

# KCATA Disadvantaged Business Enterprise Availability Study 2016



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## **About the Study Team**

**Colette Holt & Associates** (“CHA”) is a national law and consulting firm specializing in disparity studies, affirmative action contracting programs, expert witness services, compliance monitoring and strategic development related to inclusion, diversity and affirmative action. Founded in 1994, it is led by Colette Holt, J.D., a nationally recognized attorney and expert. In addition to Ms. Holt, the firm consists of Steven C. Pitts, Ph. D., who serves as the team’s economist and statistician, Robert C. Ashby, J.D., former Deputy Counsel at the US Department of Transportation, who serves as special counsel, and Ilene Grossman CHA Firm Administrator. CHA is certified as a Disadvantaged Business Enterprise, Minority-Owned Business Enterprise and a Woman-Owned Business Enterprise by numerous agencies.

**G&H Consulting** (“G&H”) is a Kansas City-based consulting firm specializing in Disadvantaged, Minority and Women Business programs, including outreach, program development, project monitoring and certification issues. G&H is certified as a Minority-Owned Business Enterprise, founded in 1996, by Gayle Holliday, Ph.D., and CEO of the company.

**Phillips-West Public Relations & Communications** (“P-W”) is a Kansas City-based consulting firm specializing in media planning & relations, public relations & involvement, marketing, public meetings & hearings, government relations, etc. P-W is certified as a Woman-Owned Business Enterprise, founded by Carrie Stapleton, CEO.

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## **I. Executive Summary**

Colette Holt & Associates (CHA) was retained by the Kansas City Area Transportation Authority (“KCATA”) to perform a study to determine the availability of Disadvantaged Business Enterprises (“DBEs”) in its market area and evaluate its DBE program. The agency was part of a study consortium consisting of KCATA, the City of Kansas City, Missouri, Jackson County, Missouri and the Kansas City Public Schools. The objective was to meet the requirements of strict constitutional scrutiny applicable to DBE programs and KCATA’s obligations as a recipient of Federal Transit Administration “(FTA)” funds under 49 C.F.R. Part 26. We analyzed purchase order and contract data for calendar years 2008 through 2013.

### **A. Study Methodology and Data**

The methodology for this study embodies the constitutional principles of *City of Richmond v. Croson* and *Adarand v. Peña*; the DBE program’s regulatory requirements in 49 C.F.R. Part 26; and best practices for designing DBE programs. The CHA approach has been specifically upheld by courts. It is also the approach developed by Ms. Holt for the National Academy of Sciences that is now the recommended standard for designing legally defensible disparity studies for transportation agencies.

We determined the availability of DBEs in KCATA’s geographic and industry market area. We further analyzed disparities in the wider economy, where affirmative action is rarely practiced, to evaluate whether barriers continue to impede opportunities for minorities and women when remedial intervention is not imposed. We gathered anecdotal data on DBEs’ experiences with the agency’s DBE program and its current race-neutral measures. We examined race- and gender-based barriers throughout the economy through focus groups with business owners and stakeholders, and interviews with agency staff. We also evaluated KCATA’s DBE program and race- and gender-neutral policies and procedures for their effectiveness and conformance with Part 26 and national standards for DBE programs. In addition to addressing KCATA’s constitutional responsibilities, these data are also relevant to KCATA’s annual goal setting process under 49 C.F.R. § 26.45.

Based on the results of these extensive analyses, we make recommendations for narrowly tailoring KCATA’s DBE program.

### **B. Study Findings**

#### **1. KCATA’s Disadvantaged Business Enterprise Program**

As a condition of receipt of US Department of Transportation (“USDOT”) funds through the FTA, KCATA is required to implement a DBE program in compliance with 49 C.F.R. Part 26. The agency’s DBE program plan has been approved by FTA. KCATA’s triennial overall DBE goal is 8.5%, 6.5% to be achieved through

race-neutral measures and 2.0% through race-conscious contract goals. KCATA does not set DBE goals on its non-federally assisted contracts.

KCATA's DBE program is administered by the Procurement Department. The Disadvantaged Business Enterprise Liaison Officer (DBELO) is responsible for day-to-day administration. The DBELO participated in numerous DBE or civil rights-related training sessions from 2008 through 2014. In addition to the DBELO, procurement and project management staff have DBE-related responsibilities.

KCATA has developed procedures, forms and other documents to implement the program. Prime vendors must submit Subcontractor Utilization Reports with each invoice and DBE jobsite reviews are conducted to determine Commercially Useful Function ("CUF"). DBE compliance information for solicitations containing a DBE contract goal is due within 48 hours of bid opening for the bidder to be deemed a "responsible" contractor and eligible for contract award.

In addition to setting DBE contract goals on appropriate solicitations, KCATA applies several race-neutral measures to reduce barriers. These include attendance at vendor fairs and outreach events; assisting firms to comply with DBE requirements; and a small business enterprise certification.

To explore the impacts of KCATA's contracting policies and procedures and the implementation of the DBE program, we interviewed 56 individuals about their experiences and solicited their suggestions for changes. They provided the following experiences and suggestions:

- Outreach efforts to DBEs: There was a general consensus that the Transit Authority does not conduct much outreach for its specific opportunities. Participants found it difficult to access information about KCATA contracts. An annual procurement forecast was one recommendation to increase opportunities.
- Payments: There were few complaints about payment, either by KCATA to prime vendors or by prime contractors to subcontractors. An unfavorable contrast was drawn with other local governments, however.
- Supportive services to DBEs: Many DBEs welcomed additional assistance for their businesses, such as programs on how to estimate jobs, comply with agency paperwork, effective marketing, etc. Majority contractors also noted the need for supportive services.
- Meeting DBE contract goals: Most prime firms were able to meet the contract goals. However, there was confusion and frustration about how the agency sets goals on specific contracts. There were concerns about whether the DBE community in Kansas City can meet the burgeoning demand in the construction industry

## 2. KCATA's Industry and Geographic Markets

49 C.F.R. Part 26 requires that a recipient limit its race-based remedial program to firms doing business in its geographic and industry markets. CHA therefore analyzed all FTA-funded contracts issued by KCATA during the Study period. We analyzed contract data for 2008 through 2013 for KCATA's federally-assisted contracts. The Final Contract Data File for analysis contained a total award amount of \$50,341,023 representing 113 contracts to primes; of this amount, 213 associated subcontracts received \$10,042,095. The Final Contract Data File was used to determine the geographic and product markets for the Study, to estimate the utilization of DBEs on those contracts, and to calculate DBE availability in KCATA's marketplace.

Table A presents the NAICS codes for KCATA's federally-funded contracts, the label for each NAICS code, and the industry percentage distribution of spending across NAICS codes.

Table A presents the distribution of the number of contracts and the amount of contract dollars across all industry sectors. Chapter IV provides tables disaggregated by dollars paid to prime contractors and dollars paid to subcontractors.

**Table A: Industry Percentage Distribution of All Contracts by Dollars Paid**

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
237310	Highway, Street, and Bridge Construction	25.0%	25.0%
236220	Commercial and Institutional Building Construction	12.7%	37.8%
485991	Special Needs Transportation	9.4%	47.1%
541330	Engineering Services	7.3%	54.5%
336211	Motor Vehicle Body Manufacturing	4.6%	59.1%
238110	Poured Concrete Foundation and Structure Contractors	4.0%	63.1%
238210	Electrical Contractors and Other Wiring Installation Contractors	3.9%	67.0%
485310	Taxi Service	3.8%	70.8%
541614	Process, Physical Distribution, and Logistics Consulting Services	2.9%	73.7%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	2.7%	76.4%
339950	Sign Manufacturing	2.6%	79.0%
326211	Tire Manufacturing (except Retreading)	1.8%	80.8%
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	1.5%	82.3%
238220	Plumbing, Heating, and Air-Conditioning Contractors	1.1%	83.5%



541512	Computer Systems Design Services	1.0%	84.4%
336320	Motor Vehicle Electrical and Electronic Equipment Manufacturing	1.0%	85.4%
541320	Landscape Architectural Services	1.0%	86.4%
561730	Landscaping Services	0.9%	87.3%
237110	Water and Sewer Line and Related Structures Construction	0.9%	88.2%
237130	Power and Communication Line and Related Structures Construction	0.8%	89.0%
541620	Environmental Consulting Services	0.6%	89.6%
423690	Other Electronic Parts and Equipment Merchant Wholesalers	0.5%	90.1%
TOTAL			100.00% <sup>1</sup>

Source: CHA analysis of KCATA data.

### 3. KCATA's Utilization of DBEs in Its Market Areas

The next step was to determine the dollar value of KCATA's utilization of DBEs in its market area, as measured by payments to prime firms and associated subcontractors and disaggregated by race and gender. To confirm the agency's records for payments to all subcontractors, we contacted the prime vendors to request that they describe in detail their contract and associated subcontracts, including race, gender and dollar amount paid to date. We further developed a Master D/M/WBE Directory based upon lists solicited from government agencies and private organizations. We used the results of this extensive data collection process to assign minority or woman status to the ownership of each firm in the analysis that was otherwise unclassified.

To determine the relevant geographic market area, we applied the standard of identifying the firm locations that account for at least 75 percent of contract and subcontract dollar payments in the contract data file.<sup>2</sup> Location was determined by ZIP code and aggregated into counties as the geographic unit.

Spending in Missouri and Kansas accounted for 79.8% of all contract dollars paid in KCATA's unconstrained product market. Within these two states' spending, five counties (Jackson County in Missouri; Douglas, Franklin, Johnson, and Wyandotte Counties in Kansas) captured 76% of all agency spending. Therefore, these 5 counties constituted the geographic market area from which we drew our availability data. Table C presents data on how the contract dollars were spent across the two state's counties.

<sup>1</sup> Agency spending across another 148 NAICS codes comprised 9.99% of all spending.

<sup>2</sup> National Disparity Study Guidelines, p. 49.

**Table C: Distribution of Contracts in KCATA's Product Market within Missouri and Kansas by County**

State	County	Pct Total Contract Dollars Paid		State	County	Pct Total Contract Dollars Paid
MO	Jackson	53.36%		MO	St. Louis	1.40%
KS	Johnson	12.15%		MO	Johnson	0.42%
KS	Franklin	6.54%		KS	Doniphan	0.19%
KS	Wyandotte	2.07%		MO	Platte	0.09%
KS	Douglas	1.95%		KS	Saline	0.02%
MO	Clay	1.63%		KS	Multnomah	0.01%
					TOTAL	100.00%

Source: CHA analysis of KCATA data.

Table D presents the distribution of contract dollars by industry sectors for federally-funded contracts. Chapter IV provides detailed breakdowns of these results.

**Table D: Distribution of Contract Dollars by DBE Status (share of total dollars)**

NAICS	DBE	Non-DBE	TOTAL
236220	14.1%	85.9%	100.0%
237110	80.3%	19.7%	100.0%
237130	0.0%	100.0%	100.0%
237310	0.0%	100.0%	100.0%
238110	91.6%	8.4%	100.0%
238120	0.0%	100.0%	100.0%
238140	0.0%	100.0%	100.0%
238150	0.0%	100.0%	100.0%
238210	67.7%	32.3%	100.0%
238220	0.0%	100.0%	100.0%
238290	0.0%	100.0%	100.0%
238990	100.0%	0.0%	100.0%
336211	0.0%	100.0%	100.0%
339950	0.0%	100.0%	100.0%
423120	0.0%	100.0%	100.0%
423420	100.0%	0.0%	100.0%

423510	0.0%	100.0%	100.0%
484110	100.0%	0.0%	100.0%
485310	0.0%	100.0%	100.0%
485991	58.3%	41.7%	100.0%
523110	0.0%	100.0%	100.0%
541320	25.1%	74.9%	100.0%
541330	13.4%	86.6%	100.0%
541620	100.0%	0.0%	100.0%
541690	100.0%	0.0%	100.0%
561720	100.0%	0.0%	100.0%
561730	82.7%	17.3%	100.0%
561990	0.0%	100.0%	100.0%
TOTAL	21.5%	78.5%	100.0%

Source: CHA analysis of KCATA data.

#### 4. Availability of DBEs in KCATA’s Market

Using the “custom census” approach to estimating availability and the further assignment of race and gender using the Master Directory and other sources, we determined the aggregated availability of DBEs, weighted by the agency’s spending in its geographic and industry markets, to be 27.7% for federally-funded contracts. Table E presents the weighted availability data for various racial and gender categories for federally-funded contracts.

**Table E: Aggregated Weighted Availability**

NAICS	DBE	Non-DBE	TOTAL
Total	27.7%	72.3%	100.00%

Source: CHA analysis of KCATA data; Hoovers; CHA Master Directory.

#### 5. Analysis of Race and Gender Disparities in KCATA’s Market

We explored the data and literature relevant to how discrimination in KCATA’s market and throughout the wider economy affects the ability of minorities and women to fairly and fully engage in the agency’s contract opportunities. First, we analyzed the earnings of minorities and women relative to White men, the rates at which DBEs in Missouri form firms and their earnings from those firms. Next, we summarized the literature on barriers to equal access to commercial credit.

Finally, we summarized the literature on barriers to equal access to human capital. All three types of evidence have been found by the courts to be relevant and probative of whether a government will be a passive participant in overall marketplace discrimination without some type of affirmative interventions. We analyzed the following data and literature:

- Data from the Census Bureau's Survey of Business Owners indicate very large disparities between DBE firms and non-DBE firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), or the payroll of employer firms.
- Data from the Census Bureau's American Community Survey ("ACS") indicate that Blacks, Hispanics, Native Americans, Asian/Pacific Islanders, Others, and White women were underutilized relative to White men. Controlling for other factors relevant to business outcomes, wages and business earnings were lower for these groups compared to White men. Data from the ACS further indicate that non-Whites and White women are less likely to form businesses compared to similarly situated White men.
- The literature on barriers to access to commercial credit and the development of human capital further reports that minorities continue to face constraints on their entrepreneurial success based on race. These constraints negatively impact the ability of firms to form, to grow, and to succeed.

Taken together with other evidence such as anecdotal data and the results of other local area disparity studies, this is the type of proof that addresses whether, in the absence of DBE contract goals, KCATA will be a passive participant in the discriminatory systems found throughout Missouri. These economy-wide analyses are relevant and probative to whether the agency may continue to employ narrowly tailored race- and gender-conscious measures to ensure equal opportunities to access its contracts and associated subcontracts.

## **6. Qualitative Evidence of Race and Gender Barriers in KCATA's Market**

In addition to quantitative data, the courts look to anecdotal evidence of firms' marketplace experiences to evaluate whether the effects of current or past discrimination continue to impede opportunities for DBEs such that race-conscious measures are supportable. To explore this type of anecdotal evidence, we conducted two group interviews, totaling 56 participants. Most reported that, while progress has been made in reducing barriers on the basis of race and gender, significant inequities remain obstacles to full and fair opportunities. DBE contract goals remain necessary to level the playing field.

- Discriminatory attitudes and negative perceptions of competence: Many minority and female owners reported that agencies and other firms display negative attitudes about the competency and professionalism of minorities

and women. The assumption is that minority firms are less qualified. Women faced continuing sexist remarks and conduct.

- Obtaining work on an equal basis: There was unanimous agreement that goals remain necessary to level the playing field and equalize opportunities. DBEs sought the right to compete on a fair and equal basis. Without goals, DBEs believed they would be shut out of KCATA's and the overall Kansas City area market. Interviewees were clear that contract goals remain necessary to ensure equal opportunities on KCATA projects. Minorities who spoke up about discrimination faced retaliation. Prime contracts were especially difficult to obtain. DBEs that did receive prime contracts sometimes felt they were subjected to a double standard. Some women reported that unions were another source of discrimination. Only a handful of Kansas City area large firms apply the same process for private sector work as they do for government projects with goals.

## **7. Recommendations for KCATA's DBE Program**

- Fully implement the B2GNow electronic data collection and monitoring system: KCATA purchased the system in 2014. However, it has not been fully implemented and additional modules are highly recommended to ensure robust and timely data collection, contractor compliance with contractual commitments, defensible goal setting and solid outreach. Full utilization of the system will make future data collection for FTA purposes and goal setting much easier and more defensible. Further, long delays and heavy agency staff burdens in conducting this Study were the direct result of a lack of complete agency records.
- Ensure prompt payment of prime vendors and subcontractors: While the great majority of business owners we interviewed did not experience severe payment delays, it is incumbent upon recipients of USDOT funds to ensure that subcontractors are paid promptly. The B2GNow system provides the ability to closely monitor payment, and KCATA should ensure that all staff with responsibilities for invoice processing are attuned to this requirement. The agency should also review how quickly it pays its prime contractors.
- Conduct outreach regarding KCATA's DBE program and specific projects: While the agency participates in outreach activities with partner organizations, it should hold at least one event on a semi-annual basis to acquaint new firms and others with its DBE program and discuss upcoming projects, regardless of the funding source.
- Review the Small Business Enterprise program element: While KCATA has a small business certification process, there is no information on the benefits of registration. One benefit could be the use of small business set-asides for appropriate prime contracts on a race-neutral basis. The

agency should also review its actual implementation of the small business elements listed in its FTA-approved DBE program document.

- Review the DBE program for conformance to the 2014 amendments to the DBE regulations: KCATA should review its current 2013 program document to ensure all elements fully comply with the changes, such as retainage, counting DBE participation for goal credit, etc.
- Use the study to set the overall annual DBE goal: This study's availability estimates in Chapter IV should be consulted to determine the Step 1 base figure for the relative availability of DBEs required by § 26.45(c). It should also form the basis for the DBE goal for state-funded contracts. The statistical disparities in Chapter V in the rates at which DBEs form businesses can serve as the basis for a Step 2 adjustment per § 26.45(d) to reflect the level of DBE availability that would be expected in the absence of discrimination.
- Use the study to set DBE contract goals: The detailed availability estimates in the study should serve as the starting point for contract goal setting. KCATA should weigh the estimated scopes of the contract by the availability of DBEs in those scopes as estimated in the study, and then adjust the result based on current market conditions. The agency's existing electronic system has an optional goal setting module. Further, KCATA should bid some contracts that it determines have significant opportunities for DBE participation without goals. These "control contracts" can illuminate whether certified firms are used or even solicited in the absence of goals, as suggested by the study data. The development of some unremediated markets data will be probative of whether contract goals remain needed to level the playing field for minorities and women. Third, KCATA should further consider listing with the solicitation the scopes of work used to set the contract goal. This would provide guidance to prime firms on specialties on which to concentrate for making good faith efforts, as well as increase transparency about how the DBE program functions.
- Consider adopting a DBE Program for locally-funded contracts: KCATA should consider using the data in this Study to establish a DBE program for its non-FTA-funded contracts. The data on locally-funded contracts available to the agency at the time of commencement of the Study were not sufficiently complete for analysis in the Study. However, the agency can look to the results on its federal-aid projects, as well as the results of our studies for other local agencies such as the City of Kansas City, Missouri, to determine that it has a strong basis in evidence that discriminatory barriers remain in its market area for local contracts, and to implement narrowly tailored remedies such as those in the FTA DBE program, to ensure it is not a passive participant in marketplace

discrimination. If such evidence is found, the same standards and processes should be applied to locally funded contracts.

## II. Legal Standards for Disadvantaged Business Enterprise Programs

### A. Summary of Constitutional Standards

To be effective, enforceable, and legally defensible, a race-based program for public contracts must meet the judicial test of constitutional “strict scrutiny.” Strict scrutiny is the highest level of judicial review and consists of two elements:

- The government must establish its “compelling interest” in remedying race discrimination by current “strong evidence” of the persistence of discrimination. Such evidence may consist of the entity’s “passive participation” in a system of racial exclusion.
- Any remedies adopted must be “narrowly tailored” to that discrimination, that is, the program must be directed at the types and depth of discrimination identified.<sup>3</sup>

The compelling interest prong has been met through two types of proof:

- Statistical evidence of the underutilization of minority firms by the agency and/or throughout the agency’s geographic and industry market area compared to their availability in the market area. These are as disparity indices, comparable to the type of “disparate impact” analysis used in employment discrimination cases.
- Anecdotal evidence of race-based barriers to the full and fair participation of minority firms in the market area and in seeking contracts with the agency, comparable to the “disparate treatment” analysis used in employment discrimination cases.<sup>4</sup> Anecdotal data can consist of interviews, surveys, public hearings, academic literature, judicial decisions, legislative reports, etc.

The narrow tailoring requirement has been met through the satisfaction of five factors to ensure that the remedy “fits” the evidence:

- The efficacy of race-neutral remedies at overcoming identified discrimination.
- The relationship of numerical benchmarks for government spending to the availability of minority- and women-owned firms and to subcontracting goal setting procedures.
- The congruence between the remedies adopted and the beneficiaries of those remedies.
- Any adverse impact of the relief on third parties.

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<sup>3</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

<sup>4</sup> *Id.* at 509.



- The duration of the program.<sup>5</sup>

In *Adarand v. Peña*,<sup>6</sup> the Supreme Court extended the analysis of strict scrutiny to race-based federal enactments such as the Disadvantaged Business Enterprise (“DBE”) program for federally-assisted transportation contracts (which applies to KCATA).<sup>7</sup> Just as in the local government context, the national government must have a compelling interest for the use of race and the remedies adopted must be narrowly tailored to the evidence relied upon.

In general, courts have subjected preferences for Women-Owned Business Enterprises (“WBEs”) to “intermediate scrutiny.” Gender-based classifications must be supported by an “exceedingly persuasive justification” and be “substantially related” to the objective.<sup>8</sup> However, appellate courts have applied strict scrutiny to the gender-based presumption of social disadvantage in reviewing the constitutionality of the DBE program.<sup>9</sup> Therefore, we advise that KCATA evaluate gender-based remedies under the strict scrutiny standard.

Classifications not based on race, ethnicity, religion, national origin or gender are subject to the lesser standard of review of “rational basis” scrutiny, because the courts have held there are no equal protection implications under the Fourteenth Amendment for groups not subject to systemic discrimination.<sup>10</sup> In contrast to strict scrutiny of government action directed towards persons of “suspect classifications” such as racial and ethnic minorities, rational basis means the governmental action must only be “rationally related” to a “legitimate” government interest. Thus, preferences for persons with disabilities, veterans, etc. may be enacted with vastly less evidence than race- or gender-based measures to combat historic discrimination.

Unlike most legal challenges, the defendant has the initial burden of producing “strong evidence” in support of a race-conscious program.<sup>11</sup> The plaintiff must then proffer evidence to rebut the government’s case, and bears the ultimate burden of production and persuasion that the affirmative action program is unconstitutional.<sup>12</sup> “[W]hen the proponent of an affirmative action plan produces

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<sup>5</sup> *United States v. Paradise*, 480 U.S. 149, 171 (1987).

<sup>6</sup> *Adarand v. Peña*, 515 U.S. 200 (1995).

<sup>7</sup> 49 C.F.R. Part 26.

<sup>8</sup> *Cf. United States v. Virginia*, 518 U.S. 515 (1996).

<sup>9</sup> *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 720 (7<sup>th</sup> Cir. 2007) (“*Northern Contracting III*”).

<sup>10</sup> [\*United States v. Carolene Products Co.\*](#), 304 U.S. 144 (1938).

<sup>11</sup> *Aiken v. City of Memphis*, 37 F.3d 1155, 1162 (6<sup>th</sup> Cir. 1994).

