization
Non-M/WBE Firms	50.59%	55.71%	90.81	Underutilization
2007				
African Americans	0.00%	9.59%	0.00	* Underutilization
Hispanic Americans	0.00%	3.02%	0.00	* Underutilization
Asian Americans	0.00%	2.59%	0.00	* Underutilization
Native Americans	0.00%	1.25%	0.00	* Underutilization
Nonminority Women	0.26%	27.84%	0.92	* Underutilization
Non-M/WBE Firms	99.74%	55.71%	179.05	Overutilization
2008				
African Americans	0.00%	9.59%	0.00	* Underutilization
Hispanic Americans	0.00%	3.02%	0.00	* Underutilization
Asian Americans	0.00%	2.59%	0.00	* Underutilization
Native Americans	0.00%	1.25%	0.00	* Underutilization
Nonminority Women	2.77%	27.84%	9.96	* Underutilization
Non-M/WBE Firms	97.23%	55.71%	174.54	Overutilization
All Years				
African Americans	0.04%	9.59%	0.45	* Underutilization
Hispanic Americans	0.00%	3.02%	0.00	* Underutilization
Asian Americans	0.00%	2.59%	0.00	* Underutilization
Native Americans	0.00%	1.25%	0.00	* Underutilization
Nonminority Women	1.02%	27.84%	3.67	* Underutilization
Non-M/WBE Firms	81.79%	55.71%	146.83	Overutilization

Source of Data: Permit data extracted from the County's and City's Permits and Enforcement Tracking System (PETS) and U.S. Bureau of the Census 2002, Survey of Business Owners, based on firms with paid and non-paid employees.

¹ The percentage of construction valuation dollars is taken from the subcontractor utilization exhibit shown in Section 6.3.1.

² The percentage of available contractors is taken from the availability exhibit shown in Section 6.5.1.

³ The disparity index is the ratio of percent utilization to percent availability times 100.

* An asterisk is used to indicate a substantial level of disparity (index below 80.00).

6.6 Comparison of the County's Utilization of M/WBE Contractors with M/WBE Businesses Utilization in the Private Sector

Exhibit 6-15 reports M/WBE and nonminority male-owned firm utilization of prime contractors and subcontractors for public sector construction projects awarded by the County from October 1, 2004 through September 30, 2008 and compares this with private commercial construction utilization calculated from County- and city of Tallahassee-construction permit information for the County's local market area. **Exhibit 6-15** summarizes findings from all three data sets for firm utilization at the prime contractor level based on the County's expenditure data (Banner financial system), and, at the subcontractor level, compares public sector utilization with private sector utilization based on the County's and city of Tallahassee's permit data.

EXHIBIT 6-15 COMPARISON OF M/WBE UTILIZATION PERCENTAGE OF DOLLARS PRIVATE COMMERCIAL CONSTRUCTION WITH THE COUNTY PUBLIC SECTOR CONSTRUCTION (EXPENDITURE AND CONTRACT AWARD DATA) OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008

Business Category/Data Source	African American	Hispanic American	Asian American	Native American	Nonminority Women	M/WBE Firms	Non-M/WBE Firms
Prime Contractors							
Leon County Construction Prime Contractors (Based on Expenditure Data Only)	3.46%	0.00%	0.00%	0.00%	12.86%	16.32%	83.68%
Private Construction Prime Contractors (Leon County, Florida Building Permits)	0.86%	0.00%	0.00%	0.00%	2.48%	3.34%	96.66%
Private Construction Prime Contractors (City of Tallahassee, Florida Building Permits)	0.03%	0.00%	0.00%	0.00%	1.02%	1.05%	98.95%
Subcontractors	African American	Hispanic American	Asian American	Native American	Nonminority Women	M/WBE Firms	Non-M/WBE Firms
Leon County Construction Subcontractors (Overall Subcontractor Level) ¹	10.12%	1.64%	0.00%	0.05%	1.16%	12.97%	87.03%
Private Construction Subcontractors (Leon County, Florida Building Permits)	0.00%	0.00%	0.00%	0.05%	3.80%	3.80%	96.20%
Private Construction Subcontractors (City of Tallahassee, Florida Building Permits)	0.04%	0.00%	0.00%	0.00%	18.16%	18.21%	81.79%

Source: The Leon County public sector data (expenditure and contract award), Leon County permit data, and City of Tallahassee permit data.

From **Exhibit 6-15**, at the construction prime contractor level, MGT finds M/WBEs received more than 16 percent (16.32%) of the dollars, based on expenditure data. At the construction prime contractor level, M/WBE utilization was much greater in the public sector (Leon County expenditure data) than in the private sector. Based on the permit data analyzed, M/WBE utilization was more than 3 percent (3.34%) and slightly more than 1 percent (1.05%) based on County-provided commercial permits. Moreover, at the prime level for both permit data sets, based on matches with M/WBE vendor lists, of the

M/WBE prime contractor activity, nonminority women-owned firms had the highest share of utilization.

As for construction subcontractors, MGT finds that M/WBEs received .38 percent and 18 percent (18.21%) of the County- and city of Tallahassee-provided permits related to subcontractor-level activity. Based on the County's data, M/WBE utilization was substantially higher at 20 percent (12.97%) than in the private sector based on Leon County permit data.

6.7 Conclusions

Exhibits 6-15 presented a summary of prime and subcontractor vendor utilization by racial/ethnic/gender category, comparing M/WBE utilization for the County construction projects with private sector commercial construction projects from October 1, 2004 through September 30, 2008. Based on identified M/WBEs for both public sector and private sector construction projects, substantial M/WBE underutilization was evident in both sectors. On the other hand, according to findings from permit data, M/WBE prime contractors fared better in the public sector, which includes the County, but were substantially underutilized in some race/ethnicity/gender classifications nonetheless. Furthermore, M/WBE subcontractors fared better in the public sector as opposed to the private sector, based on permit data⁸.

Due to exclusionary laws and years of discrimination, M/WBEs have entered the marketplace only recently, from a historical perspective, when compared with nonminority male-owned firms. They thus tend to be smaller than more established and older nonminority male-owned firms. These factors, in turn, limits their capacity not only to undertake large-scale construction projects but also to access capital and other advantages in bonding and insurance available to larger, more established firms. This conclusion is underscored by findings from the analysis of race/ethnicity/gender effects on the propensity for self-employment and self-employment earnings that suggest that M/WBEs are treated differently than their majority counterparts in the marketplace and that this difference in treatment affects rates of M/WBE business formation and earning capacity.

However, capacity alone is not a sufficient explanation for these differences, especially at the subcontractor level in the construction industry, where capacity is a lesser consideration and availability far exceeds the record of utilization, particularly in the private sector. When private sector M/WBE utilization at the subcontractor level for commercial building projects is only a fraction of public sector M/WBE utilization, there is a strong argument that nonminority firms utilized for public sector construction projects employ M/WBE subcontractors only because the municipality encourages them to do so as a condition of winning a given public contract. If M/WBE subcontractor utilization is all but absent in the private sector and the County does not require contractors who apply for public sector construction projects to demonstrate a "good faith" record of their efforts to utilize M/WBE subcontractors in the private sector as well, credence may be given to the proposition established in *Croson* that government, however effective its own M/WBE policies, may be a passive participant in private sector discrimination.

⁸ Excluding the permit data analyses, based on the city of Tallahassee commercial permit data at the subcontractor level.

7.0 *SELECTED BEST PRACTICES*

7.0 SELECTED BEST PRACTICES

7.1 Small Business Enterprise Prime Contractor Programs

7.1.1 Small Business Enterprise Set-Asides

The federal government aims to set aside every acquisition of goods and services anticipated to be between \$2,500 and \$100,000 for small business enterprises (SBEs). In response to litigation and state constitutional amendments limiting affirmative action, such as Proposition 209, many agencies have adopted SBE programs. A number of agencies (Phoenix, Arizona; Broward County, Florida; Miami-Dade County, Florida; Tampa, Florida; North Carolina Department of Transportation; Port Authority of New York and New Jersey) set aside contracts for SBEs.

North Carolina Department of Transportation (NCDOT). In the NCDOT program, small contractors are defined as firms with less than \$1.5 million in revenue. There is a small contractor goal of \$2 million for each of the 14 NCDOT divisions. The current cap on project size for small contractors is \$500,000. For contracts less than \$500,000, NCDOT can solicit three informal bids from SBEs.¹ North Carolina law permits the waiving of bonds and licensing requirements for these small contracts let to SBEs.² In 2002, M/WBEs won over 35 percent of SBE contract awards.³

City of Phoenix, Arizona. The city of Phoenix, which uses the United States Small Business Administration (SBA) small business size standards, has a modest SBE set-aside program. The SBE program only accounted for 0.5 percent of total M/WBE utilization in construction subcontracting, and 0.2 percent of total M/WBE utilization in goods and supplies. However, there was strong M/WBE utilization in the city SBE program. In the SBE program, over 92.9 percent and 89.1 percent of the dollars went to M/WBEs in construction subcontracting and goods and supplies, respectively. Firms that were certified as both M/WBEs and SBEs were awarded \$98.1 million in contract dollars.

Other SBE set-asides include:

- The city of Tampa, Florida, has an SBE set-aside program for firms with less than 25 employees and less than \$2 million in revenue.⁴
- The city of San Diego, California, set aside all construction contracts up to \$250,000.
- Sacramento Municipal Utility District (SMUD) set aside contracts up to \$50,000.
- Hillsborough County, Florida, set aside construction contracts up to \$200,000.

¹ NCGS § 136-28.10(a).

² NCGS § 136-28.10(b).

³ NCDOT, Small Business Enterprise Program (April 1, 2002).

⁴ Small Business Enterprise (SBE) Program Executive Order No. 2002-48 (December 18, 2002).

- Orlando Orange County Expressway Authority's (OOCEA) Micro Contracts Program set aside construction, maintenance, professional services, or other services that are expected to cost less than \$200,000 or electrical services expected to cost less than \$50,000. OOCEA adopted a joint-check policy to assist small firms with trade credit in the program.

7.1.2 Small Business Enterprise Bid Preferences

A number of agencies have bid preferences for SBEs (Miami-Dade County, Florida; Port Authority of New York and New Jersey; SMUD; city of Sacramento, California; city of Oakland, California; East Bay Municipal Utility District; San Francisco, California). SBE bid preferences operate along similar lines as M/WBE bid preferences. A typical example is a bid preference of 5 percent on contracts under \$100,000 (Sacramento, California; SMUD; Los Angeles County, California).

Port of Portland Bid Preferences for Small Business. The Port of Portland (Port) found that a bid preference of 5 percent had no impact on contract outcomes, but a bid preference of 10 percent did impact contract outcomes.

7.1.3 Other SBE Prime Contractor Assistance

City of Charlotte, North Carolina. The city of Charlotte has a comprehensive SBE program including SBE set-asides and business assistance. In addition, the city of Charlotte sets department goals for SBE utilization, sets SBE goals on formal and informal contracts, and makes SBE utilization part of department performance review utilization numbers.

North Carolina Department of Transportation Fully Operated Rental Agreements. Under these arrangements a firm may bid an hourly rate for using certain equipment and the necessary staff. In these field-let contracts, engineers select the firm with the appropriate equipment and the lowest bid rate. If that firm is not available, the engineers select the next lowest hourly rate. This rental agreement technique is used primarily to supplement equipment in the event of NCDOT equipment failure or peak demand for NCDOT services. The rental agreement technique is attractive to small contractors because the typical small firm has much better knowledge of its own hourly costs than it does of the costs to complete an entire project.

Florida Department of Transportation (Florida DOT) Business Development Initiative. The Florida DOT has just undertaken a stepped-up small business initiative with the following principle components:

- Reserving certain construction, maintenance, and professional services contracts for small businesses.
- Providing bid preference points to small businesses, and to firms offering subcontracts to small businesses on professional services contracts.
- Waiving performance and bid bond requirements for contracts under \$250,000.

- Using a modified pre-qualification process for certain construction and maintenance projects.

Port Authority of New York and New Jersey (Port Authority) Financial Advisors Program. The Port Authority has encouraged the use of M/WBEs in finance through its financial advisory call-in program, which targets small firms to serve as a pool of advisors for the Port Authority Chief Financial Officer. The financial advisors address debt issuance, financial advisory services, real estate transactions, and green initiatives. There are three to four firms in each of these categories in the financial advisory call-in program.

7.2 HUBZones

Another variant of an SBE program provides incentives for SBEs located in distressed areas. For example, under the *Small Business Reauthorization Act of 1997*, the federal government started the federal HUBZone program. A HUBZone firm is a small business that is: (1) owned and controlled by U.S. citizens; (2) has at least 35 percent of its employees who reside in a HUBZone; and (3) has its principal place of business located in a HUBZone.⁵ HUBZone programs can serve as a vehicle for encouraging M/WBE contract utilization. Nationally, there are 5,357 women and minority HUBZone firms, representing 56.2 percent of total HUBZone firms.⁶

City of New York, New York. The city of New York has a HUBZone type program providing subcontracting preferences to small construction firms (with less than \$2 million in average revenue) that either perform 25 percent of their work in economically distressed areas or for which 25 percent of their employees are economically disadvantaged individuals.⁷

State of California. The state of California provides a 5 percent preference for a business work site located in state enterprise zones and an additional 1 to 4 percent preference (not to exceed \$50,000 on goods and services contracts in excess of \$100,000) for hiring from within the enterprise zone.⁸

Miami-Dade County, Florida. Miami-Dade County has a Community Workforce Program that requires all Capital Construction Projects contractors to hire 10 percent of their workforce from Designated Target Areas (which include Empowerment Zones, Community Development Block Grant Eligible Block Groups, Enterprise Zones, and Target Urban Areas) in which the Capital Project is located.⁹

It is worth noting that some agencies have implemented HUBZone type programs and then terminated them, including New Jersey in the 1980s and Seattle, Washington's, BOOST program in 2001.

⁵ 13 C.F.R. 126.200 (1999).

⁶ Based on the SBA pro-net database located at <http://pro-net.sba.gov/pro-net/search.html>.

⁷ New York Administrative Code § 6-108.1. For a description of the New York local business enterprise program see <http://www.nyc.gov/html/sbs/html/lbe.html>.

⁸ Cal Code Sec 4530 *et seq.*

⁹ Miami Ordinance 03-237.

7.3 Small Business Enterprise Program for Subcontracts

7.3.1 Small Business Enterprise Project Goals

City of Charlotte, North Carolina. The city of Charlotte sets SBE projects goals for contracts.¹⁰ The city has waiver provisions for bidders, but has rejected bids for bidder noncompliance with the SBE program. Other SBE subcontractor goal programs include:

- Oakland, California – 50 percent local SBE.
- New Jersey – 25 percent (up from 15 percent).
- Connecticut – 25 percent SBE.
- Sacramento County, California – 25 percent SBE.
- San Antonio, Texas – 50 percent SBE.

7.3.2 Mandatory Subcontracting

As part of their SBE subcontracting program, some agencies impose mandatory subcontracting clauses which would promote SBE utilization and be consistent with industry practice.

City of Columbia, South Carolina. The city of Columbia Subcontractor Outreach Program established in 2003 applies to city contracts of \$200,000 or more. A prime must subcontract a minimum percentage of its bid. The minimums are set out in **Exhibit 7-1**.

EXHIBIT 7-1 MINIMUM SUBCONTRACTING REQUIREMENTS FOR COLUMBIA SUBCONTRACTOR OUTREACH PROGRAM

Projects	Minimum Subcontracting
Parks	20%
Pipelines (water and sewer)	20%
Pump Stations	20%
Street Improvements	20%
Traffic Signals/Street Lighting	20%
Buildings Project by Project	Not to exceed 49%
Miscellaneous Projects	20%

Source: City of Columbia, Subcontracting Outreach Program (March 2003).

Bidders must make affirmative efforts in outreach to DBEs, Disabled Veteran Business Enterprises (DVBEs), and Other Business Enterprises (OBEs) (defined as a business that does not qualify as either a DBE or a DVBE). A bidder will be deemed non-responsive for failure to meet the subcontractor goal, failure to document their outreach efforts, or failure to meet 80 out of 100 points for good faith efforts. Points are granted on a pass/fail basis, awarding either zero or full points.

¹⁰ A description of the Charlotte SBE program can be found at www.charmeck.org/Departments/Economic+Development/Small+Business/Home.htm.

City of San Diego, California. As part of its Subcontractor Outreach Program, San Diego requires mandatory outreach, mandatory use of subcontractors, and mandatory submission of an outreach document. Whether a contract has mandatory subcontracting is determined by the engineer on the project.

Contra Costa County, California. The Contra Costa County Outreach Program sets mandatory subcontracting minimums on a contract-by-contract basis.¹¹ The Contra Costa County Outreach Program requires that M/WBEs be considered by contractors as possible sources of supply and subcontracting opportunities.

7.3.3 Listing of Subcontractors

The listing of subcontractors reduces the possibility of bid shopping. This also assists the city during the submission review process, goal-setting process, and goal attainment review, and assists with avoiding administrative issues of handling noncompliance after contract award.

7.3.4 Subcontractor Disclosure and Substitution

State of Oregon. Under Oregon law, bidders are required to disclose first-tier subcontractors that will be furnishing labor for the project and have a contract value greater than or equal to 5 percent of the bid or \$15,000 (whichever is greater), or \$350,000 regardless of the percentage of the total project.¹² First-tier subcontractor disclosure does not apply to contracts below \$100,000, or contracts exempt from competitive bidding requirements.¹³ Bidders are not required to disclose the race or gender of the first-tier subcontractors.

Bidders are allowed to substitute subcontractors.¹⁴ The subcontractor substitution statute provides standards sufficient for cause regarding subcontractor substitution, including subcontractor bankruptcy, poor performance, inability to meet bonding requirement, licensing deficiencies, ineligibility to work based upon applicable statutes, and for “good cause” as defined by the Construction Contractors Board.¹⁵ The statute provides a process by which subcontractors can issue complaints about substitutions. Violation of subcontractor substitution rules may result in civil penalties.¹⁶

7.4 Disadvantaged Business Enterprise Programs

Following the federal model, some agencies have added DBE programs.¹⁷ SBE programs focus on the disadvantage of the business, HUBZone programs focus on the disadvantage of the business location, and DBE programs focus on the disadvantage of the individual operating the business.

¹¹ Contra Costa County, Outreach Program, Ordinance Section 3-2 et seq.

¹² ORS § 279C.370(1)(a)(A),(B).

¹³ ORS § 279C.370(1)(c),(d).

¹⁴ ORS § 279C.370(5), ORS § 279C.585.

¹⁵ ORS § 279C.585.

¹⁶ ORS § 279C.590.

¹⁷ DBE programs and Airport Concession Disadvantaged Enterprise (ACDBE) programs are required to be developed and implemented as a part of the federal funding process.

State of North Carolina. The state of North Carolina changed the definition of minority used in the state minority construction program to include socially and economically disadvantaged individuals, as defined in the federal rules.¹⁸ Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.¹⁹ Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area that are not socially disadvantaged.²⁰ This rule permits firms certified under the federal 8(a), DBE, and small disadvantaged business enterprise (S/DBE) programs to be certified as a minority firm in North Carolina. This rule also implies that firms owned by majority males are eligible for the program as there are firms owned by majority males that qualify for the 8(a), DBE, and S/DBE programs by making an individual showing of their social and economic disadvantage.

Milwaukee Emerging Business Enterprise Program. The city of Milwaukee, Wisconsin, defines disadvantage along six dimensions:

- Disadvantage with respect to education.
- Disadvantage with respect to location.
- Disadvantage with respect to employment.
- Social disadvantage (lack of traditional family structure, impoverished background, and related issues).
- Lack of business training.
- Economic disadvantage (credit issues, inability to win contracts, and related issues).

The city of Milwaukee defines an emerging business as a business owned by an individual satisfying the sixth dimension of disadvantage and three out of the five other dimensions of disadvantage.²¹ The city of Milwaukee has set a goal of 18 percent spending with emerging businesses, including both prime contracting and subcontracting.

7.5 Bidder Rotation

Some political jurisdictions use bidder rotation schemes to limit habit purchases from majority firms and to ensure that M/WBEs have an opportunity to bid along with majority firms. A number of agencies, including the city of Indianapolis, Indiana; Fairfax County, Virginia; the Port Authority of New York and New Jersey; and Miami-Dade County,

¹⁸ NC GS § 143-128.2(g).

¹⁹ 15 USC 637(a)(5).

²⁰ 15 USC 637(a)(6)(A).

²¹ Milwaukee Ordinance, Emerging Business Enterprise Program, 360-01 (12).

Florida, use bid rotation to encourage M/WBE utilization, particularly in architecture and engineering (A&E). Some examples of bidder rotation from other agencies include:

Miami-Dade County, Florida. Miami-Dade County uses small purchase orders for the Community Business Enterprise program and rotates on that basis. In addition, Miami-Dade County utilizes an Equitable Distribution Program, whereby a pool of qualified A&E professionals are rotated awards of county miscellaneous A&E services as prime contractors and subcontractors.

DeKalb County, Georgia. DeKalb County has used a form of bidder rotation called a bidder box system to promote M/WBE utilization. This system selects a group of bidders from the list of county registered vendors to participate in open market procurements. Under the bidder rotation system, the buyer identifies the commodity or service by entering an item box number. Using this item box, the computer selects five to six firms. The lowest responsible bidder is awarded the contract. M/WBEs were afforded an increased number of bid opportunities than would ordinarily be the case with a sequential selection process.

Port Authority of New York and New Jersey. The Port Authority has a Quick Bid rotation system for small contracts less than \$500,000. In this program, the agency solicits bids via telephone and fax from a minimum of six contractors on a rotating basis. The period between bid, award, and contract start is generally not more than six weeks. Bidders are provided free construction documents with which to prepare their bids.²²

7.6 Outreach

Bexar County, Texas, Small, Minority, and Women Business Owners Conference. Bexar County, in conjunction with the city of San Antonio, has sponsored annual Small, Minority, and Women Business Owners conferences since 2001. The conferences have been co-sponsored by the Central and South Texas Minority Business Council in conjunction with a number of major corporations, including Dell, Toyota, and AT&T. Typically, conference workshops have addressed the following:

- Doing business with federal, state, and local agencies, and the private sector.
- Access to capital.
- Human resources.
- Franchising.
- Management.
- Veterans.
- Responding to bids and RFPs.

Registered attendees grew from 1,200 in 2001 to 2,400 in 2006; estimated total attendance grew from 1,800 in 2001 to 5,000 in 2006. The number of exhibitors grew from 75 in 2001 to 180 in 2006.²³ Virtually all the major local agencies, loan providers, business development providers, and chambers of commerce participate in the

²² Port Authority of NY & NJ, Engineering Department, *2002 Construction Program*, at 8.

²³ Small, Minority, and Women Business Owners (S/M/WBO) Conference, Frequently Asked Questions, at 6.

conference along with a number of major corporations. The conference budget for 2007 was \$250,000.

7.7 Construction Management, Request for Proposals, and Design-Build

One method of debundling in construction is through the use of multiprime construction contracts in which a construction project is divided into several prime contracts that are then managed by a construction manager-at-risk. For example, this approach has been used on projects where each prime contractor is responsible for installation and repair in particular areas. The construction manager is responsible for obtaining materials at volume discounts based upon total agency purchases. If one contractor defaults, a change order is issued to another prime contractor working in an adjacent area. The construction manager-at-risk is responsible for cost overruns that result from prime contractor default.

Construction management also facilitates the rotation of contracts within an area of work. For example, if several subcontractors have the capacity of bidding on an extended work activity such as concrete flat work, traffic control, or hauling, the construction manager can rotate contracting opportunities over the duration of the activity.

Using a request for proposal (RFP) process can provide the flexibility for including M/WBE participation in prime contractor requirements and selection. One of the nonfinancial criteria can be the proposer's approach and past history with M/WBE subcontractor utilization as well as women and minority workforce participation. A number of agencies (Fulton County, Georgia, New Jersey Transit, Washington Metropolitan Transit, and many major airports) have a mandate for construction managers to include a team member to perform the function of the M/WBE office staff.

A number of universities around the country, the Charlotte-Mecklenburg School System, North Carolina; the Tri-County Metropolitan Transportation District of Oregon; the city of Phoenix; Arizona, and the city of Columbia, South Carolina, have had some success with this approach.²⁴

7.8 Outsourcing

City of Indianapolis, Indiana. The city of Indianapolis increased M/WBE utilization through privatization. The city prioritized outsourcing in procurement areas where minority businesses had particular expertise and experience. The city claims to have been particularly successful in contracting out street repair.

²⁴ Federal Transit Administration, *Lessons Learned #45* (May 2002).
www.fta.dot.gov/library/program/ll/man/ll45.html

7.9 Race-Neutral Joint Ventures

City of Atlanta, Georgia. The city of Atlanta requires establishment of joint ventures on large projects of over \$10 million.²⁵ Primes are required to create a joint venture with a firm from a different ethnic/gender group in order to ensure prime contracting opportunities for all businesses. This rule applies to women and minority firms as well as nonminority firms. This rule has resulted in tens of millions of dollars in contract awards to women- and minority-owned firms.

Washington Suburban Sanitation Commission (WSSC). The WSSC Competitive Business Demonstration Project requires joint ventures between a local SBE and an established firm in procurement areas that do not generate enough bids.

7.10 Combined Race-Neutral and Race-Conscious Programs

A number of agencies (Tampa, Florida; Phoenix, Arizona; Charlotte, North Carolina; Hillsborough County, Florida; Jacksonville, Florida; Port Authority of New York and New Jersey; and Connecticut) combine race-neutral and race-conscious program features.

City of Saint Paul, Minnesota. The city of Saint Paul Vendor Outreach Program requires that contractors document their solicitation of bids, in addition to listing subcontracting opportunities, from SBEs, MBEs, and WBEs attending pre-bid conferences and seeking assistance from M/WBE organizations.²⁶ Saint Paul achieved 10.4 percent SBE spending (out of \$113.2 million in total spending). In the SBE program, 62.5 percent of SBE spending went to WBEs, 21.2 percent to nonminority males, and 16.3 percent to MBEs.²⁷

City of Jacksonville, Florida. The city of Jacksonville implemented a hybrid program by establishing a declining schedule of race-conscious targets.²⁸ In the first program year, Jacksonville proposes to meet 70 percent of its M/WBE goal with race-conscious means, the second year, 50 percent, and the third year, 25 percent. At the end of the three-year period the program is to be evaluated.

State of Connecticut. The state of Connecticut reserves 25 percent of its SBE contracts for M/WBEs.

7.11 Management and Technical Services

A number of agencies hire an outside management and technical assistance provider to provide needed technical services related to business development and performance. Such a contract can be structured to include providing incentives to produce results, such as the number of M/WBEs being registered as qualified vendors with agencies, the number of M/WBEs graduating from subcontract work to prime contracting, and rewarding firms that utilize M/WBEs in their private sector business activities.

²⁵ City of Atlanta Ordinance Sec. 2-1450 and Sec. 2-1451.

²⁶ City of St. Paul, Vendor Outreach Program, Ordinance 84.08, .09

²⁷ City of St. Paul, *Vendor Outreach Program Detailed Report*, FY 2004, at 6.

²⁸ City of Jacksonville, Executive Order No. 04-02.

Port Authority of New York and New Jersey. The Port Authority has a three-year fee-for-service contract with the Regional Alliance for Small Contractors capped at \$275,000.²⁹ Previously, the contract was a flat grant, but it was changed to a fee-for-service arrangement to reward creative uses of financial resources.

7.12 Certification

7.12.1 Size Standards for Certification

State of Oregon. The state of Oregon has a two-tier system for small business certification. A tier one firm employs fewer than 20 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed \$1.5 million for construction, or \$600,000 for non-construction. A tier two firm employs fewer than 30 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed \$3 million for construction, or \$1 million for non-construction.³⁰ An emerging small business cannot be a subsidiary or a franchise. In 2006, small business program participation was extended from seven to 12 years.³¹

State of New Jersey. For the state of New Jersey, there are separate size standards for small businesses and emerging small businesses. For large projects, the state of New Jersey carves out portions of the contract for both tiers of small business. Thus, a single solicitation requires that the prime spend a certain percentage of the contract with small firms and another percentage with emerging small firms. Along related lines, the federal government sets aside contracts for bidding only amongst small firms, and other contracts may be set aside for bidding only by emerging small firms.

Federal Government. The federal government has the additional categories:

- Emerging Small Business, defined as being 50 percent of the SBA size standards.
- Very Small Business, defined as fewer than 15 employees and less than \$1 million in revenue.

7.12.2 Personal Net Worth Limits

The United States Department of Transportation DBE personal net worth limit of \$750,000 is a standard net worth requirement employed by many local agencies. The USDOT net worth limit excludes the owner's home and business equity in determining net worth.

²⁹ The Regional Alliance was started in 1989. For general background on the Regional Alliance see Timothy Bates, "Case Studies of City Minority Business Assistance Programs," report for the U.S. MBDA, September 1993.

³⁰ OAR 445-050-0115.

³¹ OAR 445-050-0135.

7.13 Economic Development Projects

A number of cities (including Atlanta, Georgia; Jersey City, New Jersey; and Saint Paul, Minnesota) have encouraged private sector M/WBE utilization by one of two methods: (1) asking prospective bidders to report their private sector M/WBE utilization, and (2) setting aspirational goals for private sector projects with significant city tax incentives, such as tax allocation districts and community improvement districts. The city of Oakland, California, Local Small Business Enterprise Program also provides bid preferences to SBEs on tax-assisted projects. Saint Paul and Jersey City have separate offices negotiating, tracking, and managing M/WBE participation on development projects.

Bexar County Tax Phase-In Agreements. M/W/SBE participation was added to the county tax incentive policy in 2004. The county currently considers tax abatements of up to 40 percent on qualified real property improvements and new personal property investment.³² Property taxes are 80 percent of county revenue. The county considers an increased property tax abatement of up to 80 percent based on other project criteria. This criteria includes hiring 25 percent of positions created with county residents, hiring 25 percent economically disadvantaged or dislocated individuals, practicing sound environmental practices, and dividing work to the extent practical to assist M/W/SBEs in obtaining contracts. Applicants are encouraged to award 20 percent of projects to M/WBEs and 30 percent to certified small businesses.³³ Currently, there are no similar M/W/SBE policies for tax increment financing (TIF) subsidy.³⁴

In a Tax Phase-In Agreement for Lowe's Home Centers, Lowe's agreed to:

- Use good faith efforts to include certified M/WBEs.
- Work in good faith to set construction and operational services goals for M/WBEs based on M/WBE availability.
- Establish a mutually agreed upon M/WBE reporting format.

The agreement acknowledged that although Lowe's still has national contracts it must comply with, and retained the right to choose any vendor, they have agreed to explore subcontracting opportunities.³⁵

In a HEB Grocery Tax Phase-In Agreement, HEB Grocery committed to 20 percent M/WBE participation and 10 percent SBE participation.³⁶ This was in addition to agreeing to hire 25 percent from Bexar County and 25 percent from economically disadvantaged or dislocated workers.

³² The County Tax Phase-In Policy is currently being revised.

³³ Bexar County Economic Development & Special Programs Office, Tax Phase-In Guidelines for Bexar County and the city of San Antonio, effective June 15, 2006 through June 14, 2008, adopted February 28, 2006. Not all agreements include M/W/SBE objectives. For examples, the Kautex Tax Phase In Agreement did not address M/W/SBE policy. See Bexar County, Tax Phase-In Agreement (Kautex), December 20, 2005.

³⁴ Bexar County, Texas, Tax Increment Financing and Reinvestment Zone (TIF/TIRZ), Guidelines and Criteria, Commissioner's Court Amended and Approved: August 23, 2005.

³⁵ Bexar County, Tax Phase-In Agreement (Lowe's), June 27, 2006, Exhibit E.

³⁶ Bexar County, Tax Phase-In Agreement (HEB Grocery), March 11, 2003, Section 5.01(c).

Bexar County Public Improvement Districts. County policies allow for the county to enter into an economic development agreement for Public Improvement Districts (PIDs).³⁷ PIDs are projected to be used in conjunction with TIFs for housing and infrastructure development.³⁸ As a condition of the economic development agreement, the firm seeking such an agreement has to meet, at a minimum, certain criteria involving employment, health care benefits, environmental practices, and M/W/SBE policy. M/W/SBE policy was added to PIDs in 2006.

In an agreement with Marriott, which has been labeled a “super PID,” the agreement provided that Marriott would “use reasonable efforts to comply with the M/W/SBE policies and procedures attached.”³⁹ The Marriott agreement noted that the project owner had established 20 percent M/W/SBE goals in construction. Marriott retained the right to accept the lowest qualified bid. The agreement also provided for the hotel to develop M/WBE goals in operational services, to work with the M/W/SBE office in implementing the Marriott supplier diversity program, to use certified firms, and semi-annual M/W/SBE reporting. “The sole remedy for noncompliance with this provision shall be the obligation of Marriott to prepare and implement a plan that provide for reasonable efforts to achieve the goals set forth.”

7.14 Project Goal Setting

North Carolina Department of Transportation. The NCDOT regulations emphasize that goals should be set on projects “determined appropriate by the Department [of Transportation].”⁴⁰ Individual goals are set based on a project’s geographic location, characteristics of the project, the percentage of that type of work that is typically performed by M/WBEs, the areas in which M/WBEs are known to provide services, and the goals set by the North Carolina General Assembly.⁴¹ The NCDOT M/WBE regulations specify (although they do not limit to) particular areas for M/WBE goals: clearing and grubbing, hauling and trucking, storm drainage, concrete and masonry construction, guardrail, landscaping, erosion control, reinforcing steel, utility construction, and pavement marking.

The NCDOT goal setting process begins with an engineering estimate of the project to determine what items might reasonably be subcontracted out. Next, estimates of the percentage of work that could be potentially performed by DBEs and M/WBEs are developed.⁴² These estimates are confidential and made available only to the Estimator (and staff), the provisions engineer in the proposals and contracts section (and staff), and members of the DBE/M/WBE committee at the DBE/M/WBE committee meetings. Next, NCDOT looks at whether there are M/WBEs available based on the NCDOT DBE/M/WBE directory and the location of the project. The NCDOT directory is a searchable database that classifies firms by location, prime contractor/subcontractor

³⁷ Such an agreement is allowed for under Chapter 372 of the Texas Local Government Code.

³⁸ Bexar County, Texas, 2005 – 2009 Consolidated Plan, Executive Summary, at 61.

³⁹ Senior Priority Economic Development Agreement By and Between Cibola Canyons Special Improvement District, Marriott International, Inc and Bexar County, Texas, January 12, 2006, Exhibit B.

⁴⁰ 19A NCAC 02D.1108(a).

⁴¹ 19A NCAC 02D.1108(a).

⁴² NCDOT, Division of Highways, Roadway Design and Design Services Unit, *Policy and Procedure Manual*, Chapter 10, at 4.

status, and six-digit work type.⁴³ The Goal Setting Committee is assisted in this process by EEO Contract Compliance staff in the Office of Civil Rights.

Prime contractors then submit documentation of good faith efforts to achieve the individual project goal. A statement of how they will make efforts to achieve the goal satisfies the good faith effort requirements.

The NCDOT Goal Setting Committee (in collaboration with the EEO Contract Compliance staff) seeks to set goals relative to where there is interest, availability and capacity, beyond mere looking at the certification lists. NCDOT relies on the EEO Contract Compliance staff to provide input on whether existing businesses are fully occupied. However, if EEO Contract Compliance says M/WBEs are not fully occupied, but prime contractors submit evidence that M/WBEs are fully occupied (for example, with invoices), then NCDOT accepts those explanations.

As part of goal setting, NCDOT regulations provide that:

- A documented excessive subcontractor bid constitutes a basis for not subcontracting with an M/WBE.
- A documented record of poor experience constitutes a basis for not subcontracting with an M/WBE.⁴⁴

In addition, a review of NCDOT DBE and M/WBE goals has been a regular topic at the Associated General Contractors (AGC)-DOT Joint Cooperative Committee meetings.⁴⁵

City of Phoenix, Arizona. The city of Phoenix Goal Setting Committee is responsible for setting project goals on public works contracts bid by the city. The assigned project manager provides goal-setting information for the specific project to the Bid Specifications section of the Engineering & Architectural Services Department (EASD) at least 21 days before the project is to be advertised. The required information includes design plans, a detailed cost estimate, a project description, and the client department's construction budget.

The Goal Setting Committee identifies trade areas needed for each eligible project. The EASD staff identifies available MBE and WBE subcontractors that could perform in each trade area identified in the project description and provides the information to the Goal Setting Committee for use in establishing M/WBE project goals. The Goal Setting Committee develops appropriate goals for each trade area based on estimated dollar amounts and M/WBE availability. EASD publishes these goals in the bid specifications. The equal opportunity department monitors projects for which MBE and WBE goals have been set. The Goal Setting Committee meets to establish goals on projects estimated to cost more than \$50,000.00.

Goals may be adjusted if the Goal Setting Committee finds, after consideration of historical bidding and utilization data, that such an adjustment is necessary to ensure a narrowly tailored goal. The Goal Setting Committee then forwards the goal to EASD for

⁴³ <http://apps.dot.state.nc.us/constructionunit/directory/>.

⁴⁴ The last two elements are adopted by the North Carolina DOT. 19A NCAC 02D.1110(7).

⁴⁵ AGC-DOT Joint Cooperative Committee Meeting Minutes, February 2001 through August 2003.

review. If EASD determines that delays or changes in the project will require modification of the goals, the recommendation is returned to the Goal Setting Committee for revision.

7.14.1 Waivers of Goals

City of Phoenix, Arizona. The city of Phoenix established a Waiver Review Committee (Committee) that is responsible for deciding whether to recommend waiver requests to the city engineer. The Committee has established a Subcontracting Goals Waiver Review Form. The form lists the criteria used by the Committee to determine whether to grant a waiver request. The Committee reviews each category on the form and evaluates the contractor's good faith efforts in attempting to meet project goals. Bidders requesting waivers must submit a letter explaining their reason(s) for the waiver along with supporting documentation demonstrating efforts made to solicit MBEs and WBEs as subcontractors on a project. The Committee then decides whether to grant the waiver based on the total number of categories in which the contractor has sufficiently complied with the requirements. Based on interviews with city officials, the criteria listed for granting or denying a waiver are not ranked in order of importance, the criteria are not weighted, and city officials have not established a definite number of categories that need to be satisfied to obtain a waiver.

Over a five-year period, the city awarded 504 projects with M/WBE goals, 25 waivers were requested by the low bidder and ten were rejected.

8.0 FINDINGS AND RECOMMENDATIONS

8.0 FINDINGS AND RECOMMENDATIONS

In October 2008, MGT of America, Inc. (MGT), was retained to conduct a minority and women business enterprise disparity study for Leon County Florida, (County), to determine whether there was a compelling interest to establish a narrowly-tailored minority- and women-owned business enterprise (M/WBE) program for the County. The study consisted of fact-finding to examine the extent to which race- and gender-conscious and race- and gender-neutral remedial efforts by the County had effectively eliminated ongoing effects of any past discrimination affecting the County's relevant marketplace; to analyze the County procurement trends and practices for the study period from October 1, 2004, through September 30, 2008; and to evaluate various options for future program development.

The results of this study and conclusions drawn are presented in detail in **Chapters 2.0** through **7.0** of this report. The following sections summarize each of the study's findings, which are followed by related major recommendations. Commendations are also noted in those instances in which the County already has procedures, programs, and policies in place that respond to findings. Selected best practices are described in **Chapter 7.0** to this report. These best practices expand on the findings and recommendations that are marked with an asterisk (*).

8.1 Findings for M/WBE Utilization and Availability

FINDING 8-1: Historical M/WBE Utilization

The dollar value of M/WBE utilization by the County in 2004 Leon County Disparity Study was as follows:

- M/WBEs won construction prime contracts for \$479,980 (1.61 percent of the total).
- M/WBEs won construction subcontracts for \$5.47 million (18.32 percent of total contract value).
- M/WBEs won professional services prime contracts for \$914,754 (12.24 percent of the total).
- M/WBEs won professional services subcontracts for \$422,975 (5.66 percent of the total).
- M/WBEs won other services contracts for \$3.28 million (29.71 percent of the total).
- M/WBEs won materials and supplies contracts for \$2.76 million (16.19 percent of the total).

FINDING 8-2: M/WBE Prime Utilization, Availability and Disparity

The dollar value of M/WBE prime utilization by the County over the study period of October 1, 2004 through September 30, 2008, is shown in **Exhibit 8-1**:

- M/WBEs were paid \$12.05 million (16.32 percent of the total) for prime construction services. There was substantial disparity for firms owned by African Americans and Asian Americans.
- M/WBEs were paid \$1.05 million (14.64 percent of the total) for architecture and engineering (A&E) services. There was substantial disparity for Hispanic American¹-, Asian American-, and nonminority women-owned firms.
- M/WBEs were paid \$719,377 (16.05 percent of the total) for professional services. There was substantial disparity for firms owned by African Americans, Hispanic Americans, and nonminority women.
- M/WBEs were paid \$3.40 million (53.57 percent of the total) for other services. There was substantial disparity for firms owned by Asian Americans, and Native Americans.
- M/WBEs were paid \$1.60 million (13.81 percent of the total) for materials and supplies. There was substantial disparity for firms owned by African Americans, Hispanic Americans, and Asian Americans.

¹ The availability pool of firms for this category among this MBE group was based on the count of firms that submitted a bid as a prime contractor and won the project. However, this contract ultimately was not awarded, thus not listed in the list of awarded agreements.

**EXHIBIT 8-1
M/WBE PRIME UTILIZATION, AVAILABILITY, AND DISPARITY
LEON COUNTY
OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008**

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women	Total M/WBE
Construction Prime Contractors						
Utilization Dollars	\$2,553,207	\$0	\$0	\$0	\$9,499,250	\$12,052,457
Utilization Percent	3.46%	0.00%	0.00%	0.00%	12.86%	16.32%
Availability Percent	9.73%	0.00%	0.54%	0.00%	6.49%	16.76%
Disparity	Underutilization *	N/A	Underutilization *	N/A	Overutilization	
Architecture and Engineering Prime Consultants						
Utilization Dollars	\$537,264	\$0	\$196,309	\$0	\$320,113	\$1,053,686
Utilization Percent	7.46%	0.00%	2.73%	0.00%	4.45%	14.64%
Availability Percent	8.51%	2.13%	4.26%	0.00%	17.02%	31.91%
Disparity	Underutilization	Underutilization *	Underutilization *	N/A	Underutilization *	
Professional Services Prime Consultants						
Utilization Dollars	\$181,430	\$0	\$0	\$0	\$537,948	\$719,377
Utilization Percent	4.05%	0.00%	0.00%	0.00%	12.00%	16.05%
Availability Percent	8.08%	1.01%	0.00%	0.00%	18.18%	27.27%
Disparity	Underutilization *	Underutilization *	N/A	N/A	Underutilization *	
Other Services Firms						
Utilization Dollars	\$817,616	\$319,088	\$3,672	\$3,696	\$2,263,882	\$3,407,954
Utilization Percent	12.85%	5.02%	0.06%	0.06%	35.59%	53.57%
Availability Percent	11.63%	1.16%	0.39%	0.39%	10.47%	24.03%
Disparity	Overutilization	Overutilization	Underutilization *	Underutilization *	Overutilization	
Materials and Supplies Vendors						
Utilization Dollars	\$95,676	\$0	\$0	\$0	\$1,509,432	\$1,605,108
Utilization Percent	0.82%	0.00%	0.00%	0.00%	12.98%	13.81%
Availability Percent	1.45%	0.36%	0.36%	0.00%	8.00%	10.18%
Disparity	Underutilization *	Underutilization *	Underutilization *	N/A	Overutilization	

Source: Utilization findings are taken from the exhibit previously shown in **Chapter 3.0** and **Chapter 4.0**. Availability is based on bidders/vendors.

N/A-not applicable.

*Substantial disparity.

FINDING 8-3: M/WBE Subcontractor Utilization, Availability, and Disparity

The dollar value of M/WBE construction subcontractors over the study period is shown in **Exhibit 8-2** below:

- M/WBEs won construction subcontracts for \$2.39 million (12.97 percent of the total). There was substantial disparity in the utilization of available African American, Asian American, Native American, and nonminority women construction subcontractors.

