

**The Impact of the *City of
Richmond v. J.A. Croson* Decision Upon
Minority and Female Business Programs
in Selected Cities of Ohio**

**Ohio Advisory Committee to the
U.S. Commission on Civil Rights**

**Volume 2
Appendix E**

March 1997

This summary report of the Ohio Advisory Committee to the United States Commission on Civil Rights was prepared for the information and consideration of the Commission. Statements and viewpoints in the report should not be attributed to the Commission or the Advisory Committee, but only to individual participants in the community forum where the information was gathered.

The United States Commission on Civil Rights

The United States Commission on Civil Rights, first created by the Civil Rights Act of 1957, and reestablished by the United States Commission on Civil Rights Act of 1983, is an independent, bipartisan agency of the Federal Government. By the terms of the 1983 act, as amended by the Civil Rights Commission Amendments Act of 1994, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study and collection of information relating to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections; and preparation and issuance of public service announcements and advertising campaigns to discourage discrimination or denials of equal protection of the law. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

The State Advisory Committees

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 and section 3(d) of the Civil Rights Commission Amendments Act of 1994. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference that the Commission may hold within the State.

**The Impact of the *City of
Richmond v. J.A. Croson* Decision Upon
Minority and Female Business Programs
in Selected Cities of Ohio**

**Ohio Advisory Committee to the
U.S. Commission on Civil Rights**

**Volume 2
Appendix E**

March 1997

This summary report of the Ohio Advisory Committee to the United States Commission on Civil Rights was prepared for the information and consideration of the Commission. Statements and viewpoints in the report should not be attributed to the Commission or the Advisory Committee, but only to individual participants in the community forum where the information was gathered.

Contents

Volume 1

1. Introduction	1
2. Background	1
National Perspectives	2
Ohio Perspectives	4
3. Legal Analysis of <i>Croson</i> Decision	5
Louis A. Jacobs	5
Harry Clor	7
4. The Community Forum	8
State of Ohio.....	9
Loren L. Braverman.....	10
Gilbert S. Price.....	10
Dana Mattison.....	12
Columbus	13
Ben Espy	16
Terry A. Boyd	16
Cheryl Lovely	18
Lewis Smoot, Sr.....	19
David Harris.....	21
Joseph Dudley	21
Barbara Stewart.....	22
Kevin Williams	23
Dayton	23
Jerald L. Steed.....	24
Warren Wise	25
Cincinnati	26
Betty C. Watson	28
Cleveland.....	30
Irie Turner	31
5. Summary	31

Appendices

A. Agenda of Community Forum	32
B. Letter and Accompany Documents from Minority Business Enterprise Legal Defense and Education Fund, Inc.	34
C. Letter from Associated General Contractors of Ohio	56
D. Proposed Federal Legislation/Minority Set-asides	60

Volume 2

Appendix

E. <i>Predicate Study</i> and Proposed Legislation, City of Columbus, Ohio	66
--	----

Volume 3

F. Ordinances Enacting the Procurement Enhancement Program (PEP), Human Relations Council, City of Dayton, Ohio.....	164
G. Equal Business Opportunity Program: Revised MBE/WBE Ordinance, 1994, Cincinnati, Ohio	187
H. Contractual Awards MBE/FBE Procurement, 1989-92, Cleveland, Ohio.....	201

PREDICATE STUDY

City of Columbus, Ohio

-- Prepared by --

(66)
Minority Business Enterprise Legal Defense
and Education Fund
220 "I" Street, N.E., Suite 280
Washington, D.C. 20002
(202) 543-0040

- and -

BBC, Inc.
155 South Madison, Suite 230
Denver, Colorado 80209
(303) 321-2547

TABLE OF CONTENTS

	Page
I. Executive Summary: Findings and Conclusions	I-1
A. Background and Introduction	I-2
1. Objectives of the Columbus Predicate Study	I-2
2. Organization of the Report	I-3
3. Limitations	I-4
B. Legal Framework	I-6
C. Overview of City Procurement and MBE/FBE Utilization	I-10
1. Quantity of Goods, Services and Construction Purchases	I-10
2. Types of Goods, Services and Construction Purchased	I-13
3. Geographic Market Area for City Purchases	I-16
4. Procedures Followed to Purchase Goods, Services and Construction	I-19
5. City Efforts to Encourage Utilization of MBEs/FBEs	I-22
D. Evaluation of Evidence of Discrimination	I-30
1. Evidence of Discrimination Against Minority-Owned Firms	I-30
2. Evidence of Discrimination Against Female-Owned Firms	I-36
3. Conclusions	I-39
E. Conclusions and Recommendations	I-41
1. Race and Gender-Neutral Measures to Redress Discrimination	I-41
2. Race and Gender-Based Measures to Redress Discrimination	I-50
3. Recommendations	I-55
4. Conclusions	I-65
II. Analysis of Quantitative Evidence of Discrimination	II-1
A. MBE and FBE Participation in City Purchasing	II-2
1. Steps Necessary to Develop Utilization Data	II-3
2. Utilization of MBEs and FBEs as Prime Contractors	II-8
3. Utilization of MBEs and FBEs as Prime and Subcontractors in Construction and Professional Design	II-17
4. Comparison of City Utilization with Relative Number of MBEs and FBEs Ready, Willing and Able to Work for the City	II-23
5. Comparison of Utilization and Availability for Detailed Procurement Areas	II-34
6. Case Studies	II-39
7. Conclusions	II-46

Appendix E

B.	Analysis of Evidence of Marketplace Discrimination	II-47
	1. Disparities in Private Sector Utilization and Availability	II-47
	2. Rates of Business Formation	II-53
	3. Concentration by Sector	II-57
	4. Conclusions	II-59

	Appendix II-A. U.S. Census Data on Availability of MBEs/FBEs	II-60
--	--	-------

III.	Summary of Qualitative Evidence of Discrimination	III-1
------	---	-------

A.	Introduction	III-2
----	--------------------	-------

B.	Methodology	III-3
----	-------------------	-------

C.	Contemporary Evidence Regarding Discrimination In the Columbus, Ohio Marketplace	III-5
----	---	-------

	1. Stereotypical Attitudes	III-5
	2. Discrimination in Previous Employment	III-9
	3. Unequal Access to Financing for Start-up and/or Expansion of Business	III-12
	4. Unequal Access to Bonding	III-16
	5. Unequal Access to Supplies and Fair Pricing	III-18
	6. Refusals to Work by Majority Employees	III-20
	7. Unnecessarily Restrictive Contract Specifications and Bidding Procedures	III-22
	8. Denials of Opportunities to Bid	III-23
	9. Exclusion from the "Good Old Boy" Network	III-30
	10. Bid Shopping	III-35
	11. Bid Manipulation	III-37
	12. Unfair Denials of Contract Awards	III-38
	13. Double Standards in Evaluating Performance	III-39
	14. Harassment	III-41
	15. Slow Payment and Non-Payment	III-43
	16. Utilization of MBE/FBE Fronts	III-45
	17. Governmental Resistance to MBE/FBE Participation	III-46

D.	Summary: The Adverse Effects of Discrimination Upon MBE/FBES In the Columbus, Ohio Marketplace	III-49
----	---	--------

	1. Adverse Effect of Denying Market Access to MBE/FBES	III-49
	2. Adverse Effect on the Ability of MBEs to Compete	III-49
	3. Adverse Effect on MBE/FBE Availability and Capacity	III-50

PART I.
EXECUTIVE SUMMARY:
FINDINGS AND CONCLUSIONS

PART I.
SECTION A.
BACKGROUND AND INTRODUCTION

In January, 1989, the U. S. Supreme Court announced its decision in City of Richmond v. J. A. Croson Company striking down the City of Richmond, Virginia minority business utilization plan as a violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution. For the first time, a majority of Supreme Court Justices agreed on the standard of constitutional review for affirmative action programs voluntarily adopted by state and local governments. The strict scrutiny standard adopted by the Court requires such programs to be predicated upon a compelling governmental interest as evidenced by ongoing effects of past or present discrimination and to be "narrowly tailored" to remedy the effects of such discrimination.

Objectives of the Columbus Predicate Study

(89) The predicate study was intended to answer three basic questions for the City of Columbus:

- Is there a firm basis in evidence for determining that there are ongoing effects of discrimination against minorities and women in the goods, services and construction sectors within the relevant market area, either by the City itself or as a passive participant in discrimination practiced by local private industries?
- If there is evidence of discrimination, are race or gender-neutral measures effective and narrowly tailored in remedying the effects of discrimination?
- If neutral remedies are not effective, are race and gender-based programs narrowly tailored to redress the effects of prior discrimination?

