

APPENDIX A.

Definition of Terms

Appendix A provides explanations and definitions useful to understanding the 2015 Public Works Disparity Study. The following definitions are only relevant in the context of this report.

Anecdotal evidence. Anecdotal evidence includes personal accounts and perceptions of incidents — including any incidents of discrimination — told from each individual interviewee’s or participant’s perspective.

Wisconsin Department of Transportation (WisDOT). WisDOT is the steward of the State of Wisconsin transportation system. WisDOT is responsible for building, maintaining, and operating the state highway system. In addition, WisDOT works with various partners to maintain and improve local transportation infrastructure. As a recipient of USDOT funds, WisDOT operates the Federal DBE Program on USDOT-funded contracts.

Availability analysis. The availability analysis examines the number of minority-, women-owned and majority-owned businesses ready, willing and able to perform public works-related construction work for the City of Madison.

“Availability” is often expressed as the percentage of contract dollars that might be expected to go to minority- or women-owned firms if based on analysis of the specific type, size and timing of each City prime contract and subcontract and the relative number of minority- and women-owned firms available for that work.

Business. A business is a for-profit company, including all of its establishments (synonymous with “firm” and “company”).

Business listing. A business listing is a record in the Dun & Bradstreet (D&B) database (or other database) of business information. A D&B record is a “listing” until the study team determines it to actually be a business establishment with a working phone number.

Business establishment. A business establishment (or simply, “establishment”) is a place of business with an address and working phone number. One business can have many business establishments.

City-funded contract. In this study, a public works contract that solely uses City funds and no state or federal funds.

Code of Federal Regulations or CFR. Code of Federal Regulations (“CFR”) is a codification of the federal agency regulations. An electronic version can be found at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

Contract. A contract is a legally binding relationship between the seller of goods or services and a buyer.

Contract element. A contract element is either a prime contract or subcontract that the study team included in its analyses.

Contractor. A contractor is a business performing construction contracts.

Controlled. Controlled means exercising management and executive authority for a company.

Disadvantaged Business Enterprise (DBE). A small business that is 51 percent or more owned and controlled by one or more individuals who are both socially and economically disadvantaged according to the guidelines in the Federal DBE Program (49 CFR Part 26). Membership in certain race and ethnic groups identified under “minority-owned business enterprise” in this appendix may meet the presumption of socially and economically disadvantaged. Women are also presumed to be socially and economically disadvantaged. Examination of economic disadvantage also includes investigating the three-year average gross revenues and the business owner’s personal net worth (at the time of this report, a maximum of \$1.32 million excluding equity in the business and primary personal residence).

Some minority- and women-owned businesses do not qualify as DBEs because of gross revenue or net worth limits.

A business owned by a non-minority male can be certified as a DBE if the enterprise meets the requirements in 49 CFR Part 26.

Disparity. A disparity is a difference or gap between an actual outcome and a reference point or benchmark. For example, a difference between an outcome for one racial/ethnic group and an outcome for non-Hispanic whites may constitute a disparity.

Disparity analysis. A disparity analysis compares actual outcomes with what might be expected based on other data. Analysis of whether there is a “disparity” between the utilization and availability of minority- and women-owned businesses is one tool in examining whether there is evidence consistent with discrimination against such businesses.

Dun & Bradstreet (D&B). D&B is the leading global provider of lists of business establishments and other business information (see www.dnb.com). Hoover’s is the D&B company that provides these lists.

Employer firms. Employer firms are firms with paid employees other than the business owner and family members.

Enterprise. An enterprise is an economic unit that could be a for-profit business or business establishment; not-for-profit organization; or public sector organization.

Establishment. See “business establishment.”

Federal Disadvantaged Business Enterprise (DBE) Program. Federal DBE Program refers to the Disadvantaged Business Enterprise Program established by the United States Department of Transportation after enactment of the Transportation Equity Act for the 21st Century (TEA-21) as amended in 1998. The regulations for the Federal DBE Program are set forth in 49 CFR Part 26.

Firm. See “business.”

Federally-funded contract. A federally-funded contract is any contract or project funded in whole or in part (a dollar or more) with United States Department of Transportation or other federal agency financial assistance, including loans.

Industry. An industry is a broad classification for businesses providing related goods or services.

Majority-owned business. A majority-owned business is a for-profit business that is not owned and controlled by minorities or women (see definition of “minorities” below).

MBE. See minority-owned business.

Minorities. Minorities are individuals who belong to one of the racial/ethnic groups identified in the federal regulations in 49 CFR Section 26.5:

- Black Americans (or “African Americans” in this study), which include persons having origins in any of the black racial groups of Africa;
- Hispanic Americans, which include persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- Native Americans, which include persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
- Asian-Pacific Americans, which include persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, Hong Kong, and other countries and territories in the Pacific set forth in 49 CFR Section 26.5; and
- Subcontinent Asian Americans, which include persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.

Minority Business Enterprise (MBE) Program. A program that specifically provides benefits to certified minority-owned businesses such as eligibility to meet MBE contract goals or price preferences in procurement. The State of Wisconsin operates a Minority Business Enterprise Program, as does Dane County. For these two programs, there are no size restrictions for MBE certification.

Minority-owned business (MBE). An MBE is a business with at least 51 percent ownership and control by minorities. Minority groups in this study are those listed in 49 CFR Section 26.5. For purposes of this study, a business need not be certified as such to be counted as a minority-owned business. Businesses owned by minority women are also counted as MBEs in this study (where that information is available).

North American Industry Classification System (NAICS) codes. NAICS codes identify the primary line of business of a business enterprise. See <http://www.census.gov/epcd/www/naics.html>.

Non-DBEs. Non-DBEs are firms that are not certified as DBEs, regardless of the race/ethnicity or gender of the owner.