EXHIBIT 8-2
M/WBE SUBCONTRACTOR UTILIZATION, AVAILABILITY, AND DISPARITY
LEON COUNTY
OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women	Total M/WBE
Construction Subcontractors						
Utilization Dollars (Overall Subcontractor Level)	\$1,868,840	\$302,580	\$0	\$9,792	\$213,761	\$2,394,973
Utilization Percent (Overall Subcontractor Level)	10.12%	1.64%	0.00%	0.05%	1.16%	12.97%
Availability Percent	18.75%	1.56%	0.52%	0.69%	10.76%	32.29%
Disparity (Overall Subcontractor Level)	Underutilization *	Overutilization	Underutilization *	Underutilization *	Underutilization *	

Source: Subcontractor bidders; Utilization and disparity findings are taken from the exhibit previously shown in **Chapters 3.0** and **4.0**.

N/A-not applicable.

*Substantial disparity.

FINDING 8-4: M/WBE Utilization in Private Sector Commercial Construction

MBE prime and subcontractor utilization in private sector commercial construction in the County was generally quite low, as measured by data from building permits. MBE subcontractor utilization in particular was low in absolute terms (less than 4 percent) (**Exhibit 8-3**), in comparison to MBE subcontractor utilization on County projects (more than 12 percent), and in comparison to MBE availability (about 21 percent).

EXHIBIT 8-3
COMPARISON OF M/WBE UTILIZATION PERCENTAGE OF DOLLARS
PRIVATE COMMERCIAL CONSTRUCTION
LEON COUNTY
OCTOBER 1, 2004, THROUGH SEPTEMBER 30, 2008

Business Category/Data Source	African American	Hispanic American	Asian American	Native American	Nonminority Women	M/WBE Firms	Non-M/WBE Firms
Prime Contractors							
Leon County Construction Prime Contractors (Based on Expenditure Data Only)	3.46%	0.00%	0.00%	0.00%	12.86%	16.32%	83.68%
Private Construction Prime Contractors (Leon County, Florida Building Permits)	0.86%	0.00%	0.00%	0.00%	2.48%	3.34%	96.66%
Private Construction Prime Contractors (City of Tallahassee, Florida Building Permits)	0.03%	0.00%	0.00%	0.00%	1.02%	1.05%	98.95%
Subcontractors							
Leon County Construction Subcontractors (Overall Subcontractor Level) ¹	10.12%	1.64%	0.00%	0.05%	1.16%	12.97%	87.03%
Private Construction Subcontractors (Leon County, Florida Building Permits)	0.00%	0.00%	0.00%	0.05%	3.80%	3.80%	96.20%
Private Construction Subcontractors (City of Tallahassee, Florida Building Permits)	0.04%	0.00%	0.00%	0.00%	18.16%	18.21%	81.79%

Source: Utilization findings are taken from the exhibit previously shown in **Chapters 3.0** and **6.0**.

FINDING 8-5: Disparities in the Census Data

There was evidence of disparities based on the 2002 Survey of Business Owners from the U.S. Census Bureau (for groups for which data was available):

- *Construction Firms.* Women-owned firms were 6.8 percent of firms, 6.2 percent of sales, with \$84,224 in average revenue per firm, 90.9 percent of the market place average.
- *Professional Services Firms.* African American-owned firms were 5.6 percent of firms, 0.9 percent of sales, with \$15,000 in average revenue per firm, 16.9 percent of the market place average. Women-owned firms were 24.4 percent of firms, 12.7 percent of sales, with \$202,148 in average revenue per firm, 52.1 percent of the market place average.

8.2 Commendations and Recommendations

8.2.1 Commendations and Recommendations for Race-Neutral Alternatives

COMMENDATION and RECOMMENDATION 8-1: Outreach*

The County should be commended for its outreach efforts, including sponsoring workshops; participating in the Small Business Enterprise Week and MEDWeek, activities with the city of Tallahassee; partnerships with business development organizations such as the Small Business Development Center at Florida Agricultural and Mechanical (Florida A&M) University; and posting opportunities on the Web. Additional outreach can be conducted through special vendor fairs, networking sessions, and “brown bag” sessions targeting vendors for major projects such as federal funded stimulus projects and the joint public safety building. Division directors should be included in outreach sessions. In addition, the consolidation of the County and city of Tallahassee certified firms’ directory would assist primes and staff with identifying available firms for M/W/SBE opportunities.

COMMENDATION and RECOMMENDATION 8-2: Vendor Rotation*

The County should consider the wider use of vendor rotation to expand utilization of under-utilized M/WBE groups. Some political jurisdictions use vendor rotation arrangements to limit habitual repetitive purchases from incumbent majority firms and to ensure that M/W/SBEs have an opportunity to bid along with majority firms. Generally, a diverse team of firms are prequalified for work and then teams alternate undertaking projects. A number of agencies, including the city of Indianapolis, Indiana; Fairfax County, Virginia; the Port Authority of New York and New Jersey; and Miami-Dade County, Florida; use vendor rotation to encourage utilization of underutilized M/WBE groups, particularly in professional services.

COMMENDATION and RECOMMENDATION 8-3: SBE Program for Prime Contracts*

The County should be commended for starting an SBE program. A strong SBE program is central to maintaining a narrowly tailored program to promote M/WBE utilization. In particular, the County should focus on increasing M/WBE utilization through the SBE program. The County does not face constitutional restrictions on its SBE program, only those procurement restrictions imposed by state law. Specific suggestions for the County's SBE program can be found in features of other SBE programs around the United States, including:

- Setting aside small financial consulting projects (Port Authority of New York and New Jersey SBE Program).
- Providing bid preferences to SBEs in bidding on contracts (Miami-Dade County, Florida, Community SBE Program; Port Authority of New York and New Jersey SBE Program; Port of Portland, East Bay Municipal Utility District Contract Equity Program).²
- Setting SBE goals on formal and informal contracts (city of Charlotte, North Carolina, SBE Program).
- Setting department goals for SBE utilization (city of Charlotte, North Carolina, SBE Program).
- Access to low cost insurance on small projects (city of San Diego, California, Minor Construction Program).
- Providing bid preferences to SBEs on tax-assisted projects (city of Oakland, California, Local Small Business Enterprise Program, and Port of Portland Emerging Small Business Program).
- Making SBE utilization part of department performance reviews (city of Charlotte, North Carolina, SBE Program).
- Mentor-protégé programs for small businesses (Port of Portland Emerging Small Business Program).

The County SBE training requirement has limited the effectiveness of the existing SBE program. The County should exempt firms from the training requirement if: (1) they have a record of satisfactory performance on similar projects with the County (or other major public/private organization), or (2) have satisfied similar training sessions with other organizations.

² The Port of Portland found that 10 percent bid preferences were more effective than 5 percent bid preferences.

RECOMMENDATION 8-4: Mandatory Subcontracting*

The County should consider imposing mandatory subcontracting clauses where such clauses would promote M/W/SBE utilization, and be consistent with industry practice.³

RECOMMENDATION 8-5: Business Development Assistance*

The County did attempt some business development initiatives for SBEs and M/WBEs. However, there have been problems with the existing delivery of training services. The County should focus on partnerships with organizations with a proven track record of business development assistance, such as the Florida Department of Transportation's Supportive Services program.

The County should evaluate the impact of these business development initiatives on M/W/SBE utilization. The County should follow the example of the Port Authority of New York and New Jersey, for which management and technical assistance contracts have been structured to include incentives for producing results, such as increasing the number of M/WBEs being registered as qualified vendors with the Port, and increasing the number of M/WBEs graduating from subcontract work to prime contracting.

8.2.2 M/WBE Policy Commendations and Recommendations

RECOMMENDATION 8-6: Narrowly Tailored M/W/SBE Program

This study provides evidence to support a narrowly tailored program to promote M/WBE utilization. This conclusion is based primarily on statistical disparities in current M/WBE utilization, particularly in subcontracting, substantial disparities in the private marketplace, evidence of discrimination in business formation and revenue earned from self-employment, and some evidence of passive participation in private sector disparities. The County should tailor its women and minority participation policy to remedy each of these specific disparities.

The case law involving federal disadvantaged business enterprise (DBE) programs provide important insight into the design of local M/WBE programs. In January 1999, the United States Department of Transportation (USDOT) published its final DBE rule in Title 49, Code of Federal Regulations, Part 26 (49 CFR 26). The federal courts have consistently found the DBE regulations to be narrowly tailored.⁴ The federal DBE program has the features listed in **Exhibit 8-4** that contribute to this characterization as a narrowly tailored remedial procurement preference program. The County should adopt these features in any new narrowly tailored M/WBE program.

³ San Diego, as part of its Subcontractor Outreach Program (SCOPE), has mandatory outreach, mandatory use of subcontractors, and mandatory submission of an outreach document. Whether a contract has subcontracting is determined by the engineer on the project.

⁴ *Adarand v. Slater*, 228 F.3d 1147 (10th Cir. 2000), *Gross Seed. v. State of Nebraska*, 345 F.3d 968 (8th Cir. 2003); cert denied, 158 L.Ed. 2d 729 (2004), *Northern Contracting v. Illinois DOT*, 2005 U.S. Dist. LEXIS 19868 (ND IL 2005).

EXHIBIT 8-4 NARROWLY TAILORED M/WBE PROGRAM FEATURES

Narrowly Tailored Goal-Setting Features	DBE Regulations
The County should not use quotas.	49 CFR 26(43)(a)
The County should use race- or gender-conscious set-asides only in cases where other methods are inadequate to address the disparity.	49 CFR 26(43)(b)
The County should meet the maximum amount of its M/WBE goals through race-neutral means.	49 CFR 26(51)(a)
The County should use M/WBE contract goals only where race-neutral means are not sufficient.	49 CFR 26(51)(d)
The County should use M/WBE goals only where there are subcontracting possibilities.	49 CFR 26(51)(e)(1)
If the County estimates that it can meet the entire M/WBE goal with race-neutral means, then the County should not use contract goals.	49 CFR 26(51)(f)(1)
If it is determined that the County is exceeding its goal, then the County should reduce the use of M/WBE contract goals.	49 CFR 26(51)(f)(2)
If the County exceeds goals with race-neutral means for two years, then the County should not set contract goals the next year.	49 CFR 26(51)(f)(3)
If the County exceeds M/WBE goals with contract goals for two years, then the County should reduce use of contract goals the next year.	49 CFR 26(51)(f)(4)
If the County uses M/WBE goals, then the County should award only to firms that made good faith efforts.	49 CFR 26(53)(a)
The County should give bidders an opportunity to cure defects in good faith efforts.	49 CFR 26(53)(d)

COMMENDATION and RECOMMENDATION 8-7: Aspirational M/WBE TARGETS

The County should periodically adjust aspirational goals by business category, and not establish rigid project goals. Adjustments should be based on the degree of success of the program in previous years. To establish a benchmark for goal setting, aspirational goals should be based on relative M/WBE availability. The primary means for achieving these aspirational goals should be the SBE program, race-neutral joint ventures, outreach, and adjustments in the County procurement policy. As in the DOT, DBE program goals on particular projects should, in general, vary from overall aspirational goals. Possible revised aspirational goals based on M/WBE availability are proposed in **Exhibit 8-5**. These aspirational goals can be further decomposed by procurement category, ethnicity, and gender.

**EXHIBIT 8-5
PROPOSED M/WBE ASPIRATIONAL TARGETS
LEON COUNTY
BY PROCUREMENT CATEGORY**

Procurement Category	Aspirational MBE Target	Aspirational WBE Target
Construction Prime Contractors	8%	5%
Construction Subcontractors*	17%	9%
Architecture & Engineering	12%	14%
Professional Services	7%	15%
Other Services	10%	8%
Materials and Supplies	1%	6%

Source: Availability estimates are based on vendor data.

*Of total subcontract dollar value.

RECOMMENDATION 8-8: Joint Ventures

The County should consider adopting a joint venture policy similar to the one implemented by the city of Atlanta, Georgia. The city of Atlanta requires establishment of joint ventures on large projects of over \$10 million.⁵ Primes are required to joint venture with a firm from a different ethnic/gender group in order to ensure prime contracting opportunities for all businesses. This rule applies to women and minority firms as well as nonminority firms. This rule has resulted in tens of millions of dollars in contract awards to women and minority firms.

COMMENDATION and RECOMMENDATION 8-9: M/WBE Subcontractor Plans*

The County should consider reestablishing the good faith effort goal requirements in its contracts. The basis for retaining good faith efforts requirements is significant disparities in construction subcontracting, the very low utilization in private sector commercial construction and other evidence of private sector disparities, even after controlling for capacity and other race-neutral variables. The core theme should be that prime contractors should document their outreach efforts and the reasons why they may have rejected qualified M/WBEs that were the low-bidding subcontractors. Accordingly, the following narrow tailoring elements should be considered:

1. Good faith effort requirements should apply to both M/WBE and nonminority prime contractors.
2. Projects goals should vary by project and reflect realistic M/WBE availability for particular projects.
3. A documented excessive subcontractor bid can be a basis for not subcontracting with an M/WBE.
4. A documented record of poor performance can be a basis for not subcontracting with an M/WBE.⁶

⁵ City of Atlanta Ordinance Sec. 2-1450 and Sec. 2-1451.

⁶ The last two elements were adopted by the North Carolina Department of Transportation (NCDOT). 19A NCAC 02D.1110(7).

COMMENDATION 8-10: RFP Language*

The County is commended for putting in its request for proposals (RFPs) language asking proposers about their strategies for M/WBE inclusion on projects. A number of agencies, including the Port Authority of New York and New Jersey, have had success in soliciting creative responses to these requests, even in areas such as large-scale insurance contracts.

RECOMMENDATION 8-11: Economic Development*

The County should consider extending the M/W/SBE program to economic development projects. Jersey City, New Jersey, and the city of Saint Paul, Minnesota, have established offices that focus on employment and M/W/SBE utilization on economic development projects. San Antonio and Bexar County, Texas, also have very active M/W/SBE initiatives for development projects that receive tax subsidies.

RECOMMENDATION 8-12: Certification*

Two-Tier Size Standards. The federal case law points to the use of size standards and net worth requirements as one factor in the narrow tailoring of remedial procurement programs. At present, the County uses its own size standard.

Size standards for remedial procurement programs face a dilemma. If the size standard is placed too high, large firms crowd out new firms. If the size standard is placed too low, too many experienced firms lose the advantages of the remedial program. The second problem is an issue with the current County SBE certification. One solution to this dilemma is to adopt a two-tier standard for M/WBE and SBE certification. The federal government and the states of Oregon and New Jersey use a two-tier size standard. Thus, for example, contracts could be set aside for small and very small firms and goals that included very large M/W/SBEs could be established on large projects. A standard approach is to use the Small Business Administration (SBA) size standard for small firms and a percentage of the SBA size standard (for example, 25 or 50 percent) for very small firms.

Automatic SBE Certification. Firms that already satisfy the size and location requirements for the SBE program should be automatically certified as SBEs, unless they elect to remove themselves from the SBE directory. Several jurisdictions have used this approach to expand the pool of SBEs.

Socially and Economically Disadvantaged Firms. The County should consider adding socially and economically disadvantaged firms to its definition of targeted groups. The North Carolina M/WBE program has this feature.

Program Participation Limits. Another graduation provision is to restrict the overall amount of dollars a program participant can receive. For example, the city of New York graduates firms that have received more than \$15 million in prime contracts within the past three years.⁷

⁷ Local Laws of New York, Section 7-1292 (c) (17).

COMMENDATION and RECOMMENDATION 8-13: MWBE Program Data Management

It is important for the County to closely monitor the utilization of all businesses by race, ethnicity, and gender, and by prime and subcontractor utilization, over time to determine whether the County's M/W/SBE policy has the potential to eliminate race and gender disparities without applying specific race and gender goals. The County should be commended for its improved tracking of subcontractor utilization and for the implementation of the B2G system for tracking M/W/SBE contract compliance.

COMMENDATION and RECOMMENDATION 8-14: Purchasing and M/W/SBE Policy

The County should be commended for the consolidation of the purchasing policy and the M/WBE participation policy and elevating the M/W/SBE program to division level, which improved the internal and external perception of the County's commitment to the program's success. The County should ensure that vendors submit the required contract compliance documents pertaining to the M/W/SBE program as part of their request for payment.

COMMENDATION and RECOMMENDATION 8-15: M/W/SBE Program Staff

The County should be commended for the efforts of the County's M/W/SBE staff. The County could increase staff, training and resources to ensure the necessary resources to operate the MWBE program. The reason for an increase of staff would be: setting M/WBE project goals (targets), updating an M/WBE policy manual, re-establishing an SBE program, reporting M/WBE utilization to the highest levels of County management, overseeing business assistance, improving outreach, reserving contracts under an SBE program, and monitoring M/W/SBE targets and contract compliance.

RECOMMENDATION 8-16: Performance Measures*

The County should add performance measures other than M/W/SBE percentage utilization. Some suggested measures come from the Florida Department of Transportation's Small Business Initiative (discussed in the best practices section of this report). The County should develop additional measures to gauge the effectiveness of its efforts. Possible measures include:

- Growth in the number of M/W/SBEs winning their first award from the County.
- Growth in percentage of M/W/SBE utilization by the County.
- Growth in M/W/SBE prime contracting.
- Growth in M/W/SBE subcontractors to prime contractors.
- Number of M/W/SBEs that receive bonding.
- Number of M/W/SBEs that successfully graduate from the program.
- Number of graduated firms that successfully win County projects.

- Percentage of M/W/SBE utilization for contracts not subject to competitive bidding requirements.
- Growth in the number of M/W/SBEs utilized by the County.
- Number of joint ventures involving M/W/SBEs.
- Largest contract won by an M/W/SBE.
- Comparability in annual growth rates and median sales for M/W/SBEs and non-M/W/SBEs in the County contracts.

APPENDICES

APPENDIX A: UTILIZATION DETAILS

APPENDIX A UTILIZATION DETAILS

Attachment #3
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Utilization Details - Construction

VENDOR NAME	ETHNICITY	COUNTY_STATE	EXPENDITURE AMT
1001 USES UTILITY BLDG	NONMINORITY MALE	LEON, FL	\$4,298.00
ABSOLUTE DEMO, INC	NONMINORITY MALE	LEON, FL	\$6,000.00
ALBRITTON ELECTRICAL SERVICE INC	NONMINORITY MALE	LEON, FL	\$475,790.14
ALL FLORIDA ELECTRIC OF TALLAHASSEE INC	NONMINORITY MALE	LEON, FL	\$500.00
ALLEN'S EXCAVATING, INC.	NONMINORITY MALE	LEON, FL	\$11,096,038.40
ALLWEATHER INSULATION INC	NONMINORITY MALE	LEON, FL	\$1,902.00
ANYTIME CONCRETE, INC	NONMINORITY MALE	LEON, FL	\$352.00
APACHEE ROOFING	NONMINORITY MALE	LEON, FL	\$10,250.00
APALACHEE BACKHOE & SEPTIC TANK LLC	NONMINORITY MALE	LEON, FL	\$204,268.35
B & S UTILITIES	NONMINORITY MALE	LEON, FL	\$48,456.68
BASS CONSTRUCTION CO INC	NONMINORITY MALE	LEON, FL	\$267,160.68
BAYCREST CORPORATION	NONMINORITY MALE	LEON, FL	\$773,711.46
BLANKENSHIP CONTRACTNG INC	NONMINORITY MALE	LEON, FL	\$4,569,664.70
BLUE CHIP CONSTRUCTION	AFRICAN AMERICAN	LEON, FL	\$2,049,796.46
BOB MCKEITHEN & SONS	NONMINORITY MALE	LEON, FL	\$3,885.00
BRYAN SCRUGGS CONSTRUCTION, INC	NONMINORITY MALE	GADSDEN, FL	\$419,150.58
C & C ASPHALT, LLC	NONMINORITY MALE	LEON, FL	\$14,870.00
C & R CONSTRUCTION SVS, INC	AFRICAN AMERICAN	LEON, FL	\$33,259.00
CAMP DRESSER & MCKEE INC	NONMINORITY MALE	LEON, FL	\$599,873.08
CAPITAL QUALITY BUILDINGS, INC	NONMINORITY MALE	LEON, FL	\$5,325.00
COUNCIL CONTRACTING, INC	NONMINORITY FEMALE	LEON, FL	\$834,907.23
CPS RESIDENTIAL & COMMERCIAL CONSTRUCTION SERVICES	NONMINORITY MALE	LEON, FL	\$76,797.74
CUMBIE CONCRETE CONSTRUCTION CO.	NONMINORITY MALE	LEON, FL	\$389.85
DAVIS CONSTRUCTION	NONMINORITY MALE	LEON, FL	\$600.00
DIXIE PAVING & GRADING, INC	NONMINORITY MALE	LEON, FL	\$487,949.65
DOVE ROOFING CO INC	NONMINORITY MALE	LEON, FL	\$48,231.10
FLORIDA DESIGN AND CONSTRUCTION	AFRICAN AMERICAN	LEON, FL	\$1,975.00
FLORIDA DEVELOPERS INC	AFRICAN AMERICAN	LEON, FL	\$42,823.00
GAINES	NONMINORITY MALE	LEON, FL	\$300.00
GAINES & SONS STRIPING, INC	AFRICAN AMERICAN	LEON, FL	\$332,679.87
GARRISON DESIGN & CONSTRUCTION INC	NONMINORITY MALE	LEON, FL	\$628,376.74
GEMINI ELECTRIC	NONMINORITY MALE	LEON, FL	\$8,200.00
GREAT SOUTHERN DEMOLITION INC	NONMINORITY MALE	LEON, FL	\$15,826.00
HARRELL ROOFING INC	NONMINORITY MALE	LEON, FL	\$86,387.00
HODGES ELECTRIC, INC.	NONMINORITY MALE	LEON, FL	\$1,303.30
JACKSON COOK INC	NONMINORITY FEMALE	LEON, FL	\$10,359.45
JIMMIE CROWDER EXCAVATING & LAND CLEARING, INC	NONMINORITY MALE	LEON, FL	\$3,238,291.93
JP POWELL SERVICES	NONMINORITY FEMALE	LEON, FL	\$47,917.49
KCW ELECTRIC CO	NONMINORITY MALE	LEON, FL	\$29,405.55
KEITH LAWSON COMPANY	NONMINORITY MALE	LEON, FL	\$877.00
KINSEY CONTRACTORS INC	NONMINORITY MALE	LEON, FL	\$443,816.17
KRATOFIL'S HEATING & AIR CONDITIONING INC	NONMINORITY MALE	LEON, FL	\$5,880.00
LANCE MAXWELL PLUMBING	NONMINORITY MALE	LEON, FL	\$2,260.00
LARRY HAGAMAN PLUMBING CONTRACTOR	NONMINORITY MALE	LEON, FL	\$1,235.00
M OF TALLAHASSEE	NONMINORITY MALE	LEON, FL	\$102,400.00
M&L PLUMBING	NONMINORITY MALE	LEON, FL	\$3,775.00
MEYER CONSTRUCTION COMPANY, LLC	NONMINORITY MALE	LEON, FL	\$59,204.00

VENDOR NAME	ETHNICITY	COUNTY_STATE	EXPENDITURE AMT
MIKE SCOTT CONSTRUCTION	NONMINORITY MALE	LEON, FL	\$266,329.68
MORGAN ELECTRIC CO.	NONMINORITY MALE	LEON, FL	\$111,777.57
MOSLEY ENTERPRISES	NONMINORITY MALE	GADSDEN, FL	\$36,620.00
MSTCONSTRUCTION	NONMINORITY MALE	GADSDEN, FL	\$1,449.46
MUD WORKS	AFRICAN AMERICAN	LEON, FL	\$16,907.00
NORTH FLORIDA ASPHALT INC	NONMINORITY MALE	LEON, FL	\$1,714,065.65
PAGEL CONSTRUCTION, INC	NONMINORITY MALE	LEON, FL	\$348,281.50
PANHANDLE CONTRACTING	NONMINORITY MALE	LEON, FL	\$6,500.00
PEARSON CONSTRUCTION COMPANY LLC	NONMINORITY MALE	LEON, FL	\$1,157,452.96
PEAVY & SON CONSTRUCTION CO INC	NONMINORITY MALE	GADSDEN, FL	\$7,185,506.99
PETER R BROWN CONSTRUCTION	NONMINORITY FEMALE	LEON, FL	\$8,510,946.67
PHOENIX CONSTRUCTION & FENCING	AFRICAN AMERICAN	LEON, FL	\$75,766.74
PRO STEEL BLDG INC	NONMINORITY MALE	LEON, FL	\$631,779.15
REYNOLDS HOME BUILDERS, INC	NONMINORITY FEMALE	LEON, FL	\$67,773.80
RIPPEE CONSTRUCTION INC	NONMINORITY FEMALE	LEON, FL	\$21,820.00
ROTO ROOTER PLUMBERS	NONMINORITY MALE	LEON, FL	\$39,826.13
SANDCO INC	NONMINORITY MALE	LEON, FL	\$26,326,144.83
SCOTT-BURNETT INC	NONMINORITY MALE	LEON, FL	\$2,435.48
SOUTHEAST CONCRETE CUTTING AND DEMOLITION INC	NONMINORITY MALE	LEON, FL	\$450.00
SOUTHERN GENERAL CONTRACTORS, LLC	NONMINORITY MALE	LEON, FL	\$28,430.00
SPECIALTY CONTRACTORS OF TALLAHASSEE INC	NONMINORITY MALE	LEON, FL	\$8,597.36
STREAMLINE ROOFING	NONMINORITY MALE	LEON, FL	\$556.94
STRICKLAND ELECTRIC COMPANY OF TALLAHASSEE INC	NONMINORITY FEMALE	LEON, FL	\$5,525.00
T S BUILDERS, INC	NONMINORITY MALE	LEON, FL	\$155,978.07
TOM SHAW CONSTRUCTION COMPANY	NONMINORITY MALE	LEON, FL	\$37,450.39
VAUSE MECHANICAL CONTRACTING, INC.	NONMINORITY MALE	LEON, FL	\$2,724.00
WHITE'S PLUMBING INC	NONMINORITY MALE	LEON, FL	\$6,350.08

Utilization Details - Architecture & Engineering

VENDOR NAME	ETHNICITY	COUNTY_STATE	EXPENDITURE
			AMT
ACOUSTI ENGINEERING CO OF FLORIDA	NONMINORITY FEMALE	LEON, FL	\$2,304.92
ADVANCED GEOSPATIAL, INC	NONMINORITY MALE	LEON, FL	\$80,425.00
AKIN & ASSOCIATES ARCHITECTS	AFRICAN AMERICAN	LEON, FL	\$146,460.64
ALLEN NOBLES AND ASSOCIATES INC	NONMINORITY MALE	LEON, FL	\$157,454.71
BARNETT FRONCZAK ARCHITECTS	NONMINORITY MALE	LEON, FL	\$522,894.85
BENEDICT ENGINEERING COMPANY INC	NONMINORITY MALE	LEON, FL	\$9,080.50
CAPITAL ENGINEERING & SURVEYING,INC	NONMINORITY MALE	LEON, FL	\$5,662.00
COLONEY BELL ENGINEERING	NONMINORITY MALE	LEON, FL	\$1,852.50
CS & K ASSOCIATES, INC	NONMINORITY FEMALE	LEON, FL	\$2,660.00
DIVERSIFIED DESIGN % DRAFTING SERVICES, INC	NONMINORITY FEMALE	LEON, FL	\$1,760.00
EMO ARCHITECTS, INC	NONMINORITY MALE	LEON, FL	\$458,382.35
ENVIRONMENTAL & GEOTECHNICAL SPECIALISTS INC (EGS)	NONMINORITY MALE	LEON, FL	\$67,388.69
ENVIRONMENTAL CONSULTING & TECHNOLOGY INC	NONMINORITY FEMALE	LEON, FL	\$292,967.33
GENESIS GROUP INC	NONMINORITY MALE	LEON, FL	\$1,490,568.99
GPI SOUTHEAST INC	NONMINORITY MALE	LEON, FL	\$29,607.32
HAMMOND DESIGN GROUP	NONMINORITY MALE	LEON, FL	\$251,525.58
JOHNSON PETERSON ARCHITECTS INC	NONMINORITY MALE	LEON, FL	\$516,512.57
JRA ARCHITECTS INC	NONMINORITY MALE	LEON, FL	\$2,845.00
McGINNISS & FLEMING ENGINEERING INC	NONMINORITY MALE	LEON, FL	\$131,844.38
MIHIR ENVIRONICS INC	ASIAN AMERICAN	LEON, FL	\$22,465.00
MOORE BASS CONSULTING INC	NONMINORITY FEMALE	LEON, FL	\$16,108.73
POOLE ENGINEERING	NONMINORITY FEMALE	LEON, FL	\$4,312.00
POST BUCKLEY SCHUH & JERNIGAN, INC	NONMINORITY MALE	LEON, FL	\$2,359,696.37
REGISTE,SLIGER ENGINEERING,INC	AFRICAN AMERICAN	LEON, FL	\$153,869.20
ROSENBAUM ENGINEERING	NONMINORITY MALE	LEON, FL	\$38,084.02
SOUTHERN EARTH SCIENCES INC	NONMINORITY MALE	LEON, FL	\$9,319.00
SPECTRA ENGINEERING & RESEARCH, INC	AFRICAN AMERICAN	LEON, FL	\$210,018.89
STRUCTURAL DIAGNOSTICS	AFRICAN AMERICAN	LEON, FL	\$26,915.00
TRAK ENGINEERING INC	NONMINORITY MALE	LEON, FL	\$11,072.50
WELCH & WARD ARCHITECTS INC	ASIAN AMERICAN	LEON, FL	\$173,844.00
WILLIAMSON & ASSOCIATES, INC.	NONMINORITY MALE	LEON, FL	\$300.00

Utilization Details - Professional Services

VENDOR NAME	ETHNICITY	COUNTY_STATE	EXPENDITURE AMT
ACCURATE STENOTYPE REPORTERS	NONMINORITY FEMALE	LEON, FL	\$1,838.40
ALL PRO DRUG TESTING INC	NONMINORITY FEMALE	LEON, FL	\$40.00
ALLIED VET EMERGENCY SERVICES INC	NONMINORITY MALE	LEON, FL	\$200.00
APPRAISAL GROUP OF TALLAHASSEE, INC	NONMINORITY FEMALE	LEON, FL	\$10,000.00
BANKS & MORRIS, P.A.	NONMINORITY MALE	LEON, FL	\$36,968.13
BECK & BARRIOS, PA	NONMINORITY MALE	LEON, FL	\$2,500.00
BIBLER DESIGN DEVELOPMENT	NONMINORITY MALE	LEON, FL	\$3,800.00
BOUTIN BROWN REALTY ADVISORS INC	NONMINORITY MALE	LEON, FL	\$107,707.50
BRADLEY	NONMINORITY MALE	LEON, FL	\$560.00
BROWN AND BROWN PA	AFRICAN AMERICAN	LEON, FL	\$9,089.81
BRYANT MILLER & OLIVE PA	NONMINORITY MALE	LEON, FL	\$171,961.83
CARR ALLISON	NONMINORITY MALE	LEON, FL	\$241,767.93
CHARLES E HOBBS II, ESQ	AFRICAN AMERICAN	LEON, FL	\$420.00
CLINICAL PSYCHOLOGICAL SERVICES, INC	NONMINORITY MALE	LEON, FL	\$205.00
COMPUTER TUTORS USA INC	NONMINORITY FEMALE	LEON, FL	\$20,095.00
COOPER BYRNE BLUE & SCHWARTZ, LLC	NONMINORITY MALE	LEON, FL	\$90,364.11
CURETON-JOHNSON & ASSOCIATES	NONMINORITY MALE	LEON, FL	\$8,750.00
DAVID C HAWKINS, PLLC	NONMINORITY MALE	LEON, FL	\$16,686.25
DEBAUBIEN KNIGHT SIMMONS MANTZARIS & NEAL, LLP	NONMINORITY MALE	LEON, FL	\$4,700.80
DIANE WILKENS PRODUCTIONS	NONMINORITY FEMALE	LEON, FL	\$750.00
DISASTERS, STRATEGIES AND IDEAS GROUP, LLC	NONMINORITY MALE	LEON, FL	\$49,757.64
DISKIN PROPERTY RESEARCH	NONMINORITY MALE	LEON, FL	\$64,368.86
EMPLOYEE MANAGEMENT SYSTEMS	NONMINORITY MALE	LEON, FL	\$7,280.00
FIXEL & MAGUIRE	NONMINORITY MALE	LEON, FL	\$9,567.00
FLORIDA PROPERTY CONSULTANTS GROUP	NONMINORITY MALE	LEON, FL	\$6,000.00
FOR THE RECORD REPORTING	NONMINORITY FEMALE	LEON, FL	\$112.50
FRANK E SHEFFIELD PA	NONMINORITY MALE	LEON, FL	\$29,635.50
GARDNER, BIST, WIENER, WADSWORTH & BOWDEN, P.A.	NONMINORITY MALE	LEON, FL	\$48,825.00
GENTRY & WAY PA	NONMINORITY FEMALE	LEON, FL	\$6,406.08
GREGORY J CUMMINGS	NONMINORITY MALE	LEON, FL	\$1,445.94
HENNINGSSEN INVESTMENT INC	NONMINORITY MALE	LEON, FL	\$2,542.43
HERRLE COMMUNICATIONS GROUP	NONMINORITY FEMALE	LEON, FL	\$1,665.50
I S CONSULTING	NONMINORITY FEMALE	LEON, FL	\$30,160.00
INFINITY SOFTWARE DEVELOPMENT	NONMINORITY MALE	LEON, FL	\$9,338.75
INOVIA CONSULTING GROUP	NONMINORITY MALE	LEON, FL	\$22,686.40
INTEGRITY PUBLIC FINANCE CONSULTING	NONMINORITY MALE	LEON, FL	\$22,300.00
JORDAN RESEARCH & CONSULTING	NONMINORITY MALE	LEON, FL	\$456.25
KETCHAM APPRAISAL GRP PA	NONMINORITY MALE	LEON, FL	\$114,348.45
KETCHAM REALTY GROUP, INC	NONMINORITY MALE	LEON, FL	\$75.00
KNOWLES & RANDOLPH PA	AFRICAN AMERICAN	LEON, FL	\$138,225.00
LAW OFFICES OF GARY ANTON, PA	NONMINORITY MALE	LEON, FL	\$1,911.40
LEWIS LONGMAN & WALKER P.A.	NONMINORITY MALE	LEON, FL	\$178,693.10
MCGLYNN LABORATORIES	NONMINORITY FEMALE	LEON, FL	\$430,440.13
MERIT REPORTING	NONMINORITY FEMALE	LEON, FL	\$145.00
MESSER CAPARELLO & SELF	NONMINORITY MALE	LEON, FL	\$2,287.04
MGT OF AMERICA INC	NONMINORITY MALE	LEON, FL	\$60,310.70

VENDOR NAME	ETHNICITY	COUNTY_STATE	EXPENDITURE AMT
MOORE CONSULTING GROUP	NONMINORITY FEMALE	LEON, FL	\$3,000.00
NABORS GIBLIN & NICKERSON PA	NONMINORITY MALE	LEON, FL	\$63,178.12
PARTNERS IN COMMUNICATION	NONMINORITY FEMALE	LEON, FL	\$4,162.50
PAUL CONSULTING INC	NONMINORITY MALE	LEON, FL	\$1,413,875.00
PROFESSIONAL PRACTICE SOLUTIONS, LLC	NONMINORITY FEMALE	LEON, FL	\$10,885.00
REMILLARD LAW FIRM, P.A.	NONMINORITY MALE	LEON, FL	\$1,168.75
RICHARD A GREENBERG ATTY	NONMINORITY MALE	LEON, FL	\$1,002.31
ROGERS, ATKINS, GUNTER & ASSOCIATES	NONMINORITY MALE	LEON, FL	\$3,850.00
ROSE, SUNDSTROM & BENTLEY, LLP	NONMINORITY MALE	LEON, FL	\$23,788.66
ROTHENBERG, LOUIS PAUL	NONMINORITY MALE	LEON, FL	\$331.50
ROUMELIS PLANNING & DEVELOP SERVICES INC	NONMINORITY FEMALE	LEON, FL	\$10,780.91
SAVLOV & ANDERSON	NONMINORITY MALE	LEON, FL	\$9,716.00
SHUTTS & BOWEN LLP	NONMINORITY MALE	LEON, FL	\$159,000.00
SMITH THOMPSON SHAW P A	NONMINORITY FEMALE	LEON, FL	\$6,496.50
TALLAHASSEE LAND CO INC	NONMINORITY MALE	LEON, FL	\$962.50
THE DYE LAW FIRM P.A.	NONMINORITY MALE	LEON, FL	\$4,905.00
THOMAS HOWELL FERGUSON PA	NONMINORITY MALE	LEON, FL	\$759,552.29
TRACY P. MOYE, P.A.	NONMINORITY FEMALE	LEON, FL	\$970.12
TROY FAIN INSURANCE INC	NONMINORITY MALE	LEON, FL	\$185.88
UZZELL ADVERTISING	AFRICAN AMERICAN	LEON, FL	\$30,000.00
VAUSE'S PROCESS SERVICE	NONMINORITY MALE	LEON, FL	\$3,633.00
WILLIAMS, WILSON, & SEXTON PA	AFRICAN AMERICAN	LEON, FL	\$3,694.80

Utilization Details - Other Services

VENDOR NAME	ETHNICITY	COUNTY_STATE	EXPENDITURE
			AMT
A AND A CLEANING	NONMINORITY MALE	LEON, FL	\$12,415.00
A BLIND DECOR	NONMINORITY MALE	LEON, FL	\$2,939.80
A MAN WITH A VAN INC	NONMINORITY MALE	LEON, FL	\$189.00
AAA TO ZEE	NONMINORITY MALE	LEON, FL	\$4,266.30
AAA TREE SERVICE INC	NONMINORITY MALE	LEON, FL	\$39,445.00
ABRAHAM GEORGE PATIO	NONMINORITY MALE	LEON, FL	\$5,939.00
ACCENT OFFICE PLANNERS INC	NONMINORITY FEMALE	LEON, FL	\$21,625.10
ACTION LEGAL COPY SERVICE INC	NONMINORITY MALE	LEON, FL	\$10.00
ADAM'S TREES	NONMINORITY MALE	LEON, FL	\$300.00
ADVANCED GRAPHICS TECHNOLOGIES INC	NONMINORITY MALE	LEON, FL	\$555.00
AEGIS COMPUTER SERVICES, INC.	NONMINORITY FEMALE	LEON, FL	\$6,450.00
AFFINITY DESIGN GROUP	NONMINORITY FEMALE	LEON, FL	\$157.60
AIR TECH	NONMINORITY MALE	LEON, FL	\$450.00
ALL PRO LANDSCAPING	NONMINORITY MALE	LEON, FL	\$33,034.15
ALL-AMERICAN CARPET & UPHOLSTERY CLEANING INC	NONMINORITY MALE	LEON, FL	\$260.00
ALPHA BUSINESS FORMS	NONMINORITY MALE	LEON, FL	\$16,795.44
ALPHA TRAVEL & TOURS INC	AFRICAN AMERICAN	LEON, FL	\$2,156.90
AMERICAN CLUTCH REBUILDERS	NONMINORITY MALE	LEON, FL	\$1,526.45
AMERICAN EXTERIOR CLEANING COMPANY	NONMINORITY MALE	LEON, FL	\$1,970.00
AMERICAN FENCE CO	NONMINORITY MALE	GADSDEN, FL	\$31,478.60
AMERICAN PHOTOGRAPHY SERVICES	AFRICAN AMERICAN	LEON, FL	\$165.00
ANDREWS	NONMINORITY MALE	LEON, FL	\$708.50
ASTRO TRAVEL AND TOURS	NONMINORITY MALE	LEON, FL	\$1,262.50
B&T FENCING INC	NONMINORITY MALE	LEON, FL	\$1,100.00
BAKER LANDSCAPE & IRRIGATION INC.	NONMINORITY FEMALE	LEON, FL	\$2,749.00
BARRY GROSS PHOTOGRAPHY	NONMINORITY MALE	LEON, FL	\$3,437.00
BEGGS FUNERAL HOME INC	NONMINORITY MALE	LEON, FL	\$250.00
BIG BEND GARAGE DOOR SERVICE	NONMINORITY MALE	LEON, FL	\$19,750.00
BIG BEND TRANSIT INC	NONMINORITY MALE	LEON, FL	\$590.15
BILL'S CARPET CARE	NONMINORITY MALE	LEON, FL	\$25,253.95
BONE DRY RESTORATION AND CLEANING	NONMINORITY MALE	LEON, FL	\$8,782.86
BRIAN S HURLEY & ASSOCIATES INC	NONMINORITY MALE	LEON, FL	\$967.22
BRIAN'S SEPTIC SERVICE	NONMINORITY MALE	LEON, FL	\$2,260.00
BRIDGES TREE SERVICE INC	NONMINORITY MALE	LEON, FL	\$3,300.00
BROWNS PAINT & BODY SHOP	AFRICAN AMERICAN	LEON, FL	\$8,975.46
BROWN'S REFRIGERATION & EQUIPMENT CO, INC	NONMINORITY MALE	LEON, FL	\$4,760.68
BRUCE'S KEY & LOCK INC	NATIVE AMERICAN	LEON, FL	\$3,696.37
B'S ICE CREAM	NONMINORITY MALE	LEON, FL	\$1,363.73
BUDDY'S SEPTIC TANK SERV	NONMINORITY MALE	LEON, FL	\$200.00
BUDGET PRINTING CENTERS	NONMINORITY MALE	LEON, FL	\$56,220.56
BUSINESS COMMUNICATIONS	NONMINORITY MALE	LEON, FL	\$5,764.50
C & L ASSOCIATES	NONMINORITY FEMALE	LEON, FL	\$2,109,824.45
C & L WELL AND PUMP SERVICE	NONMINORITY MALE	LEON, FL	\$1,920.00
C & M IRRIGATION & LAWN SERVICE	NONMINORITY MALE	LEON, FL	\$50.00
C & M LANDSCAPE & IRRIGATION	NONMINORITY MALE	LEON, FL	\$9,325.00
CAPITAL BUSINESS INTERIORS	NONMINORITY FEMALE	LEON, FL	\$7,560.69