Approach

In order to accomplish these objectives, the study team, consisting of BBC, Inc. (Browne, Bortz & Coddington, Inc.) and MBELDEF (Minority Business Enterprise Legal

Defense and Education Fund) conducted an extensive investigation and research effort from July, 1991 through July, 1992. The starting point for this study was analysis of the factual and legal requirements for race and gender-based business utilization programs. The study team compiled and analyzed both quantitative and qualitative information to examine evidence of discrimination. This was followed by a comprehensive examination of possible remedies.

Quantitative analysis. A number of steps were required to complete the quantitative analysis. Analysis of quantitative evidence of discrimination focused on participation of minority business enterprises (MBEs) and female-owned firms (FBEs) in City procurement as well as statistics on MBEs' and FBEs' participation within the private marketplace. Goods, services and construction industries were examined. Certain subsets of these broad industries were analyzed in greater detail. Additional quantitative analysis was conducted to identify specific processes in City procurement that appeared to affect minority and women-owned firms differently from majority-owned firms.

Qualitative analysis. The study team utilized a number of different sources of information in order to collect and analyze qualitative evidence of discrimination. Available historical records relating to MBEs/FBEs and discrimination were reviewed. Hearing transcripts were examined. The study team conducted in-depth personal interviews with minority and women business owners and other persons knowledgeable about the local business community.

Remedies. The final area of investigation focused on potential remedies for discrimination. Based upon the body of evidence collected, the study team proceeded to consider race and gender-neutral remedies to address the specific forms of discrimination identified in the study. After reviewing these findings, race and gender-based remedies were examined. A number of different sources of information were utilized in completing this analysis.

Organization of the Report

This report summarizes the findings and conclusions from a thirteen month study effort. It is organized into three parts. Part I reviews the background for the

study and presents key conclusions. Part II examines quantitative evidence of discrimination. Part III presents our analysis of qualitative evidence of discrimination.

Within Part I, Section A (this section) provides an introduction to the study effort. The legal framework for the study is examined in Section B. Section C outlines City procurement procedures and reviews MBE/FBE utilization. In Section D, we summarize the quantitative and qualitative evidence of discrimination identified in the study and assess its legal sufficiency as a foundation for a City affirmative action program. Finally, Section E presents our analysis of alternative measures to redress discrimination. The first part of Section E examines race and gender-neutral measures. This is followed by our analysis of race and gender-based remedies.

Limitations

(69) The legal analysis included in this study was based upon all relevant decisions available through standard research methods as of the end of July, 1992. However, because this is a developing area of the law, we are aware that cases are pending before various courts across the United States that raise issues relevant to this study. New rulings may influence how the City proceeds in implementing the findings and recommendations presented here.

This report is not intended to document each detail of the findings of discrimination examined in the course of the study. However, all of the examples used in reaching the study conclusions are summarized in the report.

This report is not inclusive of all relevant information the City of Columbus might have in reaching a decision as to future affirmative action efforts. In fact, the study was designed to be independent of previous investigations. We did not rely on any of the information contained in the disparity study conducted for the City of Columbus by Beatty & Roseboro, for example. As such, we suggest that the City of Columbus also consider other studies, findings and other evidence that relate to evidence of discrimination and to the evaluation of alternative remedies.

It should also be noted that some performance deficiencies in the Purchasing Department, Minority and Female Business Development Division, and other areas which were identified in this report have been corrected during the course of this study.

Some procedures which were not being followed at the start of the study have been improved through staff education and other means.

PART I.
SECTION B.
LEGAL FRAMEWORK

The controlling legal precedent that sets forth the guidelines for lawful minority and female business program enacted by local governments such as the City of Columbus is the U.S. Supreme Court decision in City of Richmond v. J.A. Croson, 488 U.S. 469 (1989).

In the Croson decision, the U.S. Supreme Court struck down the City of Richmond's MBE program which mandated that the City would attempt to require its prime contractors to subcontract at least 30 percent of construction contract dollars to minority-owned firms. In analyzing this case under the 14th Amendment, the Supreme Court, for the first time, adopted a "strict scrutiny" standard for testing the legality of race-conscious affirmative action programs.

(70) Under this standard, the Court employed a two-prong analysis. First, the City was required to demonstrate a compelling governmental interest for using race-conscious criteria in the awarding of contracts. (This requirement could have been satisfied if the City demonstrated that its MBE program was remedial in nature to correct the effects of identified discrimination in the public and/or private sector marketplace.) Secondly, the City was required to demonstrate that its MBE program was narrowly tailored to address the effects of that identified discrimination. In this regard, factors considered by the Court included whether the program covered minority ethnic groups for which there was no evidence of discrimination; whether the size of the MBE participation goal was flexible and rationally related to a relevant disparity in the marketplace; whether consideration was given to less restrictive race-neutral remedies; and whether the program contained sunset provisions or other means for periodic review to ensure that the program would not outlive its intended remedial purpose.

In Croson, the Supreme Court held that the City's program failed to satisfy both prongs of the strict scrutiny test. Richmond failed to demonstrate that its program was necessary to remedy the effects of discrimination in the marketplace.

The Court reasoned that a mere statistical disparity between the overall minority population in Richmond (50 percent black) and awards of prime contracts to minority-owned firms (0.67 percent to black firms) was an irrelevant comparison and insufficient to raise an inference of discrimination. Justice O'Connor stated that the relevant statistical comparison was one between the percentage of minority firms available and willing to participate in the construction industry (including prime contractors and subcontractors) and the percentage of prime and subcontract dollars awarded to those minority firms. In addition, particularized anecdotal accounts of discrimination could establish a compelling interest for a local government to institute a race-conscious remedy. However, conclusory claims of discrimination by city officials would not suffice.

Moreover, the Court held that Richmond's program was not remedial in nature because it provided preferential treatment to minorities, such as Aleuts, for which there was no evidence whatsoever of discrimination within Richmond. Justice O'Connor expressed dismay that Richmond's MBE program, in theory, afforded preference to firms that were successful and located anywhere in the nation, solely on the basis of their race.

As for the second prong of the strict scrutiny test, the Supreme Court held that Richmond's MBE program, on several grounds, was not narrowly tailored to redress the effects of discrimination. First, the program extended to a long list of ethnic minorities (e.g., Aleuts) for which the City had established no evidence of discrimination. Therefore, the scope of the program was overly broad.

Second, the Court held that the 30 percent goal for MBE participation in the Richmond program was an inflexible rigid quota and was an arbitrary figure not rationally related to relevant disparities. The Court also criticized the City's lack of inquiry into whether a particular MBE seeking racial preference has suffered from the effects of past discrimination.

Third, the City of Richmond failed to consider race-neutral alternatives to remedy the under-representation of minorities in contract awards.

The fourth and final flaw was that the Richmond MBE program contained no sunset provision or mechanism for periodic review to assess continued need. Accordingly, the Richmond program could have outlived the need for any remedy.

In the wake of Croson decision, a large number of MBE programs, including those for the City of Columbus, were challenged on constitutional grounds. In the case of Ohio Contractors Association v. City of Columbus, 733 F. Supp. 1156 (S.D. Ohio, April 3, 1990), affirmative action contracting goals of 21 percent minority and 4 percent female participation imposed by the Columbus City Council on the AmeriFlora international garden exposition were permanently enjoined by Judge Graham for being in violation of the Fourteenth Amendment Equal Protection Clause. Judge Graham cited the Croson decision extensively in holding that the City had failed to demonstrate that the AmeriFlora MBE/FBE goals were remedial in nature, and that they appeared to be politically motivated. The Court reiterated that under Croson, the granting of race-based and gender-based preferences to minority contractors must be based on firm evidence that they are in fact underrepresented in relation to their presence in the community and that such underrepresentation is the product of past discrimination. And even then the race or gender-based preference must be carefully tailored to fit the remedial goal. Thus, Judge Graham extended the Croson strict scrutiny standard to apply to gender-based preferences as well as race-based preferences.

In the case of Associated General Contractors v. City of Columbus, in which the City of Columbus' MBE and FBE subcontracting goals program was challenged on similar grounds, Judge Graham gave additional guidance on the proper procedures to be followed by the City in developing a factual predicate. Judge Graham stated the following:

A municipality which is considering the enactment of legislation which creates race-based and gender-based preferences in the award of public contracts must, in fairness to all of its citizens, fairly and fully investigate the issue of whether or not discrimination has actually occurred in the employment of minorities and females in the construction industry in its community and whether such discrimination has actually occurred in its award of contracts and in the award of subcontracts by the prime contractors it has employed. Only if a thorough and impartial investigation of the facts supports a finding that discrimination has occurred is the municipality justified in considering a scheme in which some of its citizens and firms are excluded from competing for a portion

of its total contract dollars ... Even then such a scheme should be considered as a last resort after other remedies not based on race or gender are determined to be inadequate.

