

CHAPTER 1.

Introduction

The City of Madison seeks to ensure equity in its contracting activities. It commissioned a disparity study to determine if there is a level playing field for minority- and women-owned firms when competing for City public works contracts and subcontracts. This research helps the City determine if its current Small Business Enterprise (SBE) Program is effective in encouraging utilization of minority- and women-owned firms in City public works contracts and whether additional or different measures are needed.

The ability of cities to address any racial discrimination in contracting is limited by the 1989 U.S. Supreme Court decision in *City of Richmond v. J.A. Croson Company*. The U.S. Supreme Court provided guidance for when a minority business enterprise program might be legally defensible. One reason for the disparity study is to help determine whether any City contracting programs that specifically focus on minority- and women-owned firms are needed and supportable in light of this U.S. Supreme Court decision.

A disparity study calculates the share of contract dollars going to minority- and women-owned firms and the share going to other businesses. A “disparity” exists if the share for minority- and women-owned businesses is below what might be expected based on their relative availability to perform that work. The City of Madison study focuses on City public works prime contracts and subcontracts. (See Appendix A for definitions of key terms used in this report.)

The study team also collected information about the experiences of minorities and women in the Madison construction industry. These results will help the City assess whether there is a level playing field for minorities and women in the industry.

Chapter 1 of the Disparity Study:

- A. Reviews City public works contracts;
- B. Explains the City’s Small Business Enterprise Programs;
- C. Introduces the study team;
- D. Outlines the analyses and describes where results appear in the report; and
- E. Describes the public input process, including comments for the draft report.

A. City of Madison Public Works Contracts

The study team identified \$331 million in City-funded public works contracts awarded from 2008 through 2013. City public works contracts that use state or federal funds were not examined in the study, as the State MBE/WBE Programs or the Federal DBE Program applied to many of these contracts. The City applies those programs as a condition of receiving state or federal funds.

The City contracts for a wide range of construction projects, from road work to water and sewer lines and construction of public buildings. Keen Independent identified the primary type of work involved in each of the 600 prime contracts and 2234 subcontracts awarded during the study period. As shown in Figure 1-1, much of the dollars of work was related to roads, water and sewer lines, public buildings and building trades such as electrical work, plumbing and HVAC. In total, the study team examined 29 different construction specializations. Appendix C provides more information about how the study team collected and analyzed City public works contract dollars.

Figure 1-1.
Dollars of City public works prime contracts and subcontracts, by type of work, 2008-2013

Type of work	Dollars (millions)	Percent of total
General road construction	\$ 95.9	29.0 %
Asphalt paving	54.9	16.6
Water and sewer lines	23.2	7.0
General public building construction	19.1	5.8
Concrete flatwork (sidewalk, curb, gutter and paths)	18.3	5.5
Electrical work	15.8	4.8
Plumbing and HVAC	12.7	3.8
Other concrete work	11.4	3.4
Landscaping and related work	10.9	3.3
Trucking and hauling	9.8	3.0
Culverts, drainage and water retention	8.7	2.6
Excavation, demolition and other site prep	7.1	2.1
Other building construction related	6.7	2.0
Roofing, siding and sheet metal work	5.3	1.6
Water and sewer plants	5.2	1.6
Construction materials supply	2.9	0.9
Waterways and dams	2.9	0.9
Drywall and insulation	2.9	0.9
Carpentry and floor work	2.8	0.9
Masonry, stonework, tile setting and plastering	2.2	0.7
Temporary traffic control	1.9	0.6
Windows and doors	1.6	0.5
Bridge construction	1.4	0.4
Structural steel work	1.3	0.4
Drilling and foundations	1.2	0.4
Office furniture and equipment installation	1.0	0.3
Bridge and other structure painting	1.0	0.3
Concrete cutting	1.0	0.3
Fencing and gates	0.8	0.3
Pavement marking	0.8	0.2
Other roadway work	0.4	0.1
Other construction (not otherwise specified)	0.2	0.1
Total	\$ 331.1	100.0 %

More than 90 percent of City of Madison public works contract dollars went to firms with locations in Madison or other parts of Dane County. Therefore, analyses of local construction marketplace conditions focused on Dane County.