VENDOR NAME	ETHNICITY	COUNTY_STATE	EXPENDITURE AMT
CAPITAL CITY BLACK PAGES	AFRICAN AMERICAN	LEON, FL	\$3,000.00
CAPITAL CITY RADIATOR SHP	NONMINORITY MALE	LEON, FL	\$536.50
CAPITAL CITY STAMPS	NONMINORITY FEMALE	LEON, FL	\$656.50
CAPITAL GLASS TINTING, INC	NONMINORITY MALE	LEON, FL	\$684.29
CAPITAL HYDRAULICS	NONMINORITY MALE	LEON, FL	\$26,565.35
CAPITAL OUTLOOK NEWSPAPER	AFRICAN AMERICAN	LEON, FL	\$19,888.00
CAPITAL TREE SERVICE	NONMINORITY MALE	LEON, FL	\$5,650.00
CAPITAL TRUCK INC	NONMINORITY MALE	LEON, FL	\$3,632.11
CAPITOL GLASS AND TINTING, INC.	AFRICAN AMERICAN	LEON, FL	\$4,290.75
CAPITOL WINDOW CENTER	NONMINORITY MALE	LEON, FL	\$490.83
CARLSON WAGONLIT TRAVEL	NONMINORITY FEMALE	LEON, FL	\$437.79
CITY BLUE COPY & MAIL CENTER	NONMINORITY MALE	LEON, FL	\$13,000.18
COMMERCIAL CLEANING ASSOCIATES	NONMINORITY MALE	LEON, FL	\$400.00
COMMERCIAL PRINT & COPY	NONMINORITY MALE	LEON, FL	\$368.00
CONFIDENTIAL SHREDDING & RECYCLING, INC.	NONMINORITY FEMALE	LEON, FL	\$18,265.00
CORRY CABINET COMPANY	NONMINORITY MALE	GADSDEN, FL	\$17,763.00
COVER TIME UPHOLSTERY, INC	NONMINORITY MALE	LEON, FL	\$1,565.00
CREATE IT ENTERPRISES	NONMINORITY MALE	LEON, FL	\$5,000.00
CRICKETS TREE SREVICE	NONMINORITY MALE	LEON, FL	\$6,150.00
CULLEY'S MEADOWWOOD FUNERAL HOME	NONMINORITY MALE	LEON, FL	\$250.00
CUSHING SPECIALTY CO. INC.	NONMINORITY MALE	LEON, FL	\$1,068.00
DAVIS SAFE & LOCK INC	NONMINORITY MALE	LEON, FL	\$14,644.60
DICKIES TREE SERVICE	NONMINORITY MALE	LEON, FL	\$2,820.00
DJKT ENTERPRISES INC	NONMINORITY MALE	LEON, FL	\$83.00
DON HENSLEY'S LANDSCAPE AND LAWN SERVICE	NONMINORITY MALE	LEON, FL	\$86,027.82
DON SIRMONS ALIGNMENT & BRAKE INC	NONMINORITY MALE	LEON, FL	\$63.50
DOUG'S WINDOW CLEANING	NONMINORITY MALE	LEON, FL	\$2,850.00
DUCT MASTER	NONMINORITY MALE	LEON, FL	\$550.00
EDDIE NATHAN PAINTING	AFRICAN AMERICAN	LEON, FL	\$3,425.00
ELLIS TREE SERVICE	NONMINORITY MALE	LEON, FL	\$485.00
ELSASSERS'S LOCK & KEY	NONMINORITY MALE	LEON, FL	\$1,404.00
ELUSTER RICHARDSON INC	AFRICAN AMERICAN	LEON, FL	\$300.00
EMMETT BELL'S TREE SERVICE	NONMINORITY MALE	LEON, FL	\$3,600.00
ENGLAND FLORIST & GIFTS	NONMINORITY FEMALE	LEON, FL	\$3,453.50
ESTES SEAL COATING	NONMINORITY MALE	LEON, FL	\$16,115.00
EVANS SURECUT LANDSCAPING	AFRICAN AMERICAN	GADSDEN, FL	\$47,795.97
EXPRESS COPY & PRINTING	ASIAN AMERICAN	LEON, FL	\$3,671.80
EXPRESSIT INC	NONMINORITY FEMALE	LEON, FL	\$1,382.45
FAMILY FUN RENTALS	NONMINORITY MALE	LEON, FL	\$90.00
FISH WINDOW CLEANING	NONMINORITY MALE	LEON, FL	\$378.00
FLORIDA FENCE AND DECK	NONMINORITY MALE	LEON, FL	\$132,684.47
FLORIDA PEST CONTROL &	NONMINORITY MALE	LEON, FL	\$175.00
FLORIDA ROOFING & SHEET METAL WORKS, INC	NONMINORITY MALE	LEON, FL	\$6,637.81
FULL MOON SIGNS & GRAPHIC	NONMINORITY MALE	LEON, FL	\$20,590.75
GANDY PRINTERS	NONMINORITY MALE	LEON, FL	\$21,645.64
GANT ASSOCIATES INC	AFRICAN AMERICAN	LEON, FL	\$36,200.00
GASKIN IRRIGATION AND LANDSCAPE	NONMINORITY MALE	LEON, FL	\$42,496.61
GIBSON SAW REPAIR	NONMINORITY MALE	LEON, FL	\$232.50
GLASS PRO SHOP INC	NONMINORITY MALE	LEON, FL	\$12,869.93

VENDOR NAME	ETHNICITY	COUNTY_STATE	EXPENDITURE AMT
GRAMLING'S INC.	NONMINORITY MALE	LEON, FL	\$8,530.96
GRAPHATERIA	NONMINORITY FEMALE	LEON, FL	\$4,302.06
GREENWAY LAWN CARE	NONMINORITY MALE	LEON, FL	\$950.00
GULF COAST PAINTING	AFRICAN AMERICAN	LEON, FL	\$27,830.00
H&S SERVICES OF N FLORIDA	AFRICAN AMERICAN	LEON, FL	\$10,822.50
HARMON AUTOGLASS	NONMINORITY MALE	LEON, FL	\$571.27
HARTSFIELD ELECTRIC CO.	NONMINORITY MALE	LEON, FL	\$3,108.00
HARVEST PRINTING & COPY	HISPANIC AMERICAN	LEON, FL	\$9,795.08
HEAVENLY CATERING	AFRICAN AMERICAN	LEON, FL	\$4,781.61
HELGA'S TAILORING	NONMINORITY FEMALE	LEON, FL	\$5,454.00
HIRE QUEST, LLC DBA TROJAN LABOR	NONMINORITY MALE	LEON, FL	\$469,152.70
HOUSE OF BROWN'S FUNERAL SERVICES INC	AFRICAN AMERICAN	LEON, FL	\$1,250.00
HUNTERS TREE SERVICE	NONMINORITY MALE	LEON, FL	\$2,000.00
ILG RESTAURANT LLC	NONMINORITY MALE	LEON, FL	\$352.00
INLINE LANDSCAPE INC	NONMINORITY MALE	LEON, FL	\$49,225.00
INSTY PRINTS	NONMINORITY FEMALE	LEON, FL	\$1,657.00
J & R PRINTERS	AFRICAN AMERICAN	LEON, FL	\$34,807.45
JEFF KYNOCH PAINTING	NONMINORITY MALE	LEON, FL	\$22,210.00
JERRYS AUTO & INDUSTRIAL ELECTRIC INC	NONMINORITY MALE	LEON, FL	\$8,133.43
JIMMIE WILSON PAINTING	AFRICAN AMERICAN	LEON, FL	\$1,162.00
JONES AUTO ELECTRIC, INC	NONMINORITY MALE	LEON, FL	\$1,121.85
JOYNER ELECTRIC INC	NONMINORITY MALE	LEON, FL	\$2,274.21
KIM'S FURNITURE REPAIR	NONMINORITY FEMALE	LEON, FL	\$1,322.00
KINKO'S THE COPY CENTER	NONMINORITY MALE	LEON, FL	\$564.43
LAB WORKS,LLC	NONMINORITY MALE	LEON, FL	\$4,190.41
LARRY'S PUMP SERVICE	NONMINORITY MALE	LEON, FL	\$168.60
LAWN KEEPERS	AFRICAN AMERICAN	LEON, FL	\$121,415.03
LEGAL EASE TEMP SERVICES INC	NONMINORITY MALE	LEON, FL	\$13,270.50
LEON SCREENING & REPAIR INC	NONMINORITY MALE	LEON, FL	\$34.00
LEVINGS & ASSOCIATES, INC.	HISPANIC AMERICAN	LEON, FL	\$1,071.00
LISA'S PAINT & BODY SHOP	NONMINORITY FEMALE	LEON, FL	\$5,552.79
M & L BRAKE & ALIGNMENT	NONMINORITY MALE	LEON, FL	\$11,087.54
MACK CROUNSE GROUP	NONMINORITY MALE	LEON, FL	\$54,223.00
MACK'S LAWN SERVICE	AFRICAN AMERICAN	LEON, FL	\$178,895.48
MADISON LAWN SERVICE	AFRICAN AMERICAN	LEON, FL	\$1,000.00
MAINTENANCE & MORE	NONMINORITY MALE	LEON, FL	\$924.50
MARIE LIVINGSTON'S STEAKHOUSE	NONMINORITY FEMALE	LEON, FL	\$735.00
MARK'S LAWN MAINTENANCE INC	NONMINORITY MALE	LEON, FL	\$1,150.00
MCNEILL SEPTIC TANK COMPANY INC	NONMINORITY MALE	LEON, FL	\$3,575.00
METRO DELI/ELITE DELI & CATERING	NONMINORITY MALE	LEON, FL	\$456.80
MIKE VASILINDA PRODUCTIONS INC	NONMINORITY MALE	LEON, FL	\$9,346.25
MIKE'S MOVING	NONMINORITY MALE	LEON, FL	\$2,219.01
MILLS WELL DRILLING & PUMP SERVICES, INC.	NONMINORITY MALE	LEON, FL	\$9,375.00
MODERN MAILERS INC	NONMINORITY MALE	LEON, FL	\$3,845.90
MOWER MENDERS, INC	NONMINORITY MALE	LEON, FL	\$1,199.17
NATIONWIDE TRANSMISSION	NONMINORITY MALE	LEON, FL	\$27,385.55
NATURES FINEST	HISPANIC AMERICAN	LEON, FL	\$308,222.24
NATURE'S NEEDS	NONMINORITY MALE	LEON, FL	\$11,800.00
NE-RO TIRE AND BRAKE SERVICE, INC.	NONMINORITY MALE	LEON, FL	\$205.96

VENDOR NAME	ETHNICITY	COUNTY_STATE	EXPENDITURE AMT
NEWMAN'S AUTO AIR	NONMINORITY MALE	LEON, FL	\$1,570.00
NORTHSIDE MOWER	NONMINORITY MALE	LEON, FL	\$229.50
PARKER SERVICE	NONMINORITY MALE	LEON, FL	\$5,055.00
PARKWAY WRECKER SERVICE	NONMINORITY MALE	LEON, FL	\$44,155.90
PERSICA LANDSCAPING CO INC	NONMINORITY MALE	LEON, FL	\$40,276.00
PO` BOYS CREOLE CAFE	NONMINORITY MALE	LEON, FL	\$1,739.34
PRECISION MOBILE SHARPENING SRVC	NONMINORITY MALE	LEON, FL	\$265.98
PROTECTION SERVICES, INC	NONMINORITY MALE	LEON, FL	\$240.00
PROTOCOL COMMUNICATIONS INC	NONMINORITY MALE	WAKULLA, FL	\$3,450.00
PYRAMID EXCAVATION, INC. (ADA) TIM'S HAULING AND TRACTOR SER	NONMINORITY MALE	GADSDEN, FL	\$141,963.60
RAY'S GLASS SERVICE	NONMINORITY MALE	LEON, FL	\$919.42
REX THOMAS PEST CONTROL	NONMINORITY MALE	LEON, FL	\$5,945.00
RIGGINS FENCE CO	NONMINORITY MALE	LEON, FL	\$5,471.00
ROBERT THOMAS FURNITURE REFINISHING	NONMINORITY MALE	LEON, FL	\$8,360.00
ROBERT WILSON/WILSONS BBQ & CATERING	AFRICAN AMERICAN	LEON, FL	\$14,502.25
ROSSELOT'S REMODELING	NONMINORITY MALE	LEON, FL	\$73.09
ROWE DRILLING CO INC	NONMINORITY MALE	LEON, FL	\$204.00
RUSSELL DANIEL IRRIGATION	NONMINORITY MALE	GADSDEN, FL	\$65,926.90
S&T PAINTING	AFRICAN AMERICAN	LEON, FL	\$113,300.00
SAULS SIGNS	NONMINORITY MALE	LEON, FL	\$55.00
SERVICE PLUS INC	NONMINORITY MALE	LEON, FL	\$363,451.21
SESSALY ROSE TRANSIT	AFRICAN AMERICAN	LEON, FL	\$875.00
SHEFFIELD AUTO & TRUCK BODY SHOP, INC.	NONMINORITY MALE	LEON, FL	\$10,838.57
SHEFFIELD'S BODY SHOP	AFRICAN AMERICAN	LEON, FL	\$2,288.35
SIEMENS	NONMINORITY MALE	LEON, FL	\$73.00
SILVER PRODUCTIONS	NONMINORITY MALE	LEON, FL	\$2,300.00
SIMMONS MOVING & STORAGE INC	NONMINORITY MALE	LEON, FL	\$1,550.00
SIR SPEEDY PRINTING	NONMINORITY MALE	LEON, FL	\$42.48
SKELDING & COX	NONMINORITY MALE	LEON, FL	\$40,000.00
SOFT TOUCH CAR WASH OF TALLAHASSEE	NONMINORITY MALE	LEON, FL	\$2,430.22
SOFTWARE SOLUTIONS NOW	NONMINORITY FEMALE	LEON, FL	\$250.00
SOLOMAN'S PAINTING AND PRESSURE WASHING SERVICES	AFRICAN AMERICAN	LEON, FL	\$800.00
SONITROL OF TALLAHASSEE INC	NONMINORITY MALE	LEON, FL	\$509,088.82
SOUTHERN TRADITION LANDSCAPING	NONMINORITY MALE	LEON, FL	\$11,476.00
SOUTHSIDE MOWER & MAGNETO INC	NONMINORITY MALE	LEON, FL	\$58,691.81
STEAM MASTER	NONMINORITY MALE	LEON, FL	\$30.00
STEREO SALES	NONMINORITY MALE	LEON, FL	\$703.29
STRIPES UNLIMITED	NONMINORITY MALE	LEON, FL	\$854.00
STRONG AND JONES FUNERAL HOME INC	AFRICAN AMERICAN	LEON, FL	\$7,750.00
SUN COAST ELECTRIC NETWORKING	NONMINORITY MALE	LEON, FL	\$1,528.50
SUPERGLASS WINSHIELD REPAIR	NONMINORITY MALE	LEON, FL	\$520.00
SUPER-SUDS	NONMINORITY MALE	LEON, FL	\$34.85
SUZANNE DIAMBRA LANDSCAPING INC.	NONMINORITY FEMALE	LEON, FL	\$5,497.50
SWEETPEAS CAFE' & CATERING	NONMINORITY MALE	LEON, FL	\$1,450.00
TALAHASSEE FINEST WINDOW CLEANING CO.	NONMINORITY MALE	LEON, FL	\$29,409.00
TALLAHASSEE DEMOCRAT	NONMINORITY MALE	LEON, FL	\$4,782.79
TALLAHASSEE HYDRAULIC INC	NONMINORITY MALE	LEON, FL	\$728.80
TALLAHASSEE PAINT AND BODY SHOP	NONMINORITY MALE	LEON, FL	\$81,440.70
TALLAHASSEE WELDING & MACHINE SHOP INC	NONMINORITY FEMALE	LEON, FL	\$44,895.22

VENDOR NAME	ETHNICITY	COUNTY_STATE	EXPENDITURE AMT
TARGET COPY	NONMINORITY FEMALE	LEON, FL	\$13,253.71
TASTE BUDS	NONMINORITY FEMALE	LEON, FL	\$3,880.85
TAYLOR JANITORIAL SERVICES	AFRICAN AMERICAN	LEON, FL	\$147,513.26
TERMINAL SERVICE COMPANY	NONMINORITY MALE	LEON, FL	\$1,025.65
THE BLUEPRINT SHOP	NONMINORITY MALE	LEON, FL	\$5.00
THE COPY SHOP	NONMINORITY FEMALE	LEON, FL	\$3,174.62
THE FINISHING TOUCH	AFRICAN AMERICAN	LEON, FL	\$22,426.00
THE HONEY BAKED HAM COMPANY AND CAFE	NONMINORITY MALE	LEON, FL	\$974.70
THE PRINTER	NONMINORITY FEMALE	LEON, FL	\$1,345.00
THE SEINEYARD SEAFOOD RESTAURANT	NONMINORITY MALE	LEON, FL	\$553.15
THINK CREATIVE	NONMINORITY MALE	LEON, FL	\$20,300.00
TIRES ON THE MOVE	NONMINORITY MALE	LEON, FL	\$128.00
TJG DISTRIBUTERS INC, DBA 1800 RADIATOR OF TALLAHASSEE	NONMINORITY MALE	LEON, FL	\$568.28
UPTOWN CAFE	NONMINORITY MALE	LEON, FL	\$98.25
VIDEO TECH	NONMINORITY MALE	LEON, FL	\$75.00
VISUAL SOLUTIONS	NONMINORITY MALE	LEON, FL	\$1,828.00
W BUCKLEY REESE LANDSCAPING	NONMINORITY MALE	LEON, FL	\$7,553.96
WALKER BODY SHOP INC	NONMINORITY MALE	LEON, FL	\$279.50
WRIGHT WELDING	NONMINORITY MALE	LEON, FL	\$2,050.00

Utilization Details - Materials and Supplies

VENDOR NAME	ETHNICITY	COUNTY_STATE	EXPENDITURE AMT
ACCENT BLINDS	NONMINORITY MALE	LEON, FL	\$395.00
ACCURATE AUTO & FLEET, INC	NONMINORITY FEMALE	LEON, FL	\$1,918.44
AD-ART SIGNS	NONMINORITY MALE	LEON, FL	\$1,235.00
ADVANCED BUSINESS SYSTEMS	NONMINORITY MALE	LEON, FL	\$113,509.81
ADVANCED DATA SYSTEMS	NONMINORITY MALE	LEON, FL	\$103,601.00
AEGIS COMPUTER SERVICES, INC.	NONMINORITY FEMALE	LEON, FL	\$6,450.00
ALEXANDER TRAILERS, LLC	NONMINORITY MALE	LEON, FL	\$4,200.00
ALL ABOUT GUTTERS	NONMINORITY MALE	GADSDEN, FL	\$200.00
ALL PRO EQUIPMENT	NONMINORITY MALE	LEON, FL	\$6,640.36
ALSCO INC	NONMINORITY MALE	LEON, FL	\$12,826.14
AMERICAN AUDIO VISUAL, INC	NONMINORITY MALE	LEON, FL	\$26,922.25
AMERICAN PUMP & SUPPLY	NONMINORITY MALE	LEON, FL	\$14,462.70
ARCHITECTURAL HARDWARE PRODUCTS INC	NONMINORITY MALE	LEON, FL	\$430.00
ARTISTIC FLOWERS	NONMINORITY MALE	LEON, FL	\$109.50
ASHLEY FEED STORE	NONMINORITY MALE	LEON, FL	\$259.00
ASSOCIATED SERVICES AND SUPPLIES, INC.	NONMINORITY FEMALE	LEON, FL	\$320,220.78
AWARDS 4 U	NONMINORITY MALE	LEON, FL	\$10,098.23
B & B SPORTING GOODS INC	NONMINORITY FEMALE	LEON, FL	\$949.75
B & T SMALL ENGINES	NONMINORITY MALE	LEON, FL	\$4,221.00
BENTON PRODUCTS	NONMINORITY MALE	LEON, FL	\$589.75
BILL'S SIGNS	NONMINORITY MALE	LEON, FL	\$401.81
BLOSSOM'S FLOWERS	NONMINORITY MALE	LEON, FL	\$535.61
BOATWRIGHT TIMBER SERVICE	NONMINORITY MALE	LEON, FL	\$75.00
BRADLEY	NONMINORITY MALE	LEON, FL	\$560.00
BRADLEY POND LLC	NONMINORITY MALE	LEON, FL	\$1,000.00
BRIAN BARNARD'S FLOORING AMERICA INC	NONMINORITY MALE	LEON, FL	\$6,722.42
BURKES TRACTOR WORKS, LLC	NONMINORITY MALE	GADSDEN, FL	\$117,216.96
CABINETS FROM PARKER	NONMINORITY MALE	LEON, FL	\$12,741.60
CAPITAL CITY LUMBER COMPANY INC	NONMINORITY MALE	LEON, FL	\$45.00
CAPITAL HITCH SERVICE	NONMINORITY MALE	LEON, FL	\$4,673.16
CAPITAL RUBBER & INDUSTRIAL SUPPLY CO INC	NONMINORITY MALE	LEON, FL	\$19,621.43
CARPET STUDIO INC	NONMINORITY MALE	LEON, FL	\$33,400.86
CARQUEST AUTO PARTS	NONMINORITY MALE	LEON, FL	\$80,484.27
CARROLLS BOOT COUNTRY	NONMINORITY MALE	LEON, FL	\$1,437.05
CELLULAR SALES	NONMINORITY MALE	LEON, FL	\$53.97
COASTAL WATER SYSTEMS	NONMINORITY MALE	LEON, FL	\$2,431.00
COLLIER INTERIORS	NONMINORITY MALE	LEON, FL	\$1,925.71
COMPUSA INC	NONMINORITY MALE	LEON, FL	\$14,428.93
CONNIE LILES AUTO PARTS	NONMINORITY FEMALE	LEON, FL	\$93.13
CONTRACT HARDWARE OF FLORIDA	NONMINORITY MALE	LEON, FL	\$114,498.21
COPYFAX 2000, INC	NONMINORITY MALE	LEON, FL	\$590.00
CORNERSTONE TOOL & FASTENER INC	NONMINORITY FEMALE	LEON, FL	\$48,226.19
CROSS CREEK CENTER	NONMINORITY MALE	LEON, FL	\$121,976.04
CUSHING SPECIALTY CO. INC.	NONMINORITY MALE	LEON, FL	\$1,068.00
CUSTOM GUTTER CORPORATION	NONMINORITY MALE	LEON, FL	\$739.00
CYPRESS PUBLICATIONS	NONMINORITY MALE	LEON, FL	\$10.36

VENDOR NAME	ETHNICITY	COUNTY_STATE	EXPENDITURE AMT
DACAR FIRE PROTECTION SYSTEMS, INC	NONMINORITY MALE	LEON, FL	\$1,428.00
DELTA TECHNOLOGIES INC	NONMINORITY MALE	LEON, FL	\$981,783.10
DIAL COMMUNICATIONS	NONMINORITY MALE	LEON, FL	\$1,194.50
DOCS (DEANNE'S OFFICE SUPPLY)	NONMINORITY FEMALE	LEON, FL	\$292,086.37
DOOR PRODUCTS	NONMINORITY MALE	LEON, FL	\$78,081.20
ELI ROBERTS & SONS INC	NONMINORITY MALE	LEON, FL	\$6,132,079.02
ELINOR DOYLE FLORIST	NONMINORITY MALE	LEON, FL	\$63.96
EMERALD COAST RV CENTER	NONMINORITY MALE	GADSDEN, FL	\$4.56
ENGINEERING & EQUIPMENT CO	NONMINORITY MALE	LEON, FL	\$23,384.38
ESPOSITO GARDEN SERVICE	NONMINORITY MALE	LEON, FL	\$69,963.26
EXECUTIVE OFFICE FURNITURE INC	NONMINORITY FEMALE	LEON, FL	\$145,818.42
FAST SIGNS	NONMINORITY MALE	LEON, FL	\$2,968.75
FLEET SUPPLY INC	NONMINORITY MALE	LEON, FL	\$11,483.01
FLORIDA FARM & FEED INC	NONMINORITY MALE	LEON, FL	\$3,662.30
FOURAKER ELECTRONICS INC	NONMINORITY MALE	LEON, FL	\$587.83
FULL PRESS APPAREL, INC	NONMINORITY MALE	LEON, FL	\$2,475.00
G & M ENTERPRISES	AFRICAN AMERICAN	LEON, FL	\$308.35
G WILLIE'S UNIFORM	NONMINORITY FEMALE	LEON, FL	\$31,938.18
GARDEN PRODUCTS	AFRICAN AMERICAN	LEON, FL	\$21,760.00
GEORGIA-FLORIDA BURGLAR ALARM COMPANY	NONMINORITY MALE	LEON, FL	\$50,564.59
GLASS SERVICE CENTER	NONMINORITY MALE	LEON, FL	\$4,125.24
GRAPHICS BUSINESS SYSTEMS	NONMINORITY FEMALE	LEON, FL	\$1,950.00
GRIMES CRANE SERVICE	NONMINORITY MALE	LEON, FL	\$45,345.00
GULF ATLANTIC CULVERT CO	NONMINORITY MALE	LEON, FL	\$7,983.60
GULF COAST LUMBER & SUPPLY INC	NONMINORITY MALE	LEON, FL	\$10,410.49
HAVANA SOD & PALLET, INC	NONMINORITY MALE	LEON, FL	\$750.00
HAYES COMPUTER SYSTEMS	NONMINORITY FEMALE	LEON, FL	\$649,667.86
HD SUPPLY WATERWORKS, LTD	NONMINORITY MALE	LEON, FL	\$3,093.37
HEINZ BROTHERS NURSERY	NONMINORITY MALE	LEON, FL	\$813.00
HOLLEY INC	NONMINORITY MALE	LEON, FL	\$16,813.97
HOWDY'S RENT A TOILET	NONMINORITY MALE	LEON, FL	\$2,542.50
HUGHES SUPPLY	NONMINORITY MALE	LEON, FL	\$1,801.11
INSIGHT DIRECT	NONMINORITY MALE	LEON, FL	\$20,991.30
INTERSTATE BATTERY SYSTEM	NONMINORITY MALE	LEON, FL	\$3,377.54
INTERSTATE FIRE SYSTEMS INC	NONMINORITY MALE	LEON, FL	\$5,633.39
JH DOWLING INC	NONMINORITY MALE	LEON, FL	\$39,670.46
JOHNSON'S LUMBER & SUPPLY, INC.	NONMINORITY MALE	LEON, FL	\$1,267.67
JOHNSTONE SUPPLY	NONMINORITY MALE	LEON, FL	\$24,166.51
JUST RIGHT SUPPLY INC	NONMINORITY MALE	LEON, FL	\$8,437.68
KEENS PORTABLE BUILDING	NONMINORITY MALE	LEON, FL	\$1,150.00
KELLY BROS SHEET METAL	NONMINORITY MALE	LEON, FL	\$339.00
LANDMARK SYSTEMS	NONMINORITY MALE	LEON, FL	\$8,335.00
LEE TRAILER SALES	NONMINORITY MALE	LEON, FL	\$46,802.64
LESCO-PROX	NONMINORITY MALE	LEON, FL	\$41,142.41
LPS RENTALS INC	NONMINORITY MALE	LEON, FL	\$84,000.00
MACK BROTHERS LANDSCAPE NURSERY	AFRICAN AMERICAN	LEON, FL	\$17,747.65
MANNING & SMITH TILE CO. INC.	NONMINORITY MALE	LEON, FL	\$17,995.25
MARPAN SUPPLY CO	NONMINORITY MALE	LEON, FL	\$308,363.65
MAYS MUNROE INC	NONMINORITY MALE	LEON, FL	\$5,222.00

VENDOR NAME	ETHNICITY	COUNTY_STATE	EXPENDITURE AMT
MCGEE TIRE STORES	NONMINORITY MALE	LEON, FL	\$2,081.64
MCNAMARA TRAILERS	NONMINORITY MALE	LEON, FL	\$2,175.00
METAL FABRICATION & SALES OF TALLAHASSEE	NONMINORITY MALE	LEON, FL	\$5,321.99
MILLER GLASS	NONMINORITY MALE	LEON, FL	\$52,495.00
MILLER SEPTIC TANKS	NONMINORITY MALE	LEON, FL	\$2,350.00
MILLER SHEET METAL	NONMINORITY MALE	LEON, FL	\$15,834.03
MITCHELL BROTHERS	NONMINORITY MALE	LEON, FL	\$455.82
MODERN CABINETS & FIXTURES INC	NONMINORITY MALE	LEON, FL	\$3,300.00
MULVANEYS	NONMINORITY MALE	LEON, FL	\$5,066.57
MUSICMASTERS	NONMINORITY MALE	LEON, FL	\$10,611.29
NATIVE NURSERIES	NONMINORITY MALE	LEON, FL	\$32,064.30
NEECE TRUCK TIRE CENTER INC	NONMINORITY MALE	LEON, FL	\$88,073.32
NORTHLAND MFG INC	NONMINORITY MALE	LEON, FL	\$4,020.63
OFFICE BUSINESS SYSTEMS INC	NONMINORITY MALE	LEON, FL	\$15,839.83
OFFICE EQUIPMENT SOLUTIONS	NONMINORITY MALE	LEON, FL	\$4,275.00
OFFICE SYSTEMS CONSULTANTS INC.	NONMINORITY FEMALE	LEON, FL	\$9,668.96
ONE HOUR SIGNS & DESIGNS	NONMINORITY MALE	LEON, FL	\$4,642.84
OSCEOLA SUPPLY, INC.	NONMINORITY FEMALE	LEON, FL	\$273.20
PANTHER CREEK SOD FARMS	NONMINORITY MALE	LEON, FL	\$705.00
PARAMEDICAL SERVICES INC	NONMINORITY MALE	LEON, FL	\$43,362.75
PAUL PRODUCTS COMPANY (PPC)	NONMINORITY MALE	LEON, FL	\$1,232.75
PEDDIE CHEMICAL COMPANY	NONMINORITY MALE	LEON, FL	\$30,531.09
PIT STOP PORTABLE TOILETS OF TALLAHASSEE	NONMINORITY MALE	LEON, FL	\$33,565.63
PLANTS & DESIGN	NONMINORITY MALE	LEON, FL	\$1,273.92
POINT GLASS & METAL	NONMINORITY MALE	LEON, FL	\$2,012.00
POLY ASPHALT INC	NONMINORITY MALE	WAKULLA, FL	\$86,330.36
PROCTOR & PROCTOR INC	NONMINORITY MALE	LEON, FL	\$89,598.89
PROFESSIONAL SAFETY EDUCATORS, INC	NONMINORITY MALE	LEON, FL	\$49,288.90
QUALITY WATER SUPPLY	NONMINORITY MALE	LEON, FL	\$9,063.12
R&R CORPORATE SYSTEMS, INC	AFRICAN AMERICAN	LEON, FL	\$55,809.75
RAY LYNN DISTRIBUTORS	NONMINORITY MALE	LEON, FL	\$50.00
RED ENTERPRISES	NONMINORITY MALE	LEON, FL	\$2,595.41
REVELL	NONMINORITY MALE	LEON, FL	\$180.00
REXEL SOUTHERN	NONMINORITY MALE	LEON, FL	\$82,681.37
RING RENT	NONMINORITY MALE	LEON, FL	\$1,606.25
RIVERS BAIT & TACKLE	NONMINORITY MALE	LEON, FL	\$210.00
ROMAC LUMBER	NONMINORITY MALE	LEON, FL	\$24,725.29
ROSEMOUNT % EXECUTIVE OFFICE FURNITURE	NONMINORITY MALE	LEON, FL	\$8,641.10
ROWLAND PUBLISHING INC	NONMINORITY MALE	LEON, FL	\$1,408.50
ROYSTER'S STORAGE VAN RENTALS, INC.	NONMINORITY MALE	LEON, FL	\$3,385.00
RUPPSHIRTS, INC	NONMINORITY MALE	LEON, FL	\$7,347.00
SCAN HAUS	NONMINORITY MALE	LEON, FL	\$1,982.00
SEACOAST SUPPLY	NONMINORITY MALE	LEON, FL	\$109,337.29
SGT RENTALS AND SALES	NONMINORITY MALE	LEON, FL	\$9,400.00
SHERWIN WILLIAMS	NONMINORITY MALE	LEON, FL	\$2,330.39
SIGNPRINTERS	NONMINORITY MALE	LEON, FL	\$2,085.05
SIGNS NOW	NONMINORITY MALE	LEON, FL	\$8,349.37
SIGNS UNLIMITED	NONMINORITY FEMALE	LEON, FL	\$11.00
SIMPLER SOLAR SYSTEMS INC	NONMINORITY MALE	LEON, FL	\$3,810.00

VENDOR NAME	ETHNICITY	COUNTY_STATE	EXPENDITURE AMT
SOUTH GEORGIA BRICK	NONMINORITY MALE	LEON, FL	\$189.00
SOUTHEAST DIGITAL NETWORKS	NONMINORITY MALE	LEON, FL	\$1,124.26
SOUTHEAST PROPANE	NONMINORITY MALE	LEON, FL	\$1,823.79
STEVE ROSS SHEETMETAL	NONMINORITY MALE	LEON, FL	\$930.00
SUNFLOWER SMALL ENGINES	NONMINORITY MALE	LEON, FL	\$7,339.10
SUPER SIGNS	NONMINORITY MALE	LEON, FL	\$185.00
TALLAHASSEE CAMERA & IMAGE CENTER	NONMINORITY MALE	LEON, FL	\$2,215.00
TALLAHASSEE ENGRAVING & AWARDS INC	NONMINORITY MALE	LEON, FL	\$1,451.50
TALLAHASSEE FORD LINCOLN MERCURY	NONMINORITY MALE	LEON, FL	\$50,347.52
TALLAHASSEE NURSERIES	NONMINORITY MALE	LEON, FL	\$1,801.63
TALLAHASSEE STAMP COMPANY	NONMINORITY MALE	LEON, FL	\$212.90
TALLAHASSEE TURF	NONMINORITY MALE	WAKULLA, FL	\$17,070.00
TALLAHASSEE WINAIR COMPANY	NONMINORITY MALE	LEON, FL	\$3,727.70
TERRY'S AWNING & CANVAS INC	NONMINORITY MALE	GADSDEN, FL	\$3,630.00
THE SWEET SHOP	NONMINORITY MALE	LEON, FL	\$245.00
THE CLOTHESLINE	NONMINORITY MALE	LEON, FL	\$8,064.44
THE PAINT CENTER	NONMINORITY MALE	LEON, FL	\$39,198.54
THE SAW-SAW PATCH COUNTRY WOODCRAFTS	NONMINORITY MALE	LEON, FL	\$640.00
THE SHOE BOX	NONMINORITY MALE	LEON, FL	\$50,312.17
THE STORAGE CENTER	NONMINORITY MALE	LEON, FL	\$5,636.00
TODDS GARAGE DOORS	NONMINORITY MALE	LEON, FL	\$1,300.00
TROPHY KING	NONMINORITY MALE	LEON, FL	\$15.90
TRUCK N' CAR CONCEPTS	NONMINORITY MALE	LEON, FL	\$17,289.50
TURNER SUPPLY COMPANY	NONMINORITY MALE	LEON, FL	\$2,172.17
ULTIMATE SOUND & LIGHT	NONMINORITY MALE	LEON, FL	\$2,589.72
WESLEY THIGPEN GENERAL SHEET METAL	NONMINORITY MALE	LEON, FL	\$210.00
WESTON TRAWICK, INC.	NONMINORITY MALE	LEON, FL	\$252.00
WHIDDON GLASS CO INC	NONMINORITY MALE	LEON, FL	\$11,852.38
WILEY AUTO PARTS	NONMINORITY MALE	LEON, FL	\$19.06
WILLIAMS COMMUNICATIONS	NONMINORITY FEMALE	LEON, FL	\$160.00
WILLIAMS COMMUNICATIONS	NONMINORITY MALE	LEON, FL	\$15,360.55
WILLIAMS PANHANDLE PROPANE	NONMINORITY MALE	LEON, FL	\$176.18
YOUR LOGO HERE	AFRICAN AMERICAN	LEON, FL	\$50.00

***APPENDIX B:
ANALYSIS OF RACE/GENDER/
ETHNICITY EFFECTS ON
SELF-EMPLOYMENT
PROPENSITY AND EARNINGS***

APPENDIX B

ANALYSIS OF RACE/GENDER/ETHNICITY EFFECTS ON SELF-EMPLOYMENT PROPENSITY AND EARNINGS

Executive Summary

The purpose of this analysis is to examine the effects of race and gender, along with other individual economic and demographic characteristics, on individuals' participation in the private sector as self-employed business operators, and on their earnings as a result of their participation in five categories of private sector business activity in the Tallahassee, FL, Consolidated Metropolitan Statistical Area (CMSA)¹. Findings for minority business enterprises are compared to the self-employment participation and earnings record of nonminority male business owners to determine if a disparity in self-employment rates and earnings exists, and if it is attributable to differences in race, gender, or ethnicity. Adopting the methodology and variables employed by a City of Denver disparity study (see *Concrete Works v. City and County of Denver* ²), we use Public Use Microdata Samples (PUMS) data derived from the 2000 Census of Population and Housing, to which we apply appropriate regression statistics to draw conclusions.

To guide this investigation, three general research questions were posed. Questions and variables used to respond to each, followed by a report of findings, are reported below:

1. Are racial, ethnic and gender minority groups less likely than nonminority males to be self-employed?

This analysis examined the statistical effects of the following variables on the likelihood of being self-employed in the study market area: Race, ethnicity, and gender of business owner (African American, Asian American, Hispanic American, Native American, nonminority women, nonminority men), marital status, age, self-reported health-related disabilities, availability of capital (household property value, monthly total mortgage payments, unearned income) and other characteristics (number of individuals over the age of 65 living in household, number of children under the age of 18 living in household) and level of education.

2. Does racial/gender/ethnic status have an impact on individual's self-employment earnings?

This analysis examined the statistical effects of the following variables on income from self-employment for business owners in the market area: Race, ethnicity, and gender of business owner (African American, Asian American, Hispanic American, Native American, nonminority women, nonminority men), marital status, age, self-reported health-related disabilities, and availability of capital (household property value, monthly total mortgage payments, unearned income) and level of education.

¹ The Tallahassee CMSA includes the following counties: Leon County, Florida; Gadsden County, Florida; Wakulla County, Florida; and Jefferson County, Florida.

² *Concrete Works v. City and County of Denver*, 321 F.3d 950 (10th Cir. 2003).

3. If Minority and Women's Business Enterprises (M/WBEs) and nonminority males shared similar traits and marketplace "conditions" (that is, similar "rewards" in terms of capital and asset accrual), what would be the effect on rates of self-employment by race, ethnicity and gender?

Derived from a similar model employed by a City of Denver disparity study, MGT created a model that leveraged statistical findings in response to the first two questions. The objectives were to determine if race, gender, and ethnic effects derived from those findings would persist if nonminority male demographic and economic characteristics were combined with M/WBE self-employment data. More precisely, in contrast to Question 1, which permitted a comparison of self-employment rates based on demographic and economic characteristics reported by the 2000 census for individual M/WBE categories and nonminority males, respectively, this analysis posed the question, "How would M/WBE rates change, if M/WBE's operated in a nonminority male business world and how much of this change is attributable to race, gender or ethnicity?"

Findings:

1. Are racial, ethnic and gender minority groups less likely than nonminority males to be self-employed?
 - In all industries in the Tallahassee CMSA, nonminority males were over two and a half times as likely to be self-employed as African Americans, Hispanic Americans, and nonminority women.³
 - In the Tallahassee CMSA, nonminority males were over three and a half times as likely as nonminority women to be self-employed in the construction industry.
 - In the Tallahassee CMSA, nonminority males were nearly four times as likely as African Americans to be self-employed in professional services.
 - African Americans were less likely to be self-employed than were nonminority males in all industries.
2. Does race/gender/ethnic status have an impact on an individual's self-employment earnings?
 - In the Tallahassee CMSA, African Americans, Hispanic Americans, and nonminority women reported significantly lower earnings in all business type categories.
 - In the other services industry, African Americans, Hispanic American, and nonminority women reported significantly lower earnings than nonminority males in the Tallahassee CMSA: 19.2 percent, 96.3 percent, and 38.2 percent, respectively.

³ These 'likelihood' characteristics were derived from Exhibit 1 by calculating the inverse of the reported odds ratios.

- The most egregious effect on earnings elasticities was found in other services for Hispanic Americans. In other services, Hispanic Americans earned 96.3 percent less than nonminority males.
3. If M/WBEs and nonminority males shared similar traits and marketplace “conditions” (that is, similar “rewards” in terms of capital and asset accrual), what would be the effect on rates of self-employment by race, ethnicity, and gender?
- Overall, comparing self-employed nonminority males with self-employed African Americans in the Tallahassee CMSA, over 70 percent of the disparity in self-employment rates was attributable to race differences.
 - Comparing self-employed nonminority males with self-employed African Americans in the Tallahassee CMSA construction industry, over 67 percent of the disparity in self-employment rates was attributable to race differences.
 - Comparing self-employed nonminority males with self-employed African Americans in Tallahassee CMSA professional services, over 70 percent of the disparity in self-employment rates was attributable to race differences.
 - Comparing self-employed nonminority males with self-employed African Americans in Tallahassee CMSA other services, over 80 percent of the disparity in self-employment rates was attributable to gender differences.

B.1.0 Introduction

This report analyzes the availability of minority, nonminority women, and nonminority male firms in five categories of private sector business activity in the City of Tallahassee. The goal of this investigation is to examine the effects of race and gender, along with other individual economic and demographic characteristics, on individuals’ participation in the private sector as self-employed business operators, and on their earnings as a result of their participation. Ultimately, we will compare these findings to the self-employment participation and earnings record of nonminority male business owners to determine if a disparity in self-employment rates and earnings exists, and if it is attributable to racial or gender discrimination in the marketplace. Data for this investigation are provided by the Public Use Microdata Samples (PUMS) data derived from the 2000 Census of Population and Housing, to which we apply appropriate regression statistics to draw conclusions. **Exhibit B-1** presents a general picture of self-employment rates by race, median earnings, and sample sizes (n’s) in the City of Tallahassee CMSA, calculated from the five percent PUMS census sample.

The next section will discuss the research basis for this examination to lay the groundwork for a description of the models and methodologies to be employed. This will be followed by a presentation of findings regarding minority status effects on self-employment rates, self-employment earnings, and attributions of these differences to discrimination, per se.

**EXHIBIT B-1
PERCENTAGE SELF-EMPLOYED/1999 EARNINGS BY
RACE/GENDER/ETHNIC CATEGORY
CITY OF TALLAHASSEE CMSA**

Race/Ethnic/Gender Category	Percent of the Population Self-Employed	1999 Sample Census n	1999 Median Earnings
Nonminority Males	22.93%	1,025	\$39,500.00
African American	6.83%	542	\$22,500.00
Hispanic American	8.70%	69	\$16,900.00
Asian American	21.74%	46	\$20,000.00
Native American	22.22%	18	\$112,500.00
Nonminority Women	10.40%	683	\$30,000.00
TOTAL	15.23%	2,383	\$35,000.00

Source: PUMS data from 2000 Census of Population and Housing.

B.2.0 Self-Employment Rates and Earnings as an Analog of Business Formation and Maintenance

Research in economics consistently supports the finding of group differences by race and gender in rates of business formation (see *Journal of Econometrics*, Vol. 61, Issue 1, devoted entirely to the econometrics of labor market discrimination and segregation). For a disparity study, however, the fundamental question is “How much of this difference is due to factors that would appear, at least superficially, to be related to group differences other than race, ethnicity, or gender, and how much can be attributed to discrimination effects related to one’s race/ethnic/gender affiliation?” We know, for instance, that most minority groups have a lower median age than do non-Hispanic whites (PUMS, 2000). We also know, in general, that the likelihood of being self-employed increases with age (PUMS, 2000). When social scientists speak of nonracial group differences, they are referring to such things as general differences in religious beliefs as these might influence group attitudes toward contraception, and, in turn, both birthrates and median age. A disparity study, therefore, seeks to examine these other important demographic and economic variables in conjunction with race and ethnicity, as they influence group rates of business formation, to determine if we can assert that discrimination against minorities is sufficiently present to warrant consideration of public sector legal remedies such as affirmative action and minority set-aside contracting.

Questions about marketplace dynamics affecting self-employment—or, more specifically, the odds of being able to form one’s own business and then to excel (that is, generate earnings growth)—are at the heart of disparity analysis research. Whereas early disparity studies tended to focus on gross racial disparities, merely documenting these is insufficient for inferring discrimination effects per se without “partialling out” effects due to nondiscriminatory factors. Moreover, to the extent that discrimination exists, it is likely to inhibit both the formation of minority business enterprises and their profits and growth. Consequently, earlier disparity study methodology and analysis have failed to account for the effects of discrimination on minority self-employment in at least two ways: (1) a failure to account adequately for the effects of discriminatory barriers

minorities face “up front” in attempting to form businesses; and (2) a failure to isolate and methodologically explain discrimination effects once minority businesses are formed.

The next section addresses these shortcomings, utilizing PUMS data derived from the 2000 U.S. Census to answer research questions about the effects of discrimination on self-employment and self-employment earnings using multiple regression statistics.

B.3.0 Research Questions, Statistical Models, and Methods

Two general research questions were posed in the initial analysis:

- Are racial, ethnic, and gender minority groups less likely than nonminority males to be self-employed?
- Does race/gender/ethnic status have an impact on individuals’ earnings?

A third question, to be addressed later—How much does race/ethnic/gender discrimination influence the probability of being self-employed?—draws conclusions based on findings from questions one and two.

To answer the first two questions, we employed two multivariate regression techniques, respectively: logistic regression and linear regression. To understand the appropriate application of these regression techniques, it is helpful to explore in greater detail the questions we are trying to answer. The dependent variables in questions I and II—that is, the phenomena to be explained by influences such as age, race, gender, and disability status, for example (the independent or “explanatory” variables)—are, respectively: the probability of self-employment status (a binary, categorical variable based on two possible values: 0 = not self-employed/1 = self-employed) and 1999 earnings from self-employment (a continuous variable). In our analysis, the choice of regression approach was based on the scale of the dependent variable (in question I, a categorical scale with only two possible values, and in question II, a continuous scale with many possible values). Because binary logistic regression is capable of performing an analysis in which the dependent variable is categorical, it was employed for the analysis of question I.⁴ To analyze question II in which the dependent variable is continuous, we used simple linear regression.