<sup>12</sup> *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1166 (10<sup>th</sup> Cir. 2000), cert. granted then dismissed as improvidently granted, 532 U.S. 941 (2001) (“*Adarand VII*”); *W.H. Scott Construction Co., Inc. v. City of Jackson, Mississippi*, 199 F.3d 206, 219 (5<sup>th</sup> Cir. 1999).

sufficient evidence to support an inference of discrimination, the plaintiff must rebut that inference in order to prevail.”<sup>13</sup> A plaintiff “cannot meet its burden of proof through conjecture and unsupported criticism of [the government’s] evidence.”<sup>14</sup> For example, in the challenge to the Minnesota and Nebraska DBE programs, “plaintiffs presented evidence that the data was susceptible to multiple interpretations, but they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to and participation in highway contracts. Thus, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.”<sup>15</sup> When the statistical information is sufficient to support the inference of discrimination, the plaintiff must prove that the statistics are flawed.<sup>16</sup> A plaintiff cannot rest upon general criticisms of studies or other evidence; it must carry the case that the government’s proof is inadequate to meet strict scrutiny, rendering the legislation or governmental program illegal.<sup>17</sup>

There is no need of formal legislative findings of discrimination,<sup>18</sup> nor “an ultimate judicial finding of discrimination before [a local government] can take affirmative steps to eradicate discrimination.”<sup>19</sup>

To meet strict scrutiny, studies have been conducted to gather the statistical and anecdotal evidence necessary to support the use of race- and gender-conscious measures to combat discrimination. These are commonly referred to as “disparity studies” because they analyze any disparities between the opportunities and experiences of minority- and women-owned firms and their actual utilization compared to White male-owned businesses. Quality studies also examine the elements of the agency’s programs to determine whether they are sufficiently narrowly tailored. The following is a detailed discussion of the parameters for conducting studies leading to defensible programs that can establish an agency’s compelling interest in remedying discrimination and developing narrowly tailored initiatives.

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<sup>13</sup> *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 916 (11<sup>th</sup> Cir. 1997).

<sup>14</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 989, cert. denied, 540 U.S. 1027 (2003) (10<sup>th</sup> Cir. 2003) (“*Concrete Works II*”).

<sup>15</sup> *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d. 964, 970 (8<sup>th</sup> Cir. 2003), cert. denied, 541 U.S. 1041 (2004).

<sup>16</sup> *Engineering Contractors II*, 122 F.3d at 916; *Coral Construction Co. v. King County*, 941 F.2d. 910 921 (9<sup>th</sup> Cir. 1991).

<sup>17</sup> *Adarand VII*, 228 F.3d at 1166; *Engineering Contractors II*, 122 F.3d at 916; *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1522-1523 (10<sup>th</sup> Cir. 1994) (“*Concrete Works I*”); *Webster v. Fulton County, Georgia*, 51 F.Supp.2d 1354, 1364 (N.D. Ga. 1999); see also *Wygant v. Jackson Board of Education*, 476 U.S. 267, 277-278 (1986).

<sup>18</sup> *Webster*, 51 F.Supp.2d at 1364.

<sup>19</sup> *Concrete Works III*, 36 F.3d at 1522.

## **B. City of Richmond v. J.A. Croson Co.**

The U.S. Supreme Court in the case of the *City of Richmond v. J.A. Croson Co.* established the constitutional contours of permissible race-based public contracting programs. Reversing long established law, the Court for the first time extended the highest level of judicial examination from measures designed to limit the rights and opportunities of minorities to legislation that benefits these historic victims of discrimination. Strict scrutiny requires that a government entity prove both its “compelling interest” in remedying identified discrimination based upon “strong evidence,” and that the measures adopted to remedy that discrimination are “narrowly tailored” to that evidence. However benign the government’s motive, race is always so suspect a classification that its use must pass the highest constitutional test of “strict scrutiny.”

The Court struck down the City of Richmond’s Minority Business Enterprise Plan that required prime contractors awarded City construction contracts to subcontract at least 30 percent of the project to Minority-Owned Business Enterprises (“MBEs”). A business located anywhere in the country that was at least 51 percent owned and controlled by “Black, Spanish-speaking, Oriental, Indian, Eskimo, or Aleut” citizens was eligible to participate. The Plan was adopted after a public hearing at which no direct evidence was presented that the City had discriminated on the basis of race in awarding contracts or that its prime contractors had discriminated against minority subcontractors. The only evidence before the City Council was: (a) Richmond’s population was 50 percent Black, yet less than one percent of its prime construction contracts had been awarded to minority businesses; (b) local contractors’ associations were virtually all White; (c) the City Attorney’s opinion that the Plan was constitutional; and (d) general statements describing widespread racial discrimination in the local, Virginia, and national construction industries.

In affirming the court of appeals’ determination that the Plan was unconstitutional, Justice Sandra Day O’Connor’s plurality opinion rejected the extreme positions that local governments either have *carte blanche* to enact race-based legislation or must prove their own illegal conduct:

[A] state or local subdivision...has the authority to eradicate the effects of private discrimination within its own legislative jurisdiction.... [Richmond] can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment... [I]f the City could show that it had essentially become a “passive participant” in a system of racial exclusion...[it] could take affirmative steps to dismantle such a system.<sup>20</sup>

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<sup>20</sup> 488 U.S. at 491-92.

Strict scrutiny of race-based remedies is required to determine whether racial classifications are in fact motivated by either notions of racial inferiority or blatant racial politics. This highest level of judicial review “smokes out” illegitimate uses of race by assuring that the legislative body is pursuing a goal important enough to warrant use of a highly suspect tool.<sup>21</sup> It further ensures that the means chosen “fit” this compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype. The Court made clear that strict scrutiny seeks to expose racial stigma; racial classifications are said to create racial hostility if they are based on notions of racial inferiority.<sup>22</sup>

Race is so suspect a basis for government action that more than “societal” discrimination is required to restrain racial stereotyping or pandering. The Court provided no definition of “societal” discrimination or any guidance about how to recognize the ongoing realities of history and culture in evaluating race-conscious programs. The Court simply asserted that:

[w]hile there is no doubt that the sorry history of both private and public discrimination in this country has contributed to a lack of opportunities for black entrepreneurs, this observation, standing alone, cannot justify a rigid racial quota in the awarding of public contracts in Richmond, Virginia.... [A]n amorphous claim that there has been past discrimination in a particular industry cannot justify the use of an unyielding racial quota. It is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination.<sup>23</sup>

Richmond’s evidence was found to be lacking in every respect. The City could not rely upon the disparity between its utilization of MBE prime contractors and Richmond’s minority population because not all minority persons would be qualified to perform construction projects; general population representation is irrelevant. No data were presented about the availability of MBEs in either the relevant market area or their utilization as subcontractors on City projects. According to Justice O’Connor, the extremely low MBE membership in local contractors’ associations could be explained by “societal” discrimination or perhaps Blacks’ lack of interest in participating as business owners in the construction industry. To be relevant, the City would have to demonstrate statistical disparities between eligible MBEs and actual membership in trade or

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<sup>21</sup> See also *Grutter v. Bollinger*, 539 U.S. 306, 327 (2003) (“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.”).

<sup>22</sup> 488 U.S. at 493.

<sup>23</sup> *Id.* at 499.

professional groups. Further, Richmond presented no evidence concerning enforcement of its own anti-discrimination ordinance. Finally, Richmond could not rely upon Congress' determination that there has been nationwide discrimination in the construction industry. Congress recognized that the scope of the problem varies from market to market, and in any event, it was exercising its powers under Section Five of the Fourteenth Amendment, whereas a local government is further constrained by the Amendment's Equal Protection Clause.

In the case at hand, the City has not ascertained how many minority enterprises are present in the local construction market nor the level of their participation in City construction projects. The City points to no evidence that qualified minority contractors have been passed over for City contracts or subcontracts, either as a group or in any individual case. Under such circumstances, it is simply impossible to say that the City has demonstrated "a strong basis in evidence for its conclusion that remedial action was necessary."<sup>24</sup>

The foregoing analysis was applied only to Blacks. The Court then emphasized that there was "absolutely no evidence" against other minorities. "The random inclusion of racial groups that, as a practical matter, may have never suffered from discrimination in the construction industry in Richmond, suggests that perhaps the City's purpose was not in fact to remedy past discrimination."<sup>25</sup>

Having found that Richmond had not presented evidence in support of its compelling interest in remedying discrimination—the first prong of strict scrutiny—the Court went on to make two observations about the narrowness of the remedy—the second prong of strict scrutiny. First, Richmond had not considered race-neutral means to increase MBE participation. Second, the 30 percent quota had no basis in evidence, and was applied regardless of whether the individual MBE had suffered discrimination.<sup>26</sup> Further, Justice O'Connor rejected the argument that individualized consideration of Plan eligibility is too administratively burdensome.

Apparently recognizing that the opinion might be misconstrued to categorically eliminate all race-conscious contracting efforts, Justice O'Connor closed with these admonitions:

Nothing we say today precludes a state or local entity from taking action to rectify the effects of identified discrimination within its jurisdiction. If the City of Richmond had evidence

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<sup>24</sup> *Id.* at 510.

<sup>25</sup> *Id.*

<sup>26</sup> See *Grutter*, 529 U.S. at 336-337 (quotas are not permitted; race must be used in a flexible, non-mechanical way).

before it that non-minority contractors were systematically excluding minority businesses from subcontracting opportunities, it could take action to end the discriminatory exclusion. 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. Under such circumstances, the City could act to dismantle the closed business system by taking appropriate measures against those who discriminate based on race or other illegitimate criteria. In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion... Moreover, evidence 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.<sup>27</sup>

While much has been written about *Croson*, it is worth stressing what evidence was and was not before the Court. First, Richmond presented *no* evidence regarding the availability of MBEs to perform as prime contractors or subcontractors and *no* evidence of the utilization of minority-owned subcontractors on City contracts.<sup>28</sup> Nor did Richmond attempt to link the remedy it imposed to any evidence specific to the Program; it used the general population of the City rather than any measure of business availability.

Some commentators have taken this dearth of any particularized proof and argued that only the most particularized proof can suffice in all cases. They leap from the Court's rejection of Richmond's reliance on only the percentage of Blacks in the City's population to a requirement that only firms that bid or have the "capacity" or "willingness" to bid on a particular contract at a particular time can be considered in determining whether discrimination against Black businesses infects the local economy.<sup>29</sup>

This contention has been rejected explicitly by some courts. For example, in denying the plaintiff's summary judgment motion to enjoin the City of New York's M/WBE construction ordinance, the court stated that:

[I]t is important to remember what the *Croson* plurality opinion did and did not decide. The Richmond program,

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<sup>27</sup> 488 U.S. at 509 (citations omitted).

<sup>28</sup> *Id.* at 502.

<sup>29</sup> *See, e.g., Northern Contracting III*, 473 F.3d at 723.

which the *Croson* Court struck down, was insufficient because it was based on a comparison of the minority population in its entirety in Richmond, Virginia (50%) with the number of contracts awarded to minority businesses (.67%). There were no statistics presented regarding number of minority-owned contractors in the Richmond area, *Croson*, 488 U.S. at 499, and the Supreme Court was concerned with the gross generality of the statistics used in justifying the Richmond program. There is no indication that the statistical analysis performed by [the consultant] in the present case, which does contain statistics regarding minority contractors in New York City, is not sufficient as a matter of law under *Croson*.<sup>30</sup>

Further, Richmond made no attempt to narrowly tailor a goal for the procurement at issue that reflected the reality of the project. Arbitrary quotas, and the unyielding application of those quotas, did not support the stated objective of ensuring equal access to City contracting opportunities. The *Croson* Court said nothing about the constitutionality of flexible subcontracting goals based upon the availability of MBEs to perform the scopes of the contract in the government's local market area. In contrast, the USDOT DBE Program avoids these pitfalls. 49 CFR Part 26 "provides for a flexible system of contracting goals that contrasts sharply with the rigid quotas invalidated in *Croson*."<sup>31</sup>

While strict scrutiny is designed to require clear articulation of the evidentiary basis for race-based decision-making and careful adoption of remedies to address discrimination, it is not, as Justice O'Connor stressed, an impossible test that no proof can meet. Strict scrutiny need not be "fatal in fact."

### **C. Strict Scrutiny as Applied to Federal Enactments**

In *Adarand v. Peña*,<sup>32</sup> the Supreme Court again overruled long settled law and extended the analysis of strict scrutiny under the Due Process Clause of the Fourteenth Amendment to federal enactments. Just as in the local government context, when evaluating federal legislation and regulations:

[t]he strict scrutiny test involves two questions. The first is whether the interest cited by the government as its reason

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<sup>30</sup> *North Shore Concrete and Associates, Inc. v. City of New York*, 1998 U.S. Dist. Lexis 6785, \*28-29 (E.D. N.Y. 1998); see also *Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo*, 981 F.2d 50, 61-62 (2<sup>nd</sup> Cir. 1992) ("Croson made only broad pronouncements concerning the findings necessary to support a state's affirmative action plan"); cf. *Concrete Works II*, 36 F.3d at 1528 (City may rely on "data reflecting the number of MBEs and WBEs in the marketplace to defeat the challenger's summary judgment motion").

<sup>31</sup> *Western States Paving Co., Inc. v. Washington Department of Transportation*, 407 F.3d 983, 994 (9<sup>th</sup> Cir. 2005), cert. denied, 546 U.S. 1170 (2006).

<sup>32</sup> 515 U.S. 200 (1995) (*Adarand III*).

for injecting the consideration of race into the application of law is sufficiently compelling to overcome the suspicion that racial characteristics ought to be irrelevant so far as treatment by the government is concerned. The second is whether the government has narrowly tailored its use of race, so that race-based classifications are applied only to the extent absolutely required to reach the proffered interest. The strict scrutiny test is thus a recognition that while classifications based on race may be appropriate in certain limited legislative endeavors, such enactments must be carefully justified and meticulously applied so that race is determinative of the outcome in only the very narrow circumstances to which it is truly relevant.<sup>33</sup>

### **1. U.S. Department of Transportation's Disadvantaged Business Enterprise Program**

To comply with *Adarand*, Congress reviewed and revised the Disadvantaged Business Enterprise (DBE) Program statute<sup>34</sup> and implementing regulations<sup>35</sup> for federal-aid contracts in the transportation industry. The program governs KCATA's receipt of federal funds from the Federal Transit Administration ("FTA"). To date, every court that has considered the issue has found the regulations to be constitutional on their face.<sup>36</sup> These cases provide important guidance to KCATA about how to narrowly tailor a program. Should the agency decide to formally adopt a program for its locally funded contracts, these cases are the model. For example, the Fourth Circuit Court of Appeals noted with approval that North Carolina's M/WBE program for state-funded contracts largely mirrored Part 26.<sup>37</sup>

All courts have held that Congress had strong evidence of widespread race discrimination in the construction industry.<sup>38</sup> Relevant evidence before Congress included:

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<sup>33</sup> *Adarand Constructors, Inc. v. Peña*, 965 F. Supp. 1556, 1569-1570 (D. Colo. 1997), *rev'd*, 228 F.3d 1147 (2000) ("*Adarand IV*"); *see also Adarand III*, 515 U.S. at 227.

<sup>34</sup> Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), Pub. L. No. 105-178 (b)(1), 112 Stat. 107, 113.

<sup>35</sup> 49 C.F.R. Part 26.

<sup>36</sup> *See, e.g., Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10<sup>th</sup> Cir. 2000) ("*Adarand VII*"), cert. granted then dismissed as improvidently granted, 532 U.S. 941, 534 U.S. 103 (2001); *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2004 U.S. Dist. LEXIS 3226 at \*64 (N.D. Ill., Mar. 3, 2004) ("*Northern Contracting I*").

<sup>37</sup> *H.B. Rowe Co. v. Tippett*, 615 F.3d 233, 236 (4<sup>th</sup> Cir. 2010).

<sup>38</sup> *See also Western States*, 407 F.3d at 993 ("In light of the substantial body of statistical and anecdotal material considered at the time of TEA-21's enactment, Congress had a strong basis in



- Disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms;
- Disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners;
- The large and rapid decline in minorities' participation in the construction industry when affirmative action programs were struck down or abandoned; and
- Various types of overt and institutional discrimination by prime contractors, trade unions, business networks, suppliers, and sureties against minority contractors.<sup>39</sup>

The Eighth Circuit Court of Appeals took a “hard look” at the evidence Congress considered, and concluded that the legislature had:

[S]pent decades compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority-owned construction businesses, and of barriers to entry. In rebuttal, [the plaintiffs] presented evidence that the data were susceptible to multiple interpretations, but they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to and participation in highway contracts. Thus, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.<sup>40</sup>

Next, the regulations were facially narrowly tailored. Unlike the prior program,<sup>41</sup> Part 26 provides that:

- The overall goal must be based upon demonstrable evidence of the number of DBEs ready, willing, and able to participate on the recipient's federally assisted contracts.
- The goal may be adjusted to reflect the availability of DBEs but for the effects of the DBE Program and of discrimination.

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evidence for concluding that-in at least some parts of the country-discrimination within the transportation contracting industry hinders minorities' ability to compete for federally funded contracts.”).

<sup>39</sup> See *id.*, 407 F.3d at 992-93.

<sup>40</sup> *Sherbrooke*, 345 F.3d. at 970; see also *Adarand VII*, 228 F.3d at 1175 (Plaintiff has not met its burden “of introducing credible, particularized evidence to rebut the government's initial showing of the existence of a compelling interest in remedying the nationwide effects of past and present discrimination in the federal construction procurement subcontracting market.”).

<sup>41</sup> 49 C.F.R. Part 23.

- The recipient must meet the maximum feasible portion of the goal through race-neutral measures as well as estimate that portion of the goal it predicts will be met through such measures.
- The use of quotas and set-asides is limited to only those situations where there is no other remedy.
- The goals are to be adjusted during the year to remain narrowly tailored.
- Absent bad faith administration of the Program, a recipient cannot be penalized for not meeting its goal.
- The presumption of social disadvantage for racial and ethnic minorities and women is rebuttable, “wealthy minority owners and wealthy minority firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage.”
- Exemptions and waivers from any or all Program requirements are available.<sup>42</sup>

These elements have led the courts to conclude that the program is narrowly tailored on its face. First, the regulations place strong emphasis on the use of race-neutral means to achieve minority and women participation. Relying upon *Grutter v. Bollinger*, the Eighth Circuit held that while “[n]arrow tailoring does not require the exhaustion of every conceivable race-neutral alternative...it does require serious, good faith consideration of workable race-neutral alternatives.”<sup>43</sup>

The DBE Program is also flexible. Eligibility is limited to small firms owned by persons whose net worth is under a certain amount.<sup>44</sup> Further, the recipient may terminate race-conscious contract goals if it meets its annual overall goal through race-neutral means for two consecutive years. Moreover, the authorizing legislation is subject to Congressional reauthorization that will ensure periodic public debate.

The court next held that the goals are tied to the relevant labor market. “Though the underlying estimates may be inexact, 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*....”<sup>45</sup>

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<sup>42</sup> *Sherbrooke*, 345 F.3d. at 973.

<sup>43</sup> *Id.* at 972.

<sup>44</sup> The personal net worth limit was \$750,000 when the DBE program regulations were amended to meet strict scrutiny in 1999. The limit was increased to \$1.32 million in 2012, and is now indexed by the Consumer Price Index. 49 C.F.R. § 26.67(b)(1).

<sup>45</sup> *Id.*

Finally, Congress has taken significant steps to minimize the race-conscious nature of the Program. “[W]ealthy minority owners and wealthy minority-owned firms are excluded, and certification is available to persons who are not presumptively [socially] disadvantaged but can demonstrate actual social and economic disadvantage. Thus, race is made relevant in the program, but it is not a determinative factor.”<sup>46</sup>

DBE programs based upon a methodology similar to that for this Study for KCATA, including the availability analysis and the examination of disparities in the business formation rates and business earnings of minorities and women compared to similarly situated non-minority males, have been held to be narrowly tailored in their application of Part 26. For example, in upholding the Minnesota Department of Transportation’s DBE program using the same approach, the Eighth Circuit opined that while plaintiff attacked the study’s data and methods,

it failed to establish that better data was [sic] available or that Mn/DOT was otherwise unreasonable in undertaking this thorough analysis and in relying on its results. The precipitous drop in DBE participation in 1999, when no race-conscious methods were employed, supports Mn/DOT’s conclusion that a substantial portion of its 2001 overall goal could not be met with race-neutral measures, and there is no evidence that Mn/DOT failed to adjust its use of race-conscious and race-neutral methods as the year progressed, as the DOT regulations require.<sup>47</sup>

## **2. U.S. Department of Defense’s Small Disadvantaged Business Program**

In 2008, the Federal Circuit Court of Appeals struck down the Department of Defense (DOD) program for Small Disadvantaged Businesses (SDBs) in *Rothe Development Corporation v. U.S. Department of Defense*.<sup>48</sup> The program set an overall annual goal of five percent for DOD contracting with SDBs and authorized various race-conscious measures to meet the goal.

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<sup>46</sup> *Id.* at 973.

<sup>47</sup> *Id.*

<sup>48</sup> *Rothe Development Corporation v. U.S. Department of Defense*, 545 F.3d 1023 (*Fed. Cir.* 2008). We note that the jurisdiction of the Court of Appeals for the Federal Circuit is limited to the jurisdiction described in 28 U.S.C. §§ 1292 (c) and (d) and 1295. Pursuant to 28 U.S.C. § 1295(a)(2), jurisdiction in *Rothe* was based upon the plaintiff’s claim under the Tucker Act, 28 U.S.C. § 1346(a)(2), which governs contract claims against the United States.

In *Rothe VII*,<sup>49</sup> the appeals court held that the DOD program violated strict scrutiny because Congress did not have a “strong basis in evidence” upon which to conclude that DOD was a passive participant in racial discrimination in relevant markets across the country. The six local disparity studies upon which the DOD primarily relied for evidence of discrimination did not meet the compelling interest requirement, and its other statistical and anecdotal evidence did not rise to meet the heavy constitutional burden.

Of particular relevance to this report for KCATA, the primary focus of the court’s analysis was the six disparity studies. The court reaffirmed that such studies are relevant to the compelling interest analysis.<sup>50</sup> It then rejected *Rothe*’s argument that data more than five years old must be discarded, stating, “We decline to adopt such a *per se* rule here.... [The government] should be able to rely on the most recently available data so long as that data is reasonably up-to-date.”<sup>51</sup>

In the absence of expert testimony about accepted econometric models of discrimination, the court was troubled by the failure of five of the studies to account for size differences and “qualifications” of the minority firms in the denominator of the disparity analysis, or as the court labeled it, “relative capacity.”<sup>52</sup> The court was concerned about the studies’ inclusion of possibly “unqualified” minority firms and the failure to account for whether a firm can perform more than one project at a time in two of the studies.<sup>53</sup> In the court’s view, the combination of these perceived deficits rendered the studies insufficiently probative to meet Congress’ burden.

The appellate court ignored the analyses in the cases upholding the USDOT DBE Program and the City of Denver’s local affirmative action contracting program where the fallacy of “capacity” was debunked, all of which were cited extensively by the district court. It relied instead on a report from the United States Commission on Civil Rights, which adopts the views of anti-affirmative action writers, including those of *Rothe*’s consultant.<sup>54</sup>

However, the court was careful to limit the reach of its review to the facts of the case:

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<sup>49</sup> This opinion was the latest iteration of an 11-year-old challenge by a firm owned by a White female to the DOD’s award of a contract to an Asian American–owned business despite the fact that plaintiff was the lowest bidder.

<sup>50</sup> *Rothe*, 545 F.3d at 1037-1038.

<sup>51</sup> *Id.* at 1038-1039.

<sup>52</sup> *Id.* at 1042.

<sup>53</sup> *Ibid.*

<sup>54</sup> U.S. Commission on Civil Rights, *Disparity Studies as Evidence of Discrimination in Federal Contracting* (May 2006): 79.