B. City of Madison Small Business Enterprise (SBE) Program

One of the purposes of the disparity study is to evaluate the effectiveness of the City's SBE Program applied to City-funded public works contracts. The SBE Program is one of several Targeted Business Enterprise Programs encouraging participation of different types of businesses on City projects. The current program has been in place since 1991. During the study period, the City had approximately 286 construction-related businesses certified as SBEs.

In order to be certified as an SBE, a business must be:

- Organized as a for-profit business, performing a commercially useful function;
- Independently owned and controlled by individuals possessing a net worth of no more than \$1,320,000; and
- Averaging annual gross receipts of \$4 million or less over the last three year period.

The City calculates an SBE contract goal by comparing the work areas listed in a project cost estimate with the list of certified businesses that perform those types of work. SBE contract goals are applied to City public works contracts that exceed \$100,000. Prime contractors are required to solicit bids from SBE-certified businesses for subcontracting opportunities on those projects. A responsive bidder on a project with an SBE goal must submit a complete SBE Compliance Report which shows that the bidder has met the goal or has shown good faith efforts to do so.

C. Study Team

In 2014, the City of Madison contracted with Keen Independent Research LLC (Keen Independent) to perform the City of Madison Public Works Contracting Disparity Study. Keen Independent is based in Denver and opened a Madison office upon initiation of the study. Two local Diversity Scholar Interns from Keen Independent participated in this study.

Figure 1-2 presents the Keen Independent study team, which includes three minority- or women-owned firms (Lauber Consulting, The Davis Group and Customer Research International).

David Keen, Principal of Keen Independent, directed this study. He has conducted similar studies for about 80 cities and other public agencies throughout the country.

Figure 1-2.
2015 Disparity Study team

Firm	Location	Team Leader	Responsibilities
Keen Independent Research LLC, prime consultant	Denver, CO Wickenburg, AZ Madison, WI	David Keen Principal Linsay Edinger Consultant	All study phases
Holland & Knight LLP (H&K)	Atlanta, GA	Keith Wiener Partner	Legal framework
Lauber Consulting, LLC	Madison, WI	Renée Lauber Principal	In-depth interviews, public outreach
The Davis Group	Sun Prairie, WI	Stan Davis Attorney	In-depth interviews public outreach
Customer Research International (CRI)	San Marcos, TX	Sanjay Vrudhula President	Availability telephone interviews
BBC Research & Consulting (BBC)	Denver, CO	Kevin Williams Director	Quantitative analysis of marketplace conditions

D. Analyses Performed in the Disparity Study

The study team performed research concerning MBE/WBE utilization and availability, local marketplace conditions and program options for the City as part of this disparity study.

Legal analysis. Keith Wiener of Holland & Knight analyzed legal issues surrounding MBE/WBE programs and small business programs. Chapter 2 summarizes this research and Appendix B discusses relevant court decisions.

Collection of prime contract and subcontract information for past City public works contracts.

The study team collected information about City public works contracts from January 2008 through December 2013. Appendix C outlines the data collection process and describes the prime contracts and subcontracts involved in City public works projects.

Determination of relevant geographic market area and subindustries for City contracts.

Through analysis of City contracts and the construction firms involved in those contracts, the study team identified the relevant geographic market area for the study (Dane County) and types of work involved in City public works contracts (29 areas of specialization). Keen Independent used this information to design the availability data collection effort and to define the local market for further research.

Utilization analysis. The study team identified \$331 million in City-funded public works contracts from 2008 through 2013. Keen Independent determined the share of those dollars going to minority- and women-owned firms (MBEs and WBEs). This analysis includes work performed by prime contractors, subcontractors and trucking firms, and the materials provided by suppliers. The

utilization totals for minority- or women-owned businesses included non-certified firms as well as companies certified as MBEs, WBEs or DBEs.

Because the City does not currently track race/ethnicity or gender ownership data for all firms utilized on these contracts, the study team primarily collected firm ownership information through phone calls to companies receiving City prime contracts and subcontracts. Keen Independent also examined small business participation in City public works contracts.