Associated General Contractors v. City of Columbus, (Judge Graham's Order of June 20, 1990, denying in part, defendant's motion to dismiss).

However, the most detailed guidance since Croson regarding the proper methodology for developing a factual predicate to determine the need for an MBE program has been the 9th Circuit Court of Appeals' decision in the case of Coral Construction Co. v. King County, 941 F.2d 910 (9th Cir. 1991). The 9th Circuit Court of Appeals held that the "compelling interest" requirement of Croson can best be met with a combination of convincing anecdotal and statistical evidence of discrimination in the marketplace. Anecdotal evidence of exclusion of minority contractors in the public or private sector, or of specific instances of discrimination as testified to by MBEs suggests that there may be systemic discrimination. However, without a statistical study showing disparity between the availability of MBEs and the utilization of MBEs on prime contracts and subcontracts, the picture is incomplete. There must also be a proper statistical foundation to show that incidences of discrimination identified through anecdotal evidence are systemic and require a class-based remedy.

PART I.
SECTION C.
OVERVIEW OF CITY PROCUREMENT AND MBE/FBE UTILIZATION

As background to understanding both the quantitative and qualitative evidence of discrimination and our discussion of alternative remedies, it is instructive to take a broad view of the City's purchasing activity in general. This section answers several questions:

- What quantity of goods, services and construction was purchased by the City?
- What types of goods, services and construction were purchased?
- From what geographic area?
- What procedures were followed?
- What efforts were used to encourage utilization of MBEs and FBEs?

Quantity of Goods, Services and Construction Purchases

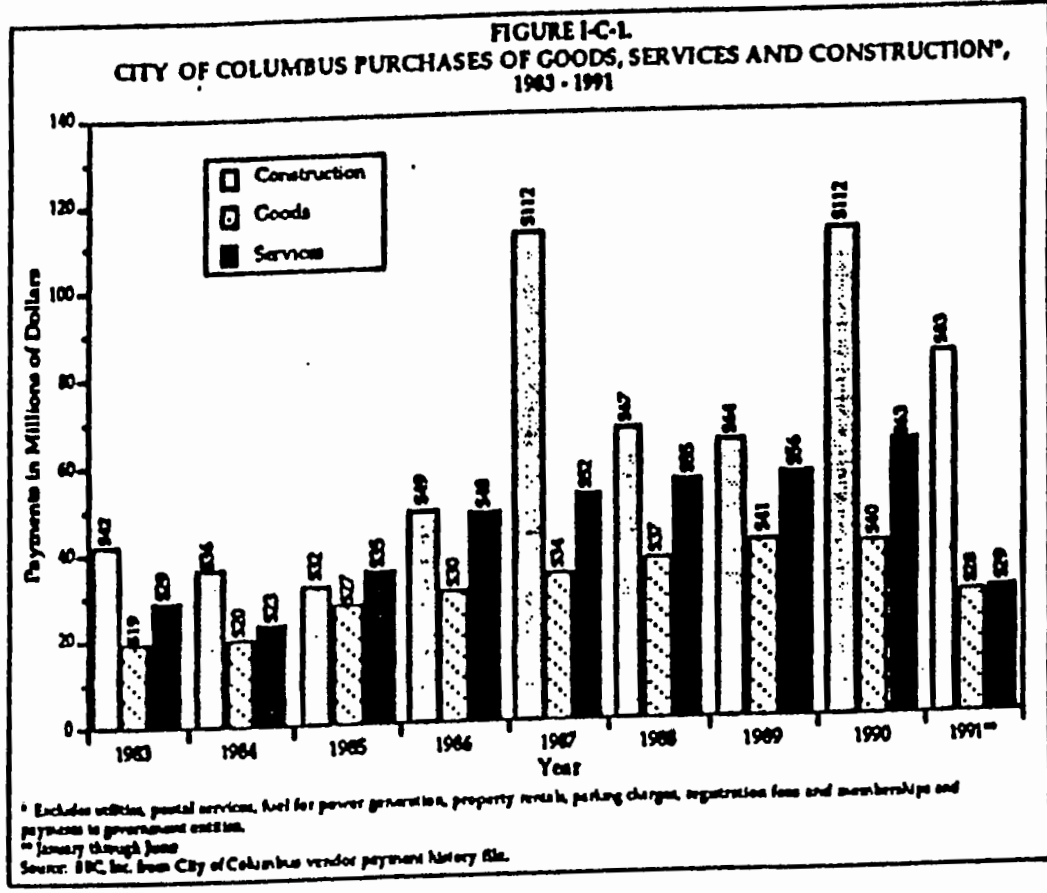
The best available information on overall City of Columbus purchases comes from a computer database for all City payments to individuals and businesses that is maintained by the City Auditor's Office. At the request of the study team, the City Auditor's Office prepared a computer tape including payments to businesses and excluding paychecks and other payments to individuals. The years 1983 through 1990 and the first six months of 1991 were included on the tape. Data were not available in the same format prior to 1983. This "vendor payment history file" contains all warrants (checks) issued to pay vendors for construction, goods and services. With certain caveats, this data source presents a reasonably accurate picture of the goods, services and construction the City purchased in a year. However, certain payments in 1990, for example, might be for goods purchased and received in 1989. Also, the City might enter a contract with a business, but not purchase any goods or services related to that contract. In these cases the business might not appear in the vendor payment history file.

The study team excluded utilities, postal services expenses, fuel for power generation, property rentals and parking charges, registration fees and memberships from the analysis, all of which are believed to be fundamentally different types of purchases than other goods, services and construction expenditures. We also excluded payments to governmental entities where identified. Excluding these expenditures, purchases of all other goods, services and construction totaled \$214 million in 1990, the last year we had complete data. Expenditures in 1990 were highest of any year from 1983 through 1990. Expenditures totaling \$79 million in 1984 were the lowest during this period.

As shown in Figure I-C-1, construction expenditures have accounted for about one-half of these purchases from 1983 through August 1991. Construction expenditures varied considerably from year to year, from a low of \$32 million in 1985 to over \$100 million in both 1987 and 1990. These figures represent payments to prime contractors and demonstrate some lag from when construction activity actually occurred (and a somewhat longer lag from when contracts were let). Goods and services purchases are much less volatile, tending to increase slightly each year from 1983.

(72)

(73)



To put these levels of expenditures in perspective, wholesale trade establishments within the Columbus Metropolitan Statistical Area (MSA) generated about \$16 billion in sales in 1987 based upon the most recent U.S. Bureau of the Census, Census of Wholesale Trade. The Columbus MSA is a federally defined functional economic area consisting of Delaware, Franklin, Fairfield, Licking, Madison, Pickaway and Union Counties. The City purchased \$17 million in goods in that year from vendors within the MSA in 1987. Therefore, City purchases accounted for about one tenth of one percent of total volume of local wholesale firms.

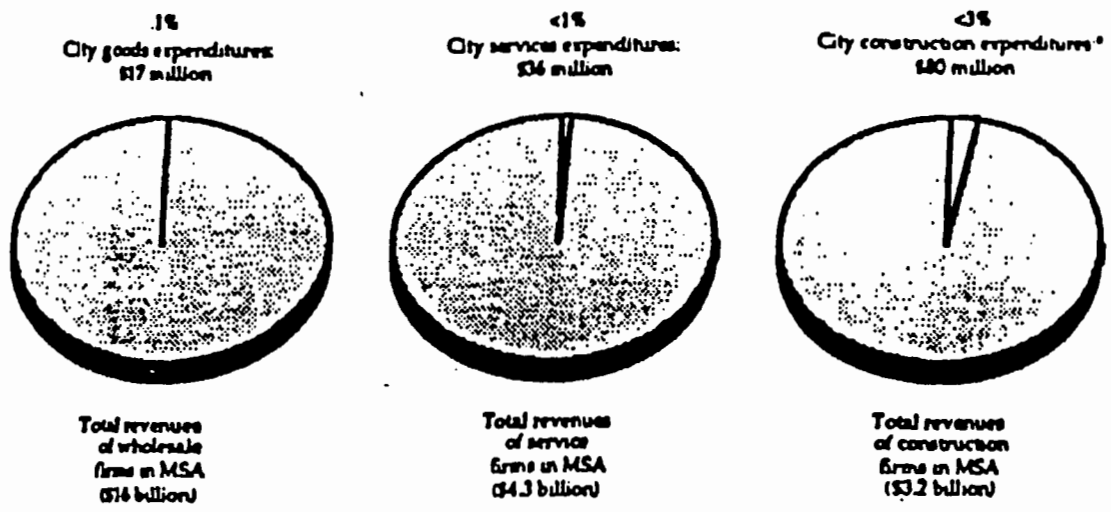
Services purchases by the City can also be compared with aggregate services volume within the MSA. In 1987, the City purchased \$36 million in services from local businesses. Based upon the 1987 Census of Service Industries, MSA establishments generated \$4.3 billion in total receipts. City services purchases represented less than 1 percent of local service business activity.