To be clear, we do *not* hold that the defects in the availability and capacity analyses in these six disparity studies render the studies wholly unreliable for any purpose. Where the calculated disparity ratios are low enough, we do not foreclose the possibility that an inference of discrimination might still be permissible for *some* of the minority groups in *some* of the studied industries in *some* of the jurisdictions. And we recognize that a minority owned firm’s capacity and qualifications may themselves be affected by discrimination. But we hold that the defects we have noted detract dramatically from the probative value of these six studies, and, in conjunction with their limited geographic coverage, render the studies insufficient to form the statistical core of the “strong basis in evidence” required to uphold the statute.<sup>55</sup>

The Federal Circuit concluded its analysis of compelling interest by “stress[ing] that [its] holding is grounded in the particular terms of evidence offered by DOD and relied on by the district court in this case, and should not be construed as stating blanket rules, for example, about the reliability of disparity studies.”<sup>56</sup>

Given the holding that Congress lacked a strong basis in evidence for the DOD program, the court did not rule on whether its provisions were narrowly tailored. The court did note, however, in its prior rulings that the program is flexible, limited in duration, and not unduly burdensome to third parties, and that the program has tended to narrow the reach of its remedies over time.<sup>57</sup>

#### **D. Narrowly Tailoring KCATA’s Disadvantaged Business Enterprise Programs**

Congress has already determined that there is a compelling interest in adopting a DBE program for those respective funding sources. Therefore, KCATA’s obligation is to ensure that its implementation of these statutory mandates is narrowly tailored.

The courts have repeatedly examined the following factors in determining whether race-based remedies are narrowly tailored to achieve their purpose:

- The efficacy of race-neutral remedies at overcoming identified discrimination;
- The relationship of numerical benchmarks for government spending to the availability of minority- and women-owned firms and to subcontracting goal setting procedures;

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<sup>55</sup> *Rothe*, 545 F.3d at 1045.

<sup>56</sup> *Id.* at 1049.

<sup>57</sup> *Id.* at 1049.

- The flexibility of the program requirements, including the provision for good faith efforts to meet goals and contract specific goal setting procedures;
- The congruence between the remedies adopted and the beneficiaries of those remedies;
- Any adverse impact of the relief on third parties; and
- The duration of the program.<sup>58</sup>

It is imperative that remedies not operate as fixed quotas.<sup>59</sup> Programs that lack waivers for firms that fail to meet the subcontracting goals but make good faith efforts to do so have been struck down.<sup>60</sup> In *Crosan*, the Court refers approvingly to the contract-by-contract waivers used in the DBE program.<sup>61</sup> This feature has been central to the holding that the DBE program meets the narrow tailoring requirement.<sup>62</sup>

## 1. Set Narrowly Tailored Goals

### a. Set the Overall, Annual DBE Goal

49 C.F.R. Part 26 requires KCATA to use a two-step goal setting process to establish its overall triennial DBE goal for FTA-funded contracts. The goal must be based upon the relative availability of DBEs and reflect the level of DBE participation that would be expected absent the effects of discrimination.<sup>63</sup> Step 1 is to determine the base figure for DBE availability, and one approved method is to use data from a disparity study.<sup>64</sup> Step 2 is to examine evidence available in the recipient's jurisdiction to determine whether to adjust the base figure. KCATA must consider the current capacity of DBEs as measured by the volume of work DBEs have performed in recent years.<sup>65</sup> The agency may consider evidence from related fields such as statistical evidence of disparities in financing, bonding and insurance and data on employment, self-employment, etc.<sup>66</sup> "If you attempt to

<sup>58</sup> *United States v. Paradise*, 480 U.S. 149, 171 (1987); see also *Sherbrooke*, 345 F.3d at 971-972.

<sup>59</sup> See 49 C.F.R. § 26.43 (quotas are not permitted and set-aside contracts may be used only in limited and extreme circumstances "when no other method could be reasonably expected to redress egregious instances of discrimination").

<sup>60</sup> See, e.g., *BAGC v. Chicago*, 298 F. Supp.2d at 740 ("Waivers are rarely or never granted...The City program is a rigid numerical quota...formulistic percentages cannot survive strict scrutiny.").

<sup>61</sup> 488 U.S. at 508; see also *Adarand VII*, 228 F.3d at 1181.

<sup>62</sup> See, e.g., *Sherbrooke*, 345 F.3d at 972.

<sup>63</sup> 49 C.F.R. § 26.45(b).

<sup>64</sup> 49 C.F.R. § 26.45(c)(3).

<sup>65</sup> 49 C.F.R. § 26.45(d)(1)(i).

<sup>66</sup> 49 C.F.R. § 26.45(d)(2).

make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought<sup>67</sup> The final result is to be expressed as a percentage of all FTA funds (exclusive of funds to be used for the purchase of transit vehicles). The "overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals."<sup>68</sup> Public participation and public notice are mandated.

Goal setting, however, is not an absolute science.<sup>69</sup> "Though the underlying estimates may be inexact, 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*."<sup>70</sup>

An availability or disparity study is the preferred method to determine availability of DBEs to perform in the recipient's market.<sup>71</sup> To perform Step 1—estimating the base figure of DBE availability—the study must conduct the following analyses. First, it must empirically establish the geographic and product dimensions of its contracting and procurement market area. This is a fact driven inquiry; it may or may not be the case that the market area is the government's jurisdictional boundaries.<sup>72</sup> A commonly accepted definition of geographic market area for disparity studies is the locations that account for at least 75 percent of the agency's contract and subcontract dollar payments.<sup>73</sup> Likewise, the accepted approach is to analyze those detailed industries that make up at least 75 percent of the prime contract and subcontract payments for the Study period.<sup>74</sup> Second, it must calculate the availability of DBEs in KCATA's market area.

Programs based upon studies similar to that employed for this Report have been repeatedly upheld. For example, the Illinois Department of Transportation's

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<sup>67</sup> 49 C.F.R. § 26.45(d)(3).

<sup>68</sup> 49 C.F.R. § 26.45(h).

<sup>69</sup> In upholding New Jersey Transit's DBE program, the court held that "Plaintiffs have failed to provide evidence of another, more perfect, method" of goal setting. *GEOD Corp. v. New Jersey Transit Corp.*, 2009 U.S. Dist. LEXIS 74120, at \*20 (D. N.J. 2009).

<sup>70</sup> *Sherbrooke*, 345 F.3d. at 972.

<sup>71</sup> An availability study using a methodology similar to that of this Report was recently upheld as the basis for the Illinois Department of Transportation's DBE program, as well as the Illinois Tollway's program for non-federally-funded contracts.

<sup>72</sup> *Concrete Works II*, 36 F.3d at 1520 (to confine data to strict geographic boundaries would ignore "economic reality").

<sup>73</sup> "Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program," Transportation Research Board of the National Academy of Sciences, NCHRP Report, Issue No. 644, 2010, p. 49 ("National Disparity Study Guidelines").

<sup>74</sup> *Id.* at pp. 50-51.

(IDOT's) DBE program was upheld based upon a "custom census" approach, combined with other economy-wide and anecdotal evidence. IDOT's plan was based upon sufficient proof of discrimination such that race-neutral measures alone would be inadequate to assure that DBEs operate on a "level playing field" for government contracts.

The stark disparity in DBE participation rates on goals and non-goals contracts, when combined with the statistical and anecdotal evidence of discrimination in the relevant marketplaces, indicates that IDOT's 2005 DBE goal represents a "plausible lower-bound estimate" of DBE participation in the absence of discrimination... Plaintiff presented no persuasive evidence contravening the conclusions of IDOT's studies, or explaining the disparate usage of DBEs on goals and non-goals contracts... IDOT's proffered evidence of discrimination against DBEs was not limited to alleged discrimination by prime contractors in the award of subcontracts. IDOT also presented evidence that discrimination in the bonding, insurance, and financing markets erected barriers to DBE formation and prosperity. Such discrimination inhibits the ability of DBEs to bid on prime contracts, thus allowing the discrimination to indirectly seep into the award of prime contracts, which are otherwise awarded on a race- and gender-neutral basis. This indirect discrimination is sufficient to establish a compelling governmental interest in a DBE program... Having established the existence of such discrimination, a governmental entity 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.<sup>75</sup>

Most recently, another challenge to the constitutionality of the DBE regulations, a second challenge to IDOT's implementation of those regulations and its DBE program for state-funded contracts, and a separate challenge to the Illinois Tollway's<sup>76</sup> separate DBE program were rejected.<sup>77</sup> Both agencies relied upon studies to support their programs, and the courts found such data to be persuasive that the programs meet strict scrutiny. Plaintiff's main objection to the defendants' evidence was that it failed to account for "capacity" when measuring DBE availability and underutilization. However, as is well established, "Midwest

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<sup>75</sup> *Northern Contracting II*, at \*82 (internal citations omitted); see *Croson*, 488 U.S. at 492.

<sup>76</sup> The Tollway is authorized to construct, operate, regulate, and maintain Illinois' system of toll highways. The Tollway does not receive any federal funding to accomplish its goals.

<sup>77</sup> *Midwest Fence, Corp. v. USDOT et al.*, 2015 WL 1396376 (N. D. Ill. March 24, 2015).



would have to come forward with “credible, particularized evidence” of its own, such as a neutral explanation for the disparity, or contrasting statistical data. [citation omitted] Midwest fails to make this showing here.”<sup>78</sup> Midwest offered only conjecture about how the defendants’ studies supposed failure to account for capacity may or may not have impacted the studies’ results. Plaintiff “fail[ed] to provide any independent statistical analysis or other evidence demonstrating actual bias.”<sup>79</sup>

### **b. Set Narrowly Tailored Contract Goals**

In addition to the overall annual goal, KCATA must set narrowly tailored goals on specific contracts where appropriate.

It is settled case law that goals for a particular solicitation should reflect the particulars of the contract, not reiterate annual aggregate targets. KCATA’s contract goals must be based upon availability of DBEs to perform the anticipated scopes – including the work estimated to be performed by the prime firm – of the individual contract.<sup>80</sup> Not only is contract goal setting legally mandated,<sup>81</sup> but this approach also reduces the need to conduct good faith efforts reviews as well as the temptation to create “front” companies and sham participation to meet unrealistic contract goals. While more labor intensive than defaulting to the annual, overall goals, there is no option to eschew narrowly tailoring program implementation because to do so would be more burdensome.

## **2. Apply Race- and Gender-Neutral Remedies to the Maximum Feasible Extent**

The courts have held that race- and gender-neutral approaches are a necessary component of a defensible and effective DBE program,<sup>82</sup> and the failure to seriously consider such remedies has been fatal to several programs.<sup>83</sup> To implement this standard, KCATA is required under the program regulations to

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<sup>78</sup> *Id.* at \*17.

<sup>79</sup> *Id.* at \*18.

<sup>80</sup> 49 C.F.R. § 26.51(e)(2).

<sup>81</sup> *See id.*; *Coral Construction*, 941 F.2d at 924.

<sup>82</sup> *Croson*, 488 U.S. at 507 (Richmond considered no alternatives to race-based quota); *Philadelphia III*, 91 F.3d at 609 (City’s failure to consider race-neutral alternatives was particularly telling); *Webster*, 51 F.Supp.2d at 1380 (for over 20 years County never seriously considered race-neutral remedies); *cf. Aiken*, 37 F.3d at 1164 (failure to consider race-neutral method of promotions suggested a political rather than a remedial purpose).

<sup>83</sup> *See, e.g., Florida A.G.C. Council, Inc. v. State of Florida*, Case No.: 4:03-CV-59-SPM at 10 (N. Dist. Fla. 2004) (“There is absolutely no evidence in the record to suggest that the Defendants contemplated race-neutral means to accomplish the objectives” of the statute.); *Engineering Contractors II*, 122 F.3d at 928.

meet the “maximum feasible portion” of its overall goal using race-neutral measures.<sup>84</sup>

Difficulty in accessing procurement opportunities, restrictive bid specifications, excessive experience requirements, and overly burdensome insurance and/or bonding requirements, for example, might be addressed by KCATA without resorting to the use of race or gender in its decision-making. Effective remedies include unbundling of contracts into smaller units, providing technical support, and developing programs to address issues of financing, bonding, and insurance important to all small and emerging businesses.<sup>85</sup> Further, governments have a duty to ferret out and punish discrimination against minorities and women by their contractors, staff, lenders, bonding companies or others.<sup>86</sup>

KCATA must also estimate the portion of the goal it predicts will be met through race-neutral and race-conscious measures (*i.e.*, contract goals).<sup>87</sup> This requirement has been central to the holdings that the DBE regulations meet narrow tailoring.<sup>88</sup>

One marker of the need to use contract goals to meet the annual goal is the results of solicitations without contract goals. This is excellent evidence of whether, in the absence of affirmative market intervention, DBEs would receive dollars in proportion to their availability. Courts have held that such outcomes are an excellent indicator of whether discrimination continues to impact opportunities in public contracting. Evidence of race and gender discrimination in relevant “unremediated”<sup>89</sup> markets provides an important indicator of what level of actual DBE participation can be expected in the absence of goals.<sup>90</sup> The court in the Chicago case held that the “dramatic decline in the use of M/WBEs when an affirmative action program is terminated, and the paucity of use of such firms when no affirmative action program was ever initiated,” was proof of the City’s compelling interest in employing race- and gender-conscious measures.<sup>91</sup>

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<sup>84</sup> 49 CFR § 26.51(a).

<sup>85</sup> *Id.*

<sup>86</sup> *Croson*, 488 U.S. at 503 n.3; *Webster*, 51 F.Supp.2d at 1380.

<sup>87</sup> 49 CFR § 26.45(f)(3).

<sup>88</sup> See, e.g., *Sherbrooke*, 345 F.3d. at 973

<sup>89</sup> “Unremediated market” means “markets that do not have race- or gender-conscious subcontracting goals in place to remedy discrimination.” *Northern Contracting II*, at \*36.

<sup>90</sup> See, e.g., *Western States*, 407 F.3d at 992 (Congress properly considered evidence of the “significant drop in racial minorities’ participation in the construction industry” after state and local governments removed affirmative action provisions).

<sup>91</sup> *Builders Association of Greater Chicago v. City of Chicago*, 298 F. Supp.2d 725, 737 (N.D. Ill. 2003); see also *Concrete Works IV*, 321 F.3d at 987-988.

Narrow tailoring does not require that every race-neutral approach must be implemented and then proven ineffective before race-conscious remedies may be utilized.<sup>92</sup> While an entity must give good faith consideration to race-neutral alternatives, “strict scrutiny does not require exhaustion of every possible such alternative...however irrational, costly, unreasonable, and unlikely to succeed such alternative might be... [S]ome degree of practicality is subsumed in the exhaustion requirement.”<sup>93</sup>

### **3. Ensure Flexible Goals and Requirements**

It is imperative that remedies not operate as fixed quotas.<sup>94</sup> A DBE program must provide for contract awards to firms who fail to meet the contract goals but make good faith efforts to do so.<sup>95</sup> Further, firms that meet the goals cannot be favored over those who made good faith efforts. Part 26 contains extensive provisions regarding the standards and processes for establishing good faith efforts.<sup>96</sup> In *Croson*, the Court refers approvingly to these contract-by-contract waivers.<sup>97</sup> This feature has been central to the holding that the DBE program meets the narrow tailoring requirement.<sup>98</sup>

### **4. Evaluate the Burden on Third Parties**

Narrow tailoring requires that KCATA evaluate whether the program unduly burdens non-DBEs.<sup>99</sup> The burden of compliance need not be placed only upon those firms directly responsible for the discrimination. “Innocent” parties can be made to share some of the burden of the remedy for eradicating racial discrimination.<sup>100</sup> The proper focus is whether the burden on third parties is “too intrusive” or “unacceptable.”

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<sup>92</sup> *Grutter*, 529 U.S. at 339.

<sup>93</sup> *Coral Construction*, 941 F.2d at 923.

<sup>94</sup> See 49 C.F.R. 26.43 (quotas are not permitted and set-aside contracts may be used only in limited and extreme circumstances “when no other method could be reasonably expected to redress egregious instances of discrimination”).

<sup>95</sup> See, e.g., *BAGC v. Chicago*, 298 F. Supp.2d at 740 (“Waivers are rarely or never granted...The City program is a rigid numerical quota...formulistic percentages cannot survive strict scrutiny.”).

<sup>96</sup> 49 C.F.R. § 26.53 and Appendix A.

<sup>97</sup> 488 U.S. at 508; see also *VII*, 228 F.3d at 1181.

<sup>98</sup> See, e.g., *Sherbrooke*, 345 F.3d. at 972.

<sup>99</sup> See *Engineering Contractors Assoc. of South Florida, Inc. v. Metropolitan Dade County* (“*Engineering Contractors I*”), 943 F.Supp. 1546, 1581-1582 (S.D. Fla. 1996) (County chose not to change its procurement system).

<sup>100</sup> *Concrete Works IV*, 321 F.3d at 973; *Wygant*, 476 U.S. at 280-281; *Adarand VII*, 228 F.3d at 1183 (“While there appears to be no serious burden on prime contractors, who are obviously compensated for any additional burden occasioned by the employment of DBE subcontractors, at the margin, some non-DBE subcontractors such as *Adarand* will be deprived of business

Burdens must be proven, and cannot constitute mere speculation by a plaintiff.<sup>101</sup> “Implementation of the race-conscious contracting goals for which TEA-21 provides will inevitably result in bids submitted by non-DBE firms being rejected in favor of higher bids from DBEs. Although this places a very real burden on non-DBE firms, this fact alone does not invalidate TEA-21. If it did, all affirmative action programs would be unconstitutional because of the burden upon non-minorities.”<sup>102</sup>

To address this factor, the DBE regulations specifically provide that if a grantee determines that DBEs are “so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.”<sup>103</sup>

## 5. Regularly Review the Effects of the Program

The courts require that race-based programs must have duration limits and “not last longer than the discriminatory effects it is designed to eliminate.”<sup>104</sup> The DBE Program’s periodic review by Congress has been repeatedly held to provide adequate durational limits.<sup>105</sup> If KCATA determines it will exceed its goal, it must reduce or eliminate the use of contract goals to the extent necessary to ensure that their use does not result in exceeding the overall goal.<sup>106</sup>

The legal test for data is the “most recent available data.”<sup>107</sup> The question ‘How old is too old’ is not definitively answered, but KCATA would be wise to conduct a study at least once every five or six years to ensure it is in compliance with Part 26 and applicable case law.

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opportunities”); *cf. Northern Contracting II*, at \*5 (“Plaintiff has presented little evidence that it [sic] has suffered anything more than minimal revenue losses due to the program.”).

<sup>101</sup> *See, e.g., Rowe*, 615 F.3d at 254 (prime bidder had no need for additional employees to perform program compliance and need not subcontract work it can self-perform).

<sup>102</sup> *Western States*, 407 F.3d at 995.

<sup>103</sup> 49 C.F.R. § 26.33(a).

<sup>104</sup> *Adarand III*, 515 U.S. at 238.

<sup>105</sup> *See Western States*, 407 F.3d at 995.

<sup>106</sup> 49 C.F.R. § 26.51(f)(2).

<sup>107</sup> *Rothe*, 545 F.3d at 1038-1039.

### III. KCATA's Disadvantaged Business Enterprise Program

This Chapter describes KCATA's Disadvantaged Business Enterprise ("DBE") Program for federal-aid contracts.

#### A. Elements of KCATA's Disadvantaged Business Enterprise Program

As a recipient of US Department of Transportation ("USDOT") funds through the Federal Transit Administration ("FTA"), KCATA is required as a condition of receipt to implement a DBE program in compliance with 49 C.F.R. Part 26.<sup>108</sup> In brief summary, KCATA must:

- Keep and report various data to USDOT, including the utilization of DBEs on its federal-aid contracts and create a bidders list of all firms bidding to KCATA as prime contractors and firms bidding to those prime contractors as subcontractors.<sup>109</sup>
- Adopt a non-discrimination policy statement.<sup>110</sup>
- Appoint a DBE Liaison Officer ("DBELO"), with substantial responsibilities and direct reporting to the chief executive office of the agency.<sup>111</sup>
- Make efforts to utilize DBE financial institutions.<sup>112</sup>
- Adopt a prompt payment mechanism for its prime contractors and for the prompt payment of subcontractors by prime contractors.<sup>113</sup>
- Create and maintain a DBE directory.<sup>114</sup> KCATA is a member of the Missouri Regional Certification Committee (MRCC), the Missouri Unified Certification Program ("UCP") and is afforded the ability to make its own decisions with respect to interstate certifications.<sup>115</sup>
- Address possible overconcentration of DBEs in certain types of work.<sup>116</sup>
- Include elements to assist small businesses, such as unbundling contracts.<sup>117</sup>

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<sup>108</sup> 49 C.F.R. §§ 26.3 and 26.21.

<sup>109</sup> 49 C.F.R. § 26.11.

<sup>110</sup> 49 C.F.R. § 26.23.

<sup>111</sup> 49 C.F.R. § 26.25.

<sup>112</sup> 49 C.F.R. § 26.27.

<sup>113</sup> 49 C.F.R. § 26.29.

<sup>114</sup> [http://www.modot.org/business/contractor\\_resources/External\\_Civil\\_Rights/mrcc.htm](http://www.modot.org/business/contractor_resources/External_Civil_Rights/mrcc.htm)

<sup>115</sup> 49 C.F.R. § 26.85.

<sup>116</sup> 49 C.F.R. § 26.33.

<sup>117</sup> 49 C.R.F. § 26.39.

KCATA's DBE program has been approved by the Federal Transit Administration and was updated in April 2013. In addition to the program document, KCATA issued a policy statement in 2015, reiterating the objectives for the DBE program as stated in Part 26. KCATA's current FTA-approved DBE goal is 8.5 percent, 6.5 percent to be met through race-neutral measures and 2 percent to be met through the use of DBE contract goals.

KCATA's DBE program is administered by the Procurement Department. The Disadvantaged Business Enterprise Liaison Officer (DBELO) is responsible for day-to-day administration. The KCATA organization chart shows a "dotted line" from the DBELO to the General Manager, representing the DBELO's direct access to the General Manager on DBE matters as required by the DBE regulations. The DBELO is a member of KCATA's Procurement Department for other purposes. The DBELO participated in numerous DBE or civil rights-related training sessions from 2008 through 2014. In addition to the DBELO, procurement and project management staff have DBE-related responsibilities.

The agency has developed procedures, forms and other documents to implement the program. For example, it uses handouts at its pre-bid meetings to explain the standards for counting DBE participation towards a contract goal, the submission of Contract Utilization Plans, the process for Requests for Waivers, and an explanation of Good Faith Efforts. Prime vendors must submit Subcontractor Utilization Reports with each invoice and DBE jobsite reviews are conducted to determine Commercially Useful Function ("CUF"). KCATA performs one CUF interview per phase, per contractor or subcontractor. KCATA also maintains the right to audit subcontract agreements to ensure the inclusion of program requirements.

KCATA maintains bidders list information about DBE and non-DBE firms that bid or quote on DOT-assisted contracts as required by 49 C.F.R. § 26.11. This information is to be used to calculate KCATA's overall triennial DBE goal. The bidders list includes the firm name, address, DBE/non-DBE status, firm's age, and annual gross receipts. The information is obtained through a vendor registration process wherein any firm wishing to do business with KCATA must complete a Vendor Registration Form.

DBE compliance information for solicitations containing a DBE contract goal is due within 48 hours of bid opening for the bidder to be deemed a "responsible" contractor and eligible for contract award.

The program includes, as an attachment, a checklist to determine whether good faith efforts were sufficient when a contract goal is not met. With respect to post-award monitoring, the KCATA program documents include a monthly subcontractor utilization report, a form to request replacement or termination of a DBE, and a form for jobsite commercially useful function reviews.