Chapter 4 reports the results of the utilization analysis.

Availability and disparity analysis. The study team compared the utilization of minority- and women-owned firms to what might be expected based on availability of minority-, women- and majority-owned firms to do that work. (“Majority-owned firms” are businesses not owned by minorities or women.)

Database of firms available for City prime contracts and subcontracts. The first step in the availability analysis was to build a database of firms available to perform City public works prime contracts and subcontracts. Although the City maintains a list of firms it has prequalified for public works contracts, Keen Independent built an independent list of available firms as part of this study. This independence from a City list is important because the availability analysis generates a benchmark to evaluate how well the City is doing to involve minority- and women-owned businesses in its contracting. Because the prequalification process might be a barrier to minority- and women-owned firms or small businesses in general, prequalified firms should not form the sole benchmark to determine whether the City underutilizes MBEs and WBEs.

To build this availability list, the study team attempted to contact each of the companies in 29 construction subindustries in Dane County (including home-based businesses). There were 1,381 such firms with working phone numbers, and the study team was able to successfully contact 696 of them. After answering questions about the types of work they perform and whether they were qualified and interested in City public works prime contracts or subcontracts (or trucking or materials supply) 145 firms were included in the final availability database for the study. Results are summarized in Chapter 3 and explained in detail in Appendix D.

Availability benchmark. Keen Independent used this availability database to determine the relative number of MBEs, WBEs and majority-owned firms available for each City public works prime contract and subcontract from 2008 through 2013. After conducting availability analyses for each specific prime contract and subcontract, the study team dollar-weighted those results. This “dollar-weighted” overall availability forms the benchmark used in the disparity analysis (see Chapter 3 and Appendix D).

Disparity analysis. The disparity analysis for minority-owned firms compares the percentage of dollars going to MBEs with what might be expected from the results of the dollar-weighted availability analysis. For example, if MBEs received 1 percent of City contract dollars but the availability analysis indicated that 2 percent should have gone to minority-owned firms, there would be a disparity between the utilization and availability of MBEs in City public works contracts. The study team performed the same type of analysis for white women-owned firms. Chapter 4 presents results.

Evaluation of the City's SBE Program. Since the City's SBE Program applied to most of the City-funded public works contracts, Keen Independent was able to evaluate the success of the SBE Program from the results of the disparity analysis in Chapter 4.

Analysis of marketplace conditions. The Keen Independent study team examined data concerning pathways to construction business ownership and success, access to capital and other information about the Madison area construction marketplace. The information includes:

- Any evidence of barriers for minorities and women to enter and advance in their careers in the local construction industry (Appendix E);
- Any differences in rates of business ownership in the local construction industry (discussed in Appendix F);
- Access to business credit, insurance and bonding (Appendix G); and
- Any differences in business success in the local marketplace (Appendix H). (Appendix I describes data sources for these analyses.)

Chapter 3 summarizes research results for these topics.

Qualitative information. Lauber Consulting and the Davis Group conducted in-depth, in-person interviews with minority, female and white male business owners. They also interviewed trade associations (40 total in-depth interviews of businesses, trade associations and other groups). The study team also analyzed complaints firms made with the City since 2008.

In addition, Keen Independent reviewed public input related to the draft report (discussed below).

Chapter 3 summarizes these results and Appendix J provides analyses of interview information by topic. The marketplace information was also used when evaluating program options (see Chapter 5).

Review of current and potential programs. Chapter 5 of the report summarizes study results and analyzes different options for the City to address barriers for minorities and women and MBE/WBEs identified in the study.

E. Public Comment Process for the Draft Disparity Study Report

The City of Madison distributed the draft Public Works Disparity Study report for public comment. The City held public meetings about the draft report on March 4 and 5, 2015. The public had the opportunity to provide feedback at those meetings and by submitting written comments. Seventeen people representing interested parties attended the public meetings. Four written comments were submitted during the review period.

Keen Independent reviewed feedback and comments before preparing the final 2015 Disparity Study report in spring 2015. The final report summarizes public comments in Appendix J. The City of Madison also reviewed comments as it considers actions to take based on the study.