The City purchased a total of \$112 million from construction firms in all locations during 1987. Based upon the prime versus subcontractor distribution of work and locations of these firms, we estimate that roughly \$70 to \$80 million of these purchases might have gone to local prime contractors and subcontractors. Based upon this estimate, City construction accounted for less than 3 percent of the \$3.2 billion in local construction activity in 1987. Figure I-C-2 illustrates the relative role of City purchases in local economic activity.

(74)

(75)

**FIGURE I-C-2
CITY PURCHASES FROM FIRMS WITHIN THE COLUMBUS MSA, 1987**



* Estimates of prime and subcontractor payments to firms within the Columbus MSA.

Source: BFC, Inc. from City vendor payments history file and U.S. Bureau of the Census, 1987 Census of Wholesale Trade, 1987 Census of Service Industries and 1987 Census of Construction Industries, 1989.

Types of Goods, Services and Construction Purchased

The City of Columbus Auditor's vendor payment history file identifies type of expenditure by minor object codes (MOCs). About 120 MOCs relate to goods, services and construction purchases (excluding utilities, postal services and fuel for power generation as discussed above). Table I-C-1 identifies some of the largest procurement areas and associated dollar volume of payments from 1983 through June 1991. Classifications of minor object codes into specific procurement areas and into the categories of goods, services and construction are only approximate, as some minor object codes might include the purchase of a particular piece of equipment and associated service for that equipment. MOCs classified as construction might sometimes include some design fees and equipment purchases as part of a larger construction contract. Classifications into goods, services and construction as well as groupings of minor object codes were formulated with review by City staff.

As shown in Table I-C-1, three categories accounted for the majority of construction activity from 1983 through June 1991. Water and sewer plants and lines (\$25 million per year), building construction and repair (\$13 million) and streets (\$6

I-13

million annually) together represented nearly two-thirds of City expenditures on construction.

The areas of greatest annual volume for goods from 1983 through 1990 were chemicals (\$4.8 million per year), trucks and other motorized equipment (\$4.1 million), equipment and machinery supplies and parts (\$3.8 million), and vehicle supplies and parts (\$2.4 million annually).

Payments to architects, engineers and other professional design firms (\$14.5 million per year) was the largest category of services purchases.

I-14

Table I-C-1
Average Annual City Purchases
Selected Procurement Areas
January 1983 - July 1991

	Millions
Goods	
Chemicals	\$4.8
Trucks and other vehicles	4.1
Equipment and machinery parts and supplies	3.8
Vehicle parts and supplies	2.4
Other goods	<u>12.2</u>
Total Goods	\$32.3
Services	
Professional design	\$14.5
Automotive maintenance	1.2
Rental of data processing equipment	1.1
Other services	<u>29.2</u>
Total Services	\$46.0
Construction	
Water and sewer plants and lines	\$25.1
Buildings	13.0
Streets	6.0
Other construction	<u>26.2</u>
Total Construction	\$70.3
Total purchases analyzed*	\$148.6

*Excludes utilities, postal services, fuel for power generation, property rentals, parking charges, registration fees and memberships and purchases from identified governmental entities.

Source: BBC, Inc. from City vendor payment history file.

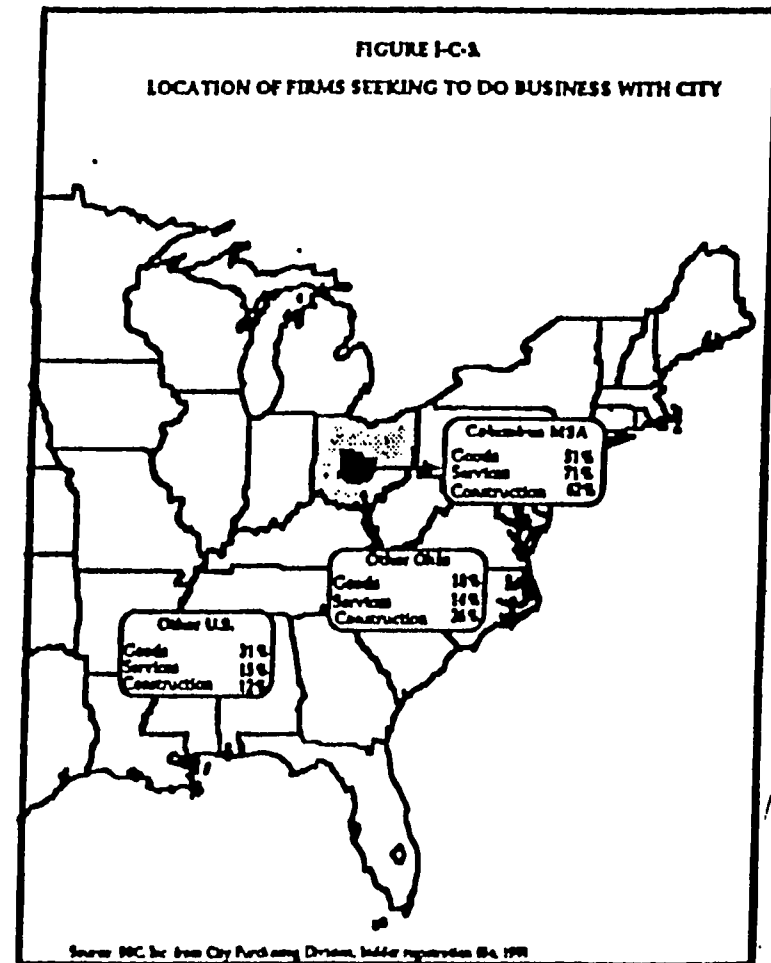
I-15

Geographic Market Area For City Purchases

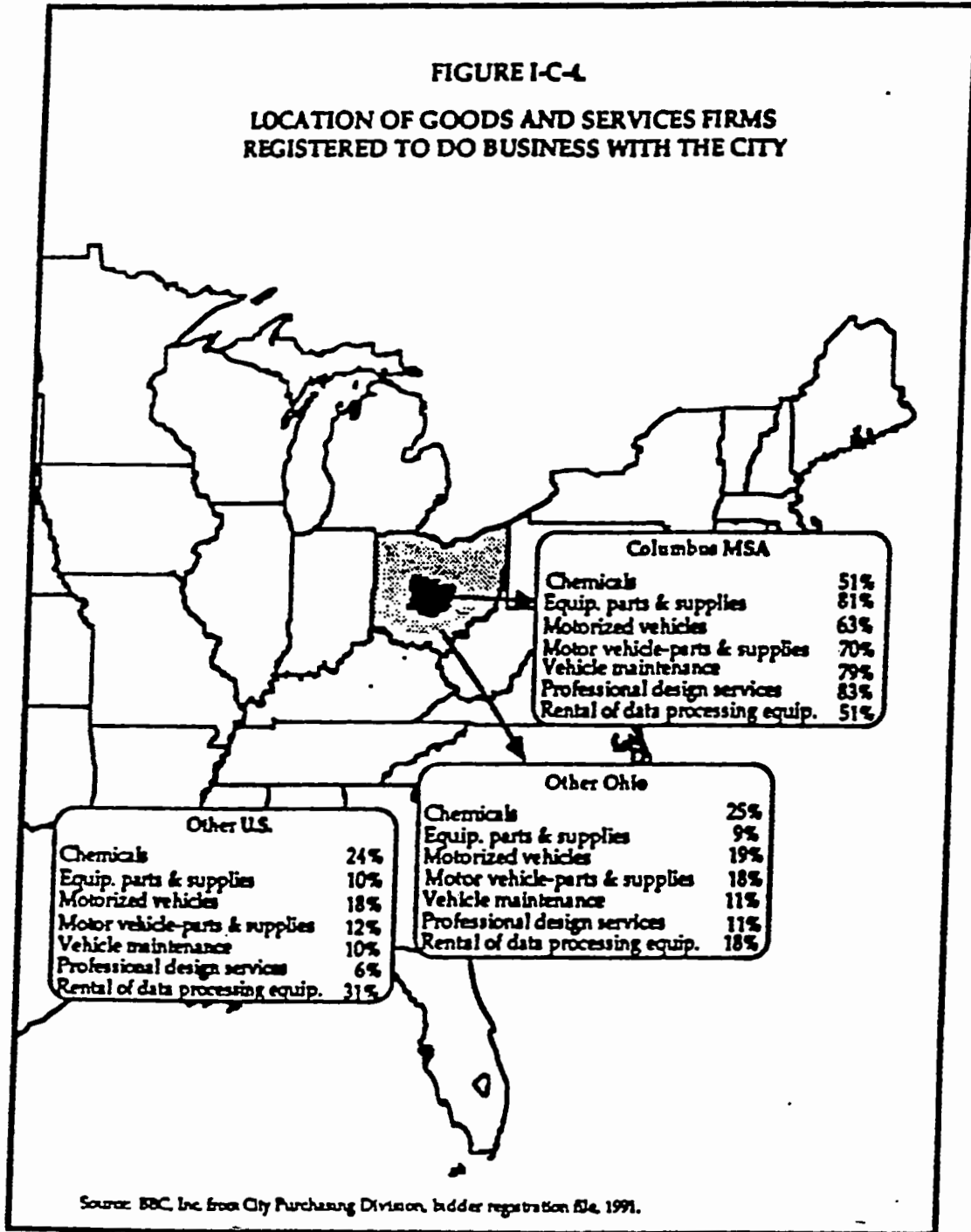
Geographic market area can be examined based on the location of firms that are attempting to do business with the City and the location of businesses that have worked for the City.