As required by 49 C.F.R. § 26.39, KCATA's Program Plan states that it implements the "following strategies to foster small business participation:"

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under 26.39 of this part;
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- Providing technical assistance and other services;
- Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses on its mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; providing information in languages other than English, where appropriate);
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- Providing services to help DBEs and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

KCATA worked with the Missouri Regional Certification Committee (MRCC) to develop a race-neutral small business enterprise program. To be eligible, a firm must not exceed the Small Business Administration size standards and the personal net worth limit applicable in the DBE program. Because DBEs are small businesses, they are automatically included in the SBE program. A firm that is certified under the SBA's 8(a) Business Development program, as described in 13 CFR Parts 121 and 124, may submit a copy of its certificate. Firms that are not certified as 8(a) firms must submit: 1) a copy of business tax returns for the most recent three-year period indicating the gross receipts; or if the SBA uses the

number of employees to determine small business eligibility, a copy of the firm's payroll statement indicating the average annual employment for the most recent year. Firm owners must also complete a Personal Net Worth Statement. The program was scheduled to go into effect in February 2015. However, only one firm has signed up to participate.

To achieve the maximum feasible portion of its overall goal through race-neutral means, KCATA participates in a number of outreach activities with partner organizations such as the Missouri Department of Transportation, the city of Kansas City (KCMO), and the FTA. From 2011 through 2014, KCATA representatives participated in 6 to 12 annual networking events. The agency also sends periodic email blasts to potentially interested businesses.

While the agency does not provide business development programs, there are 23 minority- or women-business oriented groups to which information about upcoming procurement is routinely distributed. KCATA is also a member of several minority/women's business organizations, such as the Conference of Minority Transportation Officials, Black and Hispanic chambers of commerce, etc.

The Program Plan notes the existence of three minority-owned financial institutions. KCATA reviews the market on a quarterly basis for financial institutions owned by socially and economically disadvantaged individuals. The Program Plan notes that KCATA has requested information from these banks and that literature will be provided to DBE and non-DBE companies during community outreach activities and pre-bids.

The program requires that retainage held by prime contractors must be returned to the subcontractor within 30 days of KCATA's return of retainage to the prime contractor for work related to the subcontractor's activities. Retainage means a portion of the payment owed to either the prime or the subcontractor that is held pending the satisfactory completion of work. Satisfactory completion is defined as all tasks specified in the contract or subcontract having been accomplished and that the recipient has accepted the work. The listed prompt pay requirement is no later than 30 days from the date of the prime contractor's receipt of payment.

In accordance with 49 C.F.R. § 26.33, KCATA will look at disparity study, census, and contract award data to determine if DBEs are "overconcentrated" in a particular area of work. To date, no overconcentration has been found.

The agency purchased an electronic contract compliance system, B2GNow, in 2014. However, it has not been fully implemented.

## **B. Experiences with KCATA's DBE Program**

To explore the impacts of race- and gender-neutral contracting policies and procedures and the implementation of KCATA's DBE program, we interviewed 56 individuals about their experiences and solicited their suggestions for changes. The following are summaries of the topics discussed. Quotations are indented,



and have been edited for readability. They are representative of the views expressed during the group interviews.

We note that KCATA awarded relatively few contracts during the study period, compared to the City of Kansas City, Missouri and other local agencies. We include comments relevant specifically to this agency, and more general input relevant to KCATA's DBE program and possible future contracting equity efforts for non-federally-assisted contracts.

### **1. Outreach Efforts to DBEs**

There was a general consensus that the Transit Authority does not conduct much outreach for its specific opportunities.

KCATA mostly operates under federal guidelines with DBEs, with limited local participation.

I haven't heard anything bad about KCATA, but they don't have a lot of projects.

Participants found it difficult to access information about KCATA opportunities.

KCATA doesn't have a lot of work. It's virtually impossible to find the person who would give you that information.

I'm advocating for Hispanics and then everyone else, because how I feel is that we're really behind on terms of they know how or how to go ahead and get those contracts.

An annual procurement forecast was one recommendation to increase opportunities.

### **2. Payments**

There were few complaints about payment, either by KCATA to prime vendors or by prime contractors to subcontractors. An unfavorable contrast was drawn with other local governments, however.

You probably have a better chance of getting paid on the City of Kansas City, Missouri work than you do the School District, Jackson County, or any of the other entities.

### **3. Supportive services to DBEs**

Many DBEs welcomed additional assistance for their businesses, such as programs on how to estimate jobs, comply with agency paperwork, effective marketing, etc.

Estimating is the biggest single need I encounter with the people I deal with.... The Builders Association program is the Cadillac but you're not going to do that in a couple of

one-hour seminars. Additionally, if you're not willing to buy some software, if you're still taking off everything by hand and use some paper plans, you're not going to get there.

Majority contractors also noted the need for supportive services.

Legal counsel, accounting assistance...especially legal services [are needed] because a lot of people don't know how to evaluate the contracts that they are getting from the general contractors or the subcontractors and the next thing you know is that they have problems, they have issues because the contract is really in the favor of the general contractor or subcontractor.... People buy QuickBooks and they don't have a clue of how to set it up, and they set it up and it is garbage in and garbage out. They don't know how to program the program that they get the results they need.

The most challenges I see...is how to finance those projects.

[M/WBEs need] some kind of program to help finance those projects. To give opportunity to minorities, more contracts to work directly with any entity of the government.

#### **4. Meeting DBE Contract Goals**

Most prime firms were able to meet the contract goals.

It's doable.

However, there was confusion and frustration about how the agency sets goals on specific contracts.

One of the biggest issues I see is the lack of understanding of a construction industry.... The construction industry is so detailed and specific that those employees don't understand really what availability means... They really don't understand what a contractor will self-perform and what they would sub out to an MBE/WBE.

If there was a way to figure out what their bonding capacity would be and maybe then look at the numbers in that regard, it might help [to set accurate contract goals].... There's only so many contractors to perform that work [on very large projects].

There were concerns about whether the DBE community in Kansas City can meet the burgeoning demand in the construction industry.

That's the issue, is the capacity of what the firms can do.

Some of the developers have run into that, that there's companies that they know of and they're aware of but they're not certified. And so, there's a lot of work going on now in Kansas City, a lot more than there was a couple of years ago and the pool is really small now. There's not enough of them to go around.

### **C. Conclusion**

The program review and the business owner and stakeholder interviews suggest that KCATA is implementing the program in conformance with the requirements of Part 26. However, several enhancements will make it more effective. These include additional outreach and communication efforts; partnering with other agencies to provide technical assistance to DBEs; and ensuring DBE contract goals are narrowly tailored.

## IV. UTILIZATION AND AVAILABILITY ANALYSIS FOR KCATA

### A. Contract Data Sources

We analyzed contract data for 2008 through 2013 for KCATA's federally-assisted contracts. The Final Contract Data File for analysis contained a total award amount of \$50,341,023 representing 113 contracts to primes; of this amount, 213 associated subcontracts received \$10,042,095. The Final Contract Data File was used to determine the geographic and product markets for the Study, to estimate the utilization of DBEs on those contracts, and to calculate DBE availability in KCATA's marketplace.

### B. KCATA's Product and Geographic Markets

#### 1. KCATA's Product Market

A defensible availability study must determine empirically the industries that comprise the agency's product or industry market. The Disadvantaged Business Enterprise ("DBE") regulations governing KCATA's federally-assisted contracts likewise require this type of analysis.<sup>118</sup> The accepted approach is to analyze those detailed industries, as defined by 6-digit North American Industry Classification System ("NAICS") codes<sup>119</sup> that make up at least 75 percent of the prime contract and subcontract payments for the study period.<sup>120</sup> However, for this study, we went further, and applied a "90/90/90" rule, whereby we analyzed NAICS codes that cover over 90 percent of the total contract dollars; over 90 percent of the prime contract dollars; and over 90 percent of the subcontract dollars. We took this approach to assure a comprehensive analysis of KCATA's activities.

Tables 4.1 through 4.3 present the NAICS codes used to define the product market for KCATA's federally-funded contracts when examining contracts disaggregated by level of contract (*i.e.*, was the firm receiving the contract as a prime vendor or a subcontractor), the label for each NAICS code, and the industry percentage distribution of the number of contracts and spending across NAICS codes and funding source. The results in Tables 4.1 through 4.3 present KCATA's *unconstrained* product market, which was later constrained by the geographic market area, discussed below.

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<sup>118</sup> 49 C.F.R. § 26.45.

<sup>119</sup> [www.census.gov/eos/www/naics](http://www.census.gov/eos/www/naics).

<sup>120</sup> "Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program," Transportation Research Board of the National Academy of Sciences, NCHRP Report, Issue No. 644, 2010, pp. 50-51 ("National Disparity Study Guidelines").

**Table 4.1 Industry Percentage Distribution of Contracts by Dollars Paid,  
All Contracts**

<b>NAICS</b>	<b>NAICS Code Description</b>	<b>Pct Total Contract Dollars</b>	<b>Cumulative Pct Total Contract Dollars</b>
237310	Highway, Street, and Bridge Construction	25.0%	25.0%
236220	Commercial and Institutional Building Construction	12.7%	37.8%
485991	Special Needs Transportation	9.4%	47.1%
541330	Engineering Services	7.3%	54.5%
336211	Motor Vehicle Body Manufacturing	4.6%	59.1%
238110	Poured Concrete Foundation and Structure Contractors	4.0%	63.1%
238210	Electrical Contractors and Other Wiring Installation Contractors	3.9%	67.0%
485310	Taxi Service	3.8%	70.8%
541614	Process, Physical Distribution, and Logistics Consulting Services	2.9%	73.7%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	2.7%	76.4%
339950	Sign Manufacturing	2.6%	79.0%
326211	Tire Manufacturing (except Retreading)	1.8%	80.8%
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	1.5%	82.3%
238220	Plumbing, Heating, and Air-Conditioning Contractors	1.1%	83.5%
541512	Computer Systems Design Services	1.0%	84.4%
336320	Motor Vehicle Electrical and Electronic Equipment Manufacturing	1.0%	85.4%
541320	Landscape Architectural Services	1.0%	86.4%
561730	Landscaping Services	0.9%	87.3%

237110	Water and Sewer Line and Related Structures Construction	0.9%	88.2%
237130	Power and Communication Line and Related Structures Construction	0.8%	89.0%
541620	Environmental Consulting Services	0.6%	89.6%
423690	Other Electronic Parts and Equipment Merchant Wholesalers	0.5%	90.1%
TOTAL			100.00% <sup>121</sup>

Source: CHA analysis of KCATA data.

**Table 4.2 Industry Percentage Distribution of Contracts by Dollars Paid,  
Prime Contracts**

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
237310	Highway, Street, and Bridge Construction	31.2%	31.2%
236220	Commercial and Institutional Building Construction	15.7%	46.9%
485991	Special Needs Transportation	11.7%	58.6%
336211	Motor Vehicle Body Manufacturing	5.7%	64.3%
541330	Engineering Services	5.0%	69.3%
485310	Taxi Service	4.8%	74.0%
541614	Process, Physical Distribution, and Logistics Consulting Services	3.6%	77.6%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	3.1%	80.7%
339950	Sign Manufacturing	2.8%	83.6%
326211	Tire Manufacturing (except Retreading)	2.2%	85.8%
238210	Electrical Contractors and Other Wiring Installation Contractors	2.0%	87.7%
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	1.9%	89.6%

<sup>121</sup> Agency spending across another 148 NAICS codes comprised 9.99% of all spending.

541512	Computer Systems Design Services	1.2%	90.8%
TOTAL			100.00% <sup>122</sup>

Source: CHA analysis of KCATA data

**Table 4.3 Industry Percentage Distribution of Contracts by Dollars Paid  
Subcontracts**

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
541330	Engineering Services	16.9%	16.9%
238110	Poured Concrete Foundation and Structure Contractors	15.5%	32.4%
238210	Electrical Contractors and Other Wiring Installation Contractors	11.8%	44.2%
237110	Water and Sewer Line and Related Structures Construction	4.5%	48.7%
238220	Plumbing, Heating, and Air-Conditioning Contractors	4.4%	53.1%
541320	Landscape Architectural Services	4.1%	57.2%
237130	Power and Communication Line and Related Structures Construction	3.8%	61.0%
238990	All Other Specialty Trade Contractors	2.4%	63.4%
561730	Landscaping Services	2.0%	65.4%
561990	All Other Support Services	2.0%	67.4%
339950	Sign Manufacturing	1.9%	69.3%
541690	Other Scientific and Technical Consulting Services	1.9%	71.2%
523110	Investment Banking and Securities Dealing	1.8%	73.0%
238140	Masonry Contractors	1.8%	74.8%
238120	Structural Steel and Precast Concrete Contractors	1.8%	76.5%

<sup>122</sup> Agency spending across another 116 NAICS codes comprised 9.2% of all prime contractor spending.

561720	Janitorial Services	1.7%	78.2%
238390	Other Building Finishing Contractors	1.6%	79.8%
484220	Specialized Freight (except Used Goods) Trucking, Local	1.5%	81.4%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	1.5%	82.9%
561320	Temporary Help Services	1.4%	84.2%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	1.2%	85.5%
541820	Public Relations Agencies	1.0%	86.5%
484110	General Freight Trucking, Local	1.0%	87.5%
238290	Other Building Equipment Contractors	1.0%	88.5%
423420	Office Equipment Merchant Wholesalers	0.9%	89.4%
238150	Glass and Glazing Contractors	0.8%	90.2%
TOTAL			100.00% <sup>123</sup>

Source: CHA analysis of KCATA data.

## 2. KCATA's Geographic Market

The courts and 49 C.F.R. Part 26 require that a local recipient limit the reach of its race- and gender-conscious contracting program to its market area.<sup>124</sup> While it may be that KCATA's service area borders comprise its market area, this element of the analysis must be empirically established.<sup>125</sup>

To determine the relevant geographic market area, we applied the standard of identifying the firm locations that account for at least 75 percent of contract and subcontract dollar payments in the contract data file.<sup>126</sup> Location was determined by ZIP code and aggregated into counties as the geographic unit.

<sup>123</sup> Agency spending across another 58 NAICS codes comprised 9.8% of all subcontractor spending.

<sup>124</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 508 (1989) (Richmond was specifically faulted for including minority contractors from across the country in its program based on the national evidence that supported the USDOT DBE program).

<sup>125</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1520 (10th Cir. 1994) (to confine data to strict geographic boundaries would ignore "economic reality").

<sup>126</sup> National Disparity Study Guidelines, p. 49.



As presented in Table 4.4, spending in Missouri and Kansas accounted for 79.8%% of all contract dollars paid in KCATA’s unconstrained product market. Within these two states’ spending, five counties (Jackson County in Missouri; Douglas, Franklin, Johnson, and Wyandotte Counties in Kansas) captured 76% of all agency spending. Therefore, these 5 counties constituted the geographic market area from which we drew our availability data. Table 4.5 presents data on how the contract dollars were spent across the two state’s counties.

**Table 4.4 Distribution of Contracts in KCATA’s Product Market  
by State**

State	Pct Total Contract Dollars Paid		State	Pct Total Contract Dollars Paid
MO	56.898%		MI	0.243%
KS	22.921%		VT	0.105%
WA	5.701%		Ireland	0.104%
MD	3.105%		CO	0.099%
NY	2.137%		WV	0.071%
OH	1.883%		FL	0.055%
Canada	1.473%		AZ	0.054%
NJ	1.469%		OR	0.024%
NE	1.229%		NM	0.007%
KY	0.712%		MS	0.007%
MN	0.553%		NH	0.007%
MA	0.552%		IA	0.001%
IL	0.305%		CT	0.001%
PA	0.284%			
			TOTAL	100.00%

Source: CHA analysis of KCATA data.

**Table 4.5 Distribution of Contracts in KCATA’s Product Market within Missouri  
and Kansas by County**

State	County	Pct Total Contract Dollars Paid		State	County	Pct Total Contract Dollars Paid
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MO	Jackson	53.36%		MO	St. Louis	1.40%
KS	Johnson	12.15%		MO	Johnson	0.42%
KS	Franklin	6.54%		KS	Doniphan	0.19%
KS	Wyandotte	2.07%		MO	Platte	0.09%
KS	Douglas	1.95%		KS	Saline	0.02%
MO	Clay	1.63%		KS	Multnomah	0.01%
					TOTAL	100.00%

Source: CHA analysis of KCATA data.

### C. KCATA's Utilization of DBEs

Having determined KCATA's product and geographic market areas, the next essential step was to determine the dollar value of KCATA's utilization of DBEs as measured by payments to prime firms and subcontractors and disaggregated by race and gender. Because the agency utilizes an electronic data collection and management system to record contracting activity, we did not have to contact prime vendors for information (as is typical for disparity studies).

Table 4.6 presents data on the total contract dollars paid by KCATA for each NAICS code in the constrained product market and the share the contract dollars comprise of all industries. It is important to note the contract dollar shares are equivalent to the weight of each NAICS code spending. These weights were used to transform data from unweighted availability to weighted availability.

**Table 4.6 NAICS Code Distribution of Contract Dollars**

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
237310	Highway, Street, and Bridge Construction	\$11,153,885.00	31.21%
485991	Special Needs Transportation	\$4,713,291.00	13.19%
236220	Commercial and Institutional Building Construction	\$4,413,023.00	12.35%
541330	Engineering Services	\$3,528,213.25	9.87%
336211	Motor Vehicle Body Manufacturing	\$2,306,977.50	6.46%
485310	Taxi Service	\$1,922,035.00	5.38%
238110	Poured Concrete Foundation and Structure Contractors	\$1,552,009.12	4.34%
238210	Electrical Contractors and Other Wiring	\$1,479,556.00	4.14%

	Installation Contractors		
339950	Sign Manufacturing	\$1,108,452.50	3.10%
561730	Landscaping Services	\$436,830.47	1.22%
237130	Power and Communication Line and Related Structures Construction	\$381,760.00	1.07%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$337,144.62	0.94%
541320	Landscape Architectural Services	\$305,908.69	0.86%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	\$229,896.00	0.64%
238990	All Other Specialty Trade Contractors	\$226,491.00	0.63%
561990	All Other Support Services	\$194,507.41	0.54%
541690	Other Scientific and Technical Consulting Services	\$185,583.00	0.52%
523110	Investment Banking and Securities Dealing	\$180,830.00	0.51%
561720	Janitorial Services	\$170,145.97	0.48%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	\$148,519.75	0.42%
238120	Structural Steel and Precast Concrete Contractors	\$144,001.00	0.40%
238140	Masonry Contractors	\$117,131.30	0.33%
237110	Water and Sewer Line and Related Structures Construction	\$106,141.00	0.30%
541620	Environmental Consulting Services	\$105,648.88	0.30%
484110	General Freight Trucking, Local	\$102,000.00	0.29%
238290	Other Building Equipment Contractors	\$91,605.92	0.26%
423420	Office Equipment Merchant Wholesalers	\$90,000.00	0.25%
238150	Glass and Glazing Contractors	\$4,276.00	0.01%
TOTAL		\$35,735,863.38	100.00%

Source: CHA analysis of KCATA data.

Tables 4.7a through 4.7d also present the paid contract dollars (total dollars and share of total dollars) by NAICS codes for all industries, this time disaggregated by race and gender.

**Table 4.7a Distribution of Contract Dollars by Race and Gender**  
(total dollars)

<b>NAICS</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native American</b>	<b>White Women</b>	<b>Non-DBE</b>
236220	\$0	\$0	\$0	\$0	\$622,550	\$3,790,473
237110	\$0	\$85,216	\$0	\$0	\$0	\$20,925
237130	\$0	\$0	\$0	\$0	\$0	\$381,760
237310	\$0	\$0	\$0	\$0	\$0	\$11,153,885
238110	\$1,422,009	\$0	\$0	\$0	\$0	\$130,000
238120	\$0	\$0	\$0	\$0	\$0	\$144,001
238140	\$0	\$0	\$0	\$0	\$0	\$117,131
238150	\$0	\$0	\$0	\$0	\$0	\$4,276
238210	\$241,932	\$0	\$0	\$0	\$759,252	\$478,372
238220	\$0	\$0	\$0	\$0	\$0	\$337,145
238290	\$0	\$0	\$0	\$0	\$0	\$91,606
238990	\$214,528	\$0	\$0	\$0	\$11,963	\$0
336211	\$0	\$0	\$0	\$0	\$0	\$2,306,977
339950	\$0	\$0	\$0	\$0	\$0	\$1,108,452
423120	\$0	\$0	\$0	\$0	\$0	\$229,896
423420	\$90,000	\$0	\$0	\$0	\$0	\$0
423510	\$0	\$0	\$0	\$0	\$0	\$148,520
484110	\$0	\$0	\$0	\$0	\$102,000	\$0
485310	\$0	\$0	\$0	\$0	\$0	\$1,922,035
485991	\$0	\$0	\$0	\$0	\$2,750,142	\$1,963,149
523110	\$0	\$0	\$0	\$0	\$0	\$180,830
541320	\$76,646	\$0	\$0	\$0	\$0	\$229,263
541330	\$388,917	\$0	\$0	\$0	\$83,298	\$3,055,998
541620	\$0	\$0	\$0	\$0	\$105,649	\$0
541690	\$0	\$0	\$0	\$0	\$185,583	\$0
561720	\$170,146	\$0	\$0	\$0	\$0	\$0
561730	\$43,175	\$0	\$0	\$0	\$318,212	\$75,443

561990	\$0	\$0	\$0	\$0	\$0	\$194,507
<b>TOTAL</b>	<b>\$2,647,354</b>	<b>\$85,216</b>	<b>\$0</b>	<b>\$0</b>	<b>\$4,938,649</b>	<b>\$28,064,644</b>

Source: CHA analysis of KCATA data.

**Table 4.7b Distribution of Contract Dollars by Race and Gender  
(share of total dollars)**

<b>NAICS</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native American</b>	<b>White Women</b>	<b>Non-DBE</b>
236220	0.0%	0.0%	0.0%	0.0%	14.1%	85.9%
237110	0.0%	80.3%	0.0%	0.0%	0.0%	19.7%
237130	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
237310	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
238110	91.6%	0.0%	0.0%	0.0%	0.0%	8.4%
238120	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
238140	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
238150	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
238210	16.4%	0.0%	0.0%	0.0%	51.3%	32.3%
238220	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
238290	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
238990	94.7%	0.0%	0.0%	0.0%	5.3%	0.0%
336211	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
339950	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
423120	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
423420	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%
423510	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
484110	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%
485310	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
485991	0.0%	0.0%	0.0%	0.0%	58.3%	41.7%
523110	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
541320	25.1%	0.0%	0.0%	0.0%	0.0%	74.9%
541330	11.0%	0.0%	0.0%	0.0%	2.4%	86.6%
541620	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%

541690	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%
561720	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%
561730	9.9%	0.0%	0.0%	0.0%	72.8%	17.3%
561990	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
TOTAL	7.4%	0.2%	0.0%	0.0%	13.8%	78.5%

Source: CHA analysis of KCATA data.