B.3.1 Deriving the Logistic Regression Model from the Simple Linear Model

The logistic regression model can be derived with reference to the simple linear regression model expressed mathematically as:

$$Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \beta_3 X_3 + \beta_4 X_4 + \beta_5 X_5 + \dots + \varepsilon$$

⁴ Logistical regression, or logit, models generate predicted probabilities that are almost identical to those calculated by a probit procedure, used in *Concrete Works v. City and County of Denver* case. Logit, however, has the added advantage of dealing more effectively with observations at the extremes of a distribution. For a complete explanation, see *Interpreting Probability Models* (T.F. Liao, Text 101 in the Sage University series).

Where:

Y = a continuous variable (e.g., 1999 earnings from self-employment)
 β_0 = the constant, representing the value of Y when $X_i = 0$
 β_i = coefficient representing the magnitude of X_i 's effect on Y
 X_i = the independent variables, such as age, human capital (e.g., level of education), availability of capital, race/ethnicity/gender, etc.
 ε = the error term, representing the variance in Y unexplained by X_i

This equation may be summarized as:

$$E(Y) = \mu = \sum_{k=1}^K \beta_k x_k$$

in which Y is the dependent variable and μ represents the expected values of Y as a result of the effects of β , the explanatory variables. When we study a random distribution of Y using the linear model, we specify its expected values as a linear combination of K unknown parameters and the covariates or explanatory variables. When this model is applied to data in the analysis, we are able to find the statistical link between the dependent variable and the explanatory or independent variables.

Suppose we introduce a new term, η , into the linear model such that:

$$\eta = \mu = \sum_{k=1}^K \beta_k x_k$$

When the data are randomly distributed, the link between η and μ is linear, and a simple linear regression can be used. However, to answer the first question, the categorical dependent variable was binomially distributed. Therefore, the link between η and μ became $\eta = \log[\mu/(1-\mu)]$ and logistic regression was utilized to determine the relationship between the dependent variable and the explanatory variables, calculated as a probability value (e.g., the probability of being self-employed when one is African American). The logistic regression model is expressed mathematically as:

$$\log[\mu/1(1-\mu)] = \alpha + \beta_i X_n + \varepsilon$$

Where:

$(\mu/1-\mu)$ = the probability of being self-employed
 α = a constant value
 β_i = coefficient corresponding to independent variables
 X_n = selected individual characteristic variables, such as age, marital status, education, race, and gender
 ε = error term, representing the variance in Y unexplained by X_i

This model can now be used to determine the relationship between a single categorical variable (0 = not self-employed/1 = self-employed) and a set of characteristics hypothesized

to influence the probability of finding a 0 or 1 value for the categorical variable. The result of this analysis illustrates not only the extent to which a characteristic can increase or decrease the likelihood that the categorical variable will be a 0 or a 1, but also whether the effect of the influencing characteristics is positive or negative in relation to being self-employed.

B.4.0 Results of the Self-Employment Analysis

B.4.1 Question I: Are Racial, Ethnic, and Gender Minority Groups Less Likely than Nonminority Males to Be Self-Employed?

To derive a set of variables known to predict employment status (self-employed/not self-employed), we used the 5 percent PUMS data from Census 2000. Binary logistic regression was used to calculate the probability of being self-employed, the dependent variable, with respect to socioeconomic and demographic characteristics selected for their potential to influence the likelihood of self-employment. The sample for the analysis was limited to labor force participants who met to the following criteria:

- Resident of the Tallahassee CMSA
- Self-employed in construction, professional services, other services, architecture and engineering,⁵ or goods and supplies
- Employed full-time (more than 35 hours a week)
- 18 years of age or older
- Employed in the private sector

Next, we derived the following variables hypothesized as predictors of employment status:

- **Race and Sex:** African American, Asian American, Hispanic American, Native American, nonminority woman, nonminority male
- **Availability of Capital:** Homeownership, home value, mortgage rate, unearned income, residual income
- **Marital Status**
- **Ability to Speak English Well**
- **Disability Status:** From individuals' reports of health-related disabilities
- **Age and Age Squared:** Squaring the age variable acknowledges the positive, curvilinear relationship between each year of age and earnings.

⁵ Due to inadequate sample numbers for all races in the Architecture and Engineering PUMS 2000 data, A & E was merged with the Professional Services category.

- ***Owner's Level of Education***
- ***Number of Individuals Over the Age of 65 Living in Household***
- ***Number of Children Under the Age of 18 Living in Household***

B.4.1.1 Findings

Binary logistic regression analysis provided estimates of the relationship between the independent variables described above and the probability of being self-employed in the four types of business industries. In **Exhibit B-2**, odds ratios are presented by minority group, reporting the effect of race/ethnicity/gender on the odds of being self-employed in 1999, holding all other variables constant. Full regression results for all the variables are presented in **Appendix C**.

**EXHIBIT B-2
SELF-EMPLOYMENT "ODDS RATIOS" OF MINORITY GROUPS RELATIVE TO
NONMINORITY MALES AFTER CONTROLLING FOR
SELECTED DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS
CITY OF TALLAHASSEE CMSA**

Race/Ethnic Group	All Industries	Construction	Professional Services	Other Services	Goods & Supplies
African American	0.326	0.573	0.257	0.477	0.069
Hispanic American	0.395	*	1.591	0.300	1.114
Asian American	1.007	*	1.860	0.984	2.038
Native American	1.231	3.711	*	1.654	*
Nonminority Women	0.392	0.282	0.357	1.042	0.732

Source: PUMS data from 2000 Census of Population and Housing and MGT of America, Inc., calculations using SPSS.

Note: **Bold** indicates that the estimated "odds ratio" for the group was statistically significant. The architecture and engineering business industry was excluded from this analysis because of the insufficient data.

* There were insufficient census numbers available for analysis.

The results reveal the following:

- In all industries in the Tallahassee CMSA, nonminority males were over two and a half times as likely to be self-employed as African Americans, Hispanic Americans, and nonminority women.⁶
- In the Tallahassee CMSA, nonminority males were over three and a half times as likely as nonminority women to be self-employed in the construction industry.
- In the Tallahassee CMSA, nonminority males were nearly four times as likely as African Americans to be self-employed in professional services.

⁶ These 'likelihood' characteristics were derived from Exhibit 1 by calculating the inverse of the reported odds ratios.

- African Americans were less likely to be self-employed than were nonminority males in all industries.

B.4.2 Question II: Does Race/Gender/Ethnic Status Have an Impact on Individuals' Earnings?

To answer this question, we compared self-employed, minority, and women entrepreneurs' earnings to those of nonminority males in the Tallahassee CMSA, when the effect of other demographic and economic characteristics was controlled or "neutralized." That is, we were able to examine the earnings of self-employed individuals of similar education levels, ages, etc., to permit earnings comparisons by race/gender/ethnicity.

To derive a set of variables known to predict earnings, the dependent variable, we used 1999 wages from employment for self-employed individuals, as reported in the 5 percent PUMS data. These included:

- ***Race and Sex:*** African American, Asian American, Hispanic American, Native American, nonminority woman, nonminority males
- ***Availability of Capital:*** Homeownership, home value, mortgage rate, unearned income, residual income
- ***Marital Status***
- ***Ability to Speak English Well***
- ***Disability Status:*** From individuals' reports of health-related disabilities
- ***Age and Age Squared:*** Squaring the age variable acknowledges the positive, curvilinear relationship between each year of age and earnings.
- ***Owner's Level of Education***

B.4.2.1 Findings

Exhibit B-3 presents the results of the linear regression model estimating the effects of selected demographic and economic variables on self-employment earnings. Each number (coefficient) in the exhibit represents a percent change in earnings. For example, the corresponding number for an African American in all industries is -.404, meaning that an African American will earn 40.4 percent less than a nonminority male when the statistical effects of the other variables in the equation are "controlled for." Full regression results for all the variables are presented in **Appendix C**.

EXHIBIT B-3
EARNINGS ELASTICITIES OF MINORITY GROUPS RELATIVE TO NONMINORITY
MALES AFTER CONTROLLING FOR
SELECTED DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS
CITY OF TALLAHASSEE CMSA

Race/Ethnic Group	All Industries	Construction	Professional Services	Other Services	Goods & Supplies
African American	-0.139	-0.278	-0.457	-0.192	-0.784
Hispanic American	-0.374	*	0.469	-0.963	-0.757
Asian American	0.046	*	0.172	0.041	0.569
Native American	0.852	-0.101	*	0.943	*
Nonminority Women	-0.129	0.294	-0.176	-0.382	0.056

Source: PUMS data from 2000 Census of Population and Housing and MGT of America, Inc., calculations using SPSS.

Note: **Bold** indicates that the estimated "elasticities" for the group were statistically significant. The architecture and engineering business industry was excluded from this analysis because of insufficient data.

* There were insufficient census numbers available for analysis.

The results reveal the following:

- In the Tallahassee CMSA, African Americans, Hispanic Americans, and nonminority women reported significantly lower earnings in all business type categories.
- In the other services industry, African Americans, Hispanic American, and nonminority women reported significantly lower earnings than nonminority males in the Tallahassee CMSA: 19.2 percent, 96.3 percent, and 38.2 percent, respectively.
- The most egregious effect on earnings elasticities was found in other services for Hispanic Americans. In other services, Hispanic Americans earned 96.3 percent less than nonminority males.

B.4.3 Disparities in Rates of Self-Employment: How Much Can Be Attributed to Discrimination?

Results of the analyses of self-employment rates and 1999 self-employment earnings revealed general disparities between minority and nonminority self-employed individuals whose businesses were located in the Tallahassee CMSA.

Exhibit B-4 presents the results of these analyses. Column A reports observed employment rates for each race/gender group, calculated directly from the PUMS 2000 data. To obtain values in columns B and C, we calculated two predicted self-employment rates using the following equation:

$$Pr ob(y = 1) = \sum_{k=1}^K (e^{\beta_k x_k} / 1 + e^{\beta_k x_k})$$

Where:

- $Pr ob(y = 1)$ = represents the probability of being self-employed
- β_k = coefficient corresponding to the independent variables used in the logistic regression analysis of self-employment probabilities
- x_k = the mean values of these same variables

The first of these predicted self-employment rate calculations (in column B) presents nonminority male self-employment rates as they would be if their characteristics (that is, x_k , or mean values for the independent variables) were applied to minority market structures (represented for each race by their β_k or odds coefficient values). The second self-employment rate calculation (in column C) presents minority self-employment rates as they would be if minorities were rewarded in a similar manner as nonminority males in the nonminority male market structure: that is, by multiplying the minority means (i.e., characteristics) by the estimated nonminority coefficients for both race and the other independent variables.

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**EXHIBIT B-4
OBSERVED AND PREDICTED SELF-EMPLOYMENT RATES**

CITY OF TALLAHASSEE CMSA					
Business/Race Group	Observed Self-Employment Rates	White Characteristics and Own Market Structure	Own Characteristics and White Market Structure	Disparity Ratio (column A divided by column C)	Portion of Difference Due to Discrimination
	(A)	(B)	(C)	(D)	(E)
Overall					
Nonminority Males	0.2293	0.2293	0.2293	1.000	
African American	0.0683	0.1030	0.1813	0.3764	70.23%
Hispanic American	0.0870	0.1221	0.3051	0.2850	n/d
Asian American	0.2174	0.2616	0.1977	1.0993	n/d
Native American	0.2222	0.3022	0.2462	0.9025	n/d
Nonminority Women	0.1040	0.1211	0.2679	0.3880	n/d
Construction					
Nonminority Males	0.3496	0.3496	0.3496	1.000	
African American	0.2037	0.2912	0.3015	0.6755	67.07%
Hispanic American	0.0000	0.0000	0.0572	0.0000	16.35%
Asian American	0.0000	0.0000	0.0572	0.0000	16.35%
Natvie American	0.6667	0.7269	0.4835	1.3789	57.78%
Nonminority Women	0.1404	0.1681	0.3992	0.3516	n/d
Professional Services					
Nonminority Males	0.2477	0.2477	0.2477	1.000	
African American	0.0211	0.1246	0.1897	0.1114	74.38%
Hispanic American	0.1333	0.4683	0.4385	0.3041	n/d
Asian American	0.2727	0.5073	0.2113	1.2909	n/d
Natvie American	0.0000	0.0000	0.0000	0.0000	n/d
Nonminority Women	0.0557	0.1652	0.2920	0.1908	n/d
Other Services					
Nonminority Males	0.2434	0.2434	0.2434	1.0000	
African American	0.1078	0.1563	0.2196	0.4910	82.45%
Hispanic American	0.0952	0.1043	0.4209	0.2263	n/d
Asian American	0.2400	0.2765	0.1924	1.2475	n/d
Natvie American	0.2857	0.3911	0.2328	1.2272	n/d
Nonminority Women	0.2444	0.2881	0.2754	0.8875	n/d
Goods & Supplies					
Nonminority Males	0.1000	0.1000	0.1000	1.000	
African American	0.0070	0.0102	0.3175	0.0222	n/d
Hispanic American	0.1053	0.1415	0.1123	0.9375	n/d
Asian American	0.1667	0.2318	0.0644	2.5862	n/d
Natvie American	0.0000	0.0000	0.0001	0.0000	0.07%
Nonminority Women	0.0758	0.0978	0.1092	0.6940	n/d

Source: PUMS data from 2000 Census of Population and Housing and MGT of America, Inc., calculations using SPSS and Microsoft Excel.

n/d: No discrimination was found.

Using these calculations, we were able to determine a percentage of the disparities in self-employment between minorities and nonminority males attributable to discrimination by dividing the observed self-employment rate for a particular minority group (column A) by the predicted self-employment rate as it would be if minority groups faced the same market structure as nonminority males (column C). Next, we calculated the difference between the predicted self-employment rate as it would be if minority groups faced the same market structure as nonminority males and the observed self-employment rate for that minority group, and divided this value by the difference between the observed self-

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employment rate for nonminority males and the self-employment rate for a particular minority group. In the absence of discrimination, this number is zero, which means disparities in self-employment rates between minority groups and nonminority males can be attributed to differences in group characteristics not associated with discrimination. Conversely, as this value approaches 1.0, we are able to attribute disparities increasingly to discrimination in the marketplace.

B.4.4 Findings

Examining the results reported in **Exhibit B-4**, we found the following:

- Overall, comparing self-employed nonminority males with self-employed African Americans in the Tallahassee CMSA, over 70 percent of the disparity in self-employment rates was attributable to race differences.
- Comparing self-employed nonminority males with self-employed African Americans in the Tallahassee CMSA construction industry, over 67 percent of the disparity in self-employment rates was attributable to race differences.
- Comparing self-employed nonminority males with self-employed African Americans in Tallahassee CMSA professional services, over 70 percent of the disparity in self-employment rates was attributable to race differences.
- Comparing self-employed nonminority males with self-employed African Americans in Tallahassee CMSA other services, over 80 percent of the disparity in self-employment rates was attributable to gender differences.

B.5.0 Summary of Self-Employment Analysis Findings

In general, findings from the PUMS 2000 data indicate that minorities were significantly less likely than nonminority males to be self-employed and, if they were self-employed, they earned significantly less in 1999 than did self-employed nonminority males. When self-employment rates were stratified by race and by business type, trends varied within individual race-by-type cells, but disparities persisted, in general, for African Americans, Hispanic Americans, and nonminority women. When group self-employment rates were submitted to MGT's disparity-due-to-minority-status analysis, findings supported the conclusion that disparities for these three groups (of adequate sample size to permit interpretation) were likely the result of differences in the marketplace due to race, gender, and ethnicity.⁷

⁷ **Appendix C** reports self-employment rates and earnings in greater detail by race/gender/ethnicity and business type.

APPENDIX C: PUMS REGRESSION ANALYSIS

APPENDIX C LEON COUNTY, FLORIDA BASED ON CITY TALLAHASSEE CMSA PUMS REGRESSION ANALYSIS

EXHIBIT C-a RESULTS OF LOGISTIC REGRESSION EXPLANATION OF RESULTS AND VARIABLES

Logistic Regression Output

Below, variable names and operational definitions are provided. When interpreting **Exhibits C-1 to C-5**, the third column—Exp (B)—is the most informative index with regard to the influence of the independent variables on the likelihood of being self-employed. From the inverse of this value, we can interpret a likelihood value of its effect on self-employment. For example the Exp (B) for an African American is .326, from **Exhibit C-1**; the inverse of this is 3.07. This means that a nonminority male is 3.07 times more likely to be self-employed than an African American. Columns A and B are reported as a matter of convention to give the reader another indicator of both the magnitude of the variable's effect and the direction of the effect ("-" suggests the greater the negative B value the more it depresses the likelihood of being self-employed, and vice versa for a positive B value). It is noteworthy that theoretically "race-neutral" variables (e.g., marital status) tend to impact the likelihood of self-employment positively and that the race/ethnicity/gender variables, in general, tend to have a negative effect on self-employment.

Variables

Race, ethnicity, and gender indicator variables:

- African American
- Asian American
- Hispanic American
- Native American
- Sex: Nonminority woman or not

Other indicator variables:

- Marital Status: Married or not.
- Age
- Age²: age squared. Used to acknowledge the positive, curvilinear relationship between each year of age and self-employment.
- Disability: Individuals self-reported health-related disabilities.
- Tenure: Owns their own home.
- Value: Household property value.
- Mortgage: Monthly total mortgage payments.
- Unearn: Unearned income, such as interests and dividends.
- Resdinc: Household income less individuals personal income.
- P65: Number of individuals over the age of 65 living in the household.
- P18: Number of children under the age of 18 living in the household.
- Some College: Some college education.
- College Graduate: College degree.
- More than College: Professional or graduate degree.

**EXHIBIT C-1
RESULTS OF LOGISTIC REGRESSION
OVERALL**

City of Tallahassee CMSA			
	B	Sig.	Exp (B)
African American	-1.119	0.000	0.326
Hispanic American	-0.928	0.037	0.395
Asian American	0.007	0.986	1.007
Native American	0.208	0.725	1.231
Sex (1=Female)	-0.937	0.000	0.392
Marital Status (1=Married)	0.058	0.704	1.059
Age	0.096	0.079	1.101
Age ²	-0.001	0.198	0.999
Disability (1=Yes)	-0.022	0.908	0.979
Tenure (1=Yes)	0.346	0.074	1.413
Value	0.049	0.001	1.051
Mortgage	0.000	0.880	1.000
Unearn	0.000	0.551	1.000
Resdinc	0.000	0.035	1.000
P65	-0.292	0.267	0.747
P18	0.114	0.052	1.121
Some College (1=Yes)	-0.068	0.665	0.934
College Graduate (1=Yes)	-0.126	0.468	0.882
More than College (1=Yes)	0.184	0.357	1.202
Number of Observations	2383		
Chi-squared statistic (df=19)	191.01945		
Log Likelihood	-1842.765		

Source: The Public Use Microdata Samples (PUMS) data from 2000 Census of Population and MGT of America, Inc., calculations using SPSS.

Note: **BOLD** indicates the value is statistically significant at $p < .05$.

Estimation was conducted using the Binary Logistic command on SPSS. The Binary Logistic command performs binary logistic regressions and reports estimated coefficients and odds ratios that measure the effect on the probability of each one-unit increase in the included variables.

EXHIBIT C-2 RESULTS OF LOGISTIC REGRESSION CONSTRUCTION

City of Tallahassee CMSA			
	B	Sig.	Exp (B)
African American	-0.557	0.158	0.573
Hispanic American	-20.160	0.998	0.000
Asian American	-20.232	0.999	0.000
Native American	1.311	0.344	3.711
Sex (1=Female)	-1.267	0.003	0.282
Marital Status (1=Married)	0.291	0.336	1.338
Age	0.019	0.857	1.019
Age ²	0.000	0.944	1.000
Disability (1=Yes)	-0.338	0.366	0.713
Tenure (1=Yes)	0.518	0.211	1.679
Value	0.059	0.077	1.061
Mortgage	0.000	0.609	1.000
Unearn	0.000	0.183	1.000
Resdinc	0.000	0.487	1.000
P65	-1.665	0.123	0.189
P18	0.004	0.977	1.004
Some College (1=Yes)	0.313	0.290	1.368
College Graduate (1=Yes)	-0.413	0.295	0.662
More than College (1=Yes)	-0.472	0.453	0.624
Number of Observations	378		
Chi-squared statistic (df=19)	61.577		
Log Likelihood	-388.8687		

Source: The Public Use Microdata Samples (PUMS) data from 2000 Census of Population and MGT of America, Inc., calculations using SPSS.

Note: **BOLD** indicates the value is statistically significant at $p < .05$.

Estimation was conducted using the Binary Logistic command on SPSS. The Binary Logistic command performs binary logistic regressions and reports estimated coefficients and odds ratios that measure the effect on the probability of each one-unit increase in the included variables.

**EXHIBIT C-3
RESULTS OF LOGISTIC REGRESSION
PROFESSIONAL SERVICES**

City of Tallahassee CMSA			
	B	Sig.	Exp (B)
African American	-1.358	0.041	0.257
Hispanic American	0.464	0.631	1.591
Asian American	0.621	0.468	1.860
Native American	-18.515	0.999	0.000
Sex (1=Female)	-1.029	0.002	0.357
Marital Status (1=Married)	0.172	0.666	1.187
Age	0.428	0.009	1.534
Age ²	-0.004	0.021	0.996
Disability (1=Yes)	0.342	0.510	1.408
Tenure (1=Yes)	0.641	0.197	1.898
Value	0.084	0.030	1.087
Mortgage	0.000	0.343	1.000
Unearn	0.000	0.667	1.000
Resdinc	0.000	0.252	1.000
P65	-0.055	0.921	0.947
P18	0.181	0.192	1.198
Some College (1=Yes)	0.669	0.417	1.952
College Graduate (1=Yes)	1.918	0.013	6.806
More than College (1=Yes)	2.211	0.004	9.127
Number of Observations	754		
Chi-squared statistic (df=19)	154.74		
Log Likelihood	-368.0563		

Source: The Public Use Microdata Samples (PUMS) data from 2000 Census of Population and MGT of America, Inc., calculations using SPSS.

Note: **BOLD** indicates the value is statistically significant at $p < .05$.

Estimation was conducted using the Binary Logistic command on SPSS. The Binary Logistic command performs binary logistic regressions and reports estimated coefficients and odds ratios that measure the effect on the probability of each one-unit increase in the included variables.

EXHIBIT C-4 RESULTS OF LOGISTIC REGRESSION OTHER SERVICES

City of Tallahassee CMSA			
	B	Sig.	Exp (B)
African American	-0.740	0.013	0.477
Hispanic American	-1.204	0.130	0.300
Asian American	-0.016	0.975	0.984
Native American	0.503	0.573	1.654
Sex (1=Female)	0.041	0.876	1.042
Marital Status (1=Married)	-0.053	0.834	0.949
Age	0.075	0.415	1.078
Age ²	-0.001	0.530	0.999
Disability (1=Yes)	0.348	0.233	1.417
Tenure (1=Yes)	0.119	0.735	1.126
Value	0.064	0.010	1.066
Mortgage	0.000	0.897	1.000
Unearn	0.000	0.403	1.000
Resdinc	0.000	0.088	1.000
P65	-0.437	0.321	0.646
P18	0.151	0.126	1.164
Some College (1=Yes)	0.171	0.508	1.187
College Graduate (1=Yes)	0.057	0.853	1.059
More than College (1=Yes)	-0.004	0.992	0.996
Number of Observations	659		
Chi-squared statistic (df=19)	55.384		
Log Likelihood	-599.125		

Source: The Public Use Microdata Samples (PUMS) data from 2000 Census of Population and MGT of America, Inc., calculations using SPSS.

Note: **BOLD** indicates the value is statistically significant at $p < .05$.

Estimation was conducted using the Binary Logistic command on SPSS. The Binary Logistic command performs binary logistic regressions and reports estimated coefficients and odds ratios that measure the effect on the probability of each one-unit increase in the included variables.

EXHIBIT C-5 RESULTS OF LOGISTIC REGRESSION GOODS AND SUPPLIES

City of Tallahassee CMSA			
	B	Sig.	Exp (B)
African American	-2.670	0.010	0.069
Hispanic American	0.108	0.896	1.114
Asian American	0.712	0.538	2.038
Native American	-17.942	0.999	0.000
Sex (1=Female)	-0.312	0.442	0.732
Marital Status (1=Married)	0.072	0.871	1.075
Age	0.253	0.152	1.288
Age ²	-0.002	0.240	0.998
Disability (1=Yes)	-0.651	0.316	0.522
Tenure (1=Yes)	-0.427	0.520	0.652
Value	0.006	0.888	1.006
Mortgage	0.000	0.588	1.000
Unearn	0.000	0.430	1.000
Resdinc	0.000	0.304	1.000
P65	0.687	0.220	1.987
P18	0.154	0.327	1.166
Some College (1=Yes)	0.000	0.999	1.000
College Graduate (1=Yes)	0.135	0.770	1.144
More than College (1=Yes)	0.515	0.485	1.674
Number of Observations	592		
Chi-squared statistic (df=19)	37.854		
Log Likelihood	-270.4627		

Source: The Public Use Microdata Samples (PUMS) data from 2000 Census of Population and MGT of America, Inc., calculations using SPSS.

Note: **BOLD** indicates the value is statistically significant at $p < .05$.

Estimation was conducted using the Binary Logistic command on SPSS. The Binary Logistic command performs binary logistic regressions and reports estimated coefficients and odds ratios that measure the effect on the probability of each one-unit increase in the included variables.

EXHIBIT C-b RESULTS OF LINEAR REGRESSION EXPLANATION OF RESULTS AND VARIABLES

Linear Regression Output

Below, variable names and operational definitions are provided. When interpreting the linear regression **Exhibits C-6 to C-10**, the first column—Unstandardized B—is the most informative index with regard to the influence of the independent variables on the earnings of a self-employed individual. Each number in this column represents a percent change in earnings. For example, the corresponding number for an African American is -.139, from **Exhibit C-6**, meaning that an African American will earn 13.9 percent less than a nonminority male. The other four columns are reported in order to give the reader another indicator of both the magnitude of the variable's effect and the direction of the effect. Std. Error reports the standard deviation in the sampling distribution. Standardized B reports the standard deviation change in the dependent variable from on standard deviation increase in the independent variable. The t and Sig. columns simply report the level and strength of a variable's significance.

Variables

Race, ethnicity, and gender indicator variables:

- African American
- Asian American
- Hispanic American
- Native American
- Nonminority Woman

Other indicator variables:

- Marital Status: Married or not.
- Disability: Individuals self-reported health-related disabilities.
- Age
- Age²: age squared. Used to acknowledge the positive, curvilinear relationship between each year of age and self-employment.
- Speaks English Well: Person's ability to speak English if not a native speaker.
- Some College: Some college education.
- College Graduate: College degree.
- More than College: Professional or graduate degree.

EXHIBIT C-6 RESULTS OF LINEAR REGRESSION OVERALL

City of Tallahassee CMSA					
	Unstandardized		Standardized	t	Sig.
	B	Std. Error	B		
African American	-0.139	0.148	-0.046	-0.940	0.348
Hispanic American	-0.374	0.355	-0.052	-1.054	0.293
Asian American	0.046	0.300	0.008	0.155	0.877
Native American	0.852	0.420	0.098	2.030	0.043
Nonminority Women	-0.129	0.113	-0.056	-1.141	0.255
Marital Status	0.207	0.105	0.099	1.973	0.049
Disability (1=Yes)	-0.411	0.138	-0.146	-2.985	0.003
Age	0.087	0.039	0.909	2.206	0.028
Age ²	-0.001	0.000	-0.859	-2.089	0.037
Speaks English Well	-0.109	0.207	-0.029	-0.528	0.598
Some College (1=Yes)	0.024	0.114	0.012	0.209	0.835
College Graduate	0.475	0.122	0.220	3.907	0.000
More than College	0.763	0.136	0.320	5.612	0.000
Constant	8.288	0.841		9.859	0.000

Source: The Public Use Microdata Samples (PUMS) data from 2000 Census of Population and MGT of America, Inc., calculations using SPSS.

Note: **BOLD** indicates the value is statistically significant at $p < .05$.

Estimation was conducted using the Binary Logistic command on SPSS. The Binary Logistic command performs binary logistic regressions and reports estimated coefficients and odds ratios that measure the effect on the probability of each one-unit increase in the included variables.

EXHIBIT C-7 RESULTS OF LINEAR REGRESSION CONSTRUCTION

City of Tallahassee CMSA					
	Unstandardized		Standardized	t	Sig.
	B	Std. Error	B		
African American	-0.278	0.241	-0.107	-1.153	0.252
Native American	-0.101	0.618	-0.017	-0.164	0.870
Nonminority Women (1=Female)	0.294	0.272	0.098	1.079	0.283
Marital Status (1=Married)	0.331	0.160	0.188	2.064	0.042
Disability (1=Yes)	-0.043	0.231	-0.018	-0.186	0.852
Age	0.177	0.059	2.264	2.985	0.004
Age ²	-0.002	0.001	-2.296	-3.023	0.003
Speaks English Well (1=Yes)	1.963	0.619	0.336	3.169	0.002
Some College (1=Yes)	-0.129	0.167	-0.076	-0.773	0.442
College Graduate (1=Yes)	0.414	0.220	0.177	1.881	0.063
More than College (1=Yes)	-0.088	0.346	-0.024	-0.255	0.799
Constant	6.560	1.218		5.386	0.000

Source: The Public Use Microdata Samples (PUMS) data from 2000 Census of Population and MGT of America, Inc., calculations using SPSS.

Note: **BOLD** indicates the value is statistically significant at $p < .05$.

Estimation was conducted using the Binary Logistic command on SPSS. The Binary Logistic command performs binary logistic regressions and reports estimated coefficients and odds ratios that measure the effect on the probability of each one-unit increase in the included variables.

**EXHIBIT C-8
RESULTS OF LINEAR REGRESSION
PROFESSIONAL SERVICES**

City of Tallahassee CMSA					
	Unstandardized		Standardized	t	Sig.
	B	Std. Error	B		
African American	-0.457	0.613	-0.087	-0.745	0.459
Hispanic American	0.469	0.725	0.073	0.646	0.520
Asian American	0.172	0.662	0.033	0.260	0.795
Nonminority Women (1=Female)	-0.176	0.277	-0.077	-0.636	0.527
Marital Status (1=Married)	0.285	0.351	0.102	0.814	0.419
Disability (1=Yes)	-0.954	0.454	-0.252	-2.102	0.039
Age	-0.072	0.138	-0.580	-0.523	0.603
Age ²	0.001	0.001	0.511	0.462	0.645
Speaks English Well (1=Yes)	0.040	0.485	0.011	0.083	0.934
Some College (1=Yes)	-1.412	0.785	-0.400	-1.799	0.076
College Graduate (1=Yes)	-0.661	0.746	-0.318	-0.885	0.379
More than College (1=Yes)	-0.494	0.745	-0.250	-0.663	0.509
Constant	13.565	3.406		3.982	0.000

Source: The Public Use Microdata Samples (PUMS) data from 2000 Census of Population and MGT of America, Inc., calculations using SPSS.

Note: **BOLD** indicates the value is statistically significant at $p < .05$.

Estimation was conducted using the Binary Logistic command on SPSS. The Binary Logistic command performs binary logistic regressions and reports estimated coefficients and odds ratios that measure the effect on the probability of each one-unit increase in the included variables.

EXHIBIT C-9 RESULTS OF LINEAR REGRESSION OTHER SERVICES

City of Tallahassee CMSA					
	Unstandardized		Standardized	t	Sig.
	B	Std. Error	B		
African American	-0.192	0.178	-0.095	-1.075	0.285
Hispanic American	-0.963	0.513	-0.156	-1.876	0.063
Asian American	0.041	0.342	0.011	0.119	0.906
Native American	0.943	0.515	0.153	1.831	0.070
Nonminority Women (1=Female)	-0.382	0.151	-0.219	-2.529	0.013
Marital Status (1=Married)	0.252	0.140	0.154	1.797	0.075
Disability (1=Yes)	-0.345	0.171	-0.168	-2.020	0.046
Age	0.016	0.066	0.200	0.247	0.805
Age ²	0.000	0.001	-0.024	-0.030	0.976
Speaks English Well (1=Yes)	-0.508	0.241	-0.194	-2.106	0.037
Some College (1=Yes)	0.201	0.153	0.128	1.310	0.193
College Graduate (1=Yes)	0.461	0.176	0.253	2.627	0.010
More than College (1=Yes)	0.131	0.259	0.046	0.505	0.614
Constant	9.542	1.367		6.982	0.000

Source: The Public Use Microdata Samples (PUMS) data from 2000 Census of Population and MGT of America, Inc., calculations using SPSS.

Note: **BOLD** indicates the value is statistically significant at $p < .05$.

Estimation was conducted using the Binary Logistic command on SPSS. The Binary Logistic command performs binary logistic regressions and reports estimated coefficients and odds ratios that measure the effect on the probability of each one-unit increase in the included variables.

**EXHIBIT C-10
RESULTS OF LINEAR REGRESSION
GOODS AND SUPPLIES**

City of Tallahassee CMSA					
	Unstandardized		Standardized	t	Sig.
	B	Std. Error	B		
African American	-0.784	1.125	-0.128	-0.697	0.491
Hispanic American	-0.757	0.857	-0.173	-0.884	0.384
Asian American	0.569	1.280	0.093	0.445	0.660
Nonminority Women	0.056	0.375	0.026	0.150	0.882
Marital Status	-0.489	0.370	-0.224	-1.321	0.197
Disability (1=Yes)	-0.620	0.610	-0.172	-1.016	0.318
Age	0.123	0.158	1.164	0.778	0.443
Age ²	-0.001	0.002	-1.145	-0.772	0.446
Speaks English Well	0.547	0.791	0.151	0.691	0.495
Some College (1=Yes)	-0.005	0.401	-0.003	-0.012	0.990
College Graduate	0.139	0.405	0.070	0.344	0.733
More than College	1.716	0.724	0.475	2.371	0.024
Constant	7.922	3.606		2.197	0.036

Source: The Public Use Microdata Samples (PUMS) data from 2000 Census of Population and MGT of America, Inc., calculations using SPSS.

Note: **BOLD** indicates the value is statistically significant at $p < .05$.

Estimation was conducted using the Binary Logistic command on SPSS. The Binary Logistic command performs binary logistic regressions and reports estimated coefficients and odds ratios that measure the effect on the probability of each one-unit increase in the included variables.

***APPENDIX D:
PRIVATE SECTOR DISCUSSION***

APPENDIX D

PRIVATE SECTOR DISCUSSION

Based on the U.S. Bureau of Census, 2002 Survey of Business Owners (SBO) there remains a significant gap between the market share of minority- and women-owned business enterprises (M/WBEs) and their share of the Leon County metropolitan area business population.

As shown in **Exhibit D-1** below, there were 24,317 businesses in the Leon County metropolitan area, of which 16.5 percent were owned by minorities and 27.8 percent by women. Minorities' share of market revenue was 2.2 percent. Minorities averaged \$303,661 per firm. **Exhibit D-1** also shows that the following:

- African American-owned firms were 9.6 percent of firms, 0.7 percent of sales, with \$95,637 in average revenue per firm, 7.3 percent of the market place average.
- Hispanic American-owned firms were 3.0 percent of firms, 0.4 percent of sales, with \$49,299 in average revenue per firm, 11.9 percent of the market place average.
- Asian American-owned firms were 2.6 percent of firms, 1.0 percent of sales, with \$139,444 in average revenue per firm, 39.3 percent of the market place average;
- Native American-owned firms were 1.3 percent of firms, 0.1 percent of sales, with \$19,281 in average revenue per firm, 11.3 percent of the market place average.
- Nonminority women-owned firms were 27.8 percent of firms, 7.0 percent of sales, with \$958,738 in average revenue per firm, 25.2 percent of the market place average.

**EXHIBIT D-1
U.S. BUREAU CENSUS 2002
SURVEY OF BUSINESS OWNERS
MEASURE OF AVAILABILITY AND UTILIZATION
IN THE LEON COUNTY MARKET PLACE
ALL FIRMS**

	# of Firms	Sales	Sales Per Firm
All firms	24,317	\$13,690,982	\$563
African American	2,333	\$95,637	\$41
Hispanic American	734	\$49,299	\$67
Asian American	631	\$139,444	\$221
Native American	304	\$19,281	\$63
All Minorities	4,002	\$303,661	\$76
Nonminority Women	6,769	\$958,738	\$142
Percentage of Marketplace			
	Firms	Sales	Sales Per Firm Compared to the Marketplace Average
African American	9.6%	0.7%	7.3%
Hispanic American	3.0%	0.4%	11.9%
Asian American	2.6%	1.0%	39.3%
Native American	1.3%	0.1%	11.3%
All Minorities	16.5%	2.2%	13.5%
Nonminority Women	27.8%	7.0%	25.2%
Disparity Index			
	(ratio of sales to firms)		
African American	7.3		
Hispanic American	11.9		
Asian American	39.3		
Native American	11.3		
Nonminority Women	25.2		

Source: U.S. Bureau of the Census 2002, Survey Of Business Owners, Based On All Firms.

Exhibit D-2 below shows that based on all firms there were 6,472 businesses with paid employees. in the Leon County metropolitan area in 2002, of which 7.6 percent were owned by minorities and 18 percent by nonminority women-owned firms. Minorities' share of market revenue was 1.7 percent. Minorities averaged \$217,536 per firm. **Exhibit D-2** also shows that the following,

- African American-owned firms were 3.6 percent of firms, 0.4 percent of sales, with \$53,179 in average revenue per firm, 11.5 percent of the market place average.
- Hispanic American-owned firms were 2.3 percent of firms, 0.3 percent of sales, with \$41,808 in average revenue per firm, 14.4 percent of the market place average.

- Asian American-owned firms were 1.8 percent of firms, 1 percent of sales, with \$122,549 in average revenue per firm, 53.5 percent of the market place average.
- Nonminority women-owned firms were 18 percent of firms, 5.8 percent of sales, with \$752,237 in average revenue per firm, 32.3 percent of the market place average.
- The data was incomplete for Native American-owned firms with paid employees.

**EXHIBIT D-2
 U.S. BUREAU CENSUS 2002
 SURVEY OF BUSINESS OWNERS
 ALL FIRMS WITH PAID EMPLOYEES**

	# of Firms	Sales	Sales Per Firm
All firms	6,472	\$12,889,631	\$1,992
African American	233	\$53,179	\$228
Hispanic American	146	\$41,808	\$286
Asian American	115	\$122,549	\$1,066
Native American	N/A	N/A	N/A
All Minorities	494	\$217,536	\$440
Nonminority Women	1,168	\$752,237	\$644
Percentage of Marketplace			
	Firms	Sales	Sales Per Firm Compared to the Marketplace Average
African American	3.6%	0.4%	11.5%
Hispanic American	2.3%	0.3%	14.4%
Asian American	1.8%	1.0%	53.5%
Native American	N/A	N/A	N/A
All Minorities	7.6%	1.7%	22.1%
Nonminority Women	18.0%	5.8%	32.3%
Disparity Index			
	(ratio of sales to firms)		
African American	11.5		
Hispanic American	14.4		
Asian American	53.5		
Native American	N/A		
Nonminority Women	32.3		

Source: U.S. Bureau of the Census 2002, Survey Of Business Owners, Based On Firms with Paid Employees Only.

For all construction firms the results are shown in **Exhibit D-3** below, there were 2,901 construction firms in the Leon County metropolitan area in 2002, of which 6.8 percent were owned nonminority women-owned firms. **Exhibit D-3** also shows that:

- Nonminority women-owned firms were 6.8 percent of firms, 6.2 percent of sales, with \$84,224 in average revenue per firm, 90.9 percent of the market place average.
- Complete data on African American-, Native American, Hispanic American-, and Asian American-owned firms was not available.

**EXHIBIT D-3
 U.S. BUREAU CENSUS 2002
 SURVEY OF BUSINESS OWNERS
 CENSUS MEASURE OF AVAILABILITY AND UTILIZATION
 IN THE LEON COUNTY MARKET PLACE
 ALL CONSTRUCTION FIRMS**

	# of Firms	Sales	Sales Per Firm
All firms	2,901	\$1,363,866	\$470
African American	N/A	N/A	N/A
Hispanic American	N/A	N/A	N/A
Asian American	N/A	N/A	N/A
Native American	N/A	N/A	N/A
All Minorities	N/A	N/A	N/A
Nonminority Women	197	\$84,224	\$428
Percentage of Marketplace			
	Firms	Sales	Sales Per Firm Compared to the Marketplace Average
African American	N/A	N/A	N/A
Hispanic American	N/A	N/A	N/A
Asian American	N/A	N/A	N/A
Native American	N/A	N/A	N/A
All Minorities	N/A	N/A	N/A
Nonminority Women	6.8%	6.2%	90.9%
Disparity Index			
	(ratio of sales to firms)		
African American	N/A		
Hispanic American	N/A		
Asian American	N/A		
Native American	N/A		
Nonminority Women	90.9		

Source: U.S. Bureau of the Census 2002, Survey of Business Owners, Based On All Firms Specializing in Construction.

Exhibit D-4 below shows that based on all firms there were 4,387 businesses specializing in professional services in the Leon County metropolitan area in 2002, of which 7.9 percent were owned by minorities and 24.4 percent by nonminority women-owned firms. Minorities' share of market revenue was 26.4 percent. Minorities averaged \$33,034 per firm. **Exhibit D-4** also shows that the following,

- African American-owned firms were 5.6 percent of firms, 0.9 percent of sales, with \$15,000 in average revenue per firm, 16.9 percent of the market place average.
- Asian American-owned firms were 2.3 percent of firms, 1.1 percent of sales, with \$18,034 in average revenue per firm, 49.8 percent of the market place average.
- Nonminority women-owned firms were 24.4 percent of firms, 12.7 percent of sales, with \$202,148 in average revenue per firm, 52.1 percent of the market place average.
- The data was incomplete for Hispanic American- and Native American-owned firms.

**EXHIBIT D-4
 U.S. BUREAU CENSUS 2002
 SURVEY OF BUSINESS OWNERS
 ALL FIRMS WITH PAID EMPLOYEES**

	# of Firms	Sales	Sales Per Firm
All firms	4,387	\$1,588,337	\$362
African American	245	\$15,000	\$61
Hispanic American	N/A	N/A	N/A
Asian American	100	\$18,034	\$180
Native American	N/A	N/A	N/A
All Minorities	345	\$33,034	\$96
Nonminority Women	1,072	\$202,148	\$189
Percentage of Marketplace			
	Firms	Sales	Sales Per Firm Compared to the Marketplace Average
African American	5.6%	0.9%	16.9%
Hispanic American	N/A	N/A	N/A
Asian American	2.3%	1.1%	49.8%
Native American	N/A	N/A	N/A
All Minorities	7.9%	2.1%	26.4%
Nonminority Women	24.4%	12.7%	52.1%
Disparity Index			
	(ratio of sales to firms)		
African American	16.9		
Hispanic American	N/A		
Asian American	49.8		
Native American	N/A		
Nonminority Women	52.1		

Source: U.S. Bureau of the Census 2002, Survey Of Business Owners, Based On All Firms Specializing in Professional Services.

All groups exhibited disparity to substantial disparity in the marketplace where data was available. Disparity indices for the overall market place are presented at the bottom of **Exhibits D-1, D-2, D-3, and D-4.**

Board of County Commissioners Leon County, Florida

Policy No. 96-1

Title:	Purchasing and Minority, Women and Small Business Enterprise Policy
Date Adopted:	January 27, 2015
Effective Date:	January 27, 2015
Reference:	Chapter 274, Florida Statutes
Policy Superseded:	Policy No. 96-1, APurchasing Policy@; adopted January 16, 1996; revised November 25, 1997; revised February 24, 1998; revised March 22, 2005; revised December 13, 2005; revised June 13, 2006; revised February 26, 2009; revised October 27, 2009; revised February 9, 2010; revised March 23, 2010; revised October 12, 2010; revised June 14, 2011; revised August 23, 2011; revised November 8, 2011; revised February 14, 2012; revised March 13, 2012; revised February 12, 2013; revised October 29, 2013

It shall be the policy of the Board of County Commissioners of Leon County, Florida, that Policy No. 96-1, APurchasing and Minority, Women and Small Business Enterprise Policy,@ revised by the Board of County Commissioners on October 29, 2013 be superseded and a revised policy is hereby adopted in its place, to wit:

BOARD OF COUNTY COMMISSIONERS LEON COUNTY

Purchasing and Minority, Women and Small Business Enterprise Policy



**Purchasing and Minority, Women and Small Business Enterprise Policy
Policy 96-1**

**LEON COUNTY BOARD OF COUNTY COMMISSIONERS
Purchasing and Minority, Women and Small Business Enterprise Policy**

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Section 1 PURPOSE

This policy is adopted to promote the following purposes:

- A. To simplify, clarify, and modernize the procurement practices used by the Leon County Board of County Commissioners.
- B. To promote the continued development of professional and equitable procurement policies and practices.
- C. To promote public confidence in the purchasing procedures followed by Leon County.
- D. To ensure the fair and equitable treatment of all persons who deal with the procurement system of Leon County.
- E. To encourage the growth of small and minority businesses through the promotion of an atmosphere conducive to the development and maintenance of small and minority business participation in the County's procurement system.
- F. To maximize economy in Leon County procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of Leon County.
- G. To provide safeguards for the maintenance of a procurement system of quality and integrity in Leon County.