The City of Columbus Purchasing Division maintains a database of firms that have submitted bidder information in order to receive solicitations. In 1991, 71 percent of the services firms that had completed bidder registration information were located within the seven county Columbus Metropolitan Statistical Area (MSA), as shown in Figure I-C-3. Fourteen percent of the services vendors were from other communities within Ohio. A similar distribution existed for the construction firms that had registered with the Purchasing Department: 62 percent were within the MSA and another 26 percent were from other Ohio communities. However, relatively fewer goods vendors were from the MSA (51 percent) and other Ohio (18 percent).

(77)



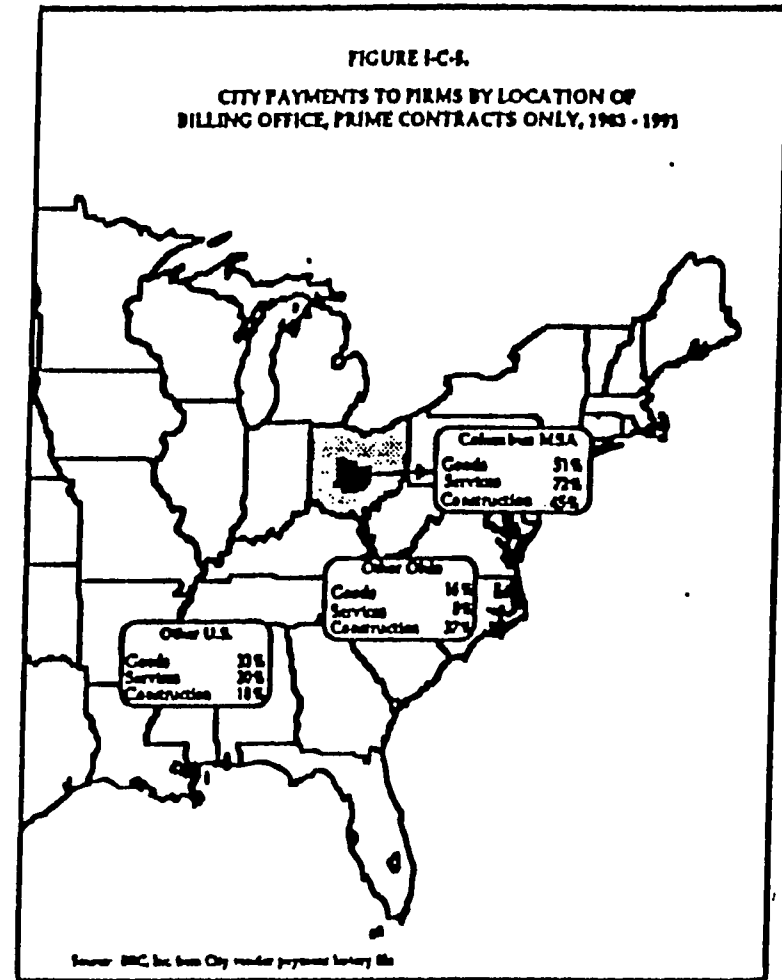
As shown in Figure I-C-4, certain types of goods purchases such as chemicals are more focused on the national market than purchases such as equipment parts or professional design services. Analysis of available data and discussions with buyers indicate that, beyond the Columbus MSA, there is no predominant geographic area for firms seeking business with the City.



Another way to examine relevant geographic market area for City procurement is to determine the location of vendors that actually received payments from the City. Figure I-C-5 shows that over one-half of the payments for goods and services went to firms with billing offices within the Columbus MSA. Results for construction somewhat differ; over one-third of the prime contract payments for construction went to billing offices in other Ohio cities.

The vendor payment data somewhat overstate the volume of purchases going to firms outside of Columbus. Even though a business may be located within Columbus, its billing office may be in another city or state. The vendor payment data only includes the address where the City sends payments. Also, payments to subcontractors are not included in these data. For these reasons, we believe the payment data present a somewhat inaccurate view of distribution of purchases, especially for construction. These results should be interpreted as minimum estimates of the relative amount of purchases from establishments within the Columbus MSA.

(67)



In sum, most types of goods, services and construction are primarily purchased from the local market, while other types are drawn from throughout the U.S. The data indicated that no one Ohio community outside of the Columbus MSA accounted for a high percentage of any types of procurement. Based upon these results, the study team selected the Columbus MSA as the relevant geographic market area for most forms of City purchases, recognizing that some purchases were made from a national vendor base.

Procedures Followed to Purchase Goods, Services and Construction

Expenditure of City funds is governed by the City Charter and City Code. Different procedures are employed to procure goods, services and construction depending upon the size and type of the purchase and whether the items are needed on a recurring or a one-time only basis. End-user divisions and departments, the Purchasing Division, City Council, City Auditor's Office and City Attorney's Office each have a key role in the purchasing process. Chapter 329 of the Columbus City Code establishes that purchases or rentals of materials, supplies and equipment are to be made by the Purchasing Administrator. Other contracts are executed by the appropriate manager of each City division or department. In practice, the Purchasing Division is increasingly involved in services purchases as well. Individual departments typically handle construction contracting.

Goods. For items not exceeding \$500, the individual division or department can purchase the item without contacting the Purchasing Division. Typically, three vendors must be contacted for quotes, but if the item is already on a supply contract set up by Purchasing, the division can directly contact the vendor without obtaining further quotes.

For items over \$500, department personnel develop specifications and list at least three vendors to be contacted for quotes by Purchasing staff. This information is forwarded to the Purchasing Division and the request is distributed to the buyer specializing in that commodity or service. For formal bids (purchases over \$10,000), the buyer reviews the specifications, prepares a bid packet and selects the vendors to be sent the bid packet. Buyers select firms to receive a solicitation based in part on the database of vendors that have submitted bidder registration forms to the Purchasing Division. The Purchasing Division staff reported that buyers are encouraged to have at

least one minority or female-owned business on the list. Buyers use their own informal lists of MBE and FBE firms. The Minority and Female Business Division (MFBD) directory of certified minority and women-owned firms is not routinely used by buyers. For formal bids, Purchasing also advertises the bid in the City Bulletin and posts the bid in the reception area of its offices.

Once bids are received in writing from vendors, the buyer reviews them for responsiveness. At the discretion of the end-user, tabulation of the bids and determination of winning vendor can be done by the individual division or by Purchasing staff. The winning vendor is the lowest bid among those vendors deemed "responsible and responsive." By City statute, in determining the lowest bid, a local bidder receives a credit equal to one percent of the lowest bid submitted by a nonlocal bidder (credit cannot exceed \$10,000, however). A local vendor is a business located within Franklin County as documented by corporate records or by holding a vendor's license indicating a place of business within the county.

Once the department makes a recommendation, Purchasing reviews the recommendation and notifies the vendor. The department (or Purchasing for UTCs) then prepares legislation for Council and the Mayor's approval. After City Council action on the legislation, Purchasing will forward the contract information to the City Auditor's Office and then on to the City Attorney's Office for review. Only after these approvals does the vendor have a contract with the City.

For purchases over \$500 but under \$10,000 invitations to bid are posted, but not advertised. Typically, buyers only contact three vendors for these quotes. Awards can be executed without further approvals (although all orders must still be certified by the Auditor's office). Streamlined procedures are followed for any emergency purchases; telephone quotes can be accepted. The local preference credit for purchases under \$10,000 is 5 percent. The exception to the \$10,000 limit is leases or purchases of motorized equipment, which has a \$5,000 limit.