**Table 4.7c Distribution of Contract Dollars by DBE Status  
(total dollars)**

NAICS	DBE	Non-DBE	TOTAL
236220	\$622,550	\$3,790,473	\$4,413,023
237110	\$85,216	\$20,925	\$106,141
237130	\$0	\$381,760	\$381,760
237310	\$0	\$11,153,885	\$11,153,885
238110	\$1,422,009	\$130,000	\$1,552,009
238120	\$0	\$144,001	\$144,001
238140	\$0	\$117,131	\$117,131
238150	\$0	\$4,276	\$4,276
238210	\$1,001,184	\$478,372	\$1,479,556
238220	\$0	\$337,145	\$337,145
238290	\$0	\$91,606	\$91,606
238990	\$226,491	\$0	\$226,491
336211	\$0	\$2,306,977	\$2,306,977
339950	\$0	\$1,108,452	\$1,108,452
423120	\$0	\$229,896	\$229,896
423420	\$90,000	\$0	\$90,000
423510	\$0	\$148,520	\$148,520
484110	\$102,000	\$0	\$102,000
485310	\$0	\$1,922,035	\$1,922,035
485991	\$2,750,142	\$1,963,149	\$4,713,291
523110	\$0	\$180,830	\$180,830

541320	\$76,646	\$229,263	\$305,909
541330	\$472,215	\$3,055,998	\$3,528,213
541620	\$105,649	\$0	\$105,649
541690	\$185,583	\$0	\$185,583
561720	\$170,146	\$0	\$170,146
561730	\$361,388	\$75,443	\$436,830
561990	\$0	\$194,507	\$194,507
<b>TOTAL</b>	<b>\$7,671,219</b>	<b>\$28,064,644</b>	<b>\$35,735,863</b>

Source: CHA analysis of KCATA data.

**Table 4.7d Distribution of Contract Dollars by DBE Status  
(share of total dollars)**

<b>NAICS</b>	<b>DBE</b>	<b>Non-DBE</b>	<b>TOTAL</b>
236220	14.1%	85.9%	100.0%
237110	80.3%	19.7%	100.0%
237130	0.0%	100.0%	100.0%
237310	0.0%	100.0%	100.0%
238110	91.6%	8.4%	100.0%
238120	0.0%	100.0%	100.0%
238140	0.0%	100.0%	100.0%
238150	0.0%	100.0%	100.0%
238210	67.7%	32.3%	100.0%
238220	0.0%	100.0%	100.0%
238290	0.0%	100.0%	100.0%
238990	100.0%	0.0%	100.0%
336211	0.0%	100.0%	100.0%
339950	0.0%	100.0%	100.0%
423120	0.0%	100.0%	100.0%
423420	100.0%	0.0%	100.0%
423510	0.0%	100.0%	100.0%
484110	100.0%	0.0%	100.0%

485310	0.0%	100.0%	100.0%
485991	58.3%	41.7%	100.0%
523110	0.0%	100.0%	100.0%
541320	25.1%	74.9%	100.0%
541330	13.4%	86.6%	100.0%
541620	100.0%	0.0%	100.0%
541690	100.0%	0.0%	100.0%
561720	100.0%	0.0%	100.0%
561730	82.7%	17.3%	100.0%
561990	0.0%	100.0%	100.0%
TOTAL	21.5%	78.5%	100.0%

Source: CHA analysis of KCATA data.

## D. Availability of DBEs

### a. Methodological Framework

Estimates of the availability of minority- and female-owned firms in KCATA’s market area are a critical component of the analysis of possible barriers to equal opportunities to participate in the agency’s contracting activities. These availability estimates are compared to the utilization percentage of dollars received by DBEs to examine whether minority- and women-owned firms receive parity.<sup>127</sup> Availability estimates are also crucial for KCATA to set narrowly tailored contract goals.

We applied the “custom census” approach to estimating availability. As recognized by the courts and the National Model Disparity Study Guidelines,<sup>128</sup> this methodology is superior to the other methods for at least four reasons.

First, it provides an internally consistent and rigorous “apples to apples” comparison between firms in the availability numerator and those in the denominator. Other approaches often have different definitions for the firms in the

<sup>127</sup> For our analysis, the term “DBE” includes firms that are certified by the Missouri and Kansas Unified Certification Programs and minority- and women-owned firms that are not certified. As discussed in Chapter II, the inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts that supports the remedial nature of the programs. *See Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 723 (7<sup>th</sup> Cir. 2007) (The “remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net.”).

<sup>128</sup> National Disparity Study Guidelines, pp.57-58.



numerator (*e.g.*, certified DBEs) and the denominator (*e.g.*, registered vendors or the Census Bureaus' County Business Patterns data).

Next, by examining a comprehensive group of firms, it “casts a broader net” beyond those known to the agency. As recognized by the courts, this comports with the remedial nature of contracting affirmative action programs by seeking to bring in businesses that have historically been excluded. A custom census is less likely to be tainted by the effects of past and present discrimination than other methods, such as bidders' lists, because it seeks out firms in the agency's market areas that have not been able to access its opportunities.

Third, this approach is less impacted by variables affected by discrimination. Factors such as firm age, size, qualifications, and experience are all elements of business success where discrimination would be manifested. Most courts have held that the results of discrimination – which impact factors affecting capacity – should not be the benchmark for a program designed to ameliorate the effects of discrimination. They have acknowledged that minority and women firms may be smaller, newer, and otherwise less competitive than non-DBEs because of the very discrimination sought to be remedied by race-conscious contracting programs. Racial and gender differences in these “capacity” factors are the *outcomes* of discrimination and it is therefore inappropriate as a matter of economics and statistics to use them as “control” variables in a disparity study.<sup>129</sup>

Fourth, it has been upheld by every court that has reviewed it, including in the recent successful defenses of the Illinois State Toll Highway's DBE program,<sup>130</sup> and the Illinois Department of Transportation's DBE program.<sup>131</sup>

### **E. Estimation of DBE Availability**

To conduct the Custom Census for this study, CHA utilized three different databases:

1. The KCATA Final Contract Data File (described in Section A of this Chapter).
2. A Master DBE Directory compiled by CHA.
3. Dun & Bradstreet/Hoovers Database downloaded from the companies' website.

The Master DBE Directory combined the lists of minority and women-owned firms of the City of Kansas City, Missouri, the Unified Certification Programs for the

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<sup>129</sup> For a detailed discussion of the role of capacity in disparity studies, see the National Disparity Study Guidelines, Appendix B, “Understanding Capacity.”

<sup>130</sup> *Midwest Fence, Corp. v. U.S. Department of Transportation et al*, 1:10-cv-05627 (N. Dist. Ill., March 24, 2015).

<sup>131</sup> *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7<sup>th</sup> Cir. 2007).

state of Missouri and Kansas, the US Small Business Administration and several private listings. The resulting list of minority businesses is comprehensive.

We took the following steps to develop the Dun & Bradstreet/Hoovers Database. After compiling the Master DBE Directory, we limited the firms we used in this Custom Census analysis to those firms operating within KCATA’s constrained product market. We purchased the firm information from Hoovers for the firms in the NAICS codes located in KCATA’s market area in order to form the Dun & Bradstreet/Hoovers Database. Hoovers, a Dun & Bradstreet company, maintains a comprehensive, extensive and regularly updated listing of all firms conducting business. The database includes a vast amount of information on each firm, including location and detailed industry codes, and is the broadest publicly available data source for firm information. In the initial download, the data from Hoovers simply identify a firm as being minority-owned.<sup>132</sup> However, the company does keep detailed information on ethnicity (*i.e.*, is the minority firm owner Black, Hispanic, Asian, or Native American). We obtained this additional information from Hoovers.<sup>133</sup>

We merged these three databases to form an accurate estimate of firm availability to the agency. Table 4.8 present data on the unweighted availability by race and gender and by NAICS codes for all industries in the KCATA constrained product market.

**Table 4.8 Unweighted Availability**  
(total dollars)

NAICS	Black	Hispanic	Asian	Native American	White Women	DBE	Non-DBE	TOTAL
236220	9.3%	5.5%	1.5%	6.3%	15.9%	38.6%	61.4%	100.0%
237110	4.2%	2.8%	1.4%	1.4%	30.6%	40.3%	59.7%	100.0%
237130	17.2%	3.4%	3.4%	6.9%	6.9%	37.9%	62.1%	100.0%
237310	7.1%	1.8%	0.9%	0.9%	12.4%	23.0%	77.0%	100.0%
238110	12.7%	0.9%	0.5%	0.4%	3.4%	17.9%	82.1%	100.0%
238120	14.3%	4.8%	4.8%	4.8%	14.3%	42.9%	57.1%	100.0%
238140	2.6%	5.2%	0.0%	0.0%	9.6%	17.4%	82.6%	100.0%
238150	13.9%	7.3%	0.0%	0.0%	21.2%	42.4%	57.6%	100.0%

<sup>132</sup> The variable is labeled: “Is Minority Owned” and values for the variable can be either “yes” or “no”.

<sup>133</sup> Hoovers was able to provide the detailed information for 75% of the firms. We used the available information to estimate the detailed information for the firms where the data was not provided.

238210	8.2%	3.0%	0.2%	1.7%	9.4%	22.6%	77.4%	100.0%
238220	2.9%	0.9%	0.1%	0.7%	6.5%	11.2%	88.8%	100.0%
238290	8.3%	0.0%	0.0%	0.0%	20.8%	29.2%	70.8%	100.0%
238990	3.4%	0.9%	0.5%	0.5%	8.8%	14.1%	85.9%	100.0%
336211	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
339950	1.0%	2.8%	1.0%	0.0%	15.4%	20.3%	79.7%	100.0%
423120	0.0%	0.0%	0.0%	0.0%	7.1%	7.1%	92.0%	100.0%
423420	7.0%	0.0%	0.0%	0.0%	18.6%	25.6%	74.4%	100.0%
423510	3.6%	0.0%	0.0%	0.0%	14.5%	18.2%	81.8%	100.0%
484110	6.8%	0.4%	0.4%	0.2%	5.8%	13.7%	86.3%	100.0%
485310	3.2%	0.0%	0.0%	0.0%	3.2%	6.5%	90.3%	100.0%
485991	16.7%	0.0%	0.0%	0.0%	50.0%	66.7%	33.3%	100.0%
523110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541320	2.3%	0.4%	0.0%	0.8%	7.2%	10.6%	89.4%	100.0%
541330	5.4%	2.0%	4.8%	1.7%	10.2%	24.1%	75.9%	100.0%
541620	5.1%	2.1%	1.2%	5.5%	15.7%	29.6%	70.4%	100.0%
541690	5.7%	3.9%	1.9%	0.5%	18.7%	30.7%	69.3%	100.0%
561720	18.2%	2.3%	1.2%	0.4%	10.5%	32.6%	67.4%	100.0%
561730	3.7%	0.7%	0.3%	0.4%	5.4%	10.6%	89.4%	100.0%
561990	0.4%	0.1%	0.1%	0.1%	1.7%	2.4%	97.6%	100.0%
TOTAL	3.3%	0.9%	0.5%	0.6%	5.5%	10.8%	89.2%	100.0%

Source: CHA analysis of KCATA data; Hoovers; CHA Master Directory.

To further meet the constitutional and regulatory requirement that the availability estimates that will be used to set goals are narrowly tailored, we then weighted the availability estimate for each of the aggregated industries in the NAICS codes by the share of KCATA's spending in each code. Tables 4.9 present these weights for all contracts<sup>134</sup>. Tables 4.10 presents the final estimates of the weighted averages of the individual 6-digit level availability estimates in KCATA's market area.

**Table 4.9 Share of KCATA Spending by NAICS Code**

<sup>134</sup> These weights are equivalent to the share of contract dollars presented in Table 4.6 above

<b>NAICS</b>	<b>NAICS Code Description</b>	<b>WEIGHT (Pct Share of Total Sector Dollars)</b>
236220	Commercial and Institutional Building Construction	12.30%
237110	Water and Sewer Line and Related Structures Construction	0.30%
237130	Power and Communication Line and Related Structures Construction	1.10%
237310	Highway, Street, and Bridge Construction	31.20%
238110	Poured Concrete Foundation and Structure Contractors	4.30%
238120	Structural Steel and Precast Concrete Contractors	0.40%
238140	Masonry Contractors	0.30%
238150	Glass and Glazing Contractors	0.00%
238210	Electrical Contractors and Other Wiring Installation Contractors	4.10%
238220	Plumbing, Heating, and Air-Conditioning Contractors	0.90%
238290	Other Building Equipment Contractors	0.30%
238990	All Other Specialty Trade Contractors	0.60%
336211	Motor Vehicle Body Manufacturing	6.50%
339950	Sign Manufacturing	3.10%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	0.60%
423420	Office Equipment Merchant Wholesalers	0.30%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.40%
484110	General Freight Trucking, Local	0.30%
485310	Taxi Service	5.40%
485991	Special Needs Transportation	13.20%
523110	Investment Banking and Securities Dealing	0.50%

541320	Landscape Architectural Services	0.90%
541330	Engineering Services	9.90%
541620	Environmental Consulting Services	0.30%
541690	Other Scientific and Technical Consulting Services	0.50%
561720	Janitorial Services	0.50%
561730	Landscaping Services	1.20%
561990	All Other Support Services	0.50%
TOTAL		100.00%

Source: CHA analysis of KCATA data.

**Table 4.10 Aggregated Weighted Availability  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	White Women	DBE	Non-DBE	TOTAL
TOTAL	7.8%	1.8%	1.1%	1.5%	15.6%	27.7%	72.0%	100.0%

Source: CHA analysis of KCATA data; Hoovers; CHA Master Directory.

These weighted availability estimates for federally-assisted contracts can be used by KCATA to set its DBE goal under 49 C.F.R. § 26.45(c). This is a USODT- approved method and one that has been upheld by the courts. KCATA may use the weighted availability estimates for non-federally-assisted contracts, provided below, to set goals on other projects.

Because KCATA's authority to set DBE goals is derivative – that is, it flows from federal, not its own actions – it relies upon the determination of Congress that there is a compelling interest in remedying discrimination based upon a strong basis in evidence. Therefore, it is not necessary for KCATA to find that there are disparities in its contracting activities, as discussed in Chapter II for non-federal aid projects.

## V. Analysis of Disparities in KCATA's market

### A. Introduction

A key element to determine the need for government intervention through contract goals in the sectors of the economy where KCATA procures goods and services is an analysis of the extent of disparities in those sectors independent of the agency's intervention through its contracting affirmative action programs. The courts have repeatedly held that analysis of disparities in the rates at which minority- and women-owned business enterprises ("M/WBEs") in the government's markets form businesses compared to similar non-M/WBEs, and their earnings from such businesses, are highly relevant to the determination whether the market functions properly for all firms regardless of the race or gender of their ownership.<sup>135</sup>

The courts have repeatedly held that analysis of disparities in the rates at which M/WBEs in the government's markets form businesses compared to similar non-M/WBEs, their earnings from such businesses, and their access to capital markets are highly relevant to the determination whether the market functions properly for all firms regardless of the race or gender of their ownership. These analyses contributed to the successful defense of Chicago's construction program.<sup>136</sup> As explained by the Tenth Circuit, this type of evidence

demonstrates the existence of two kinds of discriminatory barriers to minority subcontracting enterprises, both of which show a strong link between racial disparities in the federal government's disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination. The first discriminatory barriers are to the formation of qualified minority subcontracting enterprises due to private discrimination, precluding from the outset competition for public construction contracts by minority enterprises. The second discriminatory barriers are to fair competition between minority and non-minority subcontracting enterprises, again due to private discrimination, precluding existing minority firms from effectively competing for public construction contracts. The government also presents further evidence in the form of local disparity studies of minority

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<sup>135</sup> See the discussion in Chapter II of the legal standards applicable to contracting affirmative action programs.

<sup>136</sup> *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003) (holding that City of Chicago's M/WBE program for local construction contracts met compelling interest using this framework).

subcontracting and studies of local subcontracting markets after the removal of affirmative action programs... The government's evidence is particularly striking in the area of the race-based denial of access to capital, without which the formation of minority subcontracting enterprises is stymied.<sup>137</sup>

Business discrimination studies and lending studies are relevant and probative because they show a strong link between the disbursement of public funds and the channeling of those funds due to private discrimination. "Evidence that private discrimination results in barriers to business formation is relevant because it demonstrates that M/WBEs are precluded *at the outset* from competing for public construction contracts. Evidence of barriers to fair competition is also relevant because it again demonstrates that *existing* M/WBEs are precluded from competing for public contracts."<sup>138</sup> Despite the contentions of plaintiffs that possibly dozens of factors might influence the ability of any individual to succeed in business, the courts have rejected such impossible tests and held that business formation studies are not flawed because they cannot control for subjective descriptions such as "quality of education," "culture" and "religion."

For example, in unanimously upholding the USDOT DBE Program, the courts agree that disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms and the disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners are strong evidence of the continuing effects of discrimination.<sup>139</sup> The Eighth Circuit Court of Appeals took a "hard look" at the evidence Congress considered, and concluded that the legislature had

spent decades compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority-owned construction businesses, and of barriers to entry. In rebuttal, [the plaintiffs] presented evidence that the data were susceptible to multiple interpretations, but they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to and participation in highway contracts. Thus, they

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<sup>137</sup> *Adarand VII*, 228 F.3d at 1168-69 .

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*; *Western States*, 407 F.3d at 993; *Northern Contracting I*, 2004 U.S. Dist. LEXIS 3226 at \*64.

failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.<sup>140</sup>

To conduct this type of court-approved economy-wide analysis, we utilized U.S. Bureau of the Census datasets to address the central question whether firms owned by non-Whites and White women face disparate treatment in KCATA’s marketplace.<sup>141</sup>

We explored the existence of any disparities by analyzing two datasets, each of which permits examination of the issue from a unique vantage point.

- The Census Bureau’s *Survey of Business Owners* allows us to examine disparities using individual firms as the basic unit of analysis.
- The Census Bureau’s *American Community Survey* allows us to examine disparities using individual entrepreneurs as the basic unit of analysis.<sup>142</sup>

The Survey of Business Owners does not present data below a state-level of geography; hence, this analysis examines data from the state of Missouri. The American Community Survey presents data at a much smaller level of geography. These units are called Public Use Microdata Areas (PUMAs) and this study aggregated these PUMAs in order to examine economic activity in the Kansas City metropolitan area. The following counties were included in this definition of the metropolitan area:

State	County
Kansas	Johnson
Kansas	Wyandotte
Missouri	Cass
Missouri	Clay
Missouri	Clinton
Missouri	Jackson
Missouri	Lafayette
Missouri	Platte

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<sup>140</sup> *Sherbrooke*, 345 F.3d. at 970; *see also Adarand VII*, 228 F.3d at 1175 (plaintiff has not met its burden “of introducing credible, particularized evidence to rebut the government’s initial showing of the existence of a compelling interest in remedying the nationwide effects of past and present discrimination in the federal construction procurement subcontracting market.”).

<sup>141</sup> While this is often described as a “private sector analysis,” a more accurate description is an “economy-wide” analysis because expenditures by the public sector are included in the Census databases.

<sup>142</sup> Data from 2010 - 2014 American Community Survey are the most recent for a five-year period.



Missouri	Ray
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Using both data sets, we found disparities for minorities and women across most industry sectors in KCATA’s marketplace.

**B. Summary of Findings**

**1. Disparities in Firm Sales and Payroll**

One way to measure equity is to examine the share of total sales and/or payroll a group has relative to its share of total firms. Parity would be represented by the ratio of sales or payroll share over the share of total firms equaling 100% (*i.e.*, a group has 10% of total sales and comprises 10% of all firms.) A ratio that is less than 100% indicates an underutilization of a demographic group, and a ratio of more than 100% indicates an overutilization of a demographic group. Table 5.1 presents data from the Census Bureau’s 2012 Survey of Business Owners that indicate very large disparities for non-White and White women-owned firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), or the payroll of employer firms. In contrast, the firms that were not non-White and not White women-owned were overutilized using the identical metrics.<sup>143</sup>

**Table 5.1 Disparity Ratios of Firm Utilization Measures**  
**All Industries,**  
**Survey of Business Owners, 2012**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Non-whites</b>	11.7%	15.5%	66.4%
<b>White Women</b>	14.1%	19.7%	75.3%
<b>Not Non-White/Not White Women</b>	154.8%	127.4%	102.6%

Source: CHA Calculations from Survey of Business Owners

<sup>143</sup> The Survey of Business Owners data available via American Fact Finder do not permit the use of regression analysis on these results.

## 2. Disparities in Wages and Business Earnings

Another way to measure equity is to examine how the economic utilization of particular demographic groups compares to White men. Multiple regression statistical techniques allowed us to examine the impact of race and gender on economic outcome while controlling for other factors, such as education, that might impact outcomes.<sup>144</sup> Using these techniques and data from the Census Bureau’s American Community Survey, we found that Blacks, Latinos, Native Americans, Asian/Pacific Islanders, Others, and White women were underutilized relative to White men: controlling for other factors relevant to business success, wages and business earnings were lower for these groups compared to White men. We report wages and business earnings because disparities in wages and business earnings can lead to disparities in business outcomes. These findings are presented in Table 5.2. Parity would exist if the figures in Table 5.2 were 0.0%; in other words, non-Whites and White women would be utilized identical to White men. When the Table indicates that the wage differential between Blacks and White men is -32.9%, for example, this means that wages received by Blacks are 32.9% less than wages received by similar White men. Because of these disparities, the rates at which these groups formed businesses were lower than the business formation rate of similarly situated White men.

**Table 5.2 Economic Outcome Differentials of Minorities and White Women  
Relative to White Males  
All Industries,  
American Community Survey, 2010 - 2014**

Demographic Group	Wages Differentials Relative to White Men (% Change)	Business Earnings Relative to White Men (% Change)
<b>Black</b>	-32.90%***	-72.70%***
<b>Latino</b>	-11.60%***	-33.10%*
<b>Native American</b>	-45.10%***	-27.70%
<b>Asian/Pacific Islander</b>	-29.30%***	-64.20%*
<b>Other</b>	-18.70%	-17.50%
<b>White Women</b>	-35.40%***	-75.80%***

<sup>144</sup> See Appendix A for more information on multiple regression statistical analysis.

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\*\* Indicates statistical significance at the 0.01 level

\* Indicates statistical significance at the 0.05 level

### 3. Disparities in Business Formation

A third method of exploring differences in economic outcomes is to examine the rate at which different demographic groups form businesses. We developed these business formation rates using data from the U.S. Bureau of the Census' American Community Survey. Table 5.3a presents these results. The Table indicates that White men have higher business formation rates compared to non-Whites and White women.<sup>145</sup> Table 5.3b explores the same question but utilizes multiple regression analysis to control for important factors beyond race and gender. This Table indicates that non-Whites and White women are less likely to form businesses compared to similarly situated White men. For instance, Blacks are 4.4% less likely to form a business compared to White men after other key explanatory variables are controlled. These Tables reinforce the notion that there are significant differences in the rate of non-Whites and White women to form business compared to the rate of White men. These differences support the inference that minority- and women-owned business enterprises ("M/WBEs") suffer major barriers to equal access to entrepreneurial opportunities in the overall Kansas City Metropolitan area economy.

**Table 5.3a Business Formation Rates**  
**All Industries,**  
**American Community Survey, 2010 - 2014**

<b>Demographic Group</b>	<b>Business Formation Rates</b>
<b>Black</b>	3.98%
<b>Latino</b>	6.42%
<b>Native American</b>	6.12%
<b>Asian/Pacific Islander</b>	6.08%
<b>Other</b>	---
<b>Non-White</b>	5.18%

<sup>145</sup> Many times, there were not sufficient observations in the data to conduct a reliable statistical analysis. In these instances, the tables will contain the symbol "---".