Non-response bias. Non-response bias occurs when the observed responses to a survey question differ from what would have been obtained if all individuals in a population, including non-respondents, had answered the question.

Owned. Owned indicates at least 51 percent ownership of a company. For example, a “minority-owned” business is at least 51 percent owned by one or more minorities.

Personal net worth (PNW). Personal net worth is defined as the assets of an individual or household less outstanding loans and other liabilities. For example, if an individual owned a car worth \$20,000 but still had \$5,000 in a car loan to pay on the vehicle, that asset would be counted as \$15,000 toward the personal net worth of the individual.

To be eligible to be certified as a Disadvantaged Business Enterprise, the Federal DBE Program requires that the firm owner’s personal net worth does not exceed \$1.32 million (at the time of this report). In determining an individual’s net worth, federal guidelines include all assets except for the worth of the business and the primary residence of the individual. Other assets, including retirement savings, are included in the calculation.¹

The City of Madison’s personal net worth assessment for SBE certification mirrors that of the Federal DBE Program.

Prime contract. A prime contract is a contract between a prime contractor or a prime consultant and the end user, such as the City of Madison.

Prime contractor. A prime contractor is a construction firm that performs a prime contract for an end user, such as the City of Madison.

Public works contract. As defined under Wisconsin state law, public works contracts generally pertain to any type of construction, repair, remodeling or improvement of a public facility or building.

Race-and gender-conscious measures. Race-and gender-conscious measures are programs in which businesses owned by some racial/ethnic groups may participate but non-minority-owned firms may not, or that apply to businesses owned by women but not men. A DBE or an MBE/WBE contract goal is one example of a race- and gender-conscious measure.

Note that the term is a shortened version of “race-, ethnicity-, and gender-conscious measures.” For ease of communication, the study team has truncated the term to “race- and gender-conscious measures.”

¹ 49 CFR Section 26.67 (a)(2).

Race- and gender-neutral measures. Race- and gender-neutral measures apply to businesses regardless of the race/ethnicity or gender of firm ownership. Race- and gender-neutral measures may include assistance in overcoming bonding and financing obstacles, simplifying bidding procedures, providing technical assistance, establishing programs to assist start-up firms, and other methods open to all businesses or any disadvantaged business regardless of race or gender of ownership. (A broader list of examples can be found in 49 CFR Section 26.51(b).)

Note that the term is more accurately “race, ethnicity, and gender-neutral” measures. However, for ease of communication, the study team has shortened the term to “race- and gender-neutral measures.”

Relevant geographic market area. The relevant geographic market area is the geographic area in which the businesses receiving most City public works contracting dollars are located. The relevant geographic market area is also referred to as the “local marketplace.” Case law related to MBE/WBE programs requires disparity analyses to focus on the “relevant geographic market area.”²

Remedy. A remedy is a contracting program measure that is designed to address barriers to full participation of a particular group of businesses.

Small business. A small business is a business with low revenues or size (based on revenue or number of employees) relative to other businesses in the industry. “Small business” as used in this report does not necessarily mean that the business is certified as such.

Small Business Enterprise (SBE). An SBE is a firm certified as a small business enterprise by the City of Madison. At the time of this report, the firm must be independently owned and controlled with annual receipts limits of \$4 million or less when averaged over the most recent three years. The owner must be below personal net worth limits of \$1.32 million (see above).

Small Business Administration (SBA). The SBA refers to the United States Small Business Administration, which is an independent agency of the United States government that assists small businesses.

State-funded contract. A state-funded contract is any contract or project that is funded with State of Wisconsin monies. Some City of Madison public works contracts are state-funded.

Statistically significant difference. A statistically significant difference refers to a quantitative difference for which there is a 0.95 probability that chance can be correctly rejected as a reasonable explanation for the difference (meaning that there is a 0.05 probability that chance in the sampling process could correctly account for the difference).

Subcontract. A subcontract is a contract between a prime contractor or prime consultant and another business selling goods or services to the prime contractor as part of the prime contractor’s contract for a customer such as the City of Madison.

² See, e.g., *Croson*, 448 U.S. at 509; 49 CFR Section 26.35; *Rothe*, 545 F.3d at 1041-1042; *N. Contracting*, 473 F.3d at 718, 722-23; *Western States Paving*, 407 F.3d at 995.

Subcontractor. A subcontractor is a construction firm that performed services for a prime contractor as part of a larger project.

Supplier. A supplier is a firm that sold supplies to a prime contractor as part of a larger project.

Tax Increment Financing (TIF) project. A TIF project in the City of Madison is a project funded using tax increment financing. Developers can apply for TIF assistance if the proposed development project meets City policies and guidelines.

United States Department of Transportation (USDOT). USDOT refers to the United States Department of Transportation, which includes the Federal Highway Administration, the Federal Transit Administration, the Federal Aviation Administration and the Federal Rail Administration. Note that the Federal DBE Program does not apply to contracts solely using funds from Federal Rail Administration, and such contracts would not be included in the Disparity Study.

Utilization. Utilization refers to the percentage of total contracting dollars of a particular type of work going to a specific group of businesses (e.g., MBEs).

WBE. See women-owned business.

Women-owned Business Enterprise (WBE) Program. A program that specifically provides benefits to certified women-owned businesses such as eligibility to meet WBE contract goals or price preferences in procurement. Firms certified as WBEs in the State of Wisconsin's Women Business Enterprise Program are listed in a directory, but receive no price preferences and do not benefit from WBE contract goals. There is no size restriction for WBE certification by the State of Wisconsin.

Women-owned business (WBE). A WBE is a business with at least 51 percent ownership and control by non-minority women. A business need not be certified as such to be included as a WBE in this study. For this study, businesses owned and controlled by minority women are counted as minority-owned businesses.