Section 2 APPLICATION OF POLICY

- A. Contracts: This policy shall apply to contracts/agreements solicited or entered into after the effective date of this policy or subsequent amendments or revisions, unless the parties agree to its application to a contract solicited or entered into prior to the effective date.
- B. Activities: This policy shall apply to the purchase/procurement of all materials, supplies, services, construction and equipment except as herein specifically exempted.
- C. Exemptions from the Purchasing Policy. The following exemptions do not preclude the County from utilizing competitive procurement practices where possible. The following types of purchasing activities shall be exempt from the purchasing policy except as noted:
 - 1. All heavy equipment repairs shall be exempted from the competitive sealed bid requirements. The Fleet Management Director or designee shall solicit and evaluate quotations and make a recommendation for award. The Purchasing Director shall review the quotations and the recommendation for award and award of the bid shall be made by the appropriate authority as provided in Section 5.0.
 - 2. All purchases of services from a utility whose rates are determined and controlled by the Public Service Commission or other governmental authority, including but not limited to electricity, water, sewer, telephone, and cable television services.
 - 3. All supplies, materials, equipment, or services purchased at a price established in any of the authorized forms of state contracts of the State of Florida Department of Management Services, Division of Purchasing; or under the terms and conditions of a cooperative purchasing agreement or term contract by other governmental units.
 - 4. All supplies, and materials, equipment, construction, or services purchased from another unit of government not otherwise limited or prohibited by law.
 - 5. Service/Maintenance Contracts: Continuing service and/or maintenance contracts that are initially awarded by the Board as a part of product acquisition/installation to a vendor who is the manufacturer, developer, or who is the authorized service agent thereof and for which funds are

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- annually appropriated in the budget are exempt from further competitive requirements of this policy. Examples are software/hardware maintenance, building systems maintenance, security systems, etc.)
6. Real property, real estate brokerage, options of title or abstracts of title for real property, title insurance for real property, and other related costs of acquisition, rental, or sale of real property.
 7. All purchases of used equipment having a value of \$20,000 or less; however, each such purchase shall be supported by one equipment appraisal report from the vendor.
 8. All purchases of used equipment having a value greater than \$20,000 and less than \$100,000; however, each such purchase shall be supported by two independent equipment appraisal reports.
 9. Library Media and Materials. The purchase of library books, education and/or personnel texts, textbooks, printed instructional materials, reference books, periodicals, databases, indexes, pre-recorded library media materials, e.g. audio and video cassettes, film strips, films, sound recordings, computer software, etc., and printed library cards that are to be a part of the library collection are exempt.
 10. Grants (Direct Payment) by the County and social services (e.g. burials, reimbursable emergency assistance payments to approved social service agencies, down payment assistance, temporary housing relocation expenses and indigent medical and tubercular care patient services).
 11. Advertisements (except Delinquent Tax Notices).
 12. Training Media and Services. When such materials or services are available only from the producer, publisher, owner of the copyright or patent, educational institution or training service provider, which developed the training program, the purchase, is exempt from competitive requirements. Approval thresholds in Section 5.0 shall apply.
 13. Software. Upgrades, software modification services by the copyright holder, and related software enhancements to installed software purchased through competitive means are exempt. The purchase of new software packages or systems shall follow the thresholds and procedures of the policy to ensure competitive selection.
 14. Corporate and media sponsorship agreements up to the formal bid threshold in Section 5.0.
 15. Licensed health professionals, e.g., Doctors, Nurses, Veterinarians who provide service directly to patients.
 16. Training and educational courses, contracts between the County and governmental entities or nonprofit corporations, memberships, publications, meeting rooms, and hotels when any of the procurements listed previously are below the formal bid threshold in Section 5.0.
 17. Lectures by individuals.
 18. Artistic services, works of art for public places, and art design and conservation services.
 19. Continuing education events or programs.
 20. Services of legal counsel authorized by the Office of the County Attorney, including, but not limited to, expert witnesses, conflict counsel, and other services required by the Office of the County Attorney.
 21. Travel arrangements and expenses. (Reference Travel Policy)

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Section 3 DEFINITIONS

- A. The following terms defined in this section shall have the meanings set forth below whenever they appear in this policy:
1. "Addendum" is a written document used to expand or more fully explain the terms of a bid instrument (Invitation to Bid or Request for Proposals). An addendum is not to be confused with a contract "amendment."
 2. "Agreement" means all types of Leon County agreements, regardless of what they may be called, for the purchase or disposal of supplies, services, materials, equipment, or construction.
 3. "Blanket Purchase Order" means a purchase order issued to a vendor for an amount not to exceed the face value of the purchase order. A blanket purchase order is for the procurement of commodities or services no single item of which shall exceed the threshold for small purchases unless the appropriate method of procurement was used to generate the Blanket Purchase Order.
 4. "Board" means the Board of County Commissioners of Leon County, Florida.
 5. "Brand Name or Equivalent Specification" means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the County requirements, and which provides for the submission of equivalent products.
 6. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
 7. "Change Order" means a written order amending the scope of, or correcting errors, omissions, or discrepancies in a contract or purchase order.
 8. "Commodity" means a product that the County may contract for or purchase for the use and benefit of the County. A specific item, it is different from the rendering of time and effort by a provider.
 9. "Competitive Sealed Bidding" (Invitation for Bid) means a written solicitation for sealed competitive bids used for the procurement of a commodity, group of commodities, or services valued more than the threshold for this category. The invitation for bids is used when the County is capable of specifically defining the scope of work for which a contractual service is required or when the County is capable of establishing precise specifications defining the actual commodity or group of commodities required.
 10. "Confirming Order" means a purchase order restating the same terms originally placed orally or in writing other than a purchase order.
 11. "Construction" means the process of building, attaining, repairing, improving, or demolishing any public structure or building, or other public improvement of any kind to any public real property. It does not include routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
 12. "Contract" means all types of Leon County agreements, regardless of what they may be called, for the purchase or disposal of supplies, services, materials, equipment, or construction and which name the terms and obligations of the business transaction.
 13. "Contract amendment or modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

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14. "Contractor" means any person having a contract with Leon County (not to include employment contracts).
15. "Contractual Services" means the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged there under; and professional, technical, and social services.
16. "Contractual Services Contract" is a contract for a contractor's time and effort rather than the furnishing of specific commodities. Satisfactory completion of the service and/or a specified period of time or date completes such contract.
17. "Cooperative Purchasing" is procurement conducted by, or on behalf of, more than one public procurement unit.
18. "Cost Analysis" is the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
19. "Data" means recorded information, regardless of form or characteristic.
20. "Definite Quantity Contract" is a contract whereby the contractor(s) agrees to furnish a specific quantity of an item or items at a specified price and time to specified locations. Delivery by the vendor and acceptance of the specific quantity by the County completes such contract.
21. "Designee" means a duly authorized representative of a person holding a superior position.
22. "Emergency" means when there exists a threat to public health, welfare, or safety; natural or unnatural, unexpected events; accidents; or loss to the County under emergency conditions which shall be considered to mean those situations where the operation of a department or division would be seriously impaired if immediate action were not taken.
23. "Emergency Purchase" is a purchase necessitated by a sudden unexpected turn of events (e.g., acts of God, riots, fires, floods, accidents or any circumstances or cause beyond the control of the agency in the normal conduct of its business) where the delay incident to competitive bidding would be detrimental to the interests of the County.
24. "Employee" means an individual drawing a salary from Leon County, whether elected or non-elected. For the purposes of this policy, it also means that any non-compensated individual performing personal services for Leon County is to be governed by these rules.
25. "Established Catalog Price" is the price included in a catalog, price list, schedule, or other form that:
 - a. is regularly maintained by a manufacturer or contractor;
 - b. is either published or otherwise available for inspection by customers; and
 - c. states prices at which sales are currently or were last made to a significant number of any category of buyers or those buyers constituting the general buying public for the supplies or services involved.
26. "Field Purchase Order" means the procurement of commodities or services through the issuance of a purchase order by a department or division head under procedures established by the Purchasing Division and with a value within the thresholds set for this category. Field Purchase orders do not require quotes, bids, or public notice prior to issuance.
27. "Field Quotes" is the procurement procedure used by the operating department or divisions to purchase commodities or contractual services with a value within the threshold amounts set for this category and are conducted by the department or division.

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28. "f.o.b. or FOB (free on board)" is a term used in conjunction with an identified physical location to determine the responsibility and basis for payment of freight charges, and the point at which title for the shipment passes from seller to buyer. Commonly used deliveries are:
 - a) FOB Destination. A shipment to be delivered to a destination designated by the buyer and the point at which buyer accepts title.
 - b) FOB Shipping Point (Origin). A shipment is to be delivered to the buyer with passage of title, on board the indicated conveyance or carrier at the contractor's designated facility.
29. "Gratuity" is a payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, inuring to the benefit of an employee, unless consideration of substantially equal or greater value is given by the employee.
30. "Informal Sealed Bid is a written solicitation method used by the County for securing prices and selecting a provider of commodities or services with a value within the threshold for this category
31. Intended Decision means a written notice that states the firm or firms to whom the County intends to award a contract resulting from a solicitation and which establishes the period in which a notice of intent to protest may be timely filed. The Intended Decision is posted on the County website and on the Public Notice board in the Purchasing Division.
32. Invitation for Bid (Competitive Sealed Bidding) means a written solicitation for sealed competitive bids used for the procurement of a commodity, group of commodities, or services valued more than the threshold for this category. The invitation for bids is used when the County is capable of specifically defining the scope of work for which a contractual service is required or when the County is capable of establishing precise specifications defining the actual commodity or group of commodities required.
33. A Invitation to Negotiate@ means a written solicitation that calls for responses to select one or more persons or business entities with which to commence negotiations for the procurement of commodities or contractual services.
34. "Joint Venture" means:
 - a) a combination of contractors performing a specific job in which business enterprises participate and share a percentage of the net profit or loss; or
 - b) a joint business association of a minority individual(s)/firm(s) as defined herein, and a non-minority individual(s)/firm(s) to carry out a single business enterprise for which purpose the individuals/firms combine their property, money, efforts, skills and/or knowledge.
35. "Local Business" means a business which:
 - a) Has had a fixed office or distribution point located in and having a street address within Leon, Gadsden, Wakulla, or Jefferson County for at least six months immediately prior to the issuance of the request for competitive bids or request for proposals by the county; and
 - b) Holds any business license required by Leon County, and, if applicable, the City of Tallahassee; and
 - c) Is the principal offeror who is a single offeror; a business that is the prime contractor and not a subcontractor; or a partner or joint venturer submitting an offer in conjunction with other businesses.
36. "Manufacturer" means a person or firm engaged in the process of making, fabricating, constructing, forming, or assembling a product(s) from raw, unfinished, semi-finished, finished, or recycled materials through a direct contract/agreement on behalf of the general contractor.
37. "Option to Renew" means a contract clause that allows a party to reinstate the contract for an additional term.
38. "Person" means any business, individual, committee, club, other organization, or group of individuals.

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39. "Pre-Bid Conference" (or Pre-Proposal Conference) means a meeting held with prospective bidders prior to solicitation of or the date for receipt of bids or proposals, to recognize state of the art limits, technical aspects, specifications, and standards relative to the subject, and to elicit expertise and bidders' interest in submitting a bid or pursuing the task.
40. "Procurement Award" is an award of a contract for goods or services resulting from a solicitation through action by the Board of County Commissioners in a public meeting.
41. "Professional Services" means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying, as defined by the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered land surveyor in connection with his professional employment or practice.
42. "Purchase Order" means that document used by Leon County to request that a contract be entered into for a specified need, and may include, but not be limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, payment terms, and other specifications.
43. "Purchasing" means buying, procuring, renting, leasing, or otherwise acquiring any materials, supplies, services, construction, or equipment. It also includes all functions that pertain to the obtaining of any material, supplies, services, construction, and equipment, including description of specifications and requirements, selection and solicitation of resources, preparation, and award of contract.
44. "Purchasing Director" means the Leon County employee duly authorized to enter into and administer contracts and make written determinations with respect thereto under the terms of the purchasing policies of the Board of County Commissioners.
45. "Purchasing Quotes" is the procedure used to purchase commodities or contractual services wherein the Purchasing Director or Purchasing Agents obtain either written or oral quotations from two or more vendors for purchases within the threshold amounts set for this category.
46. "Recycled Content" means materials that have been recycled and are contained in the products or materials to be procured, including, but not limited to, paper, plastic, aluminum, glass, and composted materials. The term does not include internally generated scrap that is commonly used in industrial or manufacturing processes or waste or scrap purchased from another manufacturer who manufactures the same or a closely related product.
47. "Regulation" means a statement by the Board of County Commissioners having general or particular applicability and future effect, designed to implement, interpret, or prescribe law, policy, or practice.
48. "Request for Information" means a written or electronically posted request to vendors for information concerning commodities or contractual services. Responses to these requests are not offers and may not be accepted to form a binding contract.
49. "Request for Proposals" (RFP) means a written solicitation for sealed proposals with the title, date, and hour of public opening designated. The request for proposals may be used when the County is unable to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required, and when the County is requesting that a qualified offeror propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.
50. ARequest for a Quote® means a solicitation that calls for pricing information for purposes of competitively selecting and procuring commodities and contractual services from qualified or registered vendors.

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51. "Responsible bidder or offeror" means a person who has the capability, in all respects, to perform fully the contract requirements, and the integrity and reliability, which will assure good faith performance.
52. "Responsive bidder" means a person who has submitted a bid, which conforms in all material respects to the Invitation to Bid or the Request for Proposals.
53. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than those which is not defined as supplies and which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
54. "Small Purchases" means the procurement of commodities or services with a value within the thresholds set for this category without the requirement of quotes, bids, or public notice under procedures established by the Purchasing Division.
55. "Sole (Single) Source Purchases" means the purchase of a commodity, service, equipment, or construction item(s) from one available practical source of supply. A Sole (single) Source may be declared such by the Board of County Commissioners for reasons acceptable to it.
56. "Specification" means any description of the physical or functional characteristics of the nature of a material, supply, service, construction, or equipment item. It may include a description of any requirement for inspection, testing, recycled, or degradable materials content, or preparing a material, supply, service, construction, or equipment item for delivery.
57. "Supplier" means a person or firm who engages in the selling of materials and supplies to contractors, subcontractors, and/or manufacturers for the purpose of constructing, repairing, altering, remodeling, adding to or subtracting from or improving any building, structure, or property through a direct contract/agreement on behalf of the general contractor.
58. ~~A~~Tangible Personal Property~~@~~ is defined as property which has an original acquisition cost of \$750 or more; is not consumed in use and has a useful life of one year or more after initial acquisition; is not fixed in place and not an integral part of a structure or facility; and is not an integral part or component of another piece of equipment.
59. "Term Contract" means indefinite quantity contract whereby a contractor(s) agrees to furnish an item or items during a prescribed period of time (such as 3, 6, 9, 12 months or a specific date). The specified period of time or date completes such contract.⁶⁰ "Tie (Identical) Bid" is when two or more bids are equal with respect to price and it appears that the quality and service offered by the vendors are otherwise comparable.

Section 4 AUTHORITY OF PURCHASING DIRECTOR

- A. The Purchasing Director shall serve as the central purchasing officer of Leon County.
- B. The Purchasing Director shall develop and administer operational procedures implementing this policy and for governing the internal functions of the Division of Purchasing.
- C. Except as otherwise specifically provided in this policy, the Purchasing Director, or his/her designee, shall, in accordance with regulations promulgated by the Board of County Commissioners:
 1. Purchase or supervise the purchase of all supplies, services, materials, equipment, and construction services defined within the scope of this policy.
 2. Operate a central warehouse for the purchasing, in bulk, of items that may be more economically bought and distributed than when purchased on an individual basis; and, to provide facilities for storage of critically needed supplies.
 3. Administer the County Purchasing Card Program.
 4. Administer the Property Control Program.

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- D. Upon the prior approval of the County Administrator or designee, the Purchasing Director may delegate authority to designee(s) as allowed by law or rule.
- E. The Purchasing Director shall assist the Minority Business Enterprise Coordinator, implement, monitor, and enforce the County's Minority Business Enterprise program policy.

Section 5 PURCHASING CATEGORIES; THRESHOLD AMOUNTS

Table 1 – Purchasing Process Thresholds	
Procurement Method	Threshold
Petty Cash/Reimbursement (Section 5.01)	Not to exceed \$100
Field Purchase Order (Section 5.02)	\$1 to \$500
Small Purchase Procedures (Section 5.03)	\$1 to \$1,000
Warehouse Operations (Section 5.031)	\$1 to \$5,000
Blanket Purchase Orders (Section 5.04) Non-contractual Basis Contractual Basis	not to exceed \$5,000 not to exceed annual contract value
Field Quotes (Section 5.05)	\$1,000 to \$5,000
Purchasing Quotes (Section 5.06)	\$5,000.01 to \$50,000
Bid - Informal Bid Process – Standard (Section 5.07)	\$50,000.01 to \$100,000
Bid – Informal Bid Process for Tenant Renovations/Improvements to County Space Leased by Private Entities (Section 5.07.1)	\$50,000.01 to \$200,000
Bid - Competitive Sealed Bids (Section 5.08)	\$100,000.01 and above
RFP - Competitive Sealed Proposals (Sections 5.09 and 5.09.1)	Purchasing Director –Authorized to Release RFPs Expected to Result in Costs No Greater than \$100,000; County Administrator Authorized to release all RFPs

Table 2 - Contract Award and Signature Authority Thresholds	
Individual	Threshold¹
Purchasing Director	*Procurement Agreements up to \$100,000
County Administrator	*Procurement Agreements greater than \$100,000 and no greater than \$250,000
Board of County Commissioners	*Procurement Agreements greater than \$250,000
¹ Term contracts will be awarded based upon the value of the initial term of the contract. *All contracts will be in a form approved by the County Attorney's Office prior to execution.	

Section 5.01 PETTY CASH/REIMBURSEMENT

- A. Petty cash funds shall be established and administered under the financial policies of the Board.
- B. Purchases from any petty cash fund or the reimbursement for a purchase shall be governed by the following requirements:
1. No purchase of any single item from any petty cash fund or for reimbursement shall exceed the authorized dollar limit for petty cash/reimbursements in Section 5.
 2. Reimbursement for employee travel expenses from a petty cash fund shall not be allowed, except for local parking or toll costs.

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3. Funds contained within a petty cash fund shall not be expended for the payment of salaries.
4. Expenditures from a petty cash fund or personal funds shall be reimbursed, provided:
 - a) They are supported by itemized vouchers, invoices, or receipts signed by the division or department head or designee.
 - b) They qualify as a proper public purpose.
 - c) They are expenses included within the approved annual budget of the division or department.

Section 5.02 FIELD PURCHASE ORDERS

- A. Field purchase orders shall be used for purchase of small, sundry items, which cost not more than the threshold authorized for field purchase orders in Section 5. Field purchase orders shall be used for a single or aggregate purchase, but only for a single transaction. Employees are encouraged to seek out and utilize certified minority and women-owned business enterprises in these purchases.
- B. Field purchase orders shall not be combined to purchase any item, which costs more than the approved threshold limit and shall not be used in the manner of or in lieu of a blanket purchase order.
- C. Field purchase orders shall be issued and authorized only by department and division heads.

Section 5.03 SMALL PURCHASES

The purchase of commodities, equipment, and services, which cost less than the threshold authorized in Section 5, does not require solicitation of quotes or bids. Small purchases shall be authorized by Department or Division heads or their designees. Employees are encouraged to seek out and utilize certified minority and women-owned business enterprises in these purchases.

Section 5.03.1 WAREHOUSE OPERATIONS

The purchase of commodities, materials, and equipment for warehouse inventory, which cost less than the threshold authorized in Section 5, does not require solicitation of quotes or bids. Use of economic indices, review of costs, market trends, and/or use of periodic quotations shall be used by staff to assure cost effective purchases. Warehouse employees are encouraged to seek out and utilize certified minority and women-owned business enterprises in these purchases

Section 5.04 BLANKET PURCHASE ORDERS

Blanket Purchase Orders of either type listed below shall not be used to purchase any tangible personal property item. Tangible personal property items shall be listed as individual line items on a purchase order.

- A. Non-contractual Basis - All purchases made with a non-contractual blanket purchase order shall follow the thresholds and requirements for competitive selection. No purchase order shall be issued for an amount greater than the limit established for a non-contractual blanket purchase order in Section 5 of this policy for the purchase of goods or services not under a contractual arrangement authorized under this purchasing policy or approved by the Board.
- B. Contractual Basis - No purchase order shall be issued for an amount greater than the limit established for a contractual blanket purchase order in Section 5 of this policy for the purchase of goods or services unless approved by the Board.

Section 5.05 FIELD QUOTES

The purchase of goods and services, which cost within the range authorized for field quotes in Section 5, shall require competitive quotations from three or more vendors. The quotations may be obtained by the Department/Divisions. Employees are encouraged to seek out and secure at least one of the three quotes from certified minority and women-owned business enterprises. The Purchasing Director shall review the quotations and make the award or require additional quotations prior to award.

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Section 5.06 PURCHASING QUOTES

The purchase of goods and services, which cost within the range authorized for purchasing quotes in Section 5, shall require competitive quotations from three or more vendors. The quotations may be obtained by the operating department/division or the Purchasing Division and shall be reviewed and awarded by the Purchasing Director. Quotes must be on company letterhead, quote forms, or in a similar format with a date and signature of an authorized representative of the vendor. Employees are encouraged to seek out and secure at least one of the three quotes from certified minority and women-owned business enterprises.

Section 5.07 INFORMAL BIDS

For purchases within the cost range authorized for informal bids in Section 5, the Purchasing Director shall secure, whenever possible, a minimum of three written quotations, which shall be the result of written specifications transmitted by mail, by electronic format, or by facsimile. When such quotations are received by facsimile, the purchasing agent will immediately seal and label the quotations until the time set for opening bids. In those instances where the securing of three quotations is not practicable, the Purchasing Director shall provide written justification of such. The Purchasing Division shall seek out and encourage participation in the bid from certified small or certified minority and women-owned business enterprises, when available. The quotations shall be reviewed and a written recommendation of award shall be prepared for review and action.

**Section 5.07.1 INFORMAL BIDS FOR TENANT RENOVATIONS AND IMPROVEMENTS FOR
LEASED SPACE**

For purchases for tenant renovations/improvements for County-owned spaces leased to private entities and within the cost range authorized for informal bids for lease space in Section 5, all procedures in Section 5.07 shall be followed:

Section 5.08 COMPETITIVE SEALED BIDDING

- A. Conditions for Use. All contracts for purchases of a single item or aggregate for the proposed term of service in excess of the established base amount for competitive sealed bidding in Section 5 shall be awarded on the basis of sealed competitive bidding, except as provided in Section 5.09, Competitive Sealed Proposals.
- B. Invitation to Bid. An invitation to bid shall be issued and shall include specifications, all contractual terms and conditions, and the place, date, and time for opening or submittal. All interpretations or corrections shall be issued as addenda. The County shall not be responsible for oral clarifications or representations.
 - 1. Alternate(s). Alternate bids will not be considered unless authorized by and defined in the invitation to bid or addenda thereto.
 - 2. Approved Equivalents. The County reserves the right to determine acceptance of item(s) as an approved equivalent. Bids, which do not comply with, stated requirements for equivalents in the bid conditions are subject to rejection. The procedure for acceptance of equivalents shall be included in the invitation to bid or addenda thereto.
 - 3. If less than two responsive bids, proposals, or replies for commodity or contractual services purchases are received, the Purchasing Director may negotiate on the best terms and conditions. The Purchasing Director shall document the reasons that such action is in the best interest of the County in lieu of resoliciting competitive sealed bids, proposals, or replies. The Purchasing Director shall report all such actions to the County Administrator or designee prior to final award of any contract resulting from the negotiations.

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C. Public Notice.

1. The solicitation of competitive bids or proposals for any County construction project that is projected to cost more than \$200,000 shall be publicly advertised at least once in a newspaper of general circulation in the County at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference. The solicitation of competitive bids or proposals for any County construction project that is projected to cost more than \$500,000 shall be publicly advertised at least once in a newspaper of general circulation in the County at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference. Bids or proposals shall be received and opened at the location, date, and time established in the bid or proposal advertisement. In cases of emergency, the procedures required in this section may be altered by the County in any manner that is reasonable under the emergency circumstances.

The solicitation of competitive bids for work on roads shall be publicly advertised in a newspaper of general circulation in the county at least once each week for two consecutive weeks.

2. Changes to Public Notice. If the location, date, or time of the bid opening changes, written notice of the change shall be given in the form of an addendum, as soon as practicable after the change is made and posted on the Purchasing Division website
3. Each invitation to bid, request for proposals, request for qualifications, invitation to negotiate, or other procurement solicitation which is anticipated to include travel expenses by authorized persons as defined in the Leon County Travel Policy shall include the following notice:
Consultant travel which is not covered within the scope of the consultant=s contract and which is billed separately to the County on a cost reimbursement basis must receive prior approval and will be reimbursed in accordance with the Leon County Travel Policy. Travel expenses shall be limited to those expenses necessarily incurred in the performance of a public purpose authorized by law to be performed by the Leon County Board of County Commissioners and must be within limitations described herein and in Ch. 112.06, Florida Statutes. Consultants and contractors, traveling on a cost reimbursement basis, must have their travel authorized by the department head from whose budget the travel expenses will be paid and the County Administrator.

- D. Bid Opening.** Bids shall be opened publicly. At least one representative from the Division of Purchasing shall open the bids in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid, and such other relevant information as may be deemed appropriate by the Purchasing Director, together with the name of each bidder, and all witnesses shall be recorded. The record (Tabulation Sheet) and each bid shall be open to public inspection as provided by law.

- E. Bid Acceptance and Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include, but not be limited to criteria to determine acceptability such as: inspection, testing, quality, recycled or degradable materials content, workmanship, delivery, and suitability for a particular purpose and/or factors to determine a bidder=s level of responsibility such as references, work history, bonding capacity, licensure, certifications, etc. Those criteria that will affect the bid price and that are to be considered in evaluation for award shall be objectively measured, such as discounts, transportation costs, and total or life cycle costs. No criteria may be used in bid evaluation that is not set forth in the Invitation to Bid, in regulations, or in this policy.

- F. Bid Agenda Item.** The Tabulation Sheet and other bid documents, as necessary, shall be presented to the appropriate department or division head for review and recommendation. The department or division head shall prepare the recommendation in the appropriate format to the awarding authority as prescribed in Section 5.

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- G. Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted where appropriate under the sole discretion of the County. Mistakes discovered before bid opening may be modified or withdrawn upon written notice received in the office designated in the Invitation for Bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
1. the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 2. the bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Director and concurred with by the County Administrator.
- H. Multi-Step Sealed Bidding.
1. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids or request for proposals may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
 2. A multi-step process utilizing pre-qualification of bidders or respondents may be used to ensure that the bidders/respondents have the appropriate licensure, capacity, qualifications, experience, staffing, equipment, bonding, insurance and similar project based criteria to successfully perform a specific project or service. Those bidders/respondents determined qualified in the pre-qualification will then be eligible to participate in the invitation to bid or request for proposal process for the project or service. The Purchasing Director shall develop and administer operational procedures governing any such pre-qualification process.
- I. Award. The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. The County reserves the right to waive any informality in bids and to make an award in whole or in part when either or both conditions are in the best interest of Leon County. The contract shall be awarded by purchase order or other written notice. Every procurement of contractual services shall be evidenced by a written agreement.
1. Notice of Intended Decision. The Intended Decision shall be posted on the County website and on the public notice board in the Purchasing Division. This written notice shall state the firm or firms to whom the County intends to award the contract resulting from the solicitation and establishes the 72 consecutive hour period in which a notice of intent to protest may be timely filed.
 2. Notice of Right to Protest. Any bid award recommendation may be protested if the recommendation is alleged to be contrary to the County's rules or policies, the solicitation specifications, or law. The standard of proof for such proceedings shall be whether the action is clearly erroneous, contrary to competition, arbitrary or capricious. Such notice of intent of bid protest shall be delivered to the Purchasing Director within 72 consecutive hours after posting of the Notice of Intended Decision of Award (excluding Saturdays, Sundays, and County holidays). Protestor shall file thereafter a formal written bid challenge within 10 calendar days after the date in which the notice of intent of bid protest has been submitted. Failure to timely file a notice of intent of bid protest or failure to timely file a formal written bid protest with the proper bond shall constitute a waiver of all rights provided under the Leon County Purchasing Policy.

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- J. Cancellation of Invitations for Bids. An invitation for bids or other solicitation may be canceled, or any or all bids may be rejected in whole or in part when it is in the best interests of the County, as determined by the Board. Notice of cancellation shall be provided to all planholders and posted on the County website. The notice shall identify the solicitation, explain the reason for cancellation, and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items.
- K. Disqualification of Vendors. For any specific bid, vendors may be disqualified by the Purchasing Director for the following reasons:
1. Failure to materially perform according to contract provisions on prior contracts with the County.
 2. Conviction in a court of law of any criminal offense in connection with the conduct of business.
 3. Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.
 4. Clear and convincing evidence that the vendor has attempted to give a Board employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Board's purchasing activity.
 5. Failure to execute a Public Entity Crimes Statement as required by Florida Statutes Chapter 287.133(3)(a).
 6. Other reasons deemed appropriate by the Board of County Commissioners.
- L. If less than two responsive bids, proposals, or replies for commodity or contractual services purchases are received, or all bids received exceed the available budget identified for the commodity or contractual service, the Purchasing Director may negotiate on the best terms and conditions. The Purchasing Director shall document the reasons that such action is in the best interest of the County in lieu of resoliciting competitive sealed bids, proposals, or replies. The Purchasing Director shall report all such actions to the County Administrator or designee prior to final award of any contract resulting from the negotiations. Award will be made according to the award thresholds in Section 5.
- M. Local preference in bidding.
1. In purchasing of, or letting of contracts for procurement of, personal property, materials, contractual services, and construction of improvements to real property or existing structures for projects estimated not to exceed \$250,000, in which pricing is the major consideration, the County may give a preference to Local Businesses in making such purchase or awarding such contract, as follows:
 - a) Individuals or firms which have a home office located within Leon, Gadsden, Wakulla, or Jefferson County, and which meet all of the criteria for a Local Business as defined herein, shall be given a preference in the amount of five percent of the bid price.
 - b) Individuals or firms which do not have a home office located within Leon, Gadsden, Wakulla, or Jefferson County, and which meet all of the criteria for a Local Business as defined herein, shall be given a preference in the amount of three percent of the bid price.
 - c) The maximum cost differential shall not exceed \$20,000.00. Total bid price shall include the base bid and all alternatives or options to the base bids, which are part of the bid and being recommended for award by the appropriate authority.
 2. Preference in bidding for construction services estimated to exceed \$250,000.
 - a) Except where otherwise provided by federal or state law or other funding source restrictions, in the purchasing of, or letting of contracts for procurement of construction services for improvements to real property or existing structures, limited to projects estimated to exceed \$250,000, the County may give preference to Local Businesses in the following manner:

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- i. Under a competitive bid solicitation, when the lowest responsive and responsible bid is submitted by an individual or firm that is not a Local Business, then the local business that submitted the lowest responsive and responsible bid shall be offered the opportunity to perform the work at the lowest bid amount, if that Local Business's bid was not greater than 110 percent of the lowest responsive and responsible bid amount.
 - ii. All contractual awards issued in accordance with the provisions of Section 5.08(M)(2)(a) shall contain aspirational trade contractor work targets, based on market and economic factors, of 85 percent as follows: The successful individuals or firms shall agree to engage not less than 85 percent of the dollar value of trade contractor work with Local Businesses, unless the successful individuals or firms prove to the County's satisfaction that the trade contractor work is not available locally within the Leon, Gadsden, Wakulla or Jefferson County area. The term "trade contractor" shall mean a subcontractor who contracts with the prime contractor and whose primary activity is performing specific activities (e.g., pouring concrete, masonry, site preparation, framing, carpentry, dry wall installation, electrical, plumbing, painting) in a construction project but is not responsible for the entire project.
- b) Section 5.08 (M)(2)(a) shall sunset and stand repealed on January 1, 2016 unless reviewed and saved from repeal through reenactment by the Board.
- 3. Certification. Any vendor claiming to be a Local Business shall so certify in writing to the purchasing division. The certification shall provide all necessary information to meet the requirements for a Local Business as defined herein. The purchasing agent shall not be required to verify the accuracy of any such certifications, and shall have the sole discretion to determine if a vendor meets the definition of a "Local Business."
- 4. Waiver. The application of local preference to a particular purchase, contract, or category of contracts for which the County is the awarding authority may be waived upon written recommendation of the County Administrator and approval of the Board. The application of local preference to a particular purchase, contract, or category of contracts below the award authority of the Board may be waived upon written recommendation of the Director of Purchasing and approval of the County Administrator.

(Reference Article IX, Section 2-400, Chapter 2 of the Code of Laws of Leon County, Florida)

Section 5.09 COMPETITIVE SEALED PROPOSALS

Section 5.09.1 PROFESSIONAL ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL, AND LAND SURVEYING SERVICES

- A. Purpose. The purpose of this section, and the procedures established hereunder, is to ensure compliance with Section 287.055 Florida Statutes, known as the Consultants Competitive Negotiation Act (CCNA). This act establishes parameters within which the County must select professional services from architects, engineers, landscape architects, surveyors, and mappers. The CCNA requires the County to select these services on a qualitative basis using prescribed criteria prior to any negotiations, which may consider the cost of such services.
- B. Public Announcement. It is the policy of the County to publicly announce all requirements for professional architectural, engineering, landscape architectural, land surveying, and mapping services, and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of such services, the Purchasing Director may require firms to submit a statement of qualifications, performance data, and other information related to the performance of professional services.

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1. Scope of Project Requirements.
 - a) For specific projects, the County office requesting the professional services shall submit to the Purchasing Director written project requirements indicating the nature and scope of the professional services needed by the office, including but not limited to the following:
 - 1) the general purpose of the service or study;
 - 2) the objectives of the study or service;
 - 3) estimated period of time needed for the service or the study;
 - 4) the estimated cost of the service or study;
 - 5) whether the proposed study or service would or would not duplicate any prior or existing study or service; and
 - 6) the desired qualifications, listed in order of importance, applicable to the scope and nature of the services requested.
 - b) For Continuing Supply Services, the County office requesting the professional services shall submit to the Purchasing Director written project requirements indicating the nature and scope of the professional services needed by the office, including but not limited to the following:
 - 1) the general purpose of the service or study;
 - 2) estimated period of time needed for the service or the study;
 - 3) the estimated cost of the service or study;
 - 4) the desired qualifications, listed in order of importance, applicable to the scope and nature of the services requested.
2. Review of Project Requirements. The Purchasing Director or his/her designee shall review the scope of project requirements and prepare a draft request for proposals. The draft RFP shall be submitted to the requesting office for consideration and revision, as may be needed, prior to public distribution of the RFP.
3. Distribution of RFP. The Purchasing Director shall distribute the RFP in accord with standard procedures including publication of legal notice, and provide notification of the date and time when such proposals are due. Public notice shall be as provided in Section 5.08 (C).
4. If less than two responsive bids, proposals, or replies for commodity or contractual services purchases are received, the Purchasing Director may negotiate on the best terms and conditions. The Purchasing Director shall document the reasons that such action is in the best interest of the County in lieu of resoliciting competitive sealed bids, proposals, or replies. The Purchasing Director shall report all such actions to the County Administrator or designee prior to final award of any contract resulting from the negotiations.
5. Modification Prohibition. After the publicized submission time and date, any proposal received shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may be allowed by the Selection Committee (defined in Section 5.09.1(B) at any point in the process prior to contract negotiations.
6. Reuse of Existing Plans. There shall be no public notice requirements or utilization of the selection process as provided in this section for projects in which the County is able to reuse existing plans from a prior project. However, public notice of any plans, which are intended to be reused at some future time, shall contain a statement that provides that the plans are subject to reuse.
7. Local preference in Requests for Proposals.
 - a) In the purchasing of, or letting of contracts for procurement of, personal property, materials, contractual services, and construction of improvements to real property or existing structures for which a request for proposals is developed with evaluation criteria, a local preference of the total score may be assigned for a local preference, as follows:

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- i. Individuals or firms which have a home office located within Leon, Gadsden, Wakulla, or Jefferson County, and which meet all of the criteria for a Local Business as defined herein, shall be given a preference in the amount of five percent.
 - ii. Individuals or firms which do not have a home office located within Leon, Gadsden, Wakulla, or Jefferson County, and which meet all of the criteria for a Local Business as defined herein, shall be given a preference in the amount of three percent.
- b) Certification. Any vendor claiming to be a Local Business shall so certify in writing to the purchasing division. The certification shall provide all necessary information to meet the requirements for a Local Business as defined herein. The purchasing agent shall not be required to verify the accuracy of any such certifications, and shall have the sole discretion to determine if a vendor meets the definition of a "Local Business."
- c) Waiver. The application of local preference to a particular purchase, contract, or category of contracts for which the County is the awarding authority may be waived upon written recommendation of the County Administrator and approval of the Board. The application of local preference to a particular purchase, contract, or category of contracts below the award authority of the Board may be waived upon written recommendation of the Director of Purchasing and approval of the County Administrator.

(Reference Article IX, Section 2-400, Chapter 2 of the Code of Laws of Leon County, Florida)

8. Exemptions. This section shall not apply to a professional service contract for a project where the basic construction cost is estimated by the agency to be less than the threshold amount provided in s. 287.055, Florida Statutes, or for a planning or study activity when the fee for professional services is estimated by the agency to be less than the threshold amount provided in s. 287.055, Florida Statutes, or in cases of valid public emergency so certified by the County Administrator. This section shall not apply to any requirement for professional services if a continuing contract is in effect and a determination is made to utilize the continuing contract to obtain such services.

C. CCNA Evaluation Committee Membership.

1. Depending on the expected complexity and expense of the professional services to be contracted, the County Administrator, or his/her designee shall determine whether a three member or five-member selection committee will best serve the needs of the County.
2. Membership of all Evaluation Committees shall be appointed by the County Administrator or his/her designee.
3. Public Meetings. In accordance with Florida Statute 286.011, all Evaluation Committee meetings subsequent to the opening of the solicitation are to be public meetings. The Chairperson shall be responsible to provide the Purchasing Division with all meeting information (date, time, location, and reason for meeting) no less than 96 hours in advance of any scheduled meeting, excluding holidays and weekends. The Purchasing Division will provide reasonable notice of all meetings, no less than 72 hours in advance of such scheduled meeting, excluding holidays and weekends, by posting a Notice of Evaluation Committee Meeting on the public notice bulletin board in the Division offices and on the Leon County website. The Purchasing Director shall develop and implement Evaluation Committee procedures to ensure compliance with public meeting requirements.
4. Contact with the CCNA Evaluation Committee. Members of the CCNA Evaluation Committee are prohibited from discussing a project with any professional or professional firm that may submit a proposal during the procurement process, except in formal committee meetings. The conduct of the business and discussions regarding the proposals before the CCNA Evaluation Committee must be done in the public meetings only.
5. Evaluation of Proposals. Only written responses of statements of qualifications, performance data, and other data received in the purchasing office by the publicized submission time and date shall be evaluated.

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- a) The initial ranking of proposals is based upon the points given in the Weighted Scoring Sheet utilizing the Evaluation Criteria Matrix. The scores will be provided by the Purchasing and MWSBE Divisions for Local preference and MWBE participation, respectively.
 - b) Shortlisting. The best-qualified respondents shall be based upon the CCNA Evaluation Committee's ability to differentiate qualifications applicable to the scope and nature of the services to be performed as indicated by the ratings on the Weighted Scoring Sheet. Typically, the top three rated firms, if there are at least three responsive respondents, will be considered as the shortlisted firms, unless the County Administrator, after input and discussion with the CCNA Evaluation Committee, approves adding additional firms to the shortlist.
6. Presentations/Interviews. The CCNA Evaluation Committee may choose to conduct formal presentations/interviews with shortlisted firms prior to final ranking.
7. Final Ranking. The CCNA Evaluation Committee shall utilize the Ordinal Process Rating System to rank the firms. The respondents shall be listed in order of preference starting at the top of the list. The list of best-qualified persons shall be forwarded to the County Administrator or Board, as appropriate, for approval prior to beginning contract negotiations. Negotiation sequence shall be based on the order of preference.
- D. Negotiation Staff. Contract negotiations shall be conducted by the Purchasing Director or designee(s) or by a Negotiation Committee.
 1. Negotiation Committee Membership. Membership of the three-member Negotiation Committee shall consist of:
 - a) the Purchasing Director, or the designee of the Purchasing Director who shall chair the committee,
 - b) the head of the primary using department or agency, or his/her designee,
 - c) the County Attorney or designee.
 2. Negotiation. The Negotiator(s) shall negotiate a contract with the firm considered to be the most qualified to provide the services at compensation and upon terms which the Negotiator(s) determines to be fair and reasonable to the County. In making this decision, the Negotiator(s) shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Negotiator(s) be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be formally terminated. The Negotiator(s) shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Negotiator(s) shall formally terminate negotiations, and shall then undertake negotiations with the third most qualified firm. Should the Negotiator(s) be unable to negotiate a satisfactory contract with any of the selected firms, the Selection Committee shall select additional firms in order of their competence and qualifications, and the Negotiator(s) shall continue negotiations in accordance with this Section until an agreement is reached or until a determination has been made not to contract for such services.
 3. Continuing Contracts. Nothing in this section (5.091) shall be construed to prohibit continuing contracts for professional services between a firm and the County.

Section 5.09.2 OTHER COMPETITIVE SEALED PROPOSALS

- A. Conditions for Use. When the Director of Purchasing determines that the use of competitive sealed bidding is either not practical or not advantageous to the County, a contract may be entered into by the use of competitive sealed proposals.
- B. Consultant's Competitive Negotiation Act. Professional services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying, as defined under the Consultant's Competitive Negotiation Act (Section 287.055, Florida Statutes), shall be secured under the provisions of Section 5.09.1.

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- C. **Public Notice.** Adequate public notice of the Request for Proposals shall be given in the same manner as provided in subsection 5.08C of this policy for competitive sealed bidding.
 - D. **Evaluation Factors.** The Request for Proposals shall state the relative importance of criteria outlined in the scope of services, fee proposal, and other evaluation criteria.
 - E. **Proposal Cancellation or Postponement.** The Director of Purchasing may, prior to a proposal opening, elect to cancel or postpone the date and/or time for proposal opening or submission.
 - F. **Revisions and Discussions with Responsible Offerors.** Discussions may be conducted with responsible offerors who submit proposals determined to be qualified of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
 - G. **Award.** Award shall be made to the responsive, responsible offeror whose proposal is determined in writing to be the most advantageous to Leon County, taking into consideration the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation criteria that are not included in the Request for Proposal.
 - H. **Local preference in Other Competitive Sealed Proposals.** In the purchasing of, or letting of contracts for procurement of, personal property, materials, contractual services, and construction of improvements to real property or existing structures for which a request for proposals is developed with evaluation criteria, a local preference of the total score may be assigned for a local preference, as follows:
 - 1. Individuals or firms which have a home office located within Leon, Gadsden, Wakulla, or Jefferson County, and which meet all of the criteria for a Local Business as defined herein, shall be given a preference in the amount of five percent.
 - 2. Individuals or firms which do not have a home office located within Leon, Gadsden, Wakulla, or Jefferson County, and which meet all of the criteria for a Local Business as defined herein, shall be given a preference in the amount of three percent.
- (Reference Article IX, Section 2-400, Chapter 2 of the Code of Laws of Leon County. Florida)*
- I. If less than two responsive bids, proposals, or replies for commodity or contractual services purchases are received, the Purchasing Director may negotiate on the best terms and conditions. The Purchasing Director shall document the reasons that such action is in the best interest of the County in lieu of resoliciting competitive sealed bids, proposals, or replies. The Purchasing Director shall report all such actions to the County Administrator or designee prior to final award of any contract resulting from the negotiations.