<b>White Women</b>	6.59%
<b>Non-White Male</b>	6.07%
<b>White Male</b>	9.74%

Source: CHA calculations from the American Community Survey

--- There were insufficient observations to conduct a reliable statistical analysis

**Table 5.3b Business Formation Probabilities Relative to White Males**  
**All Industries,**  
**American Community Survey, 2010 - 2014**

<b>Demographic Group</b>	<b>Probability of Forming a Business Relative to White Men</b>
<b>Black</b>	-4.36%
<b>Latino</b>	-3.08%
<b>Native American</b>	-1.33%
<b>Asian/Pacific Islander</b>	-1.87%
<b>Other</b>	4.52%
<b>White Women</b>	-1.96%

Source: CHA calculations from the American Community Survey

Overall, the results of our analyses of the Missouri economy demonstrate that minorities and White women continue to face race- and gender-based barriers to equal opportunities as firm owners, and to equal opportunities to earn wages and salaries that impact their ability to form firms and to earn income from those firms. While not dispositive, this suggests that absent some affirmative intervention in the current operations of the Kansas City Metropolitan area marketplace, KCATA will function as a passive participant in these potentially discriminatory outcomes.<sup>146</sup>

### **C. Disparate Treatment in the Marketplace: Evidence from the Census Bureau’s 2012 Survey of Business Owners**

Every five years, the Census Bureau administers the *Survey of Business Owners* (“SBO”) to collect data on particular characteristics of businesses that report to the Internal Revenue Service receipts of \$1,000 or more.<sup>147</sup> The 2012 SBO was

<sup>146</sup> Various appendices to this Chapter contain additional data and methodological explanations. Appendix A provides a “Further Explanation of the Multiple Regression Analysis.” Appendix B provides a “Further Explanation of Probit Regression Analysis.” Appendix C discusses the meaning and role of “Significance Levels.” Appendix D provides detailed “Additional Data from the Analysis of the Survey of Business Owners.” Appendix E provides “Additional Data from the Analysis of American Community Survey.”

<sup>147</sup> See <http://www.census.gov/econ/sbo/about.html> for more information on the Survey.

released on December 15, 2015, so our analysis reflects the most current data available. The SBO collects demographic data on business owners disaggregated into the following groups:<sup>148,149</sup>

- Non-Hispanic Blacks
- Latinos
- Non-Hispanic Native Americans
- Non-Hispanic Asians
- Non-Hispanic White Women
- Non-Hispanic White Men
- Firms Equally Owned by Non-Whites and Whites
- Firms Equally Owned by Men and Women
- Firms where the ownership could not be classified
- Publicly-Owned Firms

For purposes of this analysis, the first four groups were aggregated to form a Non-White category. Since our interest is the treatment of non-White-owned firms and White women-owned firms, the last five groups were aggregated to form one category. To ensure this aggregated group is described accurately, we label this group “not non-White/non-White women”. While this label is cumbersome, it is important to be clear this group includes firms whose ownership extends beyond White men, such as firms that are not classifiable or that are publicly traded and thus have no racial ownership.

In addition to the ownership demographic data, the Survey also gathers information on the sales, number of paid employees, and payroll for each reporting firm.

To examine those sectors in which KCATA purchases, we analyzed economy-wide SBO data on the following sectors:

- Construction
- Professional, Scientific and Technical Services
- Information Technology
- Goods

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<sup>148</sup> Race and gender labels reflect the categories used by the Census Bureau.

<sup>149</sup> For expository purposes, the adjective “Non-Hispanic” will not be used in this chapter; the reader should assume that any racial group referenced does not include members of that group who identify ethnically as Latino.

- Services

However, the nature of the SBO data – a sample of all businesses, not the entire universe of all businesses – required some adjustments. In particular, we had to define the sectors at the 2-digit North American Industry Classification System (“NAICS”) code level and therefore our sector definitions do not exactly correspond to the definitions used to analyze KCATA’s contract data in Chapter IV, where we are able to determine sectors at the 6-digit NAICS code level. At a more detailed level, the number of firms sampled in particular demographic and sector cells may be so small that the Census Bureau does not report the information, either to avoid disclosing data on businesses that can be identified or because the small sample size generates unreliable estimates of the universe.<sup>150</sup> We therefore report 2-digit data.

Table 5.4 presents information on which NAICS codes were used to define each sector.

**Table 5.4 2-Digit NAICS Code Definition of Sector**

SBO Sector Label	2-Digit NAICS Codes
<b>Construction</b>	23
<b>Professional, Scientific, and Technical Services</b> <sup>151</sup>	54
<b>Information</b>	51
<b>Goods</b>	31, 42, 44
<b>Services</b>	48, 52, 53, 56, 61, 62, 71, 72, 81

The balance of this Chapter section reports the findings of the SBO analysis. For each sector, we present data describing the sector and report disparities within the sector.

### 1. All SBO Industries

For a baseline analysis, we examined all industries in the state of Missouri. Table 5.5 presents data on the percentage share that each group has of the total of each of the following six business outcomes:

<sup>150</sup> Even with these broad sector definitions, there was an insufficient number of Native American owned firms to perform our analysis on this demographic group. This limitation also arose for Latinos and Asians in the Services sector.

<sup>151</sup> This sector includes (but is broader than just) construction-related services. It is impossible to narrow this category to construction-related services without losing the capacity to conduct race and gender specific analyses.

- The number of all firms
- The sales and receipts of all firms
- The number of firms with employees (employer firms)
- The sales and receipts of all employer firms
- The number of paid employees
- The annual payroll of employer firms

Panel A of Table 5.5 presents data for the four basic non-White racial groups:

- Black
- Latino
- Native American
- Asian

Panel B of Table 5.5 presents data for six types of firm ownership:

- Non-white
- White Women
- White Men
- Equally non-Whites and Whites
- Equally women and men
- Firms that are publicly owned or not classifiable

Categories in the second panel are mutually exclusive. Hence, firms that are non-White and equally owned by men and women are classified as non-White and firms that are equally owned by non-Whites and Whites and equally owned by men and women are classified as equally owned by non-Whites and Whites.<sup>152</sup>

**Table 5.5 Percentage Demographic Distribution of Sales and Payroll Data  
All Industries, 2012**

	Total Number of Firms (All Firms)	Sales & Receipts - All Firms (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts - All Firms with Paid Employees (Employer Firms)	Number of Paid Employees	Annual payroll (\$1,000)

<sup>152</sup> Some of the figures in Panel B may not correspond to the related figures in Panel A because of discrepancies in how the SBO reports the data

				(\$1,000)		
<b>Panel A: Distribution of Non-White Firms</b>						
<b>Black</b>	7.30%	0.40%	3.09%	0.32%	0.88%	0.69%
<b>Latino</b>	1.79%	0.29%	1.19%	0.26%	0.57%	0.37%
<b>Native American</b>	0.69%	0.07%	0.40%	0.05%	0.11%	0.07%
<b>Asian</b>	2.61%	0.68%	3.38%	0.62%	1.26%	0.71%
<b>Panel B: Distribution of All Firms</b>						
<b>Non-White</b>	12.42%	1.46%	8.13%	1.26%	2.84%	1.89%
<b>White Women</b>	26.35%	3.72%	16.96%	3.34%	5.89%	4.43%
<b>White Men</b>	47.22%	27.67%	51.64%	26.88%	31.16%	28.63%
<b>Equally Non-White &amp; White</b>	0.63%	0.11%	0.64%	0.09%	0.23%	0.14%
<b>Equally Women &amp; Men</b>	11.05%	3.95%	14.97%	3.67%	6.30%	3.96%
<b>Firms Not Classifiable</b>	2.34%	63.09%	7.67%	64.76%	53.58%	60.94%
<b>All Firms</b>	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Source: CHA calculations from Survey of Business Owners

Since the central issue is the possible disparate treatment of non-White and White women firms, Table 5.6 re-aggregates the last four groups— White men; equally non-White and White; equally women and men; and firms not classifiable— into one group: Not Non-White/Not White Women.<sup>153</sup> We then present the shares each group has of the six indicators of firm utilization. These data were then used to calculate three disparity ratios, presented in Table 5.7:

- Ratio of sales and receipts share for all firms over the share of total number of all firms.
- Ratio of sales and receipts share for employer firms over the share of total number of employer firms.
- Ratio of annual payroll share over the share of total number of employer firms.

<sup>153</sup> Again, while a cumbersome nomenclature, it is important to remain clear that this category includes firms other than those identified as owned by White men.



For example, the disparity ratio of sales and receipts share for all firms over the share of total number of all firms for Black firms is 5.5% (as shown in Table 5.7). This is derived by taking the Black share of sales and receipts for all firms (0.40%) and dividing it by the Black share of total number of all firms (7.30%) that are presented in Table 5.6. If Black-owned firms earned a share of sales equal to their share of total firms, the disparity would have been 100%. An index less than 100 percent indicates that a given group is being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission’s “80 percent” rule that a ratio less than 80 percent presents a *prima facie* case of discrimination.<sup>154</sup> All disparity ratios for non-White firms and White women firms are below this threshold.<sup>155</sup>

**Table 5.6 Demographic Distribution of Sales and Payroll Data – Aggregated Groups**  
**All Industries, 2012**

	Total Number of Firms (All Firms)	Sales & Receipts - All Firms (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts - All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
<b>Black</b>	7.30%	0.40%	3.09%	0.32%	0.88%	0.69%
<b>Latino</b>	1.79%	0.29%	1.19%	0.26%	0.57%	0.37%
<b>Native American</b>	0.69%	0.07%	0.40%	0.05%	0.11%	0.07%
<b>Asian</b>	2.61%	0.68%	3.38%	0.62%	1.26%	0.71%
<b>Panel B: Distribution of All Firms</b>						
<b>Non-White</b>	12.42%	1.46%	8.13%	1.26%	2.84%	1.89%
<b>White Women</b>	26.35%	3.72%	16.96%	3.34%	5.89%	4.43%
<b>Not Non-White/Not</b>	61.24%	94.82%	74.91%	95.40%	91.26%	93.68%

<sup>154</sup> 29 C.F.R. § 1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).

<sup>155</sup> Because the data in Tables 5.6 and 5.7 are presented for descriptive purposes, significance tests on these results are not conducted.

<b>White Women</b>						
<b>All Firms</b>	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Source: CHA calculations from Survey of Business Owners

**Table 5.7 Disparity Ratios of Firm Utilization Measures**  
**All Industries, 2012**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
<b>Black</b>	5.5%	10.2%	77.9%
<b>Latino</b>	16.2%	21.7%	64.6%
<b>Native American</b>	9.7%	13.1%	64.0%
<b>Asian</b>	26.0%	18.2%	56.3%
<b>Panel B: Disparity Ratios for All Firms</b>			
<b>Non-Whites</b>	11.7%	15.5%	66.4%
<b>White Women</b>	14.1%	19.7%	75.3%
<b>Not Non-White/Not White Women</b>	154.8%	127.4%	102.6%
<b>All Firms</b>	100.00%	100.00%	100.00%

Source: CHA calculations from Survey of Business Owners

This same approach was used to examine the key sectors in which KCATA purchases. The underlying data on the various industries of construction; professional, scientific and technical services; information technology; and services are presented in Appendix D to this Chapter. The following are summaries of the results of the disparity analyses.

## 2. Construction

Of the 17 disparity ratios for non-White firms and White women firms presented in Table 5.8, 10 fall under the 80% threshold.<sup>156</sup>

**Table 5.8 Disparity Ratios – Aggregated Groups**  
**Construction, 2012**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
<b>Black</b>	27.11%	107.72%	96.53%
<b>Latino</b>	25.88%	45.88%	S
<b>Native American</b>	56.78%	64.62%	93.13%
<b>Asian</b>	22.00%	74.43%	62.08%
<b>Panel B: Disparity Ratios for All Firms</b>			
<b>Non-White</b>	29.07%	67.14%	88.14%
<b>White Women</b>	126.24%	98.65%	90.66%
<b>Not Non-White/Not White Women</b>	103.38%	101.08%	101.54%
<b>All Firms</b>	100.00%	100.00%	100.00%

Source: CHA calculations from Survey of Business Owners

## 3. Professional, Scientific and Technical Services

Of the 18 disparity ratios for non-White firms and White women firms presented in Table 5.9, 15 fall under the 80% threshold.

<sup>156</sup> The values of “S” reflect that the SBO did not publish data in these instances because it was “withheld because estimate did not meet publication standards”. See the Disclosure section under Methodology at <http://www.census.gov/econ/sbo/methodology.html>.

**Table 5.9 Disparity Ratios – Aggregated Groups  
Professional, Scientific, and Technical Services, 2012**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
<b>Black</b>	20.2%	46.4%	107.0%
<b>Latino</b>	25.1%	34.1%	88.9%
<b>Native American</b>	31.8%	25.8%	45.6%
<b>Asian</b>	40.0%	38.3%	92.7%
<b>Panel B: Disparity Ratios for All Firms</b>			
<b>Non-White</b>	27.5%	36.9%	91.8%
<b>White Women</b>	20.6%	22.5%	63.2%
<b>Not Non-White/Not White Women</b>	147.2%	128.1%	103.7%
<b>All Firms</b>	100.0%	100.0%	100.0%

Source: CHA calculations from Survey of Business Owners

#### 4. Information

Of the 5 disparity ratios for non-White firms and White women firms presented in Table 5.9, all fall under the 80% threshold.

**Table 5.10 Disparity Ratios – Aggregated Groups  
Information, 2012**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
<b>Black</b>	1.7%	S	S
<b>Latino</b>	7.2%	S	S
<b>Native American</b>	0.5%	S	S
<b>Asian</b>	S	S	S

<b>Panel B: Disparity Ratios for All Firms</b>			
<b>Non-White</b>	2.6%	S	S
<b>White Women</b>	2.9%	S	S
<b>Not Non-White/Not White Women</b>	148.3%	S	S
		S	S
<b>All Firms</b>	100.0%	S	S

Source: CHA calculations from Survey of Business Owners

## 5. Services

Of the available 6 disparity ratios for non-White firms and White women firms presented in Table 5.11, all fall below the 80% threshold.

**Table 5.11 Disparity Ratios – Aggregated Groups**

**All Services, 2012**

	<b>Ratio of Sales to Number of Firms (All Firms)</b>	<b>Ratio of Sales to Number of Firms (Employer Firms)</b>	<b>Ratio of Payroll to Number of Employer Firms</b>
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
<b>Black</b>	7.1%	S	S
<b>Latino</b>	24.1%	S	S
<b>Native American</b>	11.5%	S	S
<b>Asian</b>	30.6%	S	S
<b>Panel B: Disparity Ratios for All Firms</b>			
<b>Non-White</b>	14.6%	S	S
<b>White Women</b>	15.2%	S	S
<b>Not Non-White/Not White Women</b>	168.7%	S	S
<b>All Firms</b>	100.0%	S	S

Source: CHA calculations from Survey of Business Owners

## 6. Goods

Of the 18 disparity ratios for non-White firms and White women firms presented in Table 5.12, 14 fall under the 80% threshold.

**Table 5.12 Disparity Ratios – Aggregated Groups**  
**Goods, 2012**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
<b>Black</b>	7.50%	55.93%	108.54%
<b>Latino</b>	19.43%	39.52%	76.85%
<b>Native American</b>	7.85%	10.74%	82.58%
<b>Asian</b>	20.25%	19.35%	80.75%
<b>Panel B: Disparity Ratios for All Firms</b>			
<b>Non-White</b>	16.26%	23.75%	153.53%
<b>White Women</b>	13.66%	20.57%	79.48%
<b>Not Non-White/Not White Women</b>	132.84%	117.34%	99.70%
<b>All Firms</b>	100.00%	100.00%	100.00%

Source: CHA calculations from Survey of Business Owners

### **D. Disparate Treatment in the Marketplace: Evidence from the Census Bureau's 2010 - 2014 American Community Survey**

As discussed in the beginning of this Chapter, the key question is whether firms owned by non-Whites and White women face disparate treatment in the marketplace without the intervention of KCATA's DBE program.

In the previous section, we explored this question using SBO data. In this section, we use the Census Bureau's *American Community Survey* data to address other aspects of this question. One element asks if there exist demographic differences in the wage and salary income received by private sector workers. Beyond the issue of bias in the incomes generated in the private sector, this exploration is important for the issue of possible variations in the rate of business formation by

different demographic groups. One of the determinants of business formation is the pool of financial capital at the disposal of the prospective entrepreneur. The size of this pool is related to the income level of the individual either because the income level impacts the amount of personal savings that can be used for start-up capital or the income level affects one's ability to borrow funds. If particular demographic groups receive lower wages and salaries then they would have access to a smaller pool of financial capital, and thus reduce the likelihood of business formation.

The *American Community Survey* ("ACS") *Public Use Microdata Sample* ("PUMS") is useful in addressing these issues. The ACS is an annual survey of 1 percent of the population and the PUMS provides detailed information at the individual level. In order to obtain robust results from our analysis, we use the file that combines data for 2010 through 2014, the most recent available.<sup>157</sup> With this rich data set, our analysis can establish with greater certainty any causal links between race, gender and economic outcomes.

Often, the general public sees clear associations between race, gender, and economic outcomes and assumes this association reflects a tight causal connection. However, economic outcomes are determined by a broad set of factors, including, but extending beyond, race and gender. To provide a simple example, two people who differ by race or gender may receive different wages. This difference may simply reflect that the individuals work in different industries. If this underlying difference is not known, one might assert the wage differential is the result of the race or gender difference. To better understand the impact of race or gender on wages, it is important to compare individuals of different races or genders who work in the same industry. Of course, wages are determined by a broad set of factors beyond race, gender, and industry. With the ACS PUMS, we have the ability to include a wide range of additional variables such as age, education, occupation, and state of residence.

We employ a multiple regression statistical technique to process this data. This methodology allows us to perform two analyses: an estimation of how variations in certain characteristics (called independent variables) will impact the level of some particular outcome (called a dependent variable), and a determination of how confident we are that the estimated variation is statistically different from zero. We have provided more detail on this technique in Appendix A.

With respect to the first result of regression analysis, we will examine how variations in the race, gender, and industry of individuals impact the wages and other economic outcomes received by individuals. The technique allows us to determine the effect of changes in one variable, assuming that the other determining variables are the same. That is, we compare individuals of different

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<sup>157</sup> For more information about the ACS PUMS, please see <http://www.census.gov/acs/>.

racess, but of the same gender and in the same industry; or we compare individuals of different genders, but of the same race and the same industry; or we compare individuals in different industries, but of the same race and gender. We are determining the impact of changes in one variable (*e.g.*, race, gender or industry) on another variable (wages), “controlling for” the movement of any other independent variables.

With respect to the second result of regression analysis, this technique also allows us to determine the statistical significance of the relationship between the dependent variable and independent variable. For example, the relationship between gender and wages might exist but we find that it is not statistically different from zero. In this case, we are not confident that there is not any relationship between the two variables. If the relationship is not statistically different from zero, then a variation in the independent variable has no impact on the dependent variable. The regression analysis allows us to say with varying degrees of statistical confidence that a relationship is different from zero. If the estimated relationship is statistically significant at the 0.05 level, that indicates we are 95% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.01 level, that indicates we are 99% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.001 level, that indicates we are 99.9% confident that the relationship is different from zero.<sup>158</sup>

In the balance of this section, we report data on the following sectors:

- All Industries
- Construction
- Construction-Related Services
- Information Technology
- Services
- Goods

Each sub-section first reports data on the share of a demographic group that forms a business (business formation rates); the probabilities that a demographic group will form a business relative to White men (business formation probabilities); the differences in wages received by a demographic group relative to White men (wage differentials); and the differences in business earnings received by a demographic group relative to White men (business earnings differentials).

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<sup>158</sup> Most social scientists do not endorse utilizing a confidence level of less than 95%. Appendix C explains more about statistical significance.



## 1. All Industries in Kansas City Metropolitan Area

### a. Business Formation Rates

Table 5.13 presents business formation rates in the Kansas City metropolitan area economy by demographic groups.

**Table 5.13 Business Formation Rates,  
Kansas City Metro Area  
All Industries, 2010 - 2014**

<b>Demographic Group</b>	<b>Business Formation Rates</b>
<b>Black</b>	3.98%
<b>Latino</b>	6.42%
<b>Native American</b>	6.12%
<b>Asian/Pacific Islander</b>	6.08%
<b>Other</b>	---
<b>Non-White</b>	5.18%
<b>White Women</b>	6.59%
<b>Non-White Male</b>	6.07%
<b>White Male</b>	9.74%

Source: CHA calculations from the American Community Survey

White males have a higher rate of business formation than Non-White males. However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed.<sup>159</sup> The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

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<sup>159</sup> Probit is a special type of regression technique where the dependent variable only has two possible values: 0 or 1. For instance, the unit of observation is an individual and he/she forms a business or does not form a business. In the former case, the value of the dependent variable would be 1 while in the latter case, the value of the dependent variable would be 0. This is in contrast to the multiple regression technique discussed earlier where the dependent variable such as wages might have any non-negative value. For a more extensive discussion of probit regression analysis, see Appendix B.

Table 5.14 presents the results of the probit analysis for the Kansas City metropolitan area economy.

**Table 5.14 Business Formation Probability Differentials  
for Selected Groups Relative to White Men  
All Industries, 2010 - 2014**

Demographic Group	Probability of Forming a Business Relative to White Men
<b>Black</b>	-4.36%***
<b>Latino</b>	-3.08%***
<b>Native American</b>	-1.33%***
<b>Asian/Pacific Islander</b>	-1.87%***
<b>Other</b>	4.52%***
<b>White Women</b>	-1.96%***

Source: CHA calculations from the American Community Survey  
\*\*\* Indicates statistical significance at the 0.001 level

The analysis indicates that (with the exception of Other) non-Whites and White women in Kansas City metropolitan area are less likely than White men to form businesses even after controlling for key factors. The reduction in probability ranges from 1.33% to 4.36%. Once again, these estimates are statistically significant at the 99.1 level.

**b. Differences in Wage and Salary Incomes**

Table 5.15 presents the findings from the wage and salary income regression analysis examining the Kansas City metropolitan area economy. This indicates the wage differential for selected demographic groups in Kansas City metropolitan area relative to White men.

**Table 5.15 Wage Differentials  
for Selected Groups Relative to White Men  
All Industries, 2010 - 2014**

Demographic Group	Wages Relative to White Men (% Change)
<b>Black</b>	-32.90%***
<b>Latino</b>	-11.60%***
<b>Native American</b>	-45.10%***

<b>Asian/Pacific Islander</b>	-29.30%***
<b>Other</b>	-18.70%
<b>White Women</b>	-35.40%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

Holding constant factors such as education, age, occupation, and industry, Blacks, Latinos, White women, Asian/Pacific Islanders and Others in Kansas City metropolitan area earn less than White men in the overall economy. Estimates of the coefficients for Black, Latino, Native American, Asian/Pacific Islander and White Women are statistically significant at the 0.001 level. For example, we are 99.9% confident that wages for Blacks in Kansas City metropolitan area (after controlling for numerous other factors) are 32.9% less than those received by White men.

### c. Differences in Business Earnings

The same approach was used to investigate if there were differences in business earnings received by Non-Whites and White women entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 5.16 presents these findings.

**Table 5.16 Business Earnings Differentials  
for Selected Groups Relative to White Men  
All Industries, 2010 - 2014**

<b>Demographic Group</b>	<b>Earnings Relative to White Men (% Change)</b>
<b>Black</b>	-72.70%***
<b>Latino</b>	-33.10%*
<b>Native American</b>	-27.70%
<b>Asian/Pacific Islander</b>	-64.20%*
<b>Other</b>	-17.50%
<b>White Women</b>	-75.80%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\* Indicates statistical significance at the 0.05 level

Two of the estimates of the coefficients for these variables were found to be statistically significant at the 0.001 level. Two of the estimates of the coefficients for these variables were found to be statistically significant at the 0.05 level. The statistically significant differentials in business earnings received by Non-Whites and White women compared to White males ranged from -27.7% to -75.8%.

**d. Conclusion**

Using descriptive analysis, Table 5.13 shows that differentials exist between the business formation rates by non-Whites and White women and White males across industry sectors. Table 5.14 presents the results of a further statistical analysis, which indicated that even after taking into account potential mitigating factors, the differential still exists. Tables 5.15 and 5.16 present data indicating differentials in wages and business earnings after controlling for possible explanatory factors. These analyses support the conclusion that barriers to business success do affect non-Whites and White women entrepreneurs.