For goods and services required routinely by City departments (e.g., office supplies, auto parts, automobiles), the Purchasing Division will utilize universal term contracts (UTCs). A single contract often covers many items such as different types of office products. Based upon specifications and quantities estimated by the Purchasing Division, vendors will submit bids on each item. The Purchasing Division may then

award the entire supply contract to a single vendor or split the award among several vendors based upon the prices quoted for selected items. The City can then place orders with these vendors over the course of a year without obtaining quotes from other sources. However, the City does not enter an exclusive contract with the vendor; agencies can still choose to go out for bid for these items. Supply contracts can be extended for several years. In 1989, the City purchased \$22 million of goods off of its approximately 300 UTCs (this represents about one-half of total goods purchases). The City can also purchase items off of State of Ohio supply contracts.

(81) **Construction.** Construction contracts are agreements for the procurement of services, including labor and materials for the construction, reconstruction and maintenance of public improvements (e.g., streets, bridges, plant facilities). City agencies prepare an invitation for bids containing relevant specifications. These invitations are sent to a list of vendors selected by the agency; however, some agencies make bids available to any interested contractor who can pick up the bid packet. Some agency staff typically keep informal lists of potential vendors although Purchasing also maintains an extensive list of services vendors and a smaller list of construction firms. In some cases, vendors receiving solicitations might be pre-qualified by the agency. Notice of bids are also advertised in the Columbus City Bulletin and, if desired, other appropriate publications. Review and selection of lowest responsive and responsible bidder is the responsibility of agency staff although they might be assisted by Purchasing staff. Approval processes are similar to those for materials purchases. More streamlined procedures are allowed for purchases under \$10,000.

Services. Contracts for general services are generally handled in the same way as construction contracts.

Professional service contracts. Professional services are services which usually require advanced training and/or a significant degree of expertise to perform and which often require official certification or authorization by the State (e.g., architects, attorneys, financial consultants). City agencies have a great deal of flexibility in the award of professional services contracts. Agencies are not bound to select the lowest bidder, but can rate vendors based upon a number of criteria in addition to price. Often, potential vendors can first be ranked based upon qualifications, with only the highest rated firms selected to submit proposals. A committee of at least three City staff

is required to evaluate the statements of qualifications and proposals. Contracts above \$10,000 require City Council approval.

Contract compliance approval. Each vendor must receive a contract compliance number from the Minority and Female Business Division (MFBD) for the contract to be approved. In the past, MFBD could delay contract approval until staff were satisfied that minority and women-business subcontracting goals were achieved or that the contractor made a good faith effort to meet the goals. Since suspension of the goals program in 1989, MFBD is still responsible for issuing contract compliance numbers, but cannot deny contract approval based on its review of MBE and FBE utilization.

Other. Sole source purchases are allowed if only one business is capable of supplying the required materials or services. City agencies also have general authority to purchase items that have regulated or fixed prices such as utilities or postal services. Special procedures are followed for emergency purchases, if the need for an item or service is urgent to complete a job or prevent a danger from stopping City services or hurting an employee or the public.

There have been a number of changes to the City procurement process over time. City Council raised the dollar limit for informal bids from \$5,000 to \$10,000 in April, 1991. The limit on encumbrances issued directly by City agencies was increased from \$100 to \$500. Through the 1980s, departments had substantial flexibility in selecting professional services firms. However, new rules and regulations enacted in the last few years have formalized the professional services contracting process.

City Efforts to Encourage Utilization of MBEs/FBEs

The following summarizes the major changes in City policies and practices to encourage opportunities for minority and women-owned firms.

Prior to July 1981, The City of Columbus began its formal Affirmative Action efforts in May 1975 with the enactment of Ordinance 810-75. This ordinance created Title 39 (Contract Compliance Code) of the Columbus City Code. Title 39 established an Office of Contract Compliance and authorized the Mayor to appoint a Contract Compliance Administrator and supervisory Contract Compliance Board. The specific

requirements of the Contract Compliance Code for the City and contractors were outlined largely in Chapters 3907, 3909, 3911, and 3913.

Chapter 3907 specified that prior to bidding, each contractor must submit an Employer Report Form to the Contract Compliance Administrator. This form detailed the race and gender of the contractor's workforce. Moreover, contractors were to submit an Affirmative Action Plan satisfying the following condition:

"The final goal for the utilization of minorities shall be a percentage of minority employees in each job classifications not less than the percentage of the minority population in the total population of the Standard Metropolitan Statistical Area. The final goal shall be achieved within five years following the adoption of an accepted Affirmative Action Plan."

Chapter 3907 allowed contractors several exceptions to meeting the above employment goal. Non-construction contractors had to demonstrate a "good reason" why the final goal was not achieved. Construction contractors had four potential justifications for not meeting the goal on a city project:

- If the contractor's total workforce met the goal on all projects in the SMSA.
- If the contractor made a good faith effort to employ minorities, and was a member of a contractor association which had an affirmative action effort.
- If the contractor had a collective bargaining agreement with a labor organization whose membership met the goal.
- If the contractor had a collective bargaining agreement with a labor organization which was under a Court Order or Consent Decree to implement Affirmative Action.

Finally, Chapter 3907 stated that "Bidders not in compliance [with their Affirmative Action Plan] may be ineligible for the award of a contract" according to the determination of the Contract Compliance Administrator.

Chapter 3909 required City contracting agencies to insert an Equal Opportunity Clause into all contracts entered into by the City. This clause included language prohibiting discrimination by contractors in hiring and advancement because of race, color, religion, sex or national origin. The clause also called on contractors to advertise their status as "equal opportunity employers" both in help wanted advertisements and

in dealing with labor unions. Moreover, the clause compelled contractors to open their records on demand for inspections by the Contract Compliance Administrator.

If a contractor violated any provision of the Equal Opportunity Clause, Section 3909 allowed the Contract Compliance Administrator to withhold future payments, refuse future bids, cancel the contract, and/or collect the performance bond.

Chapter 3911 required construction contractors to submit a monthly manpower utilization report to the Contract Compliance Administrator. This report detailed the race and gender of employees working on the City project. Non-construction contractors were required to submit a similar report yearly.

Chapter 3913 enumerated several more responsibilities for City contracting agencies and the Contract Compliance Administrator. First, they were directed "to increase the level of minority participation on negotiated contracts ... to at least twenty percent (20%) of the total dollars expended for all contracts of \$2,500 or less." In order to accomplish this goal, contracting agencies were required to develop lists of qualified minority business enterprises. Second, contracting agencies were required to submit a quarterly report about the status of all open contracts over \$2,500 to the Contract Compliance Administrator.

At the same time, the Contract Compliance Administrator was required to send monthly reports about minority employment and contract amounts to the Contract Compliance Board. The Administrator was also directed to make annual reports to the Columbus City Council.

The Affirmative Action provisions contained in Chapters 3907, 3909, 3911, and 3913 remained in effect and unchanged until Ordinance 2337-81 was enacted in July/1981. Table I-C-2 summarizes the goals in effect under these sections and the following changes.

July 1981 to April 1983. In July 1981, the Columbus City Council enacted Ordinance 2337-81 which thoroughly overhauled the City's Contract Compliance Code. This ordinance included female employees and FBEs in the City's goals and enumerated specific goals regarding minority/female workforce and expenditures.

The new Chapter 3907 established a goal for construction contractors doing business with the City to maintain a workforce with at least 10.6 percent minority and 6.9 percent female employment. These minority and female employees did not have to be working on the City construction project as long as they were currently employed by the contractor. Non-construction contracts were to maintain a workforce with at least 15 percent minority and 20 percent female employment.

Regarding dollar expenditures, the ordinance established goals for construction contractors, use of MBE/FBE subcontractors: 10 percent of contract value to MBEs and 2 percent to FBEs. For non-construction contracts, goals for City agencies were to utilize MBEs for at least 10 percent and FBEs for 2 percent as well.