Section 5.10 SOLE SOURCE PURCHASES

- A. **Sole Source Certification.** A contract may be awarded, except as otherwise provided for under state law, for a supply, service, material, equipment or construction item(s) without competition when the Purchasing Director, with the concurrence of the County Administrator or designee, certifies in writing, after conducting a good faith review of available sources, that there is only one available source for the required material, supply, service, equipment, or construction item(s). Such awards will be made within the authorized procurement limits identified in Section 5.0. When a purchase exceeds the threshold amount for Board approval, the item will be placed on the agenda for Board approval and certification that the vendor has been determined to be a sole source.
- B. **Additional Purchases from Certified Sole Source.** The Purchasing Director shall be authorized, after initial sole source certification, to make additional purchases from a sole source vendor for not less than one year or until such time as contrary evidence is presented regarding sole source eligibility, whichever period is less.

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Section 5.11 EMERGENCY PURCHASES

- A. Authorization During Normal Business Hours. In the case of emergencies that require the immediate purchase of goods, equipment or services, the County Administrator, Purchasing Director, Group Director, or his designee shall be empowered to secure such goods or services without competitive bidding. In this event, all measures reasonably possible under the circumstances shall be taken to assure the maximum cost benefit to the County of the goods or services procured.
- B. Authorization Outside of Normal Business Hours. A department or division head, during non-business hours, is authorized to make purchases without competitive bids, when an emergency arises.
- C. Documentation and Approval. Documentation for emergency purchases pertaining to Section 5.11 (A) and (B) shall be submitted to the Purchasing Office on the standard requisition form with a detailed explanation, and support material attached, if applicable, within 10 workdays after the event occurred. Emergency purchases that exceed the competitive sealed bid threshold shall be ratified by the Board. Emergency purchases within the informal bid thresholds shall be approved by the County Administrator after-the-fact.
- D. Mutual Aid Agreements. The County may enter into and utilize Mutual Aid Agreements as provided in Chapter 252, Florida Statutes in the event of emergency situations. The Purchasing Director shall be authorized to invoke the terms of the Mutual Aid Agreement.

Section 5.12 COOPERATIVE PURCHASING

- A. State Contracts. The Purchasing Director is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the respective state contracts (state term continuing supply contracts, SNAPS agreements [State Negotiated Agreement Price Schedules], agreements resulting from Invitations to Negotiate [ITN], or other such contracts authorized by statute for use by local governments) of the Florida Department of Management Services or other state agencies. Such purchases shall be made without competitive bids provided that funding has been appropriated and approved by the Board of County Commissioners in Department/Division accounts.
- B. Federal Supply Service. The Purchasing Director is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the eligible Federal Supply Schedules issued by the Federal General Services Administration. Such purchases shall be made without competitive bids provided that funding has been appropriated and approved by the Board of County Commissioners in Department/Division accounts.
- C. Other Public Procurement Units. The Purchasing Director shall have the authority to join with other units of government in cooperative purchasing ventures when the best interest of the County would be served thereby, and the same is in accordance with the County and State law. The Purchasing Director shall appropriately document such cooperative purchasing arrangements. All Cooperative Purchasing conducted under this section shall be through contracts awarded through full and open competition, including use of source selection methods equivalent to those required by this policy. Each selection method shall clearly state the intention to include participation by other units of government as a requirement for use in cooperative purchasing.

Section 5.13 PROTESTING INTENDED DECISIONS AND PROCUREMENT AWARDS

- A. Right to Protest. Any person, hereinafter referred to as Protestor, who submits a timely response to an invitation to bid, a request for proposals, an invitation to negotiate, a request for qualifications, a multi-step sealed bid, or multi-step request for proposals under Sections 5.07, 5.08, 5.09, 5.09.1 or 5.09.2 of this Policy, and who is aggrieved with an Intended Decision of the County or a Procurement Award rendered by the Board of County Commissioners shall have the right to protest. Failure to protest an Intended Decision shall act as a bar to protest a subsequent Procurement Award that adopts the Intended Decision in all material respects.
 - 1. Any Protestor wishing to protest an Intended Decision shall follow the procedures set forth in paragraphs B, C, and D of this Section.

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2. Any Protestor wishing to protest a Procurement Award shall follow the procedures in paragraphs B, C, and E of this Section.

B. Filing a Protest. A Protestor shall file with the County a notice of intent to protest in writing within 72 consecutive hours after the posting of the notice of Intended Decision or Procurement Award of the County. A formal written protest shall be filed within 10 calendar days after the date the notice of intent to protest has been filed. Failure to timely file a notice of intent to protest or failure to file a formal written protest shall constitute a waiver of the right to proceedings under this Section.

A notice of intent to protest and the formal written protest are deemed filed with the County when it is received by the Purchasing Division.

1. The notice of intent to protest shall contain at a minimum: the name of the Protestor; the Protestor=s address and phone number; the name of the Protestor=s representative to whom notices may be sent; the name and bid number of the solicitation; and, a brief factual summary of the basis of the protest.
2. The formal written protest shall: identify the Protestor and the solicitation involved; include a plain, clear statement of the grounds upon which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the Protestor deems applicable to such grounds; and, specify the relief to which the Protestor deems himself entitled.
3. A formal written protest shall include the posting of a bond with the Purchasing Division at the time of filing the formal written protest, made payable to the Board of County Commissioners, Leon County, in an amount equal to one percent (1%) of the County's estimate of the total dollar amount of the contract or \$5000, whichever is greater. If after completion of the bid protest process and any court proceedings, the County prevails, the County shall be entitled to recover all court costs provided under Florida law, but in no event attorney fees, which shall be included in the final order of judgment rendered by the court. Upon payment of such court costs by the Protestor, the bond shall be returned to him. After completion of the bid protest process and any court proceedings, if the Protestor prevails, the protestor shall be entitled to have his bond returned and he shall be entitled to recover from the County all court costs provided under Florida law, but in no event attorney fees, lost profits or bid preparation costs, which shall be included in the final order of judgment rendered by the court. In no case will the Protestor or Intervenor be entitled to any costs incurred with the solicitation, including bid preparation costs, lost profits, bid protest costs, and/or attorney's fees.
4. Timeliness of protest determinations. All determinations on the timeliness of notices of intent to protest and formal written protests will be made by the Purchasing Director.

C. General Provisions

1. Intervenor. Any person, hereinafter referred to as Intervenor, who has submitted a timely response to the subject invitation to bid, request for proposals, invitation to negotiate, request for qualifications, or multi-step sealed bids, or multi-step requests for proposals, and who has a substantial interest in the Intended Decision or Procurement Award of the County, may be granted the right to intervene by order of the Chairperson of the Procurement Appeals Board or Special Master in response to a petition to intervene. A petition to intervene shall be filed within five calendar days of the filing of a formal written protest. Failure to timely file a petition to intervene shall constitute a waiver of all rights to intervene in the subject protest proceeding. Petitions to intervene will be considered by the Chairman of the Procurement Appeals Board, and any decision concerning a Petition to Intervene shall be made by the Chairman and shall be deemed final.
2. Time Limits. The time limits in which formal written protests shall be filed as provided herein may be altered by specific provisions in the invitation to bid, request for proposals, invitation to negotiate, request for qualifications, or multi-step sealed bids, or multi-step requests for proposals or upon the mutual written consent of the Protestor and the County.

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3. Entitlement to Costs. In no case will the Protestor or Intervenor be entitled to any costs incurred with the invitation to bid, request for proposals, invitation to negotiate, request for qualifications, or multi-step sealed bids, or multi-step requests for proposals, including, but not limited to bid preparation costs, lost profits, bid protest costs, and/or attorney's fees.
 4. After a formal written protest has been filed with the Purchasing Director, the Protestor may not discontinue such appeal without prejudice, except as authorized by the Procurement Appeals Board or Special Master.
 5. Stay of Procurement During Protests. In the event of a timely protest under Section 5.13(B) herein, the Purchasing Director shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the County Administrator makes a written determination that the award of a contract without delay is necessary to protect the substantial interests of the County.
- D. Protest of Intended Decisions.
1. Upon timely receipt of a notice of intent to protest an Intended Decision, the Purchasing Director shall provide the Protestor with acknowledgement of receipt and a copy of this Section. The Purchasing Director shall within one business day mail a copy of the notice of intent to protest to all persons who responded to an invitation to bid, a request for proposals, an invitation to negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals.
 2. Upon timely receipt of a formal written protest of an Intended Decision, the Purchasing Director shall provide the Protestor with acknowledgement of receipt and will notify the Chairman of the Procurement Appeals Board. The Purchasing Director shall within one business day mail a copy of the formal written protest to all persons who responded to an invitation to bid, a request for proposals, an invitation to negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals.
 3. Procurement Appeals Board. There is hereby established a Procurement Appeals Board to be composed of a chairperson and two members and two alternates. The chairperson, members, and alternates of the Procurement Appeals Board shall be appointed by the County Administrator. The term of office of the chairperson, members, and alternates of the Procurement Appeals Board shall be three years. For the initial appointments, the County Administrator shall appoint the chairperson for a term of three years, one member and one alternate for a term of two years, and one member and one alternate for a term of one year so that a term of office expires every year. Thereafter, their successors shall be appointed for terms of three years, or for the balance of any unexpired term, but members may continue to serve beyond their terms until their successors take office. Members may be reappointed for succeeding terms.
 - a) The Purchasing Division is authorized to provide for the Procurement Appeals Board such administrative support as the Chairman requests in the hearing of formal written protests.
 - b) Acting by two or more of its members, the Procurement Appeals Board shall issue a decision in writing or take other appropriate action on each formal written protest submitted. A copy of any decision shall be provided to all parties and the Purchasing Director.
 - c) Procurement Appeals Board Proceeding Procedures
 - i. The Procurement Appeals Board shall give reasonable notice to all substantially affected persons or businesses, including the Protestor, and any Intervenor.

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- ii. At or prior to the protest proceeding, the Protestor and/or Intervenor, as the case may be, may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the issues raised.
- iii. In the protest proceeding, the Protestor, and/or Intervenor, as the case may be, or his representative or counsel, may also make an oral presentation of his evidence and arguments. Further, only reasonable direct and cross-examination of witnesses shall be permitted, at the discretion of the Chairman of the Procurement Appeals Board. The members of the Procurement Appeals Board may make whatever inquiries they deem pertinent to a determination of the protest.
- iv. The judicial rules of evidence shall not strictly apply; however, witnesses shall be sworn, and any testimony taken under oath and, the members of the Procurement Appeals Board shall base their decision on competent, substantial evidence. The protest proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.
- v. Within seven (7) working days of the conclusion of the protest proceeding, the Procurement Appeals Board shall render a decision. The Procurement Appeals Board decision shall be reduced to writing and provided to the Protestor and/or Intervenor, as the case may be, and the County.
- vi. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

E. Protest of Procurement Awards; Special Master Proceedings.

- 1. Upon timely receipt of a notice of intent to protest a Procurement Award of the County, the Purchasing Director shall provide the Protestor with acknowledgement of receipt and a copy of this Section. The Purchasing Director shall within one business day mail a copy of the notice of intent to protest to all persons who responded to an invitation to bid, a request for proposals, an invitation to negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals.
- 2. Upon timely receipt of a formal written protest of a Procurement Award of the County, the Purchasing Director shall provide the Protestor with acknowledgement of receipt and will notify the County Attorney of the protest. The Purchasing Director shall within one business day mail a copy of the formal written protest to all persons who responded to an invitation to bid, a request for proposals, an invitation to negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals.
- 3. Appointment of a Special Master. The County Administrator shall appoint and retain a special master or shall contract with the Florida Division of Administrative Hearings for an administrative law judge to act as a special master to conduct evidentiary proceedings regarding formal written protests of Procurement Awards. Each special master shall be a licensed attorney with the Florida Bar who has practiced law in Florida for at least five years, and who has experience in procurement law, local governmental law, or administrative law. Each special master appointed and retained by the County shall serve at the pleasure of the County Administrator and shall be compensated at a rate or rates to be fixed by the County Administrator. The expense of each special master proceeding shall be borne equally by the Protestor and the County.

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4. Ex parte communication.
 - a) No county employee, elected official, or other person who is or may become a party to a proceeding before a special master may engage in an ex parte communication with the special master. However, the foregoing does not prohibit discussions between the special master and county staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the hearing.
 - b) If a person engages in an ex parte communication with the special master, the special master shall place on the record of the pending case all ex parte written communications received, all written responses to such communications, a memorandum stating the substance of all oral communications received, and all oral responses made, and shall advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be entitled to do so, but only if such party requests the opportunity for rebuttal within ten days after notice of such communication. If he or she deems it necessary due to the effect of an ex parte communication received by him, the special master may withdraw from the case.
5. Powers of special masters. The special masters who conduct hearings pursuant to this section shall have the powers of hearing officers enumerated in F.S. § 120.569(2)(f), as amended.
6. Prehearing requirements. At least fourteen days prior to the date set for the hearing, the parties shall exchange a list of names and addresses of witnesses planned to testify at the hearing, and a list of exhibits planned to be introduced at the hearing, as well as produce the physical exhibits for inspection by the parties. Each party is entitled to depose witnesses scheduled to testify at the evidentiary hearing.
7. Hearings.
 - a) All hearings shall be commenced within 45 days of the date of the filing of the formal written protest. Requests for continuance by any party, either before or during the hearing, may be considered upon good cause shown.
 - b) All hearings shall be open to the public.
 - c) The participants before the special master shall be the Protestor, the Protestor's witnesses, if any, county staff and witnesses, and any Intervenor. The participation of Intervenor shall be governed by the terms of the order issued by the special master in response to a petition to intervene. Intervention may only be permitted to any person, hereinafter referred to as Intervenor, who has submitted a timely response to the subject invitation to bid, request for proposals, an invitation to negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals, and who has a substantial interest in the Procurement Award.
 - d) Testimony and evidence shall be limited to matters directly relating to the formal written protest. Irrelevant, immaterial, or unduly repetitious testimony or evidence may be excluded.
 - e) All testimony shall be under oath. The order of presentation of testimony and evidence shall be as set forth by the special master.

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- f) To the maximum extent practicable, the hearings shall be informal. All parties shall have the opportunity to respond, to present evidence and provide argument on all issues involved which are related to the formal written protest, and to conduct cross-examination and submit rebuttal evidence. During cross-examination of witnesses, questioning shall be confined as closely as possible to the scope of direct testimony and matters involving impeachment. The special master may call and question witnesses or request additional evidence as he or she deems necessary and appropriate.
- g) The special master shall render a final order on the formal written protest to the parties within ten days after the hearing concludes, unless the parties waive the time requirement. The final order shall contain written findings of fact and conclusions of law.

Section 5.14 CONTRACT CLAIMS

- A. Authority to Settle Contract Controversies. This Section applies to controversies between the County and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission, where the contractor and County agree to utilize the provision of this section.
 - 1. The Purchasing Director is authorized to settle any controversy arising out of the performance of a County contract, prior to the commencement of an action in a court of competent jurisdiction up to \$10,000 in value.
 - a) If such a controversy is not resolved by mutual agreement, the Purchasing Director shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise be furnished to the contractor immediately. The decision shall:
 - (1) State the reason for the action taken; and,
 - (2) Inform the Contractor of its right to administrative review as provided in this section.
 - b) If the Purchasing Director does not issue a written decision required in paragraph (a) of this subsection within 30 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.
 - c) The decision of the Purchasing Director may be appealed to the Procurement Appeals Board by the protestor by filing a formal written appeal with the Purchasing Director within five calendar days of receipt of the Purchasing Director=s decision.
 - 2. The Procurement Appeals Board is authorized to review any appeal of a decision on a contract controversy by the Purchasing Director or to hear any contract controversy in excess of \$10,000.
 - 3. The Procurement Appeals Board shall promptly decide the contract or breach of contract controversy. The proceeding shall be de novo and shall follow the Proceeding Procedures contained in Section 5.13 (E)(3). Any prior determination by administrative officials shall not be final or conclusive.

Section 5.15 REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

- A. Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Director, after consultation with the County Attorney, determines that a solicitation is in violation of federal, state, or local law or ordinance, then the solicitation shall be canceled or revised to comply with applicable law.

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- B. Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award of contract, the Purchasing Director, after consultation with the County Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be canceled.
- C. After Award. If, after award, the Purchasing Director, after consultation with the County Attorney, determines that a solicitation or award of a contract was in violation of applicable law or ordinance, then:
 - 1. If the person awarded the contract has not acted fraudulently or in bad faith:
 - a) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the County; or
 - b) the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to termination, but excluding attorney's fees; or
 - 2. If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the County.

Section 5.16 OWNER DIRECT PURCHASES IN PUBLIC WORKS CONTRACTS

It is the policy of Leon County, Florida that all owner direct purchases for supplies and materials for use in public works projects be made in accordance with section 212.06(6) Florida Statutes and rule 12A-1.094 Florida Administrative Code, as they may be amended from time to time.

The Purchasing Director shall establish administrative procedures, processes, and forms necessary for the implementation and administration of owner direct purchases for supplies and materials for use in public works projects. In addition, the Purchasing Division shall provide training for project managers and other fiscal staff involved in contracts that may utilize owner direct purchases.

Section 5.17 EMPLOYMENT ELIGIBILITY AND VERIFICATION

- A. Federal statutes and executive orders require employers to abide by the immigration laws of the United States and to employ in the United States only individuals who are eligible to work in the United States. It is the policy of Leon County, Florida that unauthorized aliens shall not be employed nor utilized in the performance of contracted services for the County, in accordance with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (8 U.S.C. § 1324a), and Subpart 22.18 of the Federal Acquisition Register.
- B. Employment Eligibility Verification.
 - 1. This section on employment eligibility verification ("E-Verify") requirements shall apply to contractors and subcontractors performing contracted services for the County, where the contracted services are funded pursuant to federal grants, federal contracts, state grants, or state contracts.
 - 2. Each Contractor and subcontractor, as defined in this section, shall agree to enroll and participate in the federal E-Verify Program for Employment Verification under the terms provided in the Memorandum of Understanding governing the program. Contractor further agrees to provide to the County, within thirty days of the effective date of this contract/amendment/extension, documentation of such enrollment in the form of a copy of the E-Verify Edit Company Profile screen, which contains proof of enrollment in the E-Verify Program (this page can be accessed from the Edit Company Profile link on the left navigation menu of the E-Verify employer's homepage).
 - 3. Contractor further agrees that it will require each subcontractor that performs work under this contract to enroll and participate in the E-Verify Program within sixty days of the effective date of this contract/amendment/extension or within sixty days of the effective date of the contract between the Contractor and the subcontractor, whichever is later. The Contractor shall obtain from the subcontractor(s) a copy of the Edit Company Profile screen, indicating enrollment in the E-Verify Program and make such record(s) available to the Agency upon request.

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4. Contractor will utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all persons employed during the term of the Agreement by Contractor to perform employment duties within Florida; and (b) all persons (including subcontractors) assigned by Contractor to perform work pursuant to the Agreement.
 - a) Contractor must use E-Verify to initiate verification of employment eligibility for all persons employed during the term of the Agreement by Contractor to perform employment duties within Florida within three business days after the date of hire.
 - b) Contractor must initiate verification of each person (including subcontractors) assigned by Contractor to perform work pursuant to the Agreement within 60 calendar days after the date of execution of this contract or within 30 days after assignment to perform work pursuant to the Agreement, whichever is later.
 5. Contractor further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided previously, and to make such records available to the County or other authorized state entity consistent with the terms of the Memorandum of Understanding.
 6. Compliance with the terms of this Employment Eligibility Verification provision is made an express condition of this contract and the County may treat a failure to comply as a material breach of the contract.
- C. The Purchasing Director shall establish administrative procedures, processes, and forms necessary for the implementation and administration of this policy section. In addition, the Purchasing Division shall provide training for project managers and other staff involved in contracts that may utilize E-Verify requirements.

Section 6 CONTRACT ADMINISTRATION

The Purchasing Director or his designee shall serve as the chief contract administrator for the County. The Purchasing Director shall establish administrative procedures, processes, and tools necessary for the implementation and conduct of a comprehensive contract administration program. In addition, the Purchasing Division shall provide initial contract administration training for project managers and update training as deemed necessary.

Section 6.1 CONTRACT PROVISIONS

- A. Standard Contract Clauses and Their Modification. The Purchasing Director, after consultation with the County Attorney, may establish standard contract clauses for use in County contracts. However, the Purchasing Director may, upon consultation with the County Attorney, vary any such standard contract clauses for any particular contract.
- B. Contract Clauses. All County contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Director, after consultation with the County Attorney, may propose provisions appropriate for supply, service, or construction contracts, addressing among others the following subjects:
 1. the unilateral right of the County to order, in writing, changes in the work within the scope of the contract;
 2. the unilateral right of the County to order, in writing, temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 3. variations occurring between estimated quantities or work in contract and actual quantities;
 4. defective pricing;
 5. time of performance and liquidated damages;

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6. specified excuses for delay or nonperformance;
7. termination of the contract for default;
8. termination of the contract in whole or in part for the convenience of the County;
9. suspension of work on a construction project ordered by the County;
10. site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:
 - a) when the contract is negotiated;
 - b) when the contractor provides the site or design;
 - c) when the parties have otherwise agreed with respect to the risk of differing site conditions.
11. value engineering proposals.

Section 6.2 PRICE ADJUSTMENTS

- A. **Methods of Price Adjustment.** Adjustments in price during the term of a contract shall be computed in one or more of the following ways upon approval by the Board:
1. by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 2. by unit prices specified in the contract or subsequently agreed upon;
 3. by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon by the Board;
 4. in such other manner as the contracting parties may mutually agree; or
 5. in the absence of agreement by the parties, by a unilateral determination by the County of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the County, subject to the provisions of this section.
- B. **Cost or Pricing Data Required.** A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of this Section.

Section 6.3 CHANGE ORDERS/CONTRACT AMENDMENTS

- A. **Change Orders.** Change Orders are written documentation reflecting changes made to stipulations, condition, or terms of the contract during the contract period whether the contract is a capital improvement or a consultant services contract. There are two types of change orders that may be made to these contracts.

1. **Field Change Order.** This change order is identified in the original approved contract as a contingency and is referred to as a field change order. It is customary in more complex contracts to include a contingency for changes to the original contract through Field Change Orders. For contracts of less than \$1,000,000, a contingency may be included generally not to exceed 10% of the contract value, unless circumstances justify same. For contracts in excess of \$1,000,000, a contingency shall be included, but shall generally not exceed 5% of the original contract value, unless circumstances justify same.

When a contract is approved with such a contingency, the Project Manager with the concurrence of the respective Department Director or designee is authorized to approve one or more Change Orders up to the aggregate monetary value of the contingency. The contract must contain an approved contingency clause for this type of Field Change Order such as "The contract price includes a 5% or 10% (whichever is applicable) contingency amount for change orders that may be authorized at the discretion of the County."

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Alternately, as a part of the project award recommendation, staff may propose an alternate amount for the level of pre-approved field Change Orders based upon the known complexity of the project; the certainty of unknown factors such as asbestos abatement or unknown conditions in rehabilitation; or other such factors for consideration by the Board.

2. Board Approved Change Order. Any Change Order, the cost of which exceeds the Field Change Order Threshold amount, or a Change Order which amends the scope of work or services in a significant manner, shall be considered by the Board.
- B. Contract Amendments. Contract amendments, other than change orders, which provide for the alteration of specifications, delivery point, time, payments, quantity, or similar provisions of a contract without changing the scope of the project, may be approved by an appropriate person based upon the dollar value of the amendment. The purchasing categories' thresholds designated in Sections 5 through 5.09 shall govern the appropriate level of approval.

Section 6.4 ASSIGNMENTS OF CONTRACTS

No agreement made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the County nor shall the contractor assign any monies due or to become due to the contractor hereunder without the previous written consent of the County.

Section 6.5 RIGHT TO INSPECT PLANT

The County may, at its discretion, inspect the part of the plant or place of business of a contractor or any subcontractor, which is related to the performance of any contract awarded, or to be awarded, by Leon County. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving Leon County.

Section 7 RIGHTS OF BOARD OF COUNTY COMMISSIONERS

Nothing in this Policy shall be deemed to abrogate, annul, or limit the right of the Board in accordance with Florida law and in the best interests of the County, to reject all bids/proposals received in response to a solicitation, to determine in its sole discretion the responsiveness and responsibility of any bidder/proposer, to approve and authorize or to enter into any contract it deems necessary and desirable for the public welfare, or to vary the requirements of the Policy in any instance when necessary and desirable for the public welfare.

Section 8 COUNTY PROCUREMENT RECORDS

- A. Procurement Files. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the County in appropriate files by the Purchasing Director.
- B. Retention of Procurement Records. All procurement records shall be retained and disposed of by the County in accordance with records retention guidelines and schedules established by the State of Florida.

Section 9 SPECIFICATIONS

Section 9.1 MAXIMUM PRACTICABLE COMPETITION

All specifications shall be drafted to promote overall economy and encourage competition in satisfying the County's needs and shall not be unduly restrictive. This policy applies to all specifications including, but not limited to, those prepared for the County by architects, engineers, designers, and draftsmen.

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Section 9.2 USE OF BRAND NAME OR EQUIVALENT SPECIFICATIONS

- A. Use. Brand name or equivalent specifications may be used when the Purchasing Director determines that:
1. no other design, performance, or qualified product list is available;
 2. time does not permit the preparation of another form of purchase description, not including a brand name specification;
 3. the nature of the product or the nature of the County requirements makes use of a brand name or equivalent specification suitable for the procurement; or
 4. use of a brand name or equivalent specification is in the County's best interests.
- B. Designation of Several Brand Names. Brand name or equivalent specifications shall seek to designate three, or as many different brands as are practicable, as "or equivalent" references and shall further state that substantially equivalent products to those designated may be considered for award.
- C. Required Characteristics. Unless the purchasing agent determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equivalent specifications shall include a description of the particular design, functional, or performance characteristics required.
- D. Nonrestrictive Use of Brand Name or Equivalent Specifications. Where a brand name or equivalent specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
- E. Determination of Equivalents. Any prospective bidder may apply, in writing, for a pre-bid determination of equivalence by the Purchasing Director. If sufficient information is provided by the prospective bidder, the Purchasing Director may determine, in writing and prior to the bid opening time, that the proposed product would be equivalent to the brand name used in the solicitation.
- F. Specifications of Equivalents Required for Bid Submittal. Vendors proposing equivalent products shall include in their bid submittal the manufacturer's specifications for those products. Brand names and model numbers are used for identification and reference purposes only.

Section 9.3 BRAND NAME SPECIFICATIONS

- A. Use of Brand Name Specifications. Since use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Director makes a determination that only the identified brand name item or items will satisfy the County's needs.
- B. Competition. The Purchasing Director shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 5.10, Sole Source Purchases.

Section 10 ETHICS IN PUBLIC CONTRACTING

Section 10.1 CRIMINAL PENALTIES

To the extent that violations of the ethical standards of conduct set forth in this Section constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to civil sanctions set forth in this part.

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Section 10.2 EMPLOYEE CONFLICT OF INTEREST

- A. Participation. It shall be unethical for any County employee to participate directly or indirectly in a procurement contract when the County employee knows that:
1. the County employee or any member of the County employee's immediate family (father, mother, brother, sister, child, grandparent, or grandchild of employee or spouse) has a financial interest pertaining to the procurement contract; or
 2. any other person, business, or organization with whom the County employee or any member of a County employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
- B. Blind Trust. A County employee or any member of a County employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

Section 10.3 CONTEMPORANEOUS EMPLOYMENT PROHIBITED

It shall be unethical for any County employee who is participating directly or indirectly in the procurement process to become or to be, while such a County employee, the employee of any person contracting with the County.

Section 10.4 USE OF CONFIDENTIAL INFORMATION

It shall be unethical for any employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

Section 10.5 WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT PROHIBITION AND OTHER CONFLICTS OF INTEREST

The County Administrator may grant a waiver from the employee conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

- A. the contemporaneous employment or financial interest of the County employee has been publicly disclosed;
- B. the County employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
- C. the award will be in the best interest of the County.

Section 10.6 GRATUITIES AND KICKBACKS

- A. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee, or for any County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or performing in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, subcontract, or to any solicitation or proposal therefor.
- B. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- C. Contract Clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefore.

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Section 10.7 SANCTIONS

- A. Employee Sanctions. Upon violation of the ethical standards by an employee, the County Administrator, Purchasing Director, or other appropriate authority may:
 - 1. impose one or more appropriate disciplinary actions as defined in the County Personnel Rules and Regulations, up to and including termination of employment; and,
 - 2. may request investigation and prosecution.
- B. Non-employee Sanctions. The Board may impose any one or more of the following sanctions on a non-employee for violation of the ethical standards:
 - 1. written warnings;
 - 2. termination of contracts; or
 - 3. debarment or suspension as provided in Section 15.

Section 10.8 RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS

- A. General Provisions. The value of anything being transferred or received in breach of the ethical standards of this policy by a County employee or a non-employee may be recovered from both County employee and non-employee.
- B. Recovery of Kickbacks by the County. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the County and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

Section 11 FEDERAL POLICY NOTICE

Section 11.1 PATENTS

If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include the following provisions.

- A. Notice to Contractor. The contract shall give notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to, any discovery or invention arising out of the contract.
- B. Notice by Contractor. The contract shall require the contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

Section 11.2 NOTICE OF FEDERAL PUBLIC POLICY REQUIREMENTS

- A. Applicability. If the contract is being funded in whole or in part by assistance from any federal agency, the contract is subject to one or more federal public policy requirements such as:
 - 1. equal employment opportunity;
 - 2. affirmative action;
 - 3. fair labor standards;
 - 4. energy conservation;
 - 5. environmental protection; or
 - 6. other similar socio-economic programs.

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- B. Notice. The Purchasing Director shall include in the contract all appropriate provisions giving the contractor notice of these requirements. Where applicable, the Purchasing Director shall include in the contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

Section 12 INSURANCE REQUIREMENTS

- A. Minimum Requirements. Contractor shall purchase and maintain such insurance as will protect it from claims under Workers' Compensation laws, disability benefit laws or other similar employee benefit plans; from claims or damages because of bodily injury, occupational sickness or disease or death of its employees and claims insured by usual personal injury liability coverage in amounts determined by the provisions of the Risk Management Policy.
- B. Certificates of Insurance. Certificates of Insurance acceptable to the County shall be filed with the Purchasing Division prior to the commencement of the work and periodically thereafter upon any renewals during the term of the contract.
- C. Change of Insurance Requirements. The Board of County Commissioners reserves the right to change the insurance requirements based on the project scope, or when determined in the best interest of the County.

Section 13 BONDS AND DEPOSITS

When any of the following bonds is (are) required, the bond(s) will be requested in the bid document. No work in connection with the fulfillment of a contract shall commence until the appropriate bond(s) is (are) accepted by the County.

Section 13.1 TYPES OF BONDS AND DEPOSITS:

- A. Combination Payment and Performance Bond - This type of bond is required for repairs, renovations, new construction, and other public works costing in excess of \$200,000. For projects less than that amount, it may be required at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. When a payment and performance bond is required, the bond will be requested in the bid document. No work in connection with the fulfillment of a contract shall commence until the payment and performance bond is accepted by the County.
- B. Performance Bond - For a project of an estimated value less than \$200,000, requirement of a performance bond will be at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. For projects estimated to be \$200,000 or more, such bond will be required to insure that a contract is carried out in accordance with the applicable specifications and at the agreed contract price.
- C. Payment and Material Bond - For a project of an estimated value less than \$200,000, requirement of a payment and material bond will be at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. For projects estimated to be \$200,000 or more, such bond will be required to protect the County from suits for non-payment of debts, which might be incurred by a contractor's performance for the County.
- D. Warranty Bonds - At the discretion of the Purchasing Director, after consultation with user departments, a Warranty Bond may be required from a successful bidder to insure warranty provisions are fulfilled.
- E. Guaranty of Good Faith Deposit (Bid Deposit) - For projects estimated to be less than \$200,000, requirement of a bid bond will be at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. For purchases where it is determined by the Purchasing Director to be in the best interest of the County, and projects estimated to be \$200,000 or more, bidders will be required to submit with their bid or proposal a guaranty of good faith deposit. When in the best interest of the County, it is recommended by the Purchasing Director and approved by the County Administrator or his designee, these requirements may be waived.

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1. Return of Bond. Such deposit may not be withdrawn until a specified time after the proposals are opened and awards made. The deposit of the bond shall be retained by the Finance Officer of the Board until the Purchasing Director is satisfied that the Contractor's obligations have been satisfactorily completed.
 2. Substitutes. In lieu of a surety bid bond, contractor may submit a certified check, cashier's check, or treasurer's check, on any national or state bank. Such deposits shall be in the same percentage amounts as the bond. Such deposits shall be retained by the Finance Officer of the Board until all provisions of the contract have been met.
- F. Irrevocable Letter of Credit. Upon approval of the Purchasing Director, a contractor may present an Irrevocable Letter of Credit from a national or state chartered bank in lieu of any of the foregoing bonds for the same face value as required for the bond. The letter of credit shall be for a period of time not less than three months beyond the scheduled completion date of the purchase of the contracted services or materials.
- G. Retention of Payments. The County may require the payment for a project, or a portion thereof, be withheld until the project has been completed as a method of protecting the County's interest. Retention may also be used in lieu of the above listed bonds. The solicitation documents shall specifically state if retention of any portion or all of the payment for the project is to be done.

Section 13.2 AMOUNT OF BOND OR DEPOSIT

- A. Amount of Bond. Bonds or deposits, which may be required, shall normally be in the following amounts, except as provided in the following subsection B.
1. Performance Bond: 100% of contract price.
 2. Payment Bond: 100% of contract price.
 3. Payment and Performance Bond: 100% of contract price.
 4. Guaranty of Good Faith Deposit (Bid Deposit or Bond): The bid deposit will be 5% of the price bid by the vendor.
- B. Exceptions to Amount of Bond. Any of the previously listed bonds may be required at another amount recommended by the Purchasing Director and approved by the County Administrator or his designee when in the best interest of the County.

Section 13.3 PROCESSING OF BONDS AND DEPOSITS:

- A. Responsibility for Securing Bonds. The contractor shall be responsible for securing the bond. Any costs may be included in the contract price.
- B. Licensure of Bonding Company. The company acting as surety for any bond issued shall be licensed to do business in the State of Florida.
- C. Review of Bonds by County Attorney. Surety bonds furnished will be reviewed by the County Attorney, who shall either accept or reject it for the Board. All surety bonds accepted shall be forwarded to the Finance Officer of the Board by the Purchasing Director to be filed in the official records of the Board.
- D. Failure to Provide Required Bond. In the event a contractor fails to provide an acceptable bond when required, within 10 days after notification, the County Attorney will be notified. Upon the recommendation of the County Attorney, the Board may declare the contract null and void, and retain in the account of Leon County any good faith deposits or guaranty which may have been submitted as liquidated damages under the terms of the solicitation.
- E. Filing of Bonds. Bonds, when accepted, shall be forwarded to the Finance Officer of the Board and shall be filed with the applicable contract documents.

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- F. Deposits. Cash deposits (cashier's check, money orders, bank drafts, etc.) of all bidders shall be forwarded to the Finance Officer of the Board for deposit to the account of the Board of County Commissioners. Upon award of contract, the Purchasing Director or designee shall be responsible for approving the return of deposits to unsuccessful bidders.
- G. Plans and Specification Deposit/Fees. The Purchasing Director is authorized to assess reasonable deposits and/or fees, not to exceed the cost of reproduction, for plans and specifications issued as a part of invitations for bids or requests for proposals. Deposits of all bidders for plans and specifications shall be forwarded to the Finance Officer of the Board for deposit to the account of the Board of County Commissioners. Upon award of contract, the Purchasing Director or designee shall be responsible for approving the return of refundable deposits to unsuccessful bidders. Fees are to be deposited into the account from which applicable reproduction costs are paid.

Section 14 PAYMENT TO VENDORS

It is the policy of Leon County, Florida that payment for all purchases by the County be made in a timely manner in accordance with the provisions of the "Local Government Prompt Payment Act," sections 218.70 – 218.79, Florida Statutes.

The Purchasing Director, in conjunction with the Finance Director, shall establish administrative procedures, processes, and forms necessary for the implementation and administration of payments for all contracts under the requirements of the Local Government Prompt Pay Act. In addition, the Purchasing Division shall team with the Finance Department to provide accounts payable training for project managers and other fiscal staff involved in contracts and update training as deemed necessary.

Section 14.1 PAYMENT DISPUTE RESOLUTION

- A. In the event a dispute occurs between a contractor/vendor, herein referred to as vendor, and the County concerning payment of a payment request for construction work or an invoice for goods and/or services, the vendor should first attempt to resolve the issue with the Project Manager. If the dispute cannot be resolved between the vendor and the Project Manager within two business days of the dispute first being raised, the vendor may file a formal payment dispute. Formal payment dispute resolution shall be finally determined by the County, under this procedure in accordance with Florida Statute (FS) 218.76.
- B. Definitions. These definitions are specific to Section 14.1 of this policy.
 - 1. "Project Manager" is the Leon County employee responsible for managing the contract and approving payment requests and invoices related to the payment dispute.
 - 2. "Contract Manager" is the Leon County employee within the County Purchasing Division responsible for monitoring contracts. The Contract Manager serves as Chair of the Payment Dispute Resolution Committee.
- C. Filing a Dispute. Any vendor shall file with the Contract Manager in the County Purchasing Division a formal notice of payment dispute in writing within two (2) business days of the dispute first being raised.
 - 1. The notice of payment dispute shall contain at a minimum: the name of the vendor; the vendor's address and phone number; the name of the vendor's representative to whom notices may be sent; the contract number associated with the payment dispute; and, a brief factual summary of the basis of the dispute.
 - 2. Waiver. Failure to timely file a written payment dispute shall constitute a waiver of proceedings under this section.
 - 3. Upon timely receipt of a formal payment dispute, the Contract Manager shall provide the vendor with acknowledgement of receipt, will notify the Payment Dispute Resolution Committee, and will coordinate with all parties to establish the date and time for a Payment Dispute Resolution Proceeding.

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D. General Provisions

1. Time Limits. Proceedings to resolve the dispute shall be commenced not later than 45 calendar days after the date on which the payment request or proper invoice (as specified in the contract document) was received by the County and shall be concluded by final decision of the County not later than 60 calendar days after the date on which the payment request or proper invoice was received by the County.
2. Protest. Dispute resolution procedures shall not be subject to chapter 120, and such procedures shall not constitute an administrative proceeding, which prohibits a court from deciding de novo any action arising out of the dispute.
3. Interest. If the dispute is resolved in favor of the County, then interest charges shall begin to accrue 15 calendar days after the County's final decision. If the dispute is resolved in favor of the vendor, then interest shall begin to accrue as of the original date the payment became due.
4. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

E. Payment Dispute Resolution Proceeding Process

1. All formal payment disputes shall be presented to the Payment Dispute Resolution Committee. The committee shall be comprised of the Contract Manager, Purchasing Director, and appropriate Division Director for the County or their designees.
2. Within three (3) business days of timely receipt of a formal notice of payment dispute, the Contract Manager shall schedule a proceeding before the Payment Dispute Resolution Committee to include all substantially affected persons or businesses, including the vendor and County project manager. Non-appearance by the vendor shall constitute a forfeiture of proceedings with prejudice.
3. At or prior to the dispute proceeding, the vendor and project manager, may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the payment dispute.
4. In the proceeding, the vendor and project manager, or his representative or counsel, may also make an oral presentation of his evidence and arguments. Further, only reasonable direct and cross-examination of witnesses shall be permitted, at the discretion of the Chairman of the Payment Dispute Resolution Committee. The members of the Payment Dispute Resolution Committee may make whatever inquiries they deem pertinent to a determination of the dispute.
 - a) The judicial rules of evidence shall not strictly apply; however, witnesses shall be sworn, and any testimony taken under oath and, the members of the Payment Dispute Resolution Committee shall base their decision on competent, substantial evidence. The proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.
 - b) Within three business days of the conclusion of the proceeding, the Payment Dispute Resolution Committee shall render a decision. The Payment Dispute Resolution Committee decision shall be reduced to writing and provided to the vendor and the County project manager. The decision of the Payment Dispute Resolution Committee shall be final and conclusive for all disputes valued less than \$100,000.
 - c) For those disputes valued above \$100,000, the Payment Dispute Resolution Committee shall file a Recommended Agency Order for approval by the County Administrator or his designee.

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Section 15 AUTHORIZATION TO DEBAR OR SUSPEND VENDOR(S)

- A. Suspension. After consultation with the County Attorney, the Purchasing Director is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity, which might lead to debarment. The suspension shall be for a period not to exceed three (3) months, and the Purchasing Director shall immediately inform the Board and provide notice to the affected person.
- B. Debarment. After reasonable notice and a reasonable opportunity for the suspended person to be heard, the Board shall either disbar such person or terminate the suspension. The debarment should be for a period of not more than three (3) years.
- C. Causes for Debarment. The causes for debarment include:
1. entry of a plea of guilty, no contest, or nolo contendere to or conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 2. entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;
 3. entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
 4. violation of contract provisions, as set forth below, of a character which is regarded by the Board to be so serious as to justify debarment action:
 - a) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
 5. having been adjudicated guilty of any violation by the Leon County Contractor's Licensing Board, or the State of Florida Construction Industry Licensing Board within the past twelve (12) month period at the time of bid submittal;
 6. having been adjudicated guilty by the Leon County Code Enforcement Board of any violation of an environmental ordinance within the past six (6) month period at the time of bid submittal; and
 7. any other cause the Purchasing Director or Board determines to be as serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity.
- D. Notice of Decision. The Purchasing Director shall issue a written notice to the person of the decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial or administrative review. The written decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

Section 15.1 APPEAL OF DECISION TO DEBAR OR SUSPEND

The Board's decision to debar or suspend a person or business shall be final and conclusive, unless the debarred person commences a timely action in court in accordance with applicable law.

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Section 16 MINORITY, WOMEN AND SMALL BUSINESS ENTERPRISE PROGRAM

- A. Purpose. The purpose of the Minority and Women-Owned Business Enterprise and Small Business Enterprise (MWSBE) Program is to effectively communicate Leon County procurement and contracting opportunities, through enhanced business relationships, to end disparity and to increase participation opportunities for certified minority and women-owned business enterprises and small business enterprises in a competitive environment.
- B. Definitions. These definitions are specific to Section 16 of this policy.
1. "Affiliate" or "Affiliation" – Shall mean when Eligible Owner either directly or indirectly controls or has the power to control the other; a third party or parties controls or has the power to control both; or other relationships between or among parties exist such that affiliation may be found. A business enterprise is an Affiliate of an Eligible Owner when the Eligible Owner has possession, direct or indirect of either: (i) the Ownership of or ability to direct the voting of as the case may be more than fifty percent (50%) of the equity interest, value or voting power of such business, or (ii) the power to direct or cause the direction of the management and policies of such business whether through the Ownership of voting securities by contract or otherwise. In determining whether a business is an Affiliate with another business or with an Owner, consideration shall be given to all appropriate factors including but not limited to common Ownership, common management, contractual relationship and shared facilities.
 2. "Applicant" – Shall mean a Person who has submitted a Certification Application to the MWSBE Division for Certification consideration.
 3. "Aspirational Targets" – Shall mean the percentage or dollar level targeted for the minimum level of MBE, WBE, or SBE participation for a particular procurement opportunity.
 4. "Bidder" – Shall mean, unless otherwise stated, a party responding to an invitation for bid, or other form of a procurement opportunity.
 5. "Business Categories" shall include and shall have the following meaning:
 - a) "Architecture & Engineering" – Shall mean architectural or engineering services provided by an appropriately licensed professional architect or engineer, or by a professional architectural or engineering firm, related to architectural or engineering services.
 - i. "Architecture" - When provided by an appropriately licensed architect or architectural firm that employs appropriately licensed architects, "architecture" shall mean the rendering or offering to render services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.
 - ii. "Engineering" – "Engineering" shall include the term "professional engineering" and, when provided by an appropriately licensed "professional engineer", "licensed engineer", or an engineering firm that employs appropriately licensed professional or licensed engineers, "engineering" shall mean any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services.