**2. The Construction Industry in Kansas City Metropolitan area**

**a. Business Formation Rates**

Table 5.17 presents business formation rates in the Kansas City metropolitan area construction industry for selected demographic groups.

**Table 5.17 Business Formation Rates,  
Kansas City Metro Area  
Construction, 2010 - 2014**

<b>Demographic Group</b>	<b>Business Formation Rates</b>
<b>Black</b>	15.52%
<b>Latino</b>	18.31%
<b>Native American</b>	---
<b>Asian/Pacific Islander</b>	---
<b>Other</b>	---
<b>Non-White</b>	18.10%
<b>White Women</b>	13.57%
<b>Non-White Male</b>	16.92%
<b>White Male</b>	22.08%

Source: CHA calculations from the American Community Survey

White males have a higher rate of business formation than non-White males where there were sufficient observations to make a statistical inference. However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed. The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

Table 5.18 presents the results of the probit analysis for the construction industry in Kansas City metropolitan area.

**Table 5.18 Business Formation Probability Differentials  
for Selected Groups Relative to White Men  
Construction, 2010 - 2014**

Demographic Group	Probability of Forming a Business Relative to White Men
<b>Black</b>	-1.73%***
<b>Latino</b>	-0.59%***
<b>Native American</b>	-4.09%***
<b>Asian/Pacific Islander</b>	-6.53%***
<b>Other</b>	---
<b>White Women</b>	-2.28%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

The analysis indicates that non-Whites and White women in Kansas City metropolitan area are less likely to form construction businesses compared to White men even after controlling for key factors. The reduction in probability ranges from 0.59% to 6.53%. Once again, these estimates are statistically significant at the 99.1 level.

**b. Differences in Wage and Salary Incomes**

Table 5.19 presents the findings from the wage and salary income regression analysis examining the construction industry in the Kansas City metropolitan area. This indicates the wage differential for selected demographic groups in Kansas City metropolitan area relative to White men.

**Table 5.19 Wage Differentials  
for Selected Groups Relative to White Men  
Construction, 2010 - 2014**

Demographic Group	Wages Relative to White Men (% Change)
<b>Black</b>	-48.50%***
<b>Latino</b>	-15.90%*
<b>Native American</b>	30.80%
<b>Asian/Pacific Islander</b>	-15.90%
<b>Other</b>	---
<b>White Women</b>	-55.30%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\* Indicates statistical significance at the 0.05 level

Holding constant factors such as education, age, occupation, and industry, Blacks, Latinos, White women, and Asian/Pacific Islanders in Kansas City metropolitan area earn less than White men in the construction industry. The differential ranges between 15.9% less and 55.3% less. Estimates of the coefficients for Black and White Women are statistically significant at the 0.001 level. The coefficient for Latino and statistically significant at the 0.05 level and the coefficient for Asian/Pacific Islander is not statistically significant.

**c. Differences in Business Earnings**

The same approach was used to investigate if there were differences in business earnings received by non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 5.20 presents these findings.

**Table 5.20 Business Earnings Differentials  
for Selected Groups Relative to White Men  
Construction, 2010 - 2014**

Demographic Group	Earnings Relative to White Men (% Change)
<b>Black</b>	-57.70%
<b>Latino</b>	-10.20%

<b>Native American</b>	-136.00%
<b>Asian/Pacific Islander</b>	-125.00%
<b>Other</b>	---
<b>White Women</b>	25.20%

Source: CHA calculations from the American Community Survey

\*\* Indicates statistical significance at the 0.01 level

None of the coefficients are significantly statistically different from zero.

#### **d. Conclusion**

Using descriptive analysis, Table 5.17 shows that differentials exist between the business formation rates by non-White males and White males. Table 5.18 presents the results of a further statistical analysis, which indicated that even after taking into account potential mitigating factors, the differential still exists. Table 5.19 presents data indicating wage differentials in wage and Table 5.20 indicates no statistically significant differences in business earnings.

### **3. The Construction-Related Services Industry in Kansas City Metropolitan Area**

#### **a. Business Formation Rates**

Table 5.21 presents business formation rates in the construction-related services industry in Kansas City metropolitan area for selected demographic groups.

**Table 5.21 Business Formation Rates,  
Kansas City Metropolitan Area  
Construction-Related Services, 2010 - 2014**

<b>Demographic Group</b>	<b>Business Formation Rates</b>
<b>Black</b>	---
<b>Latino</b>	---
<b>Native American</b>	No observations
<b>Asian/Pacific Islander</b>	---
<b>Other</b>	---
<b>Non-White</b>	---
<b>White Women</b>	1.04%

<b>Non-White Male</b>	---
<b>White Male</b>	3.89%

Source: CHA calculations from the American Community Survey

A limited number of observations hampered the studies' ability to conduct a detailed analysis in this sector. There were no Native Americans in this sector and the small number of Black, Latino, Asians, and Others meant that reliable estimates for specific groups could not be made. White males have a higher rate of business formation than White females. However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed. The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

Table 5.22 presents the results of the probit analysis for the construction-related services industry in Kansas City metropolitan area.

**Table 5.22 Business Formation Probability Differentials  
for Selected Groups Relative to White Men  
Construction-related Services, 2010 - 2014**

<b>Demographic Group</b>	<b>Probability of Forming a Business Relative to White Men</b>
<b>Black</b>	---
<b>Latino</b>	---
<b>Native American</b>	---
<b>Asian/Pacific Islander</b>	---
<b>Other</b>	---
<b>White Women</b>	-0.46%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

Because of sample size concerns, the only valid analysis could examine business formation probabilities for White Women; here, White Women were 0.46% less likely to form a business relative to White Men. This estimate was statistically significant at the 99.1 level.



**b. Differences in Wage and Salary Incomes**

Table 5.23 presents the findings from the wage and salary income regression analysis examining the construction-related services industry in Kansas City metropolitan area. This indicates the wage differential for selected demographic groups in Kansas City metropolitan area relative to White men.

**Table 5.23 Wage Differentials  
for Selected Groups Relative to White Men  
Construction-Related Services, 2010 - 2014**

Demographic Group	Wages Relative to White Men (% Change)
Black	---
Latino	---
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	-35.20%***

Source: CHA calculations from the American Community Survey  
\*\*\* Indicates statistical significance at the 0.001 level

Because of sample size concerns, the only valid analysis could examine wage differentials for White Women; here, White Women earn 35.2% less than White Men. This estimate was statistically significant at the 99.1 level.

**c. Differences in Business Earnings**

The same approach was used to investigate if there were differences in business earnings received by non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 5.24 presents these findings.

**Table 5.24 Business Earnings Differentials  
for Selected Groups Relative to White Men  
Construction-related Services, 2010 - 2014**

Demographic Group	Earnings Relative to White Men (% Change)
Black	---
Latino	---
Native American	---

<b>Asian/Pacific Islander</b>	---
<b>Other</b>	---
<b>White Women</b>	-73.60%**

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

Because of sample size concerns, the only valid analysis could examine business earnings differentials for White Women; here, business earnings for White Women were 73.6% less than White Men. This estimate was statistically significant at the 99.1 level.

#### **d. Conclusion**

Because of the limited number of observations in this sector and subsequent sample size concerns, reliable estimates could only be conducted for White women. For this group, the analysis found statistically significant disadvantages relative to White men.

### **4. The Information Technology Industry in Kansas City Metropolitan Area**

#### **a. Business Formation Rates**

Table 5.25 presents business formation rates in the information technology industry in Kansas City metropolitan area for selected demographic groups.

**Table 5.25 Business Formation Rates,  
Kansas City Metro Area  
Information Technology, 2010 - 2014**

<b>Demographic Group</b>	<b>Business Formation Rates</b>
<b>Black</b>	---
<b>Latino</b>	---
<b>Native American</b>	---
<b>Asian/Pacific Islander</b>	---
<b>Other</b>	---
<b>Non-White</b>	---
<b>White Women</b>	3.36%
<b>Non-White Male</b>	---
<b>White Male</b>	5.02%

Source: CHA calculations from the American Community Survey

Similar to the Construction-related Services sector, a limited number of observations in the Information Technology sector hampered the studies' ability to conduct a detailed analysis in this sector. There were no Native Americans in this sector and the small number of Black, Latino, Asians, and Others meant that reliable estimates for specific groups could not be made. White males have a higher rate of business formation than White females. However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed. The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

Table 5.26 presents the results of the probit analysis for the information technology industry in Kansas City metropolitan area.

**Table 5.26 Business Formation Probability Differentials for Selected Groups Relative to White Men Information Technology, 2010 - 2014**

Demographic Group	Probability of Forming a Business Relative to White Men
<b>Black</b>	---
<b>Latino</b>	---
<b>Native American</b>	---
<b>Asian/Pacific Islander</b>	---
<b>Other</b>	---
<b>White Women</b>	-1.29%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

Because of sample size concerns, the only valid analysis could examine business formation probabilities for White Women; here, White Women were 01.29% less likely to form a business relative to White Men. This estimate was statistically significant at the 99.1 level.

**b. Differences in Wage and Salary Incomes**

Table 5.27 presents the findings from the wage and salary income regression analysis examining the information technology industry in the Kansas City metropolitan area. This indicates the wage differential for selected demographic groups in the Kansas City metropolitan area relative to White men.

**Table 5.27 Wage Differentials  
for Selected Groups Relative to White Men  
Information Technology, 2010 - 2014**

Demographic Group	Wages Relative to White Men (% Change)
Black	---
Latino	---
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	-14.00%**

\*\*\* Indicates statistical significance at the 0.001 level  
Source: CHA calculations from the American Community Survey

Because of sample size concerns, the only valid analysis could examine wage differentials for White Women; here, White Women earn 14.0%% less than White Men. This estimate was statistically significant at the 99.1 level.

**c. Differences in Business Earnings**

The same approach was used to investigate if there were differences in business earnings received by non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 5.28 presents these findings.

**Table 5.28 Business Earnings Differentials  
for Selected Groups Relative to White Men  
Information Technology, 2010 - 2014**

Demographic Group	Earnings Relative to White Men (% Change)
Black	---
Latino	---
Native American	---

<b>Asian/Pacific Islander</b>	---
<b>Other</b>	---
<b>White Women</b>	-10.60%

Source: CHA calculations from the American Community Survey

\*\* Indicates statistical significance at the 0.01 level

\* Indicates statistical significance at the 0.05 level

Because of sample size concerns, the only valid analysis could examine business earnings differentials for White Women; here, business earnings for White Women were 10.6% less than White Men. This estimate was statistically significant at the 99.1 level.

#### **d. Conclusion**

Because of the limited number of observations in this sector and subsequent sample size concerns, reliable estimates could only be conducted for White women. For this group, the analysis found statistically significant disadvantages relative to White men.

### **5. The Services Industry in Kansas City Metropolitan Area**

#### **a. Business Formation Rates**

Table 5.29 presents business formation rates in the services industry in Kansas City metropolitan area for selected demographic groups.

**Table 5.29 Business Formation Rates,  
Kansas City Metro Area  
Services, 2010 - 2014**

<b>Demographic Group</b>	<b>Business Formation Rates</b>
<b>Black</b>	4.48%
<b>Latino</b>	5.60%
<b>Native American</b>	---
<b>Asian/Pacific Islander</b>	5.58%
<b>Other</b>	---
<b>Non-White</b>	5.02%

<b>White Women</b>	7.29%
<b>Non-White Male</b>	6.48%
<b>White Male</b>	10.17%

Source: CHA calculations from the American Community Survey

White males have a higher rate of business formation than non-White males. (Sample size issues meant that analyses could not be conducted for Native Americans and Others.) However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed. The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

Table 5.30 presents the results of the probit analysis for the services industry in Kansas City metropolitan area.

**Table 5.30 Business Formation Probability Differentials  
for Selected Groups Relative to White Men  
Services, 2010 - 2014**

<b>Demographic Group</b>	<b>Probability of Forming a Business Relative to White Men</b>
<b>Black</b>	-4.30%***
<b>Latino</b>	-2.57%***
<b>Native American</b>	---
<b>Asian/Pacific Islander</b>	-3.12%***
<b>Other</b>	---
<b>White Women</b>	-2.37%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

The analysis indicates that compared to White men, non-Whites and White women in Kansas City metropolitan area are less likely to form services businesses even after controlling for key factors. The reduction in probability ranges from 2.37% less to 4.30% less. Once again, these estimates are statistically significant at the 99.1 level.

**b. Differences in Wage and Salary Incomes**

Table 5.31 presents the findings from the wage and salary income regression analysis examining the services industry in Kansas City metropolitan area. This indicates the wage differential for selected demographic groups in Kansas City metropolitan area relative to White men.

**Table 5.31 Wage Differentials  
for Selected Groups Relative to White Men  
Services, 2010 - 2014**

Demographic Group	Wages Relative to White Men (% Change)
<b>Black</b>	-31.80%***
<b>Latino</b>	-1.61%
<b>Native American</b>	---
<b>Asian/Pacific Islander</b>	-23.60%***
<b>Other</b>	---
<b>White Women</b>	-32.80%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

Holding constant factors such as education, age, occupation, and industry, Blacks, White women, and Asian/Pacific Islanders in the Kansas City metropolitan area earn less than White men in the services industry. The differential ranges between 23.6% less and 32.8% less. All estimated coefficients were statistically significant at the 0.001 level. The estimated coefficient for Latinos was not statistically different than zero.

**c. Differences in Business Earnings**

The same approach was used to investigate if there were differences in business earnings received by non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 5.32 presents these findings.

**Table 5.32 Business Earnings Differentials  
for Selected Groups Relative to White Men  
Services, 2010 - 2014**

Demographic Group	Earnings Relative to White Men (% Change)
<b>Black</b>	-65.10%**
<b>Latino</b>	-64.20%*
<b>Native American</b>	---
<b>Asian/Pacific Islander</b>	-91.50%*
<b>Other</b>	---
<b>White Women</b>	-77.00%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\*\* Indicates statistical significance at the 0.01 level

\* Indicates statistical significance at the 0.05 level

The differentials in business earnings for Blacks, Latinos, Asians, and White women relative to White males ranged from 64.2%% less to 77.0% less. For White Women, the coefficient was statistically significant at the 0.001 level; for Black, the coefficient was statistically significant at the 0.01 level; and for Latino and Asian/Pacific Islander, the coefficient was statistically significant at the 0.05 level.

#### **d. Conclusion**

Using descriptive analysis, Table 5.29 shows that differentials exist between the business formation rates by non-White males and White males. Table 5.30 presents the results of a further statistical analysis, which indicated that even after taking into account potential mitigating factors, the differential still exists. Tables 5.31 and 5.32 present data indicating differentials in wage and business earnings after controlling for possible explanatory factors. These analyses support the conclusion that barriers to business success do affect non-Whites and White women entrepreneurs.

### **6. The Goods Industry in Kansas City Metropolitan area**

#### **a. Business Formation Rates**

Table 5.33 presents business formation rates in the goods industry in Kansas City Metropolitan area for selected demographic groups.



**Table 5.33 Business Formation Rates,  
Kansas City Metro Area  
Goods, 2010 - 2014**

Demographic Group	Business Formation Rates
<b>Black</b>	3.08%
<b>Latino</b>	2.50%
<b>Native American</b>	---
<b>Asian/Pacific Islander</b>	---
<b>Other</b>	---
<b>Non-White</b>	3.32%
<b>White Women</b>	4.96%
<b>Non-White Male</b>	4.34%
<b>White Male</b>	7.06%

Source: CHA calculations from the American Community Survey

White males have a higher rate of business formation than non-Whites and White women. Note: the observed number of Native American, Asian/Pacific Islander, and Other was too small for any reliable statistical analysis. However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed. The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

Table 5.34 presents the results of the probit analysis for the construction industry in Kansas City metropolitan area.

**Table 5.34 Business Formation Probability Differentials  
for Selected Groups Relative to White Men  
Goods, 2010 - 2014**

Demographic Group	Probability of Forming a Business Relative to White Men
<b>Black</b>	-5.47%***
<b>Latino</b>	-3.38%***

<b>Native American</b>	---
<b>Asian/Pacific Islander</b>	---
<b>Other</b>	---
<b>White Women</b>	-0.73%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

The analysis indicates that Blacks, Latinos, and White women in the Kansas City metropolitan area are less likely to form goods businesses compared to White men even after controlling for key factors. The reduction in business formation probability ranged from 0.73% to 5.47%. These estimates are statistically significant at the 99.1 level.

#### **b. Differences in Wage and Salary Incomes**

Table 5.35 presents the findings from the wage and salary income regression analysis examining the goods industry in Kansas City metropolitan area. This indicates the wage differential for selected demographic groups in Kansas City metropolitan area relative to White men.

**Table 5.35 Wage Differentials  
for Selected Groups Relative to White Men  
Goods, 2010 - 2014**

<b>Demographic Group</b>	<b>Wages Relative to White Men (% Change)</b>
<b>Black</b>	-24.90%**
<b>Latino</b>	-15.90%*
<b>Native American</b>	---
<b>Asian/Pacific Islander</b>	---
<b>Other</b>	---
<b>White Women</b>	-41.60%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\*\* Indicates statistical significance at the 0.01 level

\* Indicates statistical significance at the 0.05 level

Holding constant factors such as education, age, occupation, and industry, Blacks, Latinos, and White women in Kansas City metropolitan area earn less

than White men in the goods industry. The differential ranges between 15.9% less and 41.6% less.

**c. Differences in Business Earnings**

The same approach was used to investigate if there were differences in business earnings received by non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 5.36 presents these findings.

**Table 5.36 Business Earnings Differentials for Selected Groups Relative to White Men Goods, 2010 - 2014**

Demographic Group	Earnings Relative to White Men (% Change)
<b>Black</b>	-229.00%**
<b>Latino</b>	34.80%
<b>Native American</b>	---
<b>Asian/Pacific Islander</b>	---
<b>Other</b>	---
<b>White Women</b>	-129.00%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\*\* Indicates statistical significance at the 0.01 level

Blacks earned 229.0% less than White males and White women earned 129.0% less than White males. These coefficients were statistically significant at the 0.01 level and 0.001 level, respectively. The coefficient for Latino was not statistically different from zero.

**d. Conclusion**

Using descriptive analysis, Table 5.33 shows that differentials exist between the business formation rates by non-Whites and White women and White males. Table 5.34 presents the results of a further statistical analysis, which indicated that even after taking into account potential mitigating factors, the differential still exists. Tables 5.35 and 5.36 present data indicating differentials in wage and business earnings after controlling for possible explanatory factors. These

analyses support the conclusion that barriers to business success do affect non-Whites and White women entrepreneurs.

## VI. QUALITATIVE EVIDENCE OF RACE AND GENDER DISCRIMINATION IN KCATA'S MARKET

In addition to quantitative data, an availability study should further explore anecdotal evidence of experiences with discrimination in contracting opportunities. Such data are relevant to the determination of whether race- and gender-neutral measures will fully remediate discrimination and create a level playing field for KCATA's contracts. As observed by the Supreme Court, anecdotal evidence can be persuasive because it "brought the cold [statistics] convincingly to life."<sup>160</sup> Evidence about discriminatory practices engaged in by prime contractors and consultants, lenders and other actors relevant to business opportunities on agency contracts and associated subcontracts has been found probative regarding barriers both to minority firms' business formation and to their success on governmental projects.<sup>161</sup> While anecdotal evidence is insufficient standing alone, "[p]ersonal accounts of actual discrimination or the effects of discriminatory practices may, however, vividly complement empirical evidence. Moreover, anecdotal evidence of a [government's] institutional practices that exacerbate discriminatory market conditions are [sic] often particularly probative."<sup>162</sup> "[W]e do not set out a categorical rule that every case must rise or fall entirely on the sufficiency of the numbers. To the contrary, anecdotal evidence might make the pivotal difference in some cases; indeed, in an exceptional case, we do not rule out the possibility that evidence not reinforced by statistical evidence, as such, will be enough."<sup>163</sup>

There is no requirement that anecdotal testimony be "verified" or corroborated, as befits the role of evidence in legislative decision-making as opposed to judicial proceedings. "Plaintiff offers no rationale as to why a fact finder could not rely on the State's 'unverified' anecdotal data. Indeed, a fact finder could very well conclude that anecdotal evidence need not—indeed cannot—be verified because it 'is nothing more than a witness' narrative of an incident told from the witness' perspective and including the witness' perception."<sup>164</sup> Likewise, the Tenth Circuit held that "Denver was not required to present corroborating evidence and [plaintiff] was free to present its own witnesses to either refute the incidents

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<sup>160</sup> *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 399 (1977).

<sup>161</sup> *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1172 (10<sup>th</sup> Cir. 2000), *cert. granted*, 532 U.S. 941, *then dismissed as improvidently granted*, 534 U.S. 103 (2001).

<sup>162</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1520, 1530 (10<sup>th</sup> Cir. 1994).

<sup>163</sup> *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 926 (11<sup>th</sup> Cir. 1997).

<sup>164</sup> *H.B. Rowe Co., Inc. v. Tippett*, 615 F.3d 233, 249 (4<sup>th</sup> Cir. 2010).

described by Denver’s witnesses or to relate their own perceptions on discrimination in the Denver construction industry.”<sup>165</sup>

To explore anecdotal evidence of possible discrimination against minorities and women in KCATA’s geographic and industry markets and the need for race-and gender-conscious contract goals, we interviewed 57 business owners or executives from the industries from which KCATA purchases. Firms ranged in size from large national businesses to decades-old family-owned firms to new start-ups. Owners’ backgrounds included individuals with many years of experience in their fields and entrepreneurs beginning their careers. We sought to explore their experiences in seeking and performing public and private sector prime contracts and subcontracts, with the KCATA, other Kansas City area agencies and in the private sector. We also elicited recommendations for improvements to KCATA’s Disadvantaged Enterprise Program (“DBE”) program.

As with other jurisdictions, most minority and women owners reported that while some progress has been made in integrating their firms into public and private sector contracting activities through race- and gender-conscious contracting programs, significant barriers remain.

The following are summaries of the issues discussed and interviewees’ experiences and comments. Quotations are indented, and have been edited for readability.

#### **A. Discriminatory Attitudes and Negative Perceptions of Competence**

Many minority and female owners reported that agencies and other firms display negative attitudes about the competency and professionalism of minorities and women. The assumption is that minority firms are less qualified.

The biggest barriers that I see is the perception that the G[eneral C[ontractor]s out there– it's still a good ol' boy network.... I've sat in meetings and had them talk about the small and the minority contractors as the “little people. We have to clean up after the little people.” To the point where I just want to scream.... There's the perception out there that GCs don't like participation. The GCs no matter how well you perform, do your paperwork, do the job, meet every of their requirements, you're used for participation. The good 'ol boy system is still out there.

There is still that undermining thing that women can't do it and minorities can't do it.

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<sup>165</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 989 (10<sup>th</sup> Cir. 2003), *cert. denied*, 540 U.S. 1027 (2003).

A lot of the higher architectural firms, there's not a lot of black people employed there.

Women faced continuing sexist remarks and conduct.

When people make comments or something, I mean I'm in my 50s, I don't take that shit anymore from somebody says something to me. I'll just throw it right back at them and they were done.... A man is aggressive. A woman is a bitch.

[A Missouri Department of Transportation engineer] only talks to men and pretty young women. He's really condescending. Honestly, I don't project his little problems with all of MoDOT but it does piss you off after awhile sitting there watching. You just have to shut up and let it go. When you see people like that get promoted, it [tells you something about] the culture.