(83)

Table I-C-2.
City of Columbus Affirmative Action Goals

	Construction Contracts	Non- Construction Contracts
May 1973 to June 1981 Ordinance 810-73		
Employment of minorities	SMSA %	SMSA %
Employment of females	0.0%	0.0%
City Contract dollars to MBEs	0.0%	0.0%
City Contract dollars to FBEs	0.0%	0.0%
Small Contract dollars to MBEs/FBEs	20.0%	20.0%
July 1981 to April 1983 Ordinance 2337-81		
Employment of minorities	10.6%	15.0%
Employment of females	6.9%	20.0%
City contract dollars to MBEs	10.0%	10.0%
City contract dollars to FBEs	2.0%	2.0%
Small contract dollars to MBEs/FBEs	20.0%	20.0%
May 1983 to December 1988 Ordinance 863-83 *		
Employment of minorities	10.6%	15.0%
Employment of females	6.9%	20.0%
City contract dollars to MBEs	10.0%	10.0%
City contract dollars to FBEs	2.0%	2.0%
Small contract dollars to MBEs/FBEs	20.0%	20.0%
January 1989 to August 1989 Ordinance 29-89		
Employment of minorities	21.0%	21.0%
Employment of females	10.0%	25.0%
City contract dollars to MBEs	21.0%	21.0%
City contract dollars to FBEs	4.0%	4.0%
Small contract dollars to MBEs/FBEs	21.0%	21.0%
September 1989 - Ordinance 2322-89		
Employment of minorities	0.0%	0.0%
Employment of females	0.0%	0.0%
City contract dollars to MBEs	0.0%	0.0%
City contract dollars to FBEs	0.0%	0.0%
Small contract dollars to MBEs/FBEs	0.0%	0.0%

* No goals changed, but MFBD was created to replace the Office of Contract Compliance.

Finally, the new Chapter 3907 also included language similar to the old Chapter 3913 regarding contracts of \$5,000 or less: "Contracting agencies are directed to make every effort to increase the level of participation of minority business enterprises and/or female business enterprises on contracts to at least twenty percent (20%) of the total dollars expended for all contracts of \$5,000 or less."

May 1983 to December 1988. In May 1983, Ordinance 885-83 created the Minority and Female Business Division (MFBD) to replace the Office of Contract Compliance which had been in existence since 1975. None of the goals enumerated in Ordinance 2337-81 were altered.

The legislative mandate of MFBD was virtually identical to that of the Office of Contract Compliance. For example, the Division was primarily engaged in approving all subcontracting plans before construction began. The review process entailed two main tasks. First, MFBD was to check that all primes and subs had received contract compliance numbers by filling out the appropriate paper work which included information on the racial and gender composition of the workforce. At the same time, MFBD was to delay and/or not approve subcontracting plans which did not meet the City's goals or at least evidenced a good faith effort. In these cases, prime contractors were to be given more time to comply with the goals or make a good faith effort. Available information indicates no winning bidder was ever permanently denied a prime contract because of an unacceptable subcontracting plan.

Once a contractor began work on a City project, MFBD inspectors conducted site inspections during which they audited the number of minority and female employees on the job. Even when MFBD inspectors did not visit the job site, contractors were responsible for submitting monthly manpower utilization reports (MURs) which detailed labor force participation. If an MFBD site inspection or review of MURs yielded unsatisfactory results, including non compliance, the Division could threaten to halt contractor payments or even revoke contracts. According to MFBD staff, the former happened infrequently, and the latter never occurred.

January 1989 to August 1989. In January 1989, Ordinance 29-89 increased the goals percentages established in Ordinance 2337-81. The role of the Minority and Female Business Division was unchanged.

The new Chapter 3907 directed City contracting agencies to utilize construction contractors with at least a 21 percent minority and 10 percent female work force. For non-construction contracts, City agencies were to utilize minority business enterprises for at least 21 percent and female business enterprises for at least 4 percent of total dollars expended. On all contracts less than \$5,000, City agencies were directed to increase MBE/FBE participation to 21 percent.

As did Ordinance 2337-81, Ordinance 29-89 imposed similar goals on contractors. The ordinance established goals for construction contractors when choosing subcontractors for City projects. The goals for female business enterprises were 4 percent of subcontracting dollars with a minority business enterprise's goal of 21 percent of subcontracting dollars. Finally, non-construction contractors had a goal of a workforce with 21 percent minority and 25 percent female employment.

A lawsuit challenging the constitutionality of Ordinance 29-89 was filed by the Associated General Contractors against the City of Columbus in Federal District Court. On January 25, 1992, Judge Graham issued an order declaring that ordinance to be unconstitutional and maintaining jurisdiction over the case to review any future MBE/FBE preferences instituted by the City.

September 1989 to Present. In September 1989, Ordinance 2322-89 modified Section 3907 of the City's Contract Compliance Code. As mentioned above, the Associated General Contractors had challenged the constitutionality of Ordinance 29-89. The City chose to voluntarily suspend its employment and contracting goals. Currently, the City's Division of Purchasing and Minority and Female Business Division employ five non-goal techniques to increase the amount of equal employment and contracting opportunities.

First, MFBD staff attend pre-construction meetings where they are available to answer prime contractor questions about the availability of MBE/FBE subcontractors. Purchasing staff also participate in pre-construction meetings if Purchasing is issuing the bid. Second, MFBD personnel are members of "fast track" construction committees which are utilized on large construction projects with a short performance period such as the recently completed Central Safety Building. MFBD staff act as internal advocates for MBE/FBE utilization on the "fast track" committee.

Third, MFBD personnel are available as an on-call resource to answer inquiries from prime contractors looking for MBE/FBE subs and MBE/FBE subs looking for primes. To assist in this matchmaking effort, MFBD publishes a directory of all MBE/FBE firms which have achieved contract compliance with the City. Fourth, staff in the Division of Purchasing routinely hold new vendor conferences with all firms (including MBEs/FBEs) to explain the intricacies of doing business with the City of Columbus.

Finally, purchasing and MFBD staff participate in the Columbus Regional Minority Supplier Development Council (CRMSDC), the Woman Business Owner Conference (WBOC) and the Minority Business Opportunity Committee (MBOC). These organizations provide seminars and training and hold annual trade fairs.

As such, the City has implemented only race and gender-neutral remedies to encourage opportunities for MBEs/FBEs since 1989.

(85)

PART I. SECTION D. EVALUATION OF EVIDENCE OF DISCRIMINATION

Reviewing the evidence in order to draw conclusions about discrimination requires reference to the standards enunciated by the U.S. Supreme Court in City of Richmond v. J.A. Croson Co.

First, Croson requires evidence "approaching a prima facie case of a constitutional or statutory violation" as support for affirmative action. To support affirmative action for minority-owned businesses, a jurisdiction must have a "strong basis in evidence" for believing the jurisdiction has discriminated either actively or as a passive participant in a system of racial exclusion practiced within the marketplace. The jurisdiction considering enactment of affirmative action is not required to prove discrimination by an alleged perpetrator, but only to demonstrate that evidence of discrimination exists.

Second, the Croson opinion is limited to race-based affirmative action. Traditionally, gender classifications are subjected to a less stringent standard of review. Some court decisions suggest that because gender classifications are not as suspect as racial classifications, evidence of societal discrimination may suffice. Other decisions ignore this distinction and apply the same standards articulated in Croson for race-based as for gender-based affirmative action. The most stringent standard for review is adopted in the following discussion of findings.

Evidence of discrimination is summarized for minority-owned firms and then female-owned firms in the following discussion. Quantitative analysis of evidence of discrimination is presented in detail Part II of this report. Qualitative evidence is examined in Part III.

Evidence of Discrimination Against Minority-Owned Firms

Market area. The seven county Columbus MSA is the relevant geographic market area for most forms of goods, services and construction purchases, although

some types of purchases primarily draw from a national market. This market area definition applies to the following discussion of MBEs and FBEs.

Availability. Availability of firms ready, willing and able to perform work for the City was examined in two ways. The following discussion presents availability measures for goods, services and construction.

Goods. A substantial portion of goods firms actively soliciting business from the City were minority-owned (8.7 percent including minority women-owned firms) based upon the number of minority, female and majority-owned businesses in the City's Bidder Registration File in 1991. Our investigation concluded that this database was not biased toward or against inclusion of minority or female-owned firms as of mid-1991 (it was completely independent of the MBE/FBE certification process). A second measure of availability of firms ready, willing and able to work for the City is the proportion of all wholesaling firms in the Columbus MSA that were minority-owned in 1987 based upon the U.S. Bureau of the Census, 1987 Census of Minority-Owned Business Enterprises. These data indicate that 2.8 percent of Metro Area wholesaling firms were minority-owned in 1987.¹ These firms include African-American, Hispanic, and Asian and Native American-owned businesses. Black-owned firms comprised two-thirds of local MBE wholesale firms, while Hispanic-owned firms were 8 percent of the MBEs and Asian and Native American-owned firms were 25 percent.

Services. Including male and female-owned minority firms, 14.3 percent of services firms in the Bidder Registration File were MBE. Again, we found the Bidder Registration File in mid-1991 to have no bias toward or against the inclusion of MBEs/FBEs. In 1987, 5.4 percent of services firms in the Columbus Area marketplace were MBE. These firms include African-American (76 percent of MBE services firms), Hispanic (6 percent) and Asian and Native American-owned firms (18 percent).