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- b) "Construction" – Shall mean services that include the building, attaining, repairing, improving, or demolishing any public structure or building, or other public improvement of any kind to any public real property. It does not include routine operation, routine repair, or routine maintenance of existing buildings or facilities.
 - c) "Professional Services" – Shall mean any service provided by a person or firm that is of a professional nature, with special licensing, educational degrees, and unusual or highly specialized expertise. Examples include, but are not limited to Financial Services, Legal Services, Medical Services, and Advertising/Marketing Services. "Professional Services" does not include "Architecture & Engineering," which is previously separately defined herein.
 - d) "Other Services" – Shall mean any service that is labor intensive and not professional or construction related. Examples include, but are not limited to maintenance services, janitorial services, lawn services, employment services, and printing services.
 - e) "Materials and Supplies/Purchases" – Shall mean the equipment and consumable items purchased in bulk, or deliverable products. Examples of such include, but are not limited to equipment and parts, chemicals, and paper products.
6. "Certification" – Shall mean the verification that a business meets all of the eligibility criteria for participation in the MWSBE Program as a SBE and/or a MBE or WBE.
7. "Certification Application" – Shall mean the forms and documents an Applicant must complete to be considered for Certification.
8. "Commercially Useful Function" - Shall mean a business that: (a) is responsible for the execution of a distinct element of work or services; (b) carries out its obligation by actually performing, managing, or supervising the work involved; (c) performs work that is normal for its business, services and function; and (d) is not further Subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices. A Contractor, Subcontractor, Vendor or Supplier shall not be considered to perform a Commercially Useful Function if the Contractor's, Subcontractor's, Vendor's or Supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MWSBE participation.
9. "Contract" - Shall include any agreement, regardless of what it may be called, between the County and a Person to provide or procure labor, materials, supplies, or services to, for, or on the behalf of the County.
10. "Contractor" - Shall mean any person, firm, or legal entity that has entered into a Contract with the County or any of its contracting agencies.
11. "Control" – Shall mean the Applicant Owner(s) actually exercise control over the business' operations, work, management, and policy. Indication of such control are set forth as follows:
- a) Applicant Owner(s) must demonstrate the ability to make unilateral and independent business decisions as needed to guide the future and destiny of the business, and their business must not be subject to any formal or informal restrictions that limit the customary discretion of such Applicant Owner(s). There can be no restrictions through corporate provisions, by-law provisions, contracts or any other formal or informal devices that prevent the Applicant Owner(s) from making any business decision of the firm without the cooperation or vote of another entity or Person that is not an Applicant Owner(s) or who would not be eligible for the MWSBE Program.
 - b) The Applicant Owner(s) must control the day-to-day operations of the business in the critical area(s). Administrative responsibilities alone are not sufficient to prove control. The Applicant Owner(s) may delegate various areas of the management or daily operations of the business to persons, who would not qualify to be MWSBEs or who are not Applicant Owners, only if such delegation is typical in the industry for such business and such delegation is revocable.

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- c) The Applicant Owner(s) must have an overall understanding of, and managerial and technical competence, experience and expertise, directly related to the business' operations and work.
- 12. "County" - Shall mean Leon County, Florida
- 13. "County Facilities" – Shall mean County buildings and other buildings and structures owned, leased, or used by the County or its contractors, assignees, lessees and licensees.
- 14. "Front" – Shall mean a business that intentionally and/or falsely holds itself out as a business that is Controlled and Owned at least 51% by a Minority(ies), a Woman or Women, when in fact it is not.
- 15. "Good Faith Committee" – Shall mean a standing committee whose purpose is to determine the validity of a Bidder's Good Faith Efforts to meet Aspirational Targets, as it relates to MWSBE participation for a procurement opportunity, when a Bidder with Subcontracting and/or Supplier opportunities fails to meet the Aspirational Targets, and the MWSBE Director has determined that the Bidder has not made Good Faith Efforts.
- 16. "Good Faith Efforts" – Shall mean efforts exercised by a Bidder in good faith to meet Aspirational Targets for MWSBE participation as a Subcontractor or Supplier, as may be relevant to the particular bid or RFP. The Bidder can demonstrate that it has made a Good Faith Effort by meeting the Aspirational Targets, or by demonstrating it has made reasonable efforts to do so, such as in person, written, telephone, electronic communication, contact with certified MWBE's, provisions of plans or specifications to MWBE's, or outreach efforts with MWBE's.
- 17. "Independent" – Shall mean a business whose viability does not depend on its relationship with another firm. Recognition of an Applicant business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a business is independent. Considerations of such independence include: (i) relationships with other businesses in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources; (ii) whether present or recent family, or employer/employee relationships compromise the Applicant Owner(s)' independence; and (iii) whether the Applicant Owner(s)' exclusive or primary dealings with a prime contractor compromises the Applicant Owner(s)' independence.
- 18. "Joint Venture" – Shall mean a legal organization that takes the form of a short-term partnership in which the parties jointly undertake for a transaction, for which they combine their property, capital, efforts, skills, and knowledge. Generally, each party shall contribute assets and share risks. Joint Ventures can involve any type of business transaction and the parties involved can be individuals, groups of individuals, companies, or corporations.
- 19. "Local Market" – Shall mean the geographical area consisting of the following Florida counties: Leon, Gadsden, Jefferson, and Wakulla.
- 20. "Majority Ownership" or "Majority Owner" – Shall mean owning no less than 51% of a business enterprise.
- 21. "Minority Business Enterprise" (MBE) - Shall mean a business whose MBE Certification is recognized, current, and accepted by Leon County's MWSBE Program.
- 22. "Minority Person" or "Minority" - Shall mean an individual who is a citizen of the United States, or a lawfully admitted permanent resident, and who identifies himself or herself as being African, Hispanic, Asian, American Indian, Alaskan Native, and American Aleut descent.
 - a) "African American" – Which shall mean all persons having origins from Africa
 - b) "Hispanic American" – Which shall mean all persons having origins from a Hispanic country.
 - c) "Asian American" – Which shall mean all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.
 - d) "American Indian", "Alaskan Native" and "American Aleut" – Which shall mean all persons having origins in any of the original people of North America

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23. "Minority, Women and Small Business Enterprise" (MWSBE) – Shall refer jointly to MBE, WBE and SBE, or any combination thereof.
24. "MWSBE Director" - Shall mean the Director of Leon County's MWSBE Division and manager of the MWSBE Program.
25. "MWSBE Program" – Shall mean the programs and efforts set forth by Leon County under the provisions of this policy, either directly or through partners, to enhance participation in County procurements to achieve parity for MBEs, WBEs, and SBEs.
26. "Owner" or "Ownership" – Shall mean the person(s) who own(s) a business.
27. "Parity" – Shall mean the utilization of MBEs and WBEs for County Contracting and procurements in a share equal to the availability of MBEs and WBEs in the Local Market who are willing, able and available to perform the services and provide the goods being Contracted or procured.
28. "Participation Plan" – Shall mean the response provided by the Bidder as a part of their bid or proposal and which provides the detailed information in response to the Aspirational Targets contained in the invitation to bid or request for proposals.
29. "Person or Party" – Shall mean one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more individuals, and further includes any department, office, agency or instrumentality of the County.
30. "Prime Contractor" – Shall mean a person or firm who is qualified and responsible for the entire project contracted, who may have one or more Subcontractors.
31. "Purchasing" or "Procurement"- Shall mean the buying, renting, leasing or otherwise obtaining or acquiring any goods, supplies, materials, equipment, or services.
32. Respondent – The Person or Party who responds to a request for proposal or a request for qualification.
33. "Small Business Enterprise" (SBE) – Shall mean a business whose SBE Certification is recognized, effective and accepted by Leon County's MWSBE Program.
34. "Small Business Enterprise Program" (SBE Program) – Shall mean those components of the MWSBE Program that targets increased participation of SBEs in the County's procurements, including the coordination with other entities and agencies that assist small businesses through various means such as education and networking.
35. "Subcontract" - Shall mean any agreement, arrangement, or understanding, written or otherwise, between a Contractor and any Party (in which the parties do not stand in relationship of employer and employee) which assigns some of the obligations of the Contract:
 - a) For the furnishing of supplies or services or for the use of real personal property; including lease arrangements which, in whole or in part, is/are utilized in the performance of one or more Contracts with the County; or
 - b) Under which any portion of the Contractor/Vendor's obligation under one or more Contracts with the County is performed, undertaken, or assumed.
36. "Subcontractor" – Shall mean any Party performing work for a Prime Contractor engaged by Leon County under a Contract with a Contractor.
37. "Supplier" - Shall mean a business that furnishes needed items to a Contractor, and (i) is either involved in the manufacture or distribution of the supplies or materials; or (ii) otherwise warehouses and ships the supplies.

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38. "Vendor" – Shall mean a business that sells goods or services.
39. "Woman" or "Women" - Shall mean an American woman who has not self-identified, within the definition of this Section, as a Minority Person or Minority.
40. "Women Business Enterprise" (WBE) - Shall mean a business whose WBE Certification is recognized, effective and accepted by Leon County's MWSBE Program.

C. Administrative Authority, Powers and Duties

1. The provisions of the MWSBE Program shall be administered and enforced by the MWSBE Director.
2. The MWSBE Director's powers and duties include the following:
 - a) Establish written procedures to implement the MWSBE Program, including the Certification of businesses as SBEs, MBEs and WBEs;
 - b) Assess the Certification of applications for the MWSBE program, and coordinate Certifications with partner agencies;
 - c) Maintain a database of MWSBEs and provide assistance to County departments and divisions in identifying MWSBEs for anticipated procurements;
 - d) Provide information and assistance to MWSBEs to assist them with increasing their ability to compete effectively for the award of County solicitations for procurements;
 - e) Apprise SBEs, MBEs and WBEs of opportunities for technical assistance and training;
 - f) Identify and work to eliminate barriers that inhibit MWSBE participation in the County's procurement process;
 - g) Establish realistic MBE and/or WBE Aspirational Targets for specific procurements;
 - h) Establish realistic Aspirational Targets and identify procurement opportunities for competition among SBEs;
 - i) Monitor the utilization of MWSBEs and the progress of the MWSBE Program to ensure that MWSBEs have opportunities to participate in the County's procurement of goods and services, and report on the progress of the MWSBE Program at least annually;
 - j) Implement mechanisms and procedures for monitoring utilization of MWSBEs in accordance with Contract requirements; and,
 - k) Perform outreach by networking with state and local governments, nonprofit organizations, professional and trade organizations and participate in conventions and seminars sponsored and widely attended by small, minority, and women business owners.
3. All Departments and Divisions under the jurisdiction of the Leon County Board of County Commissioners are responsible for assisting in the implementation of the MWSBE Program.

- D. MWSBE Citizens Advisory Committee** – The Board of County Commissioners may establish a MWSBE Citizens Advisory Committee (Committee) and appoint persons to serve on the Committee at the pleasure of the Board. The principle purpose of the Committee is to monitor progress of the MWSBE Program toward achieving program performance goals established by the Board. The Committee may be requested to provide MWSBE policy alternatives and/or review, and make recommendations seeking resolution of disputes regarding Certification. The size and membership of the Committee and its responsibilities shall be determined by the Board. The Committee shall be chaired by a chairperson nominated and elected by the members of the Committee. A quorum of the membership shall be required to conduct any meeting of the Committee. All meetings shall be noticed, open to the public and minutes of any such meeting shall be recorded.

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E. Aspirational Targets

1. The Aspirational Targets (Section 16, Table 1) were identified through the October 15, 2009 Disparity Study Update performed by MGT America and accepted by the Leon County Board of County Commissioners on October 27, 2009.

Section 16, Table 1- Aspirational Targets		
Procurement Category	Aspirational MBE Target	Aspirational WBE Target
Construction Prime Contractors	8%	5%
Construction Subcontractors	17%	9%
Architecture & Engineering	12%	14%
Professional Services	7%	15%
Other Services	10%	8%
Materials and Supplies	1%	6%

2. The Aspirational Targets for individual bids/RFPs may be higher or lower than the participation levels identified in Section 16, Table 1, and should reflect realistic M/WBE availability for the particular project.
 3. Aspirational Targets are considered to be the minimum level of MBE, WBE, and/or SBE participation expected for a particular procurement. Aspirational Targets are considered to be targets set to achieve participation levels commensurate with available businesses, and for which there are opportunities for exemptions based upon Good Faith Efforts.
 4. Aspirational Targets shall be reasonable (with consideration given to Subcontracting opportunities and the availability of MBEs, WBEs, or SBEs in the Market Area, that are capable of performing the work).
 5. Aspirational Targets may not be appropriate when Subcontracting is not reasonable or permitted.
 6. In cases where it is not reasonable to set Aspirational Targets, the MWSBE Director may encourage MWSBE participation through Bidder's purchase of goods or services from MWSBEs, consistent with the Aspirational Targets, or provide for any combination thereof.
 7. Aspirational Targets shall apply to all Bidders, including MBE, WBE, and SBE Bidders.
 8. Only the dollars expended with certified MWSBE firms shall be considered toward satisfying the Aspirational Targets.
 9. In an effort to meet Aspirational Targets, Departments and Divisions under the jurisdiction of the Board of County Commissioners shall cooperate with the MWSBE Division and make every reasonable effort, consistent with Board policy, to utilize MWSBEs when available. The MWSBE Director shall coordinate and promote the process by taking active steps to encourage full participation of Certified, capable, and competitive MBE, WBE, and SBE businesses and by keeping staff informed of MWSBE availabilities.
 10. The MWSBE Director shall annually evaluate relevant expenditure and contracting data to determine the performance and progress of the MWSBE Program.
- F. Special Consideration for MBEs, WBEs and SBEs -** For contracts of \$100,000 or less, where there is a disparity of 1% or less between the total of the base bid and all recommended alternates of a 100% owned and operated MBE, WBE or SBE and the apparent lowest bid which is from a business that is not a MBE, WBE or SBE, and all other purchasing requirements have been met, the Contract may be awarded to the MBE, WBE or SBE to help achieve Aspirational Targets, where otherwise permissible.

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G. Setting and Meeting Aspirational Targets

1. Project Review and Setting Aspirational Targets - The MWSBE Director, a Purchasing representative and an appropriate division or department representative shall review each proposed project or bid to determine the potential for Subcontracting and for utilizing MWSBEs, considering the scope of work, available and capable MWSBEs to potentially perform the work, and opportunities for multiple bids. Such reviews may be held as a group, via e-mail, telephone, etc. Based upon these and other reasonable factors, the MWSBE Director or designee shall determine the recommended Aspirational Targets.
 - a) If the recommended Aspirational Target is lower than the applicable participation level(s) identified in Section 16, Table 1:
 - i. The MWSBE Director shall notify the County Administrator of the recommendation Aspirational Target and provide reasons for such recommendation.
 - ii. The County Administrator shall then advise the Leon County Board of County Commissioners, typically through an e-mail to each Commissioner. Commissioners shall be given five (5) business days to ask the County Administrator to delay the issuance of the Bid/RFP and request an agenda item regarding the recommended Aspirational Target.
 - iii. If no Commissioner requests an agenda item regarding the recommended Aspirational Target within the five-business day time period, the recommended Aspirational Target shall stand, and staff is authorized to release the Bid/RFP.
 - b) The notification process previously outlined does not apply when the recommended Aspirational Target is equal to or greater than the applicable participation level(s) identified in Section 16, Table 1.
2. Notice to Potential Bidders -
 - a) Language regarding the MWSBE Program policy and Aspirational Targets will be included into each bid and request for proposal package specifications to inform prospective Bidders of the requirement to make good faith efforts to utilize MWSBEs, as appropriate to the particular procurement.
 - b) Plans and specifications will be made available to the MWSBE Director by the Purchasing Division or originating division for review by potential MWSBE Bidders.
3. Participation Plans (Submitting and Changing) - Bidders shall submit a Participation Plan when the procurement opportunity contains Aspirational Targets. Such Participation Plans shall identify the MBEs, WBEs and SBEs to be utilized, their percentage of utilization, and the Commercially Useful Functions they will be providing, consistent with the commodities or services for which they are Certified to provide.
 - a) Unless otherwise approved by the Board, no Bidder that will be Subcontracting will be awarded a bid or proposal that contained Aspirational Targets until the Bidder has provided a Participation Plan detailing the utilization of MWSBEs (as applicable to the Aspirational Targets for the procurement); the Participation Plan has been analyzed by the MWSBE Director; such analysis is provided to the Board through an agenda item; and the proposed Contract is approved by the Board.
4. Good Faith Efforts required Proposing Prime Contractors (including Joint Ventures) to Meet Aspirational Targets
 - a) Bidders responding as a Prime Contractor (including Joint Ventures) shall demonstrate that they made Good Faith Efforts to meet Aspirational Targets.

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- b) All Bidders, including MBEs, WBEs, or SBEs, shall either meet the Aspirational Targets or demonstrate in their bid or RFP response the Good Faith Efforts they made, such as:
 - i. Advertising for participation by MWSBEs in non-minority and minority publications within the Market Area, including a copy of the advertisement and proof of the date(s) it appeared – or by sending correspondence, no less than ten (10) days prior to the submission deadline, to all MWSBEs referred to the Bidder by the MWSBE Division for the goods and services to be Subcontracted and/or Supplied.
 - ii. Documentation indicating that the bidding Prime Contractor provided ample time for potential MBE, WBE and SBE Subcontractors to respond to bid opportunities, including a chart outlining the schedule/time frame used to obtain bids from MBE, WBE and SBE Vendors as applicable to the Aspirational Target.
 - iii. Contacting MBEs, WBEs, and SBE Vendors who provide the services needed for the bid or proposal, including a list of all MWSBEs that were contacted and the method of contact.
 - iv. Contacting the MWSBE Division for a listing of available MWSBEs who provide the services needed for the bid or proposal, including a list of those MWSBEs who were contacted regarding their participation.
 - v. Document follow-up telephone calls with potential MWSBE Subcontractors encouraging their participation.
 - vi. Allowing potential MWSBE Subcontractors to review bid specifications, blueprints and all other bid/RFP related items at no charge to the MWSBEs.
 - vii. Contacting the MWSBE Division, no less than five (5) business days prior to the bid/RFP deadline, regarding problems they are having in reaching the Aspirational Targets.
 - viii. Other documentation indicating their Good Faith Efforts to meet the aspirational targets.
 - c) Prime Contractors will negotiate in good faith with interested MWSBEs, not rejecting a MWSBE as unqualified or unacceptable without sound business reasons based on a thorough investigation of their capabilities. The basis for rejecting any MWSBE deemed unqualified or unacceptable by the Prime Contractor shall be included in the Good Faith Effort documentation. The Prime Contractor shall not impose unrealistic conditions of performance on MWSBEs seeking subcontracting opportunities.
5. Good Faith Committee
- a) Should the MWSBE Director determine that a Bidder with Subcontracting and Supplier opportunities has not made Good Faith Efforts to meet the Aspirational Targets the MWSBE Director shall refer the matter to the Good Faith Committee.
 - b) The Good Faith Committee shall include the County Administrator or designee, serving as Chair, the Purchasing Director or designee, the Chair of the MWSBE Citizens Advisory Committee or designee, and may include others appointed at the discretion of the County Administrator or the County Administrator's designee.
 - c) The Good Faith Committee shall make a formal determination, based on a simple majority vote, as to whether the proposing Prime Contractor made Good Faith Efforts to reach the Aspirational Targets, with each member of the Good Faith Committee having an equal vote in making such determination.
6. The Participation Plan for a specific project and the Contractor's commitment to carry out the program shall become a part of the Contract.

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7. Joint Ventures - To determine whether the Joint Venture is given credit as such for meeting Aspirational Targets:
 - a) The Joint Venture shall demonstrate that at least one partner to the Joint Venture is a MBE, WBE or SBE, as applicable to the Aspirational Target, and that such partner is responsible for a clearly defined portion of the work to be performed, will be performing a Commercially Useful Function under the Contract, and shares in the Ownership, Control, management, responsibilities, risks, and profits of the Joint Venture.
 - b) Such demonstration shall be verified by pertinent documents and sworn statements and may be reviewed by the MWSBE Division at the time a bid, proposal, or reply is submitted, or prior to the award of a bid, proposal or Contract.
 - c) For the purpose of tentatively awarding credit towards a Bidder meeting Aspirational Targets, the MWSBE Division may consider a proposed partnership, that is not yet legally formed and which appears in all matters except legal formation as a joint venture. However, such partnership shall become a legal Joint Venture organization prior to entering into a Contract and failure to form such legal Joint Venture organization shall result in the loss of such proposed Contract.
 - d) The MWSBE Division may award credit towards a Bidder meeting Aspirational Targets a portion of the total dollar amount of a proposed Contract equal to the percentage of the Ownership and Control held by the qualifying MBE, WBE, and SBE partners (as applicable to the Aspirational Targets) in the Contracting Joint Venture.

H. Responsibilities of Persons Seeking Participation as a MBE, WBE or SBE Contractor or Subcontractor

1. Persons seeking to participate as a MBE, WBE or SBE Contractor or Subcontractor shall complete the MWSBE certification process managed by the Leon County MWSBE Director, or assure that they have Certification that is accepted by the MWSBE Division, for the scope of work for which they are proposing to perform.
2. Persons seeking to participate as a MBE, WBE or SBE Contractor or Subcontractor shall attend pre-bid conferences to obtain information and technical assistance on projects and procedures in which they may be interested in bidding, or in which they may be interested in participating as a Subcontractor.

I. Contract Management

1. Changing Subcontractors - A Prime Contractor who determines that an MWSBE named in their bid or proposal submittal is unavailable or cannot perform the work, shall request a change order to modify their Participation Plan.
 - a) Such changes require the prior written concurrence of the MSWBE Division, which shall be based on reasonable considerations such as:
 - i. The Prime Contractor has provided the MWBE Division with documentation regarding the current MWSBE's poor work performance and measures the Prime Contractor has taken to improve the MWSBE's performance.
 - ii. The Prime Contractor has worked with the MWSBE Division and County staff without success to improve the MWSBE's performance.
 - b) The MWSBE Division shall consult with the Prime Contractor and the County's technical staff and project manager prior to approve or disapprove the Prime Contractor's proposed substitution.
 - c) Prime Contractors who substitute Subcontracted MWSBEs without the prior written approval by the MWSBE Division may be subject to actions for breach of contract, and dollars spent with the unauthorized MWSBE may not be credited towards meeting the Aspirational Targets, with the Prime Contractor remaining responsible for meeting the Aspirational Targets provided for by the Contract.

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2. Monitoring Contracted Utilization and Failure to Meet Contracted Utilization
 - a) The MWSBE Division will monitor the level of MWSBE utilization by Prime Contractors. If a Contractor is having difficulties meeting the contractual MWSBE Aspirational Targets, the MWSBE Division will help the Contractor identify additional potential MWSBE sub-contractors and/or suppliers.
 - b) If a Contractor's MWSBE participation falls below that provided for in their Contract, then the Contractor may be in breach of their contract. The MWSBE Division shall investigate whether it appears that a breach of contract has occurred. Upon a determination by the MWSBE Director that it appears a breach has occurred, the County Attorney's office will be contacted, and payments under the Contract may be immediately suspended. The County Attorney's office shall be fully involved throughout this process. Based upon guidance from the County Attorney's office, the findings and determination of the MWSBE Director, in conjunction with the County Attorney's office, may be forwarded to the Good Faith Committee for a determination as to whether the Contractor made a Good Faith Effort to comply with the requirements of the Contract, or take other appropriate actions.
3. Suspension - Contractors found in breach of their Contract may be suspended from bidding on and/or participating in any future County contracts for up to three (3) years as provided in Section 15 of the Purchasing Policy.
4. Reporting – Prime Contractors with MWSBE participation shall submit a monthly report, not less frequently than monthly, and in a form and manner prescribed by the MWSBE Division, which may include items, such as the invoices submitted to the County, payments received, and payments made to each MBE, WBE, and SBE as a part of each project.
5. Payments - Contracts and purchase orders shall contain the payment schedule. An MBE, WBE or SBE may seek expedited payment in case of hardship by notifying the MWSBE Director or Purchasing Director, and in such cases, the County may provide expedited payments when determined to be reasonably necessary, provided all work or services have been satisfactorily performed.
6. On-Site Monitoring - The MWSBE Division may perform on-site monitoring of MWSBE utilization on County projects. Monitoring may consist of scheduled or unscheduled project site visits. This does not exclude Contract monitoring expected by other County staff responsible for the project in the performance of their regular duties.

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J. Certification Criteria –

For Certification as a MBE, WBE or SBE, the Applicant must meet all of the following Criteria as noted; businesses may be Certified as a: (1) MBE; (2) WBE; (3) SBE; (4) MBE/SBE; or (5) WBE/SBE:

MBE, WBE and SBE Certification Eligibility Criteria			
	Type of Certification (must meet ALL marked criteria)		
	MBE	WBE	SBE
Majority Owner(s) must be a Minority or Minorities who manage and Control the business. In the case of a publicly owned business, at least 51% of all classes of the stock, which is owned, shall be owned by one or more of such persons.	X		
Majority Owner(s) must be a Woman or Women who manage and Control the business. In the case of a publicly owned business, at least 51% of all classes of the stock, which is owned, shall be owned by one or more of such persons.		X	
Majority Ownership in the business shall not have been transferred to a woman or minority, except by descent or a bona fide sale within the previous 2 years.	X	X	
Majority Owner(s) must reside in Leon, Gadsden, Jefferson, or Wakulla County Florida.	X	X	X
Majority Owner(s) must be a United States citizen or lawfully admitted permanent resident of the United States.	X	X	X
Business must be legally structured either as a corporation, organized under the laws of Florida, or a partnership, sole proprietorship, limited liability, or any other business or professional entity as required by Florida law.	X	X	X
Business must be Independent and not an Affiliate, Front, façade, broker, or pass through.	X	X	X
Business must be a for-profit business concern.	X	X	X
Business must be currently located within the Market Area.	X	X	X
Business must have all licenses required by local, state, and federal law.	X	X	X
Business must currently be licensed and engaging in commercial transactions typical of the field, with customers in the Local Market Area other than state or government agencies, for each specialty area in which Certification is sought. Further, if a Supplier, business must be making sales regularly from goods maintained in stock.	X	X	X
Business must have expertise normally required by the industry for the field for which Certification is sought.	X	X	X
Business must have a net worth no more than \$2 million.	X	X	X
Business must employ 50 or fewer full- or part-time employees, including leased employees.	X	X	X
Annual gross receipts on average, over the immediately preceding three (3) year period, shall not exceed: - For businesses performing Construction – \$2,000,000/year. - For businesses providing Other Services or Materials & Supplies - \$2,000,000/year. - For businesses providing Professional Services – \$1,000,000/year.	X	X	X
Business must have been established for a period of one (1) calendar year prior to submitting its application for SBE certification.			X
Business must have a record of satisfactory performance on no less than three (3) projects, in the business area for which it seeks certification, during the past 12 calendar months.			X

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K. Certification and Recertification Process

1. Application –

- a. Persons seeking Certification shall complete a Certification Application, which provides the MWSBE Division with information regarding the name and address of the company and its owner(s), the gender/race of the Owner(s), a listing of the type of commodities/services it provides, the Vendor=s work/contract history and past earnings, and other relevant information necessary for the determination of Certification eligibility.
- b. Certification Application attachments, such as "Proof of Ownership" with the Applicant=s name listed on it, a copy of the applicant=s most recent pictured identification also indicating race and gender (if seeking MBE or WBE Certification), the most recent financial statements for the company, as well as the other required documents listed on the Certification Application, shall accompany the completed and notarized Certification Application. Copies of MWSBE Certifications(s) from other governmental agencies shall also be included, where applicable.

2. Application Evaluation Period – The MWSBE Division shall review, evaluate, and make a determination as to whether an Applicant is certifiable within 30 days of receipt of a complete Certification Application, with all applicable attachments.
3. Certification Approvals - If the Applicant is deemed certifiable, they will be notified of their Certification approval in writing through a letter of Certification and a certificate, which indicates the expiration date of their certification.
4. Certification Denials - If an Applicant who has submitted a Certification Application is determined not certifiable based on information provided on the Certification Application, including attachments, or as a result of the MWSBE Division's investigation and research, the Certification Application will be denied. Submission of fraudulent information, by or on the behalf of the Applicant as part of the Certification process, is grounds for Certification denial. The Applicant will then be notified in writing of the denial of their Certification. Such official denial notification shall include notice to the Applicant of their right to appeal their denial and of the appeal process.
5. Appeals of Certification Denials - An Applicant may appeal their Certification denial by presenting written notice of their appeal to the MWSBE Director within 10 business days after the Applicant's receipt of the Certification denial. An appeal of a Certification denial will be heard by the MWSBE Citizen Advisory Committee. Upon receipt of the notice of appeal of a Certification denial, the MWSBE Director shall convene a meeting of the Committee to review the denial of the application for Certification. The Committee shall review all documentation prepared by the MWSBE Division or submitted by the Applicant prior to the time the committee convenes. The Committee shall not receive any new evidence, and may make whatever relevant inquiry necessary to render a decision on the appeal. The Committee shall review the relevant evidence submitted and determine whether the Application for MWSBE Certification meets the specific criteria provided in Policy 96-1. The decision of the Committee shall be upon majority vote of the Committee and shall be based upon competent substantial evidence. Within five (5) business days of the decision of the Committee, the Chairman shall reduce to writing the decision of the Committee, which shall set forth a statement of the relevant facts and application of the Policy to the facts supporting the decision of the Committee.
6. Denied Application May Not Resubmit - Applicants whose request for Certification has been denied by the MWSBE Division shall not be eligible to submit a new Certification Application for six (6) months after the notice of Certification denial.
7. Certification Period - Unless otherwise provided, Certification is valid for two (2) years.

**Purchasing and Minority, Women and Small Business Enterprise Policy
Policy 96-1**

8. Recertification –

- a. MBEs, WBEs and SBEs are required to submit a Certification Application biannually for a review of and potential continuation of the Certification status.
- b. The MWSBE Division will send written notification to the Certified MBE, WBE, or SBE, no later than 60 days prior to the Certification expiration date, along with a Certification Application and instructions for completion and submission.
- c. Certification Applications submitted for recertification consideration shall be received by the MWSBE Division no later than the last effective date of the current Certification. Certification Applications submitted for recertification consideration received after expiration of the current Certification will not be considered, unless the reason for the delay is accepted and approved by the MWBE Division, at which time a one-time extension of their certification not to exceed 30 days may be granted.
- d. Procedures relevant to the review of the Certification Application, Certification Approvals, Certification Denials, Appeals of Certification Denials, and Certification Periods, provided for in this Section, shall be the same for the Applications for recertification as for the initial Certification Application.

9. Notification of Changes – MBEs, WBEs, and SBEs shall notify the MWSBE Division of any changes in the Certified business, during the Certification period, which may impact the Certification (such as a change in Ownership or in the types of services and/or commodities being provided). If such changes occur during the Certification period, the business' Certification status may be reevaluated.

10. Certification Reevaluation - The County reserves the right to reevaluate an MWSBE's Certification at any time during the Certification period, and to rescind Certification if it is found that the business is not certifiable.

11. Certification From Other Agencies - The MWSBE Program may accept MBE, WBE and SBE Certifications from parties to THE MWBE INTER-LOCAL AGREEMENT (such parties currently include the City of Tallahassee and Leon County; however, such parties may change from time to time without notice or revision to this policy), and in accord with the Memorandum of Understanding with the Florida Office of Supplier Diversity. Further, the MWSBE Division reserves the right to review the Certification process and documentation utilized by an outside certifying agency; request clarification or additional information from the certified business; to delay acceptance of certification while it is being reviewed; and to deny certification any time during the Certification period.

12. The MWSBE Division may, based upon the provisions of this policy, determine to approve certifications that only apply to the County procurement process due to the difference in the policies between the County, City of Tallahassee, and the Florida Office of Supplier Diversity.

L. Decertification and Right of Appeal

1. The MWSBE Program reserves the right to revoke Certification at any time such action is deemed reasonably necessary. Grounds for revocation of Certification include, but are not limited to, the following:
 - a. Submission of fraudulent information, by or on the behalf of the Applicant for Certification or by or on the behalf of the MBE, WBE or SBE either as part of the Certification process or as part of a procurement or contract process.
 - b. Failure to promptly report any change in Ownership or Control of the business.
 - c. Failure to promptly report any name, address or telephone number changes of the business.
 - d. Failure to respond to requests for information from the MWSBE Division.
 - e. Fraudulent representation or participation on County projects or contracts, or breach of contract with the County.
 - f. Revocation by a party to the MWBE INTERLOCAL AGREEMENT or the Memorandum of Understanding with the Florida Office of Supplier Diversity.
2. Any business having its Certification revoked by the MWSBE Division shall have the right to appeal such Certification revocation, following the same process as Appeals of Certification Denials.

**Purchasing and Minority, Women and Small Business Enterprise Policy
Policy 96-1**

M. Small Business Enterprise (SBE)

1. **SBE Orientation** - The County shall conduct periodic meetings to educate SBEs about the program and about general matters relating to participating in County procurement opportunities. The MWSBE Division may require SBEs to attend periodic follow-up meetings, but no more than once every two (2) years. Failure to attend such meetings shall be grounds for decertification for such up to 12 months, as determined appropriate by the MWSBE Division.
2. **SBE Graduation** - A SBE shall graduate from the SBE Program and is no longer eligible for Certification as a SBE six (6) years after the date of award of the first procurement opportunity made through the SBE program and will no longer be eligible for certification as a SBE. Graduation of an SBE shall not affect the contribution made by the SBE toward satisfaction of an Aspirational Target if the work was identified in a bid or RFP proposed to be performed by the SBE prior to the date of SBE Graduation and the bid or RFP opening date occurred prior to the SBE Graduation date.
3. **Reserving Procurement Opportunities for Exclusive Competition Among SBEs** - Procurement opportunities may be reserved for exclusive competition among SBEs when:
 - a. At least three (3) SBEs, with Certification in the relevant area, are available to compete for the procurement opportunity;
 - b. Permissible by law; and,
 - c. Such limited competition has been recommended by the appropriate authority as stipulated:

Criteria for Reserving Procurement Opportunities for Exclusive Competition Among SBEs			
Business Category	Estimated Procurement Value (Estimated Contract Cost)	Minimum Number of Available SBEs, Certified in Procurement Opportunity Area	Authority that Recommends Reserving Procurement Opportunity for Exclusive Competition Among SBEs
Construction - Prime Contractor	\$100,000 or less	Three (3)	¹ Committee Concurrence (MWSBE Director, Purchasing Director and Project Director or Division Director responsible for the project/budgeted expense)
Professional Services	\$50,000 or less	Three (3)	¹ Committee Concurrence (MWSBE Director, Purchasing Director and Project Director or Division Director responsible for the project/budgeted expense)
Other Services	\$25,000 or less	Three (3)	¹ Committee Concurrence (MWSBE Director, Purchasing Director and Project Director or Division Director responsible for the project/budgeted expense)
Materials & Supplies	\$25,000 or less	Three (3)	¹ Committee Concurrence (MWSBE Director, Purchasing Director, Project Director or Division Director responsible for the project/budgeted expense)
¹ Committee Concurrence – If consensus cannot be reached, the County Administrator or his/her designee shall make the final decision. Such agreement between the committee members can be gained via any reasonable means of communication, such as a face-to-meeting, over the phone or via e-mail. Documentation of such concurrence shall be retained with the procurement records.			

**Purchasing and Minority, Women and Small Business Enterprise Policy
Policy 96-1**

N. Outreach –

A continuing effort of the County involves identifying SBEs, MBEs, and WBEs capable of providing goods and services and ensuring that staff, through business community interactions, are knowledgeable about and support the MWSBE Program. The MWSBE Division will network with state and local governments, nonprofit organizations, professional and trade organizations and participate in conventions and seminars sponsored and widely attended by small, minority, and women business owners. Staff coordination may include, but is not limited to:

1. Coordination with the user departments on increasing awareness of program policies, directives and program targets and objectives for County staff;
2. Development of an internal education program to promote the awareness of all staff about SBE and MBE, and WBE firms and the commitment to their full participation in its activities.
3. Determine prospective program participants as well as assist them in understanding regulations and the certification process.
4. Develop directories of certified minority, women-owned, and SBEs firms capable of providing services.
5. Assist program participants in understanding and meeting the County's contracting need.
6. Develop promotional campaigns, forums or seminars to inform the small, minority and women-owned business community of the County's needs and its commitment to involve such firms in its contracting activities, along with receiving feedback from the business community.
7. Target appropriate firms for participation in the County's contractor training effort;
8. Identify categories in which firms are underrepresented;
9. Develop special events to meet special needs or concerns including contracting trade fair open houses;
10. Coordinate events with other governmental entities and private and nonprofits organizations.

O. Severability Clause

Each separate provision of this program is deemed independent of all other provisions herein so that if any provision or provisions are declared invalid, all other provisions hereof shall remain valid and in full force and effect.

(Section 16 Adopted September 10, 1991, deleted and replaced by separate policy January 16, 1996, reincorporated July 30, 2002, and replaced in its entirety June 13, 2006)

Section 17 PROCUREMENT FOR FEDERAL GRANT AND AID PROGRAMS

This section supplements Section 11.2, NOTICE OF FEDERAL PUBLIC POLICY REQUIREMENTS and applies to all Federal grant and aid procurements and contracts to include, but not be limited to the Community Development Block Grant Housing Program, the Federal Highway System Local Agency Program, and any other Federally funded grants or contracts.

- A.** It is the policy of the Board of County Commissioners to obtain commodities and services efficiently and effectively in free and open competition for the Federal Grant and Aid Programs through the use of sound procurement practices. All County staff and other persons (subgrantees or contractors) with designated responsibility for the administration of Federal Grant award contracts are responsible for ensuring compliance with all applicable federal and state laws and regulations. These include but are not limited to OMB Circular A-102, Attachment O; 24 CFR Part 85 Section 85.36; s. 255.0525, Florida Statutes; s. 287.055, Florida Statutes; s. 290.047, Florida Statutes; Chapter 73C-23, Florida Administrative Code; and, the Purchasing Policy of the Leon County Board of County Commissioners.

**Purchasing and Minority, Women and Small Business Enterprise Policy
Policy 96-1**

- B. The County Purchasing Policy shall govern the procurement of commodities and services for the Federal Grant and Aid Programs except as provided in this section.
1. Local Preference Program is not applicable to Federally funded programs.
 2. The County's Minority, Women, and Small Business Enterprise Program is not applicable to Federally funded programs.
 3. All procurement of commodities or services in excess of \$1,000 shall require a written agreement embodying all provisions and conditions thereof.
 4. All procurement of commodities or services in excess of \$1,000 and less than the threshold amount provided for CATEGORY TWO in s. 287.017, Florida Statutes may be entered only after informal competition based on offers or quotes from not less than three (3) vendors.
 5. Publication of public notice for invitations to bid or requests for proposals and notification of the solicitation through distribution to potential bidders or offerors shall be required for all procurement in excess of the threshold amount provided for CATEGORY TWO in s. 287.017, Florida Statutes. The time frames in section 5.08 of this policy shall apply for the required public notice.
 6. Except as may otherwise be provided by law, procurement awards shall be made only on the basis of requirements and evaluation factors related to the price or quality of the commodities or services or to the ability of the prospective supplier or contractor to perform under the agreement. In evaluating the ability of a prospective contractor to perform, the County shall at a minimum consider the prospective contractor's record of past performance under similar federal grants.
 7. Nothing herein shall limit the County to except from the requirement of competition commodities and services available only from a single source (Section 5.10, Sole Source Purchases) or procurement from another unit of government (Section 5.12, Cooperative Purchasing).

Revised January 27, 2015

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Leon County Board of County Commissioners Cover Sheet for Agenda #17

January 21, 2014

To:	Honorable Chairman and Members of the Board
From:	Vincent S. Long, County Administrator
Title:	Acceptance of the Status Report of Minority and Women-Owned Business Enterprise Expenditures

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County Administrator Review and Approval:	Vincent S. Long, County Administrator
Department/Division Review and Approval:	Alan Rosenzweig, Deputy County Administrator Ken Morris, Director, Economic Development & Business Partnerships
Lead Staff/ Project Team:	Shanea Wilks, Director of Minority, Women, & Small Business Enterprise Division

Fiscal Impact:

This item has no fiscal impact to the County.

Staff Recommendation:

Option #1: Accept the status report of Minority and Women-Owned Business Enterprise expenditures.

Report and Discussion

Background:

This item provides a report on the County's expenditures through the Minority and Women-Owned Business Enterprise (M/WBE) Program. The following narrative provides a refresher on the MGT Disparity Study Update that serves as a guiding document for the County's M/WBE Program (Attachment #1).

The Disparity Study Update, prepared by MGT of America (the "MGT Study"), was accepted by the Board during its October 27, 2009 meeting, subsequent to its October 13, 2009 workshop regarding the draft report. The overall objective for the disparity study was to determine if data supported a "compelling interest" for the County to maintain a program to provide minority- and woman-owned business enterprises greater opportunities to participate in County procurement activities as goods and services providers.

To meet the requirements of the U.S. Supreme Courts rules in *City of Richmond v. J.A. Croson Co.*; narrow tailoring under the *Croson* standard requires that remedial goals be in line with measure availability. The Supreme Court in *Croson* recognized statistical measures of disparity that compared the number of qualified and available M/WBEs with the rate of municipal construction dollars actually awarded to M/WBEs in order to demonstrate disparity. M/WBE programs must be limited in its geographical scope to the boundaries of the enacting government's market place. In order for the County to comply with the U.S. Supreme Court's ruling, the County must demonstrate a compelling governmental interest for minority and gender-based goals, which would include evidence of prior discrimination in the field/industry, and the goals must be narrowly tailored to remedy the effects of the prior discrimination.

The MGT Study states that, generally, utilization ratios of "80 percent or higher - indicating close to full participation - are not significant", noting the court referenced the Equal Employment Opportunity Commission's "80 percent rule." The MGT Study further noted there is no standard measurement to evaluate levels of utilization within a procurement context; however, in the context of employment discrimination, an employment disparity ratio below 80 percent indicates a "substantial disparity."

The MGT Disparity Study Update identified the number of available M/WBEs within the market area, and categorized these firms by business category, race, and gender. Businesses classified as M/WBEs were firms that were at least 51% owned and controlled by members of one of the following race/gender groups, whether or not they were county-certified M/WBEs: African Americans, Hispanic Americans, Asian Americans, Native Americans, and Nonminority Women.

Based on statistical disparities between the percentage of funds expended with M/WBEs in the market area and the number of available M/WBEs, the MGT Study provided evidence to support a narrowly tailored program to promote the County's utilization of M/WBEs. The 2009 Disparity Study Update included proposed M/WBE aspirational targets, which the Board incorporated in Policy No. 96-1, "Purchasing and Minority/Women Business Enterprise Policy" and are illustrated in the analysis section under Table #1. The aspirational targets approximate 80% of the firms available within the market area.

Analysis:

In accordance with the Purchasing and M/WSBE Policy 96-1, the M/WSBE Director evaluates relevant expenditures and contracting data to determine the performance and progress of the

M/WBE Program. This report conveys the expenditure evaluation performed by the Director, given the importance placed on this program by the Board. The County's procurement activity and additional statistical analysis has assisted staff in determining the presence or absence of disparity in the County's contracting practices. The purpose of this analysis is to determine the amount of minority, women, and non-M/WBE businesses participation that exists in the County's procurement processes when aspirational targets are present and when aspirational targets are absent. As prescribed in the recommendations by MGT of America, aspirational targets should vary by project and reflect realistic M/WBE availability.