I get this a lot from white men: "It's really unfair that you get this WBE and it's unfair."... I can give you enough stories when I was a young female engineer that will make your toes curl of some discrimination. Granted, that was back in the early '80s. I do think some of the over the top discrimination, that's kind of gone under. I do think there is unconscious bias. People hire who they're comfortable with.

When you're at meetings, you get vibes of who you can approach and who you can't. When I get that vibe that that guy is not going to give me the time of day, then I don't approach him. I do get an email off to him.

## **B. Obtaining Work on an Equal Basis**

These types of barriers lead minorities and women to unanimous agreement that goals remain necessary to level the playing field and equalize opportunities. DBEs sought the right to compete on a fair and equal basis. Without goals, DBEs believed they would be shut out of KCATA's and the overall Kansas City area market. Interviewees were clear that contract goals remain necessary to ensure equal opportunities on KCATA projects.

[We get used] only on setasides.

[Minority-owned firms] don't do any work in the private sector, that the only window of opportunity we have is within the [government] program.... [The agencies' programs are] the entree we all have [to the marketplace].

There's not an aggressive marketing strategy or plan to pursue minorities or the certified companies on those private jobs.

The public sector work, you can find out about that. Contractors, generals will contact me. It's the private sector jobs that you never know about. If there isn't an inclusion goal, you won't even hear about the opportunity and be given the opportunity to even compete for it. That's the biggest gap I've seen.

If there is no goal setting, you don't have any opportunity to perform as a subcontractor. That's a big dichotomy, public-private.

We already can't do any private sector work... That's every kind of development in the world and we're missing it all.... it's the good old boy network. They can just give the job to who they want to.

Let's say a contractor comes to town, which a lot of them are. And the first thing, they see me and they say oh, okay. And they see my financials, they see my safety record. Everything just legit. Everything is great. First thing that comes out of their mouth is, are you certified by the City of Kansas City, Missouri. And as soon as I say no, all of a sudden I got a black cloud against me.

Minorities who spoke up about discrimination faced retaliation.

The minute I open my mouth, I am filleted and I have gotten filleted a little bit by one of the biggest contractors in town.... Kansas City's not a very big town. You piss off the right people, you're not getting any work.

[Retaliation against firms that complain about fronts or the failure to perform commercially useful function is] going on all the time.

Prime contracts were especially difficult to obtain.

I'm able to get my prime contracts is through the SLBE. I have had a few prime contracts not as an SLBE but it's been kind of specialty type stuff.

MBEs that did receive prime contracts sometimes felt they were subjected to a double standard.



[The agencies] don't force the larger already white and established contractor, they go around the codes for them. For the minority contractor, you got the [prime] bid now. They're somewhat pissed off at you, for lack of a better term. That you've got it and the other one didn't. Then, you're being subjected to codes that they would have gotten around or that would have been allowances made in the City for the other contractor.

Some WBEs reported that unions were another source of discrimination.

My payment history [of benefits contributions] wasn't anything different from the male businesses. However, they did not incur the same action from the business manager that I got.... It's just all male. You're great if you're male. If you're a girl, bitching about something, it is not allowed and some of the things that even some of the male minority companies do, is acceptable. Whereas for me, I would get three day's notice and you're pulling my men.

I don't have a bad relationship with the union, but I would say I have what I wouldn't call a favorable one because I did not come up through the trade and I'm female. It's the good ol' boy [network], yes. To get around that, I've put someone in my office [who is] a male that has really good relationships with key people at the union, which has helped me

Only a handful of Kansas City area large firms apply the same process for private sector work as they do for government projects with goals.

The only exceptions are enlightened corporations like [name]. When they did their veteran office tower, all they did was solicit the same people they solicit on public sector work, and minorities and women went to work on that project. That is by way the exception.... All they did was cast a broader net and included minority and women-owned companies, and the pool of contractors they solicited bids from. Internally, they had a goal that [name] supports inclusion and that's on all their work, but that is an exception.

Others agreed that this firm is exemplary.

I do a lot of work with [name] and it has nothing to do that I'm MBE certified. I believe in relationships, so I believe a lot of opportunities that I get are because of relationships,

building relationships, or relationships that my father has built. I believe in relationships. It's about getting out there and meeting people, and they know who you are and what you do. When you get that chance, it's performing well, doing a great job performing, and then they'll come back. It won't have anything to do with whether you're MBE or WBE.

### **C. Conclusion**

Consistent with other evidence reported in this Study, anecdotal interview information strongly suggests that minorities and women continue to suffer discriminatory barriers to full and fair access to KCATA and private sector contracts and subcontracts. While not definitive proof that KCATA should apply race- and gender-conscious measures to these impediments, the results of the personal interviews are the types of evidence that, especially when considered alongside the numerous pieces of statistical evidence assembled, the courts have found to be highly probative of whether KCATA may use narrowly tailored DBE contract goals to address that discrimination.

## **VII. Recommendations for KCATA’s Disadvantaged Business Enterprise Program**

Based upon the results of the statistical and anecdotal analyses, we make the following recommendations for KCATA’s Disadvantaged Business Enterprise (DBE) Program.

### **A. Augment Race- and Gender-Neutral Measures**

The courts and the DBE program regulations require that grantees use race-neutral<sup>166</sup> approaches to the maximum feasible extent to meet the annual DBE goal. This is a critical element of narrowly tailoring the program so that the burden on non-DBEs is no more than necessary to achieve RTA’s remedial purposes. Increased participation by DBEs through race-neutral measures will also reduce the need to set DBE contract goals. We therefore suggest the following enhancements of RTA’s current efforts, based on the business owner interviews, the input of agency staff, and national best practices for DBE programs.

#### **1. Fully implement the B2GNow electronic data collection and monitoring system**

KCATA purchased the system in 2014. However, it has not been fully implemented and additional modules are highly recommended to ensure robust and timely data collection, contractor compliance with contractual commitments, defensible goal setting and solid outreach. Functionality should include:

- Full firm contact information;
- Pre-award utilization plan capture with verified work categories and certified status;
- Contract compliance, including submission and verification of payments, change order tracking, verified work categories;
- Contract goal setting;
- Outreach tools;
- Spend analysis of informal purchases and contracts;
- Integrated email and fax notifications;
- Export/import integration with existing systems; and
- Access by authorized KCATA staff, prime contractors, and subcontractors.

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<sup>166</sup> The term race-neutral as used here includes gender-neutrality.

Full utilization of the system will make future data collection for FTA purposes and goal setting much easier and more defensible. Long delays and heavy agency staff burdens in conducting this Study were the direct result of a lack of complete agency records.

## **2. Ensure prompt payment of prime vendors and subcontractors**

While the great majority of business owners we interviewed did not experience severe payment delays, it is incumbent upon recipients of USDOT funds to ensure that subcontractors are paid promptly. The B2GNow system provides the ability to closely monitor payment, and KCATA should ensure that all staff with responsibilities for invoice processing are attuned to this requirement. The agency should also review how quickly it pays its prime contractors.

## **3. Conduct outreach regarding KCATA's DBE program and specific projects**

Some interview attendees reported that they did not know how to access information about agency contracts or had little familiarity with the DBE program (as opposed to the City of Kansas City's minority and women business program). While the agency participates in outreach activities with partner organizations, it should hold at least one event on a semi-annual basis to acquaint new firms and others with its DBE program and discuss upcoming projects, regardless of the funding source.

## **4. Review the Small Business Enterprise program element**

KCATA worked with the Missouri Regional Certification Committee (MRCC) to develop a race-neutral small business enterprise program, applying the Small Business Administration size standards. However, only one firm has signed up. No one interviewed as part of the Study process was aware of this program element and there is very little information, including the benefits of becoming SBE certified, on the agency's website. Therefore, the agency should take steps to publicize this remedy for DBEs and other small firms and explain what remedies are available to certified firms.

In addition to the current benefits of SBE registration, KCATA should consider adopting a SBE setaside for smaller contracts that could be successfully completed by DBEs and SBEs as prime contractors. SBE setasides are especially useful for those industries that do not operate on a prime vendor-subcontractor model, such as consulting services. It will also reduce the need to set contract goals to ensure equal opportunities. A SBE element could include additional assistance for the vendors, such as quick pay (*e.g.*, invoicing every two weeks); reduced experience requirements; no holding of retainage, etc. Such an approach is an approved element under 49 C.F.R. § 26.39. We further

recommend that the same personal net worth test be applied to SBE eligibility criteria, so that the benefits are limited to small firms owned by economically disadvantaged individuals.

Further, although KCATA's FTA-approved DBE program lists several race-neutral small business elements, it does appear that the agency is actually implementing many of them. KCATA should review its document and seek revisions based upon actual agency resources.

## **5. Review the DBE program for conformance to the 2014 amendments to the DBE regulations**

The DBE program regulations at 49 C.F.R. Part 26 were amended in 2014. KCATA should review its current 2013 program document to ensure all elements fully comply with the changes, such as retainage, counting DBE participation for goal credit, etc.

### **B. Continue to Implement Narrowly Tailored Race- and Gender-Conscious Measures for FTA-funded contracts**

#### **1. Use the study to set the overall annual DBE goal**

49 C.F.R. Part 26 requires that KCATA adopt an annual overall goal for DBE participation in its federally-funded projects covering a three-year period. This study's availability estimates in Chapter IV should be consulted to determine the Step 1 base figure for the relative availability of DBEs required by § 26.45(c). It should also form the basis for the DBE goal for state-funded contracts. The statistical disparities in Chapter V in the rates at which DBEs form businesses can serve as the basis for a Step 2 adjustment per § 26.45(d) to reflect the level of DBE availability that would be expected in the absence of discrimination.

#### **2. Use the study to set DBE contract goals**

The detailed availability estimates in the study should serve as the starting point for contract goal setting. KCATA should weigh the estimated scopes of the contract by the availability of DBEs in those scopes as estimated in the study, and then adjust the result based on current market conditions. The agency's existing electronic system has an optional goal setting module. KCATA will also need to develop written procedures for use of the goal setting tool.

KCATA should bid some contracts that it determines have significant opportunities for DBE participation without goals. These "control contracts" can illuminate whether certified firms are used or even solicited in the absence of goals, as suggested by the study data. The development of some unremediated markets data will be probative of whether contract goals remain needed to level the playing field for minorities and women.

KCATA should further consider listing with the solicitation the scopes of work used to set the contract goal. This would provide guidance to prime firms on specialties on which to concentrate for making good faith efforts, as well as increase transparency about how the DBE program functions.

**C. Consider Adopting a DBE Program for Locally-Funded Contracts**

KCATA should consider using the data in this Study to establish a DBE program for its non-FTA-funded contracts. The data available to the agency at the time of commencement of the Study were not sufficiently complete for analysis in the Study. However, the agency can look to the results on its federal-aid projects, as well as the results of our studies for other local agencies such as the City of Kansas City, Missouri, to determine that it has a strong basis in evidence that discriminatory barriers remain in its market area for local contracts, and to implement narrowly tailored remedies such as those in the FTA DBE program, to ensure it is not a passive participant in marketplace discrimination. If such evidence is found, the same standards and processes should be applied to locally funded contracts.

## Appendix A: Further Explanation of the Multiple Regression Analysis

As explained in the Report, the multiple regression statistical techniques seek to explore the relationship between a set of independent variables and a dependent variable. The following equation is a way to visualize this relationship:

$$DV = f(D, I, O),$$

where DV is the dependent variable; D is a set of demographic variables; I is a set of industry & occupation variables; and O is a set of other independent variables.

The estimation process takes this equation and transforms it into:

$$DV = C + (\beta_1 * D) + (\beta_2 * I) + (\beta_3 * O) + \mu,$$

where C is the constant term;  $\beta_1$ ,  $\beta_2$  and  $\beta_3$  are coefficients, and  $\mu$  is the random error term.

The statistical technique seeks to estimate the values of the constant term and the coefficients.

In order to complete the estimation, the set of independent variables must be operationalized. For demographic variables, the estimation used race, gender and age. For industry and occupation variables, the relevant industry and occupation were utilized. For the other variables, education and the state of residence were used.

A coefficient was estimated for each independent variable. The broad idea is that a person's wage or earnings is dependent upon the person's race, gender, age, industry, occupation, and education. An additional factor was included: because of our interest in the impact of race and gender on wages and earnings, we made the assumption that the impact of those variables might vary from state to state (*i.e.*, the impact of being Black on wages is different in Missouri than it is in Iowa). We therefore developed new variables that would show the interaction between race and gender and one particular state. Since this Report examined Missouri, that was the state employed. The coefficient for the new variable showed the impact of being a member of that race or gender in Missouri. Consequently, the impact of race or gender on wages or earnings had two components: the national coefficient and the state-specific impact.

## Appendix B: Further Explanation of the Probit Regression Analysis

Probit regression is a special type of regression analysis. While there are many differences between the underlying estimation techniques used in the probit regression and the standard regression analysis, the main differences from the layperson's point of view lie in the nature of dependent variable and the interpretation of the coefficients associated with the independent variables.

The basic model looks the same:

$$DV = f(D, I, O),$$

where DV is the dependent variable; D is a set of demographic variables; I is a set of industry & occupation variables; and O is a set of other independent variables.

The estimation process takes this equation and transforms it into:

$$DV = C + (\beta_1 * D) + (\beta_2 * I) + (\beta_3 * O) + \mu,$$

where C is the constant term;  $\beta_1$ ,  $\beta_2$ , and  $\beta_3$  are coefficients, and  $\mu$  is the random error term.

In the standard regression model, the dependent variable is continuous and can take on many values. In the probit model, the dependent variable is dichotomous and can take on only two values: zero or one. For instance, in the standard regression analysis, we may be exploring the impact of a change in some independent variable on wages. In this case, the value of one's wage might be any non-negative number. In contrast, in the probit regression analysis, the exploration might be the impact of a change in some independent variable on the probability that some event occurs. For instance, the question might be how an individual's gender impacts the probability of that person forming a business. In this case, the dependent variable has two values: zero, if a business is not formed; one, if a business is formed.

The second significant difference – the interpretation of the independent variables' coefficients – is fairly straight-forward in the standard regression model: the unit change in the independent variable impacts the dependent variable by the amount of the coefficient.<sup>167</sup> However, in the probit model, the initial coefficients cannot be interpreted this way. One additional step - which can be computed easily by most statistical packages - must be undertaken in order to yield a result that indicates how the change in the independent variable affects the probability of an event (*e.g.*, business formation) occurs. For instance, using our previous example of the impact on gender on business formation, if the

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<sup>167</sup> The exact interpretation depends upon the functional form of the model.



independent variable was WOMAN (with a value of 0 if the individual was male and 1 if the individual was female) and the final transformation of the coefficient of WOMAN was -0.12, we would interpret this to mean that women have a 12% lower probability of forming a business compared to men.

## Appendix C: Significance Levels

Many tables in this report contain asterisks indicating a number has statistical significance at 0.001 or 0.01 levels and the body of the report repeats these descriptions. While the use of the term seems important, it is not self-evident what the term means. This appendix provides a general explanation of significance levels.

This report seeks to address the question whether non-Whites and White women received disparate treatment in the economy relative to White males. From a statistical viewpoint, this primary question has two sub-questions:

- What is the relationship between the independent variable and the dependent variable?
- What is the probability that the relationship between the independent variable and the dependent variable is equal to zero?

For example, an important question facing Metra as it explores the necessity of intervening in the marketplace through contract goals to ensure it is not a passive participant in the continuation of historic and contemporary bias is do non-Whites and White women receive lower wages than White men? As discussed in Appendix A, one way to uncover the relationship between the dependent variable (*e.g.*, wages) and the independent variable (*e.g.*, non-Whites) is through multiple regression analysis. An example helps to explain this concept.

Let us say this analysis determines that non-Whites receive wages that are 35% less than White men after controlling for other factors, such as education and industry, which might account for the differences in wages. However, this finding is only an estimate of the relationship between the independent variable (*e.g.*, non-Whites) and the dependent variable (*e.g.*, wages) – the first sub-question. It is still important to determine how accurate is that estimation, that is, what is the probability the estimated relationship is equal to zero – the second sub-question.

To resolve the second sub-question, statistical hypothesis tests are utilized. Hypothesis testing assumes that there is no relationship between belonging to a particular demographic group and the level of economic utilization relative to White men (*e.g.*, non-Whites earn identical wages compared to White men or non-Whites earn 0% less than White men). This sometimes called the null hypothesis. We then calculate a confidence interval to find explore the probability that the observed relationship (*e.g.*, - 35%) is between 0 and minus that confidence interval.<sup>168</sup> The confidence interval will vary depending upon the level

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<sup>168</sup> Because 0 can only be greater than -35%, we only speak of “minus the confidence level”. This is a one-tailed hypothesis test. If, in another example, the observed relationship could be above or below the hypothesized value, then we would say “plus or minus the confidence level” and this would be a two-tailed test.

of confidence (statistical significance) we wish to have in our conclusion. Hence, a statistical significance of 99% would have a broader confidence interval than statistical significance of 95%. Once a confidence interval is established, if -35% lies outside of that interval, we can assert the observed relationship (*e.g.*, 35%) is accurate at the appropriate level of statistical significance.

## Appendix D: Additional Data from the Analysis of the Survey of Business Owners<sup>169</sup>

Table D1. Demographic Distribution of Sales and Payroll Data

Construction, 2012

	Total Number of Firms (All Firms)	Sales & Receipts (All Firms) (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
<b>Black</b>	2.92%	0.79%	0.68%	0.73%	0.83%	0.80%
<b>Latino</b>	2.81%	0.73%	0.98%	0.45%	S	S
<b>Native American</b>	0.82%	0.47%	0.72%	0.46%	0.55%	0.51%
<b>Asian</b>	0.40%	0.09%	0.07%	0.05%	0.09%	0.05%
<b>Panel B: Distribution of All Firms</b>						
<b>Non-White</b>	6.96%	2.02%	2.45%	1.64%	2.19%	1.93%
<b>White Women</b>	7.85%	9.91%	10.44%	10.30%	11.45%	10.38%
<b>White Men</b>	73.81%	64.86%	66.62%	63.78%	61.61%	61.95%
<b>Equally Non-White &amp; White</b>	0.38%	0.15%	0.45%	0.12%	0.26%	0.11%
<b>Equally Women &amp; Men</b>	10.41%	9.06%	17.62%	9.02%	11.47%	10.12%
<b>Firms Not Classifiable</b>	0.60%	14.00%	2.43%	15.14%	13.01%	15.51%
<b>All Firms</b>	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Source: CHA calculations from Survey of Business Owners

<sup>169</sup> See Footnote 15 for an explanation of the reported value of “S”.

**Table D2. Demographic Distribution of Sales and Payroll Data – Aggregated Groups**

Professional, Scientific, and Technical Services, 2012

	Total Number of Firms (All Firms)	Sales & Receipts (All Firms) (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
<b>Black</b>	3.91%	0.79%	1.45%	0.67%	0.87%	0.93%
<b>Latino</b>	1.74%	0.44%	1.12%	0.38%	0.54%	0.48%
<b>Native American</b>	0.76%	0.24%	0.86%	0.22%	0.19%	0.08%
<b>Asian</b>	2.43%	0.97%	2.29%	0.88%	1.13%	1.05%
<b>Panel B: Distribution of All Firms</b>						
<b>Non-White</b>	8.86%	2.43%	5.81%	2.15%	2.79%	2.56%
<b>White Women</b>	28.87%	5.93%	21.57%	4.85%	8.25%	5.21%
<b>White Men</b>	52.27%	32.03%	58.86%	30.49%	34.96%	32.95%
<b>Equally Non-White &amp; White</b>	0.44%	0.10%	0.38%	0.07%	0.10%	0.06%
<b>Equally Women &amp; Men</b>	8.29%	2.91%	8.54%	2.55%	4.91%	2.88%
<b>Firms Not Classifiable</b>	1.27%	56.58%	4.82%	59.91%	48.99%	56.34%
<b>All Firms</b>	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Source: CHA calculations from Survey of Business Owners

**Table D3. Demographic Distribution of Sales and Payroll Data – Aggregated Groups**  
Information, 2012

	Total Number of Firms (All Firms)	Sales & Receipts (All Firms) (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
<b>Black</b>	5.50%	0.10%	0.67%	0.08%	0.25%	0.17%
<b>Latino</b>	1.32%	0.10%	0.42%	0.08%	0.16%	0.17%
<b>Native American</b>	0.71%	0.00%	0.25%	S	S	S
<b>Asian</b>	1.85%	S	0.67%	S	S	S
<b>Panel B: Distribution of All Firms</b>						
<b>Non-White</b>	9.33%	0.25%	2.02%	S	S	S
<b>White Women</b>	23.51%	0.68%	13.06%	0.61%	1.97%	1.07%
<b>White Men</b>	51.74%	8.08%	51.05%	7.73%	16.97%	10.34%
<b>Equally Non-White &amp; White</b>	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
<b>Equally Women &amp; Men</b>	9.41%	0.91%	11.20%	0.85%	1.70%	1.17%
<b>Firms Not Classifiable</b>	4.93%	90.09%	22.49%	90.61%	78.90%	87.04%
<b>All Firms</b>	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Source: CHA calculations from Survey of Business Owners

**Table D4. Demographic Distribution of Sales and Payroll Data – Aggregated Groups**

Services, 2012

	Total Number of Firms (All Firms)	Sales & Receipts (All Firms) (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
<b>Black</b>	10.16%	0.72%	4.77%	S	S	S
<b>Latino</b>	1.72%	0.41%	1.46%	S	S	S
<b>Native American</b>	0.69%	0.08%	0.28%	S	S	S
<b>Asian</b>	3.40%	1.04%	4.59%	0.86%	1.98%	1.15%
<b>Panel B: Distribution of All Firms</b>						
<b>Non-White</b>	15.95%	2.33%	11.20%	S	S	S
<b>White Women</b>	28.64%	4.35%	17.68%	3.40%	6.65%	5.07%
<b>White Men</b>	41.31%	22.77%	46.82%	20.97%	29.96%	25.75%
<b>Equally Non-White &amp; White</b>	0.46%	0.15%	0.54%	0.12%	0.24%	0.15%
<b>Equally Women &amp; Men</b>	10.55%	4.29%	14.07%	3.65%	7.49%	4.32%
<b>Firms Not Classifiable</b>	2.89%	66.02%	9.46%	69.95%	51.24%	62.08%
<b>All Firms</b>	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Source: CHA calculations from Survey of Business Owners

**Table D5. Demographic Distribution of Sales and Payroll Data – Aggregated Groups**

Goods, 2012

	Total Number of Firms (All Firms)	Sales & Receipts (All Firms) (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
<b>Black</b>	2.75%	0.21%	0.36%	0.20%	0.31%	0.34%
<b>Latino</b>	3.14%	0.61%	1.53%	0.61%	0.67%	0.52%
<b>Native American</b>	0.29%	0.02%	0.21%	0.02%	0.05%	0.04%
<b>Asian</b>	4.95%	1.01%	5.12%	0.99%	1.34%	1.10%
<b>Panel B: Distribution of All Firms</b>						
<b>Non-White</b>	11.21%	1.83%	7.26%	1.72%	2.24%	3.49%
<b>White Women</b>	16.49%	2.26%	10.87%	2.24%	4.48%	3.62%
<b>White Men</b>	55.34%	21.70%	60.49%	21.59%	37.56%	34.56%
<b>Equally Non-White &amp; White</b>	0.33%	0.03%	0.29%	0.03%	0.07%	0.05%
<b>Equally Women &amp; Men</b>	10.26%	1.77%	9.45%	1.75%	3.44%	2.75%
<b>Firms Not Classifiable</b>	6.03%	72.34%	11.50%	72.53%	52.01%	56.94%
<b>All Firms</b>	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Source: CHA calculations from Survey of Business Owners