Targets are established to remedy the areas of underutilization and substantial underutilization among M/WBE businesses. When aspirational targets are present in solicitations, staff encourages prime contractors/consultants to utilize M/WBE businesses in order for the County to become closer to parity levels as recommended by MGT of America. The use of aspirational targets promotes relationship development between larger (primes) and smaller (subcontractors) businesses in the local market area (Leon, Gadsden, Jefferson, and Wakulla Counties); therefore, providing mentoring opportunities for smaller companies to be afforded an opportunity to enhance their business practices. **Table #1** illustrates the County's M/WBE Aspirational Targets based on the 2009 Disparity Study Update:

Table #1 - Aspirational Targets – Policy No. 96-1		
<i>Procurement Category</i>	<i>Aspirational MBE Target</i>	<i>Aspirational WBE Target</i>
Construction Prime Contractors	8%	5%
Construction Subcontractors	17%	9%
Architecture & Engineering	12%	14%
Professional Services	7%	15%
Other Services	10%	8%
Materials and Supplies	1%	6%

The aspirational targets for individual bids/request for proposals (RFP) may be higher or lower than the participation level identified in Table #1. Aspirational targets are considered to be the minimum level of M/WBE participation expected for a particular procurement; with consideration given to subcontracting opportunities and the availability of M/WBEs in the market area that are capable of performing the work.

If the recommended aspirational targets are lower than the applicable participation levels identified in Table #1, the County Administrator is notified of the recommended modified aspirational targets and reasoning for such recommendations. The County Administrator then advises the Board, via email, and Commissioners have five business days to request a delay for the issuance of the bid/RFP and an agenda item regarding the recommended aspirational targets. This request for delay and further discussion can be effectuated by an individual Commissioner. If no Commissioner requests an agenda item within the five business days, staff is authorized to release the bid/RFP.

Board Expenditure Analysis

The following narrative is the analysis of FY 2011 and FY 2012 Board expenditures with M/WBEs. Board expenditure analysis is typically conducted on an annual basis. However, the report was delayed due to a staffing transition between the previous and current MWSBE Director. The FY 2011 Report of Expenditures (Attachment #2) and the FY 2012 Report of Expenditures (Attachment #3) are reports that also include non-minority male expenditures.

The expenditure evaluation process involves data being extracted from the County's financial system and processed in a manner consistent with the methodology utilized for the MGT Study; records not relevant to the report were excluded. Examples of activity excluded from analysis

included expenditures outside of the market area (which includes Leon, Gadsden, Jefferson and Wakulla Counties); expenditures with nonprofit agencies, associations or councils, governmental entities, including universities; utilities, telephones, gasoline, p-cards, real estate, office rent, postage, and hospitals; travel-related expenses, including hotels, car rental, and conference fees; and grants to various entities.

FY 2011 Minority and Women-Owned Business Expenditures

A Minority Business Enterprise (MBE) is a business that is 51% owned by a person that identifies himself or herself as being African American, Hispanic American, Asian American, American Indian, Alaskan Native, and American Aleut descent. Table #2 provides the FY 2011 MBE Expenditures within the County's Operating Budget and Capital Improvement Program (CIP).

Table #2 – FY 2011 Minority Business Enterprise (MBE) Expenditures

Category	FY 2011 MBE Expenditures by Category	FY 2011 Total Expenditures by Category	FY 2011 MBE Expenditure % by Category	Aspirational Target %
Architecture & Engineering	\$207,509	\$3,822,616	5%	12%
Construction Prime Contractors	\$221,457	\$11,628,988	2%	8%
Construction Reported Subcontractors (reported via the B2GNow Contract Compliance Management System)	\$1,356,987	\$3,275,190	41%	17%
Materials and Supplies	\$0	\$3,037,108	0%	1%
Other Services	\$577,983	\$2,149,608	27%	10%
Professional Services	\$18,159	\$1,681,716	1%	7%
Total	\$2,382,095	\$25,595,226	9%	N/A

A Woman Business Enterprise (WBE) is a business that is 51% owned by an American woman that has not self-identified as a minority. Table #3 provides the WBE Expenditures for FY 2011 within the Board's Operating Budget and Capital Improvement Program (CIP).

Table #3 - FY 2011 Women Business Enterprise (WBE) Expenditures

Category	FY 2011 WBE Expenditures by Category	FY 2011 Total Expenditures by Category	FY 2011 WBE Expenditure % by Category	Aspirational Target %
Architecture & Engineering	\$13,241	\$3,822,616	.35%	14%
Construction Prime Contractors	\$77,976	\$11,628,988	1%	5%
Construction Reported Subcontractors (reported via the B2GNow Contract Compliance Management System)	\$924,436	\$3,275,190	28%	9%
Materials and Supplies	\$230,396	\$3,037,108	8%	6%
Other Services	\$679,566	\$2,149,608	32%	8%
Professional Services	\$288,344	\$1,681,716	17%	15%
Total	\$2,213,959	\$25,595,226	9%	N/A

FY 2011 MBE and WBE Expenditures are associated with projects or services including:

- Stormwater and sewer projects including Hampton Creek Stormwater Management Facility and Pedrick Creek Sewer
- Miscellaneous small construction projects

- Buck Lake Road Phase II and III, construction of the Northeast Branch Library and its addition, Dr. B. L. Perry Library Expansion, Asphaltic Concrete Continuing Services
- Purchase of technological equipment and other miscellaneous materials and supplies
- Janitorial, printing, real estate, and other miscellaneous services

FY 2012 Minority and Women-Owned Business Expenditures

FY 2012 includes M/WBE expenditures associated with various projects including Architectural and Engineering Services for the Public Safety Complex; and, various other projects that were included within Leon County's Operating Budget and Capital Improvement Program. The M/WBE Reported Subcontractor expenditure activity is also included and reflected separately. FY 2012 M/WBE expenditures for the Public Safety Complex are captured within this report at approximately 31% of the total subcontractor project expenditures for FY 2012. This is due to the project not being completed that year. The balance of the Public Safety Complex's M/WBE expenditures will be reflected within the FY 2013 Report of M/WBE Expenditures.

Table #4 provides the MBE Expenditures for FY 2012 within the Board's Operating Budget and Capital Improvement Program.

Table #4 - FY 2012 Minority Business Enterprise (MBE) Expenditures

Category	FY 2012 MBE Expenditures by Category	FY 2012 Total Expenditures by Category	FY 2012 MBE Expenditure % by Category	Aspirational Target %
Architecture & Engineering	\$183,824	\$2,886,453	6%	12%
Construction Prime Contractors	\$615,315	\$7,415,597	8%	8%
Construction Reported Subcontractors (reported via the B2GNow Contract Compliance Management System)	\$1,994,672	\$7,045,062	28%	17%
Materials and Supplies	\$22,963	\$1,771,707	1%	1%
Other Services	\$774,812	\$3,322,445	23%	10%
Professional Services	\$11,981	\$1,118,621	1%	7%
Total	\$3,603,567	\$23,559,885	15%	N/A

Table #5 provides the WBE Expenditures for FY 2012 within the Board's Operating Budget and Capital Improvement Program.

Table #5 - FY 2012 Women Business Enterprise (WBE) Expenditures

Category	FY 2012 WBE Expenditures by Category	FY 2012 Total Expenditures by Category	FY 2012 WBE Expenditure % by Category	Aspirational Target %
Architecture & Engineering	\$45,986	\$2,886,453	2%	14%
Construction Prime Contractors	\$74,181	\$7,415,597	1%	5%
Construction Reported Subcontractors (reported via the B2GNow Contract Compliance Management System)	\$1,274,133	\$7,045,062	18%	9%
Materials and Supplies	\$92,125	\$1,771,707	5%	6%
Other Services	\$472,925	\$3,322,445	14%	8%
Professional Services	\$6,935	\$1,118,621	0.62%	15%
Total	\$1,966,285	\$23,559,885	8%	N/A

FY 2012 MBE and WBE Expenditures are associated with projects or services such as:

- Civil Engineering Continuing Services
- Home rehabilitation, home replacement, and other miscellaneous construction projects
- Public Safety Center, Lake Jackson Library, Asphaltic Concrete Materials Continuing Services and other miscellaneous improvement projects including Magnolia Drive and Lafayette Intersection and Killearn Acres Subdivision Middle Basin Drainage
- Technological and other miscellaneous supplies
- Security, cleaning, painting, legal, and consulting services

Public Safety Complex

The construction of the Public Safety Complex has been accomplished through a joint agreement between Leon County and the City of Tallahassee. In order to realize a cost savings on the project, the City and the County purchased the materials associated with the project. The joint venture of Ajax Construction and Construction Support Southeast were hired for Construction Management Services; and, MBE and WBE participation was included within the project at 17% and 9% respectively. Despite the project being jointly funded by the City and the County, expenditures are reported based upon an aggregate total of labor plus cash to provide the composite MWBE expenditures and participation percentages.

During FY 2012, there was \$1,659,276 in total subcontractor reported payment activity for the project. The reported MBE total expenditures for labor and materials are estimated as \$364,079 or 22%. The reported WBE total expenditures for labor and materials are estimated as \$151,342 or 9%. The total MWBE expenditure amount for FY 2012 is \$515,421 or approximately 31%.

The balance of expenditure activity will be included in the FY 2013 MWBE Report of Expenditures, due to the majority of the project being completed in FY 2013. However, the current estimate for MWBE participation upon project completion is 26%.

Contractual Activity

During FY 2011, there were 65 contracts awarded by Leon County, with the associated payments totaling \$7,118,995. The concentration of contractual awards was in the Architectural and Engineering, Construction, and Other Services categories. Eighteen contracts included M/WBE aspirational targets for subcontracting which included two contracts having the aspirational targets lowered due to the specialized nature of the work and vendor availability. The resulting payments to M/WBEs totaled approximately \$1,068,026. Based upon the total contractual payments and the payments to M/WBEs, the M/WBE contractual utilization for FY 2011 was approximately 15%.

During FY 2012, there were there were 59 contracts awarded by Leon County, with the associated payments totaling \$18,687,286. The concentration of contractual awards was in the Construction and Materials and Supplies categories. There were 12 contracts that included M/WBE aspirational targets for subcontracting. The aspirational targets were lowered for two contracts due to the specialized nature of the work and vendor availability. The resulting payments to M/WBEs totaled approximately \$2,456,225. Based upon the total contractual payments and the payments to M/WBEs, the M/WBE contractual utilization for FY 2012 was approximately 13%.

The following are brief summaries for each procurement category:

Architecture and Engineering (A&E) Prime Consultants: The County utilizes vendors in an A&E continuing services agreement. Projects under A & E are distributed on an equitable basis to provide all firms with a reasonable opportunity for work assignments based on their area of expertise identified by the awarded firm.

Construction Prime Contractors: M/WBE vendors must be the prime contractor submitting the actual bid to the County or be part of a joint venture, in order for the associated expenditures to apply to this category. Staff has utilized the Small Business Enterprise (SBE) Program (Attachment #4) to provide bidding opportunities to companies that are similar in size and net worth. The MWBE expenditures reported within this category are associated with certified MWBE vendors that are also SBE certified. During FY 2011, the County awarded construction-related projects to MWBE vendors totaling approximately \$299,433 or 3% of the total expenditures for this category. FY 2011 MBE expenditures total \$221,457 or 2% of the total expenditures; and FY 2011 WBE expenditures total \$77,976 or 1% of the total expenditures. During FY 2012, the County awarded construction-related projects to MWBE vendors, which included housing rehabilitation, housing replacements, septic tank repair, and other small construction projects to certified local small businesses through the SBE Program. The dollar value associated with these projects totals approximately \$689,496 or 9% of the total expenditures for this category. FY 2012 MBE expenditures total \$615,315 or 8% of the total for Construction Prime Contractors and FY 2012 WBE expenditures total \$74,181 or 1% of the same category. Staff is continuing to identify opportunities for MWBE vendors to participate as prime contractors.

Construction Subcontractors: In this category, the County greatly exceeded the aspirational target for minorities and women in both fiscal years. Construction subcontracting opportunities are achieved through solicitation when aspirational targets are present. Due to the presence of these aspirational targets and the implementation of the B2GNow Contract Compliance Monitoring System, staff continues to see strong M/WBE subcontracting participation.

Professional Services Prime Consultants: Based upon the nature of Professional Services contracts (i.e. auditing services, insurance services, legal services, and advertising) staff has been able to identify M/WBE firms in the area of advertising and legal services. Due to the specificity of this category, staff will continue to reach out to other local agencies to identify additional firms in order to increase M/WBE participation.

Other Services: As noted in the tables above, the County exceeded the aspirational targets in this category (i.e. janitorial and repair services, uniform guard services and painting etc.), with MBE firms being utilized at 27% and WBE firms being utilized at 32% for FY 2011; and 23% MBE utilization and 14% WBE utilization for FY12.

Material and Supplies: The commodities purchased under this category (i.e. office supplies, equipment, miscellaneous building materials, and computers) are mainly based on the necessity of the departmental operating needs. Due to the type of services provided under this category, opportunities are limited for M/WBE vendors.

Conclusion: The County continues to meet or exceed the aspirational targets in a number of categories; in particular, the targets have been greatly exceeded in the area of sub-contracting. Staff will continue to promote M/WSBE utilization to ensure the County comes closer to attaining parity levels in those categories where the aspirational targets have not been met; and, as recommend by MGT, through the Small Business Enterprise Program where applicable.

In addition, staff will continue to seek opportunities to strengthen participation within County projects for minority and women businesses through:

- Identifying barriers that prevent M/WBE procurement opportunities.
- Continuing to host training sessions to prepare M/WBE firms for procurement opportunities. Staff has surveyed program participants and future trainings will include the areas of demand identified through the survey results such as financial planning, estimating, job cost control; and accounting.

- Continuing to develop partnerships to help improve M/WBE firms' operations to increase success in procurement opportunities. This includes seeking partnerships with organizations that can aid in the provision of business development assistance and training in areas based upon vendor demand.
- Continuing to provide networking opportunities for M/WBEs to develop new business relationships through co-sponsorships of the annual local observation of Small Business Week and the local observation of Minority Enterprise Development (MED) Week events.
- Continuing to notify certified M/WBE firms of the County's procurement opportunities.

Options:

1. Accept the status report of Minority and Women-Owned Business (M/WBE) Enterprise expenditures.
2. Do not accept the status report of Minority and Women-Owned Business (M/WBE) Enterprise expenditures.
3. Board direction.

Recommendation:

Option #1.

Attachments:

1. [2009 Disparity Study Update](#)
2. [FY 2011 Report of M/WBE Expenditures](#)
3. [FY 2012 Report of M/WBE Expenditures](#)
4. [Small Business Enterprise Program Overview](#)

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Board of County Commissioners

Leon County, Florida

www.leoncountyfl.gov

Agenda Item Executive Summary

Tuesday, August 23, 2011

Title:

Acceptance of Status Report on the Minority and Women-Owned Businesses Expenditures for FY 2010

Staff:

Vincent S. Long, County Administrator

Alan Rosenzweig, Assistant County Administrator

Iranetta J. Dennis, Minority, Women and Small Business Enterprise Director

Issue Briefing:

In accordance with the Purchasing and MWSBE Policy, the MWSBE Director annually evaluates relevant expenditure and contracting data to determine the performance and progress of the MWSBE Program. Given the importance placed on this program by the Board, staff has prepared this status report to convey the evaluation performed by the Director. Staff intends to continue to provide annual updates to the Board. This agenda item seeks the Board's acceptance of a report that analyzes FY 2010 expenditures with minority- and women-owned businesses within the local area (Attachments #1 and #2).

Fiscal Impact:

This item has no fiscal impact to the County.

Staff Recommendation:

Option #1: Accept the status report on the minority and women-owned businesses expenditures for FY 2010

Report and Discussion

Background:

The Disparity Study Update, prepared by MGT of America (the "MGT Study"), was accepted by the Board during its October 27, 2009 meeting, subsequent to its October 13, 2009 workshop regarding the draft report. The overall objective for the Disparity Study was to determine if data supported a "compelling interest" for the County to maintain a program to provide minority- and woman-owned business enterprises (M/WBEs) greater opportunities to participate in County procurement activities as goods and services providers.

To meet the requirements of the U.S. Supreme Court's ruling in *City of Richmond v. J.A. Croson Co.*, narrow tailoring under the Croson standard requires that remedial goals be in line with measured availability. The Supreme Court recognized statistical measures of disparity that compared the number of qualified and available M/WBEs, with the rate of municipal construction dollars actually awarded to M/WBEs in order to demonstrate disparity. M/WBE programs must be limited in its geographical scope to the boundaries of the enacting government's marketplace. In order for the County to comply with the U.S. Supreme Court's ruling, the County must demonstrate a compelling governmental interest for minority and gender-based goals, which would include evidence of prior discrimination in the field/industry, and the goals must be narrowly tailored to remedy the effects of the prior discrimination.

The MGT Study states that, generally, utilization ratios of "80 percent or higher – indicating close to full participation – are not significant", noting the Court referenced the Equal Employment Opportunity Commission's "80 percent rule." The MGT Study further noted there is no standard measurement to evaluate levels of utilization within a procurement context; however, in the context of employment discrimination, an employment disparity ratio below 80 percent indicates a "substantial disparity."

The MGT Study identified the number of available M/WBEs within the market area, and categorized these firms by business category, race, and gender. Businesses classified as M/WBEs were firms that were at least 51% owned and controlled by members of one of the following race/gender groups, whether or not they were County-certified M/WBEs:

African Americans, Hispanic Americans, Asian Americans, Native Americans, and Non-minority women.

Based on statistical disparities between the percentage of funds expended with M/WBEs in the market area and the number of available M/WBEs, the MGT Study provided evidence to support a narrowly tailored program to promote the County's utilization of M/WBEs. The 2009 Disparity Study Update included proposed M/WBE aspirational targets, which the Board incorporated in Policy No. 96-1, "Purchasing and Minority/Women Business Enterprise Policy" (Table 1). The aspirational targets approximate 80% of the firms available within the market area.

The County's procurement activity and statistical analysis assists staff in determining the presence or absence of disparity in the County's contracting practices. The purpose of this analysis is to determine the amount of minority, women, and non-M/WBE businesses participation exists in the County's procurement processes when aspiratioanl targets are present, and when aspriational targets are absent.

Targets are established to remedy the areas of underutilization and substantial underutilization among M/WBE businesses. When aspirational targets are present in solicitations, staff encourages prime contractors/consultants to utilize M/WBE businesses in order for the County to become closer to parity levels as recommended by MGT of Amercia. The use of aspriational targets promotes relationship development between larger (primes) and smaller (subcontractors) businesses in the local market area (Leon, Gadsden, Jefferson, and Wakulla Counties); therefore, providing mentoring opportunities for smaller companies to enhance their business practices.

Prime aspriational targets are usually achieved through the Small Business Enterprise (SBE) program. The SBE program provides set-aside contracts for placement with small businesses.

Table 1 - Aspirational Targets – Policy No. 96-1		
Procurement Category	Aspirational MBE Target	Aspirational WBE Target
Construction Prime Contractors	8%	5%
Construction Subcontractors	17%	9%
Architecture & Engineering	12%	14%
Professional Services	7%	15%

Other Services	10%	8%
Materials and Supplies	1%	6%

In accordance with the Purchasing and MWSBE Policy, the MWSBE Director annually evaluates relevant expenditure and contracting data to determine the performance and progress of the MWSBE Program. Given the importance placed on this program by the Board, staff has prepared this status report to convey the evaluation performed by the Director. Staff intends to continue to provide annual updates to the Board.

Staff has analyzed FY 2010 Board expenditures with M/WBEs. Expenditure data was extracted from the County's financial system, and processed in a manner consistent with the methodology utilized for the MGT Study; records not relevant to the report were excluded. Examples of activity excluded from analysis included expenditures outside of the market area; expenditures with nonprofit agencies, associations or councils, governmental entities, including universities; utilities, telephones, gasoline, p-cards, real estate, office rent, postage, and hospitals; travel-related expenses, including hotels, car rental, and conference fees; and grants to various entities.

Analysis:

Table 2 provides a summary of the data analyzed for the fiscal year ending September 30, 2010:

Table 2.

FY 2010 Net Expenditures							
Minority Subtotal		Aspirational Target	Non-minority Women		Aspirational Target	Non-MWBE	Total
\$	%	Policy No. 96-1	\$	%	Policy No. 96-1	\$	\$
Construction - Prime Contractors							
\$ 37,870	0.37	8%	\$387,319	4%	5%	\$9,873,079	\$10,298,268
Construction - Reported Subcontractors							
\$ 699,451	56%	17%	\$175,126	14%	9%	\$376,507	\$1,251,084
Architecture & Engineering - Prime Contractors							
\$141,393	5%	12%	\$210,926	7%	14%	\$2,558,645	\$2,910,964
Professional Services - Prime Contractors							
\$ 17,733	1%	7%	\$55,038	4%	15%	\$1,365,347	\$1,438,118
Other Services							
\$ 523,973	19%	10%	\$910,685	33%	8%	\$1,274,917	\$2,709,575
Materials and Supplies							
\$ 10,919	0.38	1%	\$257,261	9%	6%	\$2,579,671	\$2,847,851

Attachment #2 contains a detailed analysis for each procurement category. The following provides a brief summary:

Construction Prime Contractors: To fulfill this aspirational target, M/WBE's must be the prime contractor submitting the actual bid to the County or be part of a joint venture. Of the construction bids solicited, the County received 84 separate bids/responses; only three were from certified WBEs. In one bid, there were 15 non-M/WBE bidders, with only one bid submitted by a certified vendor. In the second bid, two certified vendors submitted bids; however, the low bidder was more than \$200,000 less expensive than the certified firm was.

Construction Subcontractors: As noted in the table, the County has exceeded the aspirational targets for subcontracting, based on the data reported. Subcontracting opportunities are achieved through solicitation when aspirational targets are present. Due to the presence of these aspirational targets, and the implementation of the contract management system, staff has seen an increase in the utilization of M/WBE subcontractors.

Architecture & Engineering (A & E) Prime Consultants: The County utilizes a Request for Proposal (RFP) process to acquire the services in this category; therefore, multiple vendors are included in an A&E continuing service agreement. Due to the limited number of solicitations, and the firms awarded an agreement with the County, aspirational targets set for this category were not reached during FY 2009/10. Projects are distributed on an equitable basis; therefore, providing all firms with a reasonable opportunity for work assignments, based on their area of expertise and the needs of the County. Staff anticipates these numbers to increase when projects become available in the area of expertise identified by the awarded M/WBE firm(s).

Professional Services Prime Consultants: Based on the nature of the Professional Services contracts (i.e., auditing services, insurance services, legal services, and advertising), staff has been unable to identify certified M/WBE firms capable to bid in the capacity of a prime consultant, except in the areas of advertising and legal services. Staff has identified 15 M/WBE firms that were utilized in this category. The majority of the M/WBEs businesses solicited provided expertise in the area of marketing and advertising. Due to the specificity of this category, staff has reached out to other agencies (i.e., Jefferson, Wakulla, and Gadsden counties), to determine if there are additional firms in order to increase vendor participation.

Other Services: There are a reasonable number of certified M/WBE vendors in this category. Staff anticipates utilization of certified M/WBE vendors to remain steady. As noted in the summary table, the County exceeded the aspirational targets in this category.

Material and Supplies: The commodities purchased under this category (i.e., office goods, supplies, equipment, miscellaneous building materials, and computers) are based on the necessity of the County's division operating needs. The County did not ascertain the aspirational target of 1% of expenses with MBE primes; but exceeded the 6% of expenses with WBEs by 2%. Due to the type of services provided under this category, opportunities are limited for M/WBE businesses.

Conclusion: Overall, the County has made significant increases in the utilization of M/WBE firms. Based on staff's analysis, the County continues to have a compelling interest to support a Minority and Women Business Enterprise program. Staff will continue to promote MWBE utilization on all procurement activity to ensure the County becomes closer to parity levels, as recommended by MGT, through the Small Business Program, when deemed reasonable. In addition, staff will continue to seek opportunities for minority and women businesses through:

- identifying barriers that prevent MWBE procurement opportunities.
 - hosting training sessions to prepare MWBE firms for procurement bids.
 - providing networking opportunities for MWBEs to develop new business relationships.
- ... developing partnerships to help improve MWBE firms' operations to increase success in procurement opportunities.
- continuing to notify certified MWBE firms of County procurement opportunities.
 - providing County divisions with monthly reports on their MWBE utilization.
 - providing smaller projects for MWBE firms to gain experience (when the MWBE is the lowest responsible bidder).
 - providing an online certification process to make it easier for MWBE to become certified.

Options:

1. Accept the status report on the minority and women-owned businesses expenditures for FY 2010.
2. Do not accept the status report on the minority and women-owned businesses expenditures for FY 2010.
3. Board direction.

Recommendation:

Option #1.

Attachments:

1. [Summary of FY 2010 Expenditures](#)
2. [Detail Analysis](#)

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Certification Criteria

For Certification as a MBE, WBE or SBE, the Applicant must meet all of the following Criteria as noted; businesses may be Certified as a: (1) MBE; (2) WBE; (3) SBE; (4) MBE/SBE; or (5) WBE/SBE:

MBE, WBE and SBE Certification Eligibility Criteria			
	Type of Certification (must meet ALL marked criteria)		
	MBE	WBE	SBE
Majority Owner(s) must be a Minority or Minorities who manage and Control the business. In the case of a publicly owned business, at least 51% of all classes of the stock, which is owned, shall be owned by one or more of such persons.	X		
Majority Owner(s) must be a Woman or Women who manage and Control the business. In the case of a publicly owned business, at least 51% of all classes of the stock, which is owned, shall be owned by one or more of such persons.		X	
Majority Ownership in the business shall not have been transferred to a woman or minority, except by descent or a bona fide sale within the previous 2 years.	X	X	
Majority Owner(s) must reside in Leon, Gadsden, Jefferson, or Wakulla County Florida.	X	X	X
Majority Owner(s) must be a United States citizen or lawfully admitted permanent resident of the United States.	X	X	X
Business must be legally structured either as a corporation, organized under the laws of Florida, or a partnership, sole proprietorship, limited liability, or any other business or professional entity as required by Florida law.	X	X	X
Business must be Independent and not an Affiliate, Front, façade, broker, or pass through.	X	X	X
Business must be a for-profit business concern.	X	X	X
Business must be currently located within the Market Area.	X	X	X
Business must have all licenses required by local, state, and federal law.	X	X	X
Business must currently be licensed and engaging in commercial transactions typical of the field, with customers in the Local Market Area other than state or government agencies, for each specialty area in which Certification is sought. Further, if a Supplier, business must be making sales regularly from goods maintained in stock.	X	X	X
Business must have expertise normally required by the industry for the field for which Certification is sought.	X	X	X
Business must have a net worth no more than \$2 million.	X	X	X
Business must employ 50 or fewer full- or part-time employees, including leased employees.	X	X	X
Annual gross receipts on average, over the immediately preceding three (3) year period, shall not exceed: - For businesses performing Construction – \$2,000,000/year. - For businesses providing Other Services or Materials & Supplies - \$2,000,000/year. - For businesses providing Professional Services – \$1,000,000/year.	X	X	X
Business must have been established for a period of one (1) calendar year prior to submitting its application for SBE certification.			X
Business must have a record of satisfactory performance on no less than three (3) projects, in the business area for which it seeks certification, during the past 12 calendar months.			X



Board of County Commissioners
Leon County, Florida
www.leoncountyfl.gov


Budget Discussion Item
Executive Summary

March 17, 2011

Title:

Consideration to Transition from a Minority, Women, Small Business Enterprise (MWSBE) Office to a Small Business and Community Development Office

Staff:

Parwez Alam, County Administrator 
Vincent S. Long, Deputy County Administrator
Alan Rosenzweig, Assistant County Administrator
Scott Ross, Director of the Office of Management and Budget
Ken Morris, Director of Legislative Affairs & Economic Development
Iranetta Dennis, MWSBE Director

Issue Briefing:

During the November 9, 2010, Board Meeting, Commissioner Proctor discussed transitioning the MWSBE program into a Small Business and Community Development Office and requested this issue to be included at the Board retreat. At the Board's 2010/2011 Annual Retreat, staff provided an overview of the County's MWBE and Small Business programs with potential transition opportunities toward a broadly defined Small Business and Community Development Office (Attachment #1). At that time, the Board directed staff to proceed and further develop the concept of a Small Business and Community Development Office and present the findings as a budget discussion item.

Fiscal Impact:

This item has no fiscal impact.

Staff Recommendation:

- Option #1: Accept staff report.
- Option #2: Direct staff to continue to review the SBE program and policies to increase small business participation.

Report and Discussion

Background:

During the November 9, 2010, Board Meeting, Commissioner Proctor discussed transitioning the MWSBE program into a Small Business and Community Development Office and requested this issue to be included at the Board retreat. At the Board's 2010/2011 Annual Retreat, staff provided an overview of the County's MWBE and Small Business programs with potential transition opportunities toward a broadly defined Small Business and Community Development Office. At that time, the Board directed staff to proceed and further develop the concept of a Small Business and Community Development Office and present the findings as a budget discussion item.

Analysis:

Leon County currently operates the Minority, Women and Small Business Enterprise program through the MWBE Division. While co-located with the Purchasing Division, the MWSBE Division operates separately based upon the recommendation of a 2000 MGT study. Co-location provides vendors and staff with access to shared documents and facilitates better collaboration during pre-bid conferences and bid award activities. The MWSBE program is composed of two, separate program areas:

1. The MWBE component focuses on firms owned and operated by minorities and women; and
2. The SBE component focuses on businesses that meet the small business criteria in terms of their size and net worth, regardless of the owner's gender or ethnicity.

Minority/Women - The County adopted an MWBE policy in 1987. To remain a legally viable program, the County has engaged an outside consultant on a regular basis to prepare an updated disparity study; the last study was prepared in October 2009. The County also regularly monitors the actual results of the program. The program has been successful in providing opportunities for minority/women owned businesses to secure business with the County that may not have occurred without the program. Through certification, training and outreach, the program continues to have a positive impact on the targeted community.

Leon County's MWBE program is a race/gender specific program whereby a prime contractor receives preference for utilizing certified minority and women owned businesses on a Leon County project. The MWBE program's overall objective is to promote parity of MWBE firms in Leon County procurement activities through the utilization of aspirational targets and other means.

Small Business - The County added the SBE component in June 13, 2006. The County currently operates a limited SBE program. The SBE program is a race/gender neutral program which, by Board policy, provides for the reservation of certain procurement opportunities for exclusive competition among SBE firms only. The dollar threshold that must be met in order to limit competition to SBEs only differs by business category, as follows: Construction (Procurement Value - \$100,000 or less), Professional Services (Procurement Value - \$50,000 or less), Other Services (Procurement Value - \$25,000 or less), and Material & Supplies (Procurement Value - \$25,000 or less).

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A significant difference between MWBE goals and SBE goals are the MWBE goals need to be supported through a disparity study based on existing case law; whereas SBE goals do not. If the Board directs staff to eliminate the MWBE program for an SBE only program, the County could no longer mandate MWBE requirements because an SBE program must be race and gender neutral. However, MWBE aspirational targets could be set for projects based on the availability of MBEs and WBEs. Should the Board choose this route, staff would also recommend revising the current thresholds established for business categories in order for a project to be set aside for small businesses. Other changes consistent with SBE trends should also be considered:

- Impose bond waivers for construction projects with a procurement amount of \$200,000 or less, consistent with the Florida Statue Section 255.05(1)(a). The division procuring the project will determine the appropriateness of waiving payment and performance bond requirements. The factors to be considered include but are not limited to:
 - a. Complexity of the construction project;
 - b. Contractors experience with the type of construction project under review;
 - c. Exceptional risk factors; and
 - d. The recommendation of the user or solicitation division.
- Set aside all projects with a procurement amount of \$250,000 or less when at least three SBEs are available. Such procurements shall be contracts that SBEs are capable of performing in an economically feasible manner, i.e. at the customary and usual market rate.
- Establish a cumulative goal based on local market availability and participation by certified SBE firms on all County contracts that exceed a procurement value of \$200,000. This goal may be adjusted if SBE firms are not available. The cumulative goal should not be applicable to shelter market projects.

These proposed revisions would provide small business owners additional opportunities to gain experience needed to expand their businesses and keep dollars in the local market area. However, as an SBE program, it would be a race/gender neutral program. If the Board determines to transition the program, staff is recommending the assistance of a consultant to ensure the program functionality is consistent with SBE trends.

The Community Development Office (CDO) concept, as described by Commissioner Proctor, is one that could provide a local community with the necessary resources to address a wide range of unique community development needs in an effort to eliminate blight and promote economic development. Many of the typical areas addressed in a CDO (i.e., social services and housing) are currently being performed by existing County departments (Housing and Human Services). As noted during the Board Retreat, staff does not recommend incorporating Housing and Human Services in to the CDO given the focus on commercial economic development.

The major focus of a combined Small Business and CDO would be to expand the County's role in economic development efforts through the utilization of an in-house office. The County's existing economic development efforts are addressed through the County's Director of Legislative Affairs and Economic Development, located in County Administration, and an annual contract with the Economic Development Council (EDC). The CDO component could allow the County to bring the

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current services contracted out to the EDC in-house so that the County can directly engage the economic development community. The reorganization to a Small Business and CDO could be established in short time and located at the Purchasing office to maintain coordination and access to vendors.

Under the proposed Small Business and CDO, all of the County's economic development efforts would be centrally located in one office to address community needs and serve small vendors in the procurement process. The County could also begin to directly or indirectly provide youth development services such as after school programs and activities focused on vocational training and crime prevention. Should the Board wish to proceed with this concept, staff could prepare more detailed financial information relating to the staffing needs and investment strategies for the next budget workshop.

MWSBE Citizen Advisory Committee

On March 1, 2011, the County's MWSBE Citizen Advisory Committee convened to discuss the potential transition of the MWSBE program to a Small Business and Community Development Office. The Committee unanimously opposed the transition at this time over concerns that it would reduce the County's focus on the achieving its aspirational targets for contract opportunities with minority vendors. Commissioner Proctor, who attended the meeting and concurred with the Committee, suggested that the County table this discussion for the time being and continue efforts to engage and educate minority vendors on procurement opportunities with the County.

Summary

The transition from the MWSBE programs to a Small Business and Community Development Office presents a major policy shift by the Board to a race/gender neutral program. However, a CDO could provide a more holistic approach to community and economic development with the inclusion of youth services and by bringing the economic development services in-house.

Many of the services traditionally offered by a CDO are currently being provided by the County's Health and Human Services Division and the County has benefited from a successful partnership with the EDC in recent years as evidenced by the Board's consideration of increasing funds for the Qualified Targeted Industry program. At this time, staff recommends proceeding with the existing MWSBE program and continuing to review the SBE program and policies to increase small business participation.

Should the Board wish to proceed with the CDO concept, staff will prepare more detailed financial information relating to the staffing needs and investment strategies for the next budget workshop. To develop the long-term strategies of the SBE component, staff would recommend seeking a consultant to provide guidance on the program functionality consistent with SBE programs.

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Options:

1. Accept staff report.
2. Direct staff to continue to review the SBE program and policies to increase small business participation.
3. Direct staff to prepare more detailed financial information relating to staffing and investment strategies for the proposed Small Business and Community Development Office at the next budget workshop.
4. Board Direction.

Recommendation:

Options 1 & 2.

Attachments:

1. Agenda Item #23 from the Board's 2010/2011 Annual Retreat regarding the consideration to transition from a MWSBE to a Small Business and Community Development Office.

Board Retreat, Agenda Item #23
December 13, 2010

Title:

Board Consideration to Transition from a Minority, Women, Small Business Enterprise (MWSBE) Office to a Small Business and Community Development Office.

Staff:

Parwez Alam, County Administrator
Vincent S. Long, Deputy County Administrator
Alan Rosenzweig, Assistant County Administrator
Iranetta Dennis, Director, MWSBE

Issue Briefing: This item seeks Board direction on whether to pursue the transition from the County's existing Minority, Women and Small Business (MWSBE) program to a Small Business and Community Development Office.

During the November 9, 2010, Board Meeting, Commissioner Proctor discussed transitioning the MWSBE program into a Small Business and Community Development Office and requested this issue to be included at the Board retreat.

Analysis: Leon County currently operates the Minority, Women and Small Business Enterprise program through the MWSBE Division. While co-located with the Purchasing Division, the MWSBE Division operates separately. The County co-located the divisions upon the recommendation of a 2000 MGT study. Co-location provides vendors and staff with access to shared documents and facilitates better collaboration during pre-bid conferences and bid award activities.

The MWSBE program is composed of two, separate program areas:

1. The MBE component focuses on firms owned and operated by minorities and women; and
2. The SBE component focuses on businesses that meet the small business criteria in terms of their size and net worth, regardless of the owner's gender or ethnicity.

There are relatively few programs of this nature currently being run in Florida. The following table shows the most recent listing of jurisdictions in Florida running a similar program:

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Table 1 - Florida County and City Race/Gender Specific and Race/Gender Neutral Programs			
FL County/City	* Programs	Program Design	
		Race/Gender Specific	Race/Gender Neutral
Hillsborough County, FL	MWBE, SBE	X	X
City of Hollywood, FL	MBE, SBE	X	X
City of Tallahassee	MWBE, DBE	X	X
City of Tampa, FL	MWBE, SBE	X	X
Orange County, FL	MWBE	X	
Osceola County, FL	MBE	X	
City of Orlando, FL	MWBE	X	
Polk County, FL	MBE	X	
Palm Beach County, FL	SBE		X
Broward County, FL	CBE, DBE, SBE		X
Alachua County, FL	SBE		X
City of West Palm Beach, FL	SBE		X
City of Jacksonville, FL	SBE		X
St. Petersburg, FL	SBE		X
Pinellas County, FL	SBE		X
<ul style="list-style-type: none"> • Race/Gender Specific: MWBE (Minority Women Business Enterprise) • Race/Gender Neutral: Small Business Enterprise (SBE), Disadvantaged Business Enterprise (DBE), Community Disadvantaged Business Enterprise (small businesses within the County) (CDBE) 			

The following provides a brief overview of each program area.

Minority/Women - The County adopted an MWBE policy in 1987. The program has been successful in providing opportunities for minority/women owned businesses to secure business with the County that may not have occurred without the program. Through certification, training and outreach, the program continues to have a positive impact on the targeted community.

Leon County's MWBE program is a race/gender specific program whereby a prime contractor receives preference for utilizing certified minority and women owned businesses on a Leon County project. The MWBE program's overall objective is to promote parity of MWBE firms in Leon County procurement activities through the utilization of aspirational targets and other means.

Small Business - The County added the SBE component in June 13, 2006. The County currently operates a limited SBE program. The SBE program is a race/gender neutral program which, by Board policy, provides for the reservation of certain procurement opportunities for exclusive competition among SBE firms only. The dollar threshold that must be met in order to limit competition to SBEs only differs by business category, as follows: Construction (Procurement Value - \$100,000 or less), Professional Services (Procurement Value - \$50,000 or less), Other

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Services (Procurement Value - \$25,000 or less), and Material & Supplies (Procurement Value - \$25,000 or less).

Additionally, to reserve a procurement opportunity for exclusive competition among SBE firms, there must be no less than three SBEs for the relevant procurement area; this assures sufficient competition. Currently staff has identified certified SBE vendors in the categories of concrete, landscape, janitorial, and roofing, however, an exclusive competition opportunity meeting the dollar thresholds has not been available. Hence, to date, the County has not done any set asides under the existing program.

Staff is continuing to review the existing program in order to incorporate innovative methods to identify opportunities and increase small business participation. In this effort staff has consulted with Leon County departments/divisions to identify projects that would fit the current dollar threshold for the FY 10/11.

In addition staff has provided networking events in order to inform the local community of the program and the benefits of participating. The SBE program provides outreach opportunities to keep the local business community informed about the necessary tools to stay in business. In an effort to increase awareness staff has either conducted or participated in MED (Minority Enterprise Development) Week, Small Business Development Week, FSU Vendor Conference and Trade Fair, Financially Fit Workshop, and a Reverse Trade Show. In excess of 40 vendors either attended the events and/or workshops.

Additionally, FAMU's Small Business Development Center is located in the Morgan Building in Innovation Park. The center offers free workshops for startups, along with business counseling and troubleshooting with seasoned advisers. Florida has 12 Small Business Development Centers, all supported financially by the U.S. Small Business Administration. The center in Tallahassee serves an eight-county area.

Transition of Existing Program:

If the Board directs staff to eliminate the MWBE program and operate an SBE only program, staff will evaluate several components that could be included in a new structured program. A significant difference between MWBE goals and SBE goals are the MWBE goals need to be supported through a disparity study based on existing case law; whereas SBE goals do not. Some of the types of program changes could include:

- A cumulative program target for small business participation. For example, a project that is \$500,000 could incorporate a project aspirational target of 25% for certified small businesses. (As with the existing MWBE program, this would not be a mandatory target).
- Consider establishing a sheltered market process where contracts will be reserved for competition among certified SBE businesses for projects with a total base bid amount of \$200,000 or less (or some other threshold) across business categories.

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- Evaluate imposing a vendor rotation process for purchase orders of \$50,000 (or some other to be determined threshold) or less; this process allows vendors to be rotated based on their first award of the same type of services and/or commodities.

As part of the SBE program some agencies impose mandatory subcontracting clauses which would promote SBE utilization and be more consistent with industry practice by way of bid and/or vendor rotation. Other than Alachua and Osceola, none of Leon County comparable counties (Bay, Collier, Escambia, Lake, Manatee, Marion, Okaloosa, and St. Lucie Counties, FL) reported having a small or a minority business office. Larger state, cities and county's agencies have adopted small business initiatives.

- Alachua County, Florida's SBE program has established goals of awarding up to 15% of the total bid for the areas of materials, supplies, equipment, services and construction to small business. This is accomplished by offering bid preference discounts of 5% for SBEs and 3% for prime contractors who meet the participation goal by subcontracting with SBEs
- Miami-Dade County, Florida, uses a small pool of qualified A&E professionals that are rotated awards as prime contractors and subcontractors.
- Florida Department of Transportation (Florida DOT) has undertaken a small business initiative with the following principle components:
 - Reserving certain construction, maintenance, and professional services contracts for small businesses
 - Providing bid preference points to small businesses and to firms offering subcontracts to small businesses on professional services contracts
 - Waiving performance and bid bond requirements for contracts under \$250,000
 - Using a modified pre-qualification process for certain construction and maintenance projects
- DeKalb County, Georgia uses bidder rotation. This system works by selecting a group of bidders from a list of County registered vendors to participate in open market procurements. The buyer identifies the commodity or services by entering an item box number. The computer selects five to six firms. The lowest responsible bidder is awarded the contract. An outcome of this process involved MWBEs being afforded more opportunities.
- The City of Charlotte, North Carolina sets department goals for SBE utilization, and sets SBE goals on formal and informal contracts and makes SBE utilization part of the department performance review utilization numbers.

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Community Development Office (CDO) - The Community Development Office (CDO) concept, as described by Commissioner Proctor, is one that could provide a local community with the necessary resources to address a wide range of unique community development needs in an effort to eliminate blight and promote economic development. As part of the review, staff would evaluate the role of the County's existing economic development efforts and how they could be integrated with a CDO.

Many of the typical areas addressed in a CDO (i.e., social services and housing) are currently being performed by existing County departments (Housing and Human Services). For these areas, staff does not recommend changing this approach at this time.

The major focus of a CDO would be to expand the County's role in economic development efforts through the utilization of an in-house office. The County's existing efforts are addressed through the county's Director of Economic Development and Intergovernmental Affairs and an annual contract with the Economic Development Council (EDC).

Should the Board wish to further consider this proposal, additional review and analysis of the scope of a County CDO would need to be defined. Areas of consideration may include:

- Inclusion of the Small Business Enterprise within the CDO
- The consolidation of all the County's Economic Development efforts under one central office.
- Researching the nature and extent of local social and reinvestment needs.
- Develop priorities and strategies to address community development needs in consultation with other County departments and local public and private service organizations.
- Provide youth development initiatives to increase youth awareness and development opportunities.

Timeline:

If the Board directed staff to further evaluate this concept, staff would provide a budget discussion item during the Board's FY11/12 budget workshops. Pending the outcome of the budget discussion item, the transition could occur beginning in FY11/12.

Fiscal Impact:

This item is an informational report and has no fiscal impact at this time. Should the Board proceed, the implementation of a new office could have a fiscal impact that depending upon the scope of services could include additional staffing and operating expenses.

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Options:

1. Direct staff to further develop the concept of transitioning from a Minority, Women, Small Business Enterprise Office to a Small Business and Community Development Office and present the findings as a budget discussion item.
2. Direct staff to further develop the concept of transitioning from a Minority, Women, Small Business Enterprise Office to a Small Business Office (excluding the Community Development Office component) and present the findings as a budget discussion item.
3. Accept staff's report and take no further action.
4. Board Direction

Recommendation:

Board Direction