Construction. Based upon the Bidder Registration File, 23.7 percent of construction firms seeking business with the City were minority male or female-owned.

¹ The 1987 Census data include only proprietorships, partnerships and Subchapter S corporations; "C" corporations (often larger, publicly held corporations) were not included. Therefore, the availability data were adjusted to reflect MBEs and FBEs proportions of all firms. The number of "C" corporations were estimated for each sector based on national data, and all corporations were assumed to be majority-owned. Thus, the availability statistics reported here should be viewed as the minimum percentage of all firms that were minority-owned or women-owned.

For reasons discussed in Part II of the report, we believe that this might overstate true availability. In 1987, 3.0 percent of Columbus MSA construction firms were minority-owned. Three-quarters of MBEs in the Columbus MSA were African American-owned, 16 percent were Hispanic-owned and 8 percent were Asian and Native American-owned.

Evidence of discrimination. Four broad types of evidence of discrimination are presented here. Each form tends to confirm and support the evidence identified in the other areas.

1. **Disparities in City utilization.** For goods, services and construction, City utilization of MBEs fell below availability as measured based upon the Bidder Registration File. For goods and services, utilization fell below the availability measure based upon 1987 Census data.

Goods. The study team found statistically significant disparities between City utilization of MBEs in goods purchases (1.5 percent of total dollars from 1983-July 1991) and the two different approaches to measuring availability. Accurate data were not available to compare utilization and availability by specific racial or ethnic group for any of the industries examined. The study team performed all statistical significance tests at the 95 percent confidence level, a widely accepted standard for this type of research.

The study team also examined utilization and availability for four of the largest categories of goods purchases. Statistically significant disparities were found for each of the four specialized areas of goods purchases.

Elements of City ordinances to encourage utilization of MBEs in goods purchases were either not implemented or were ineffective. There was no substantial change in utilization of MBE goods firms after the City discontinued certain affirmative action efforts in 1989.

Case studies of 40 City contracts and purchase orders for goods and services were examined to determine representation of MBEs and FBEs among firms contacted, firms submitting bids, determinations of responsiveness and quoted prices. The City may have been less likely to solicit bids from minority-owned firms than from available majority-owned firms for those procurements. MBEs were not any more likely to be deemed non-responsive than majority-owned firms. In some cases, MBEs were price competitive while in other instances, MBE prices were substantially higher than competitors'.

Services. Including minority male and female-owned firms, 4.2 percent of City services expenditures from 1983 through July 1991 went to MBEs. Statistically significant disparities were evident comparing utilization with either measure of availability.

Utilization and availability were also compared for three of the largest areas of services purchases. Statistically significant disparities were identified for each of the three categories.

Elements of City ordinances to encourage utilization of MBEs in services purchases were either not implemented or were ineffective. There was no substantial change in MBE services firm utilization after the City discontinued affirmative action programs in 1989.

Construction. Including only prime contracts, 2.3 percent of City construction dollars from 1983-1991 went to minority male or female-owned firms. This is below both of the two measures of availability applied in this analysis. The City's goals programs from 1983 through 1989 did not have an effect on utilization of MBEs as prime contractors.

Only including contracts awarded after the local subcontracting goals program was discontinued and accounting for contract amounts to be performed by prime contractors and subcontractors, 10.1 percent of City construction contract dollars was awarded to male and female-owned MBEs in 1990. MBE utilization fell dramatically for the first six months of 1991 (3.8 percent). One prime contract accounted for a large portion of 1991 MBE participation. Even only examining 1990 and 1991, the utilization data still reflect State and Federal affirmative action efforts on some contracts (e.g., certain airport and highway-related contracts).

Statistically significant disparities exist for one of the two measures of availability for construction for 1990-1991. Utilization of 7.0 percent was significantly different from the proportion of construction firms in the City's Bidder Registration File that were MBEs (23.7 percent). A more conservative measure of availability is the percentage of all firms in the Columbus MSA marketplace that were MBE in 1987 (from the 1987 Survey of Minority Business Enterprises). Utilization of 7.0 percent for 1990 through mid-1991 exceeded the 3.0 percent of all firms that were reported to be minority-owned.

There are several reasons to believe more recent utilization data would result in a finding of disparity for both measures of availability. Utilization declined from 10.1 percent in 1990 to 3.8 percent in the first six months of 1991. Based upon this trend and anecdotal information from the City, we believe utilization from mid-1991 through mid-1992

might have declined to below 3.0 percent. Also, 1990-91 utilization data were influenced by State and Federal affirmative action programs. The study team could not quantify this effect with the information available at the time of this report. City utilization of construction firms in 1990-91 was substantially higher than overall utilization of MBE construction firms in the private marketplace (0.9 percent). City utilization of MBEs in construction also far exceeded 1990-1991 utilization in goods and services where no affirmative action efforts were found. These factors explain why 1990-91 utilization might overstate current utilization absent any affirmative action programs. We also have evidence that availability of MBEs within the local construction industry has been constrained by past discrimination. Absent this past discrimination, availability of MBEs would be substantially higher. Thus, not only are the 1990-91 utilization data somewhat unrepresentative, but the 3.0 percent MBE availability statistic underrepresents what availability would be absent the effects of past marketplace discrimination.

We recommend that the City improve efforts to collect utilization data and to identify contracts subject to State or Federal goals. The City may be able to make a better comparison of utilization and availability absent affirmative action based upon contracts awarded from mid-1991 through mid-1992. These data should be considered in weighing the evidence necessary to implement affirmative action programs for construction.

2. Disparities in private marketplace utilization. There has been a statistically significant disparity between private sector utilization of MBEs compared with availability of minority-owned firms within the Columbus MSA. Based upon 1987 U.S. Bureau of the Census Economic Census data and only examining proprietorships, partnerships and Subchapter S corporations, minority male and minority female-owned firms received 1.4 percent of Columbus MSA revenues (primarily private sector sales). This was significantly below MBE representation in the Columbus MSA (4.9 percent). Disparities between utilization and availability were evident for African American, Asian American and Native American-owned firms. Disparities were statistically significant for African American-owned firms, however, sample sizes were too small to make this determination for other racial or ethnic groups. MBEs also had lower revenues per employee compared with all firms. Findings can also be drawn specifically for both the services and construction industries as presented below. Data were not disclosed for wholesale firms, however.

Services. Statistically significant disparities exist between private sector MBE utilization (2.6 percent) and availability (6.0 percent), only including proprietorships, partnerships and Subchapter S corporations in the Columbus MSA. (This excludes "C" corporations, usually the largest and often publicly held corporations.)

Construction. The study team found statistically significant disparities between private sector utilization (0.9 percent) and availability of MBEs in the Columbus MSA (3.4 percent). (This only includes proprietorships, partnerships and Subchapter S corporations.)

3. **Disparities in rates of business ownership.** Number of firms per 1,000 is one measure commonly used to compare rates of business formation and success among racial and ethnic groups. Based upon 1987 data from the 1987 Economic Censuses and the 1990 U.S. Census of Population, the study team calculated rates of business ownership for the Columbus MSA. Overall, there were 53 firms per 1,000 people in the Columbus MSA. For African Americans, this rate of business ownership was one-third of the overall average. (17 black-owned firms per 1,000 black population). Disparities also existed for Columbus Area Asians and Native Americans (26 firms per 1,000 population) and for Hispanics (24 firms per 1,000 population).

Disparities in the rates of business ownership can also be analyzed for blacks based upon 1980 U.S. Census data for the Columbus MSA. Because of the relatively small proportions of the Columbus Area that are Hispanic, Asian and Native American, similar U.S. Census data for these groups were not available. Results by industry are reported below:

Goods. Black males working in the wholesale trade industry were four times less likely to own firms than white males in 1980. This difference was statistically significant. Disparities were even greater for African American females.

Services. For legal, engineering and other professional services, black males were four times less likely to own firms than white males. African Americans were one-half as likely to own other business and repair services firms. Both disparities are statistically significant. Blacks were somewhat more likely to own automotive repair and services firms. Statistically significant disparities were found in each of these areas for black females.

Construction. The rate of business ownership for African American males among those working in the construction industry was only 60

percent of the rate for white males. Greater disparities existed for black females.

4. **Qualitative evidence of discrimination.** The study team collected qualitative evidence of discrimination against black-owned construction, goods and services firms by the City, by non-minority prime contractors employed by the City and by others within the Columbus area marketplace. (The body of qualitative evidence collected was too small to make such a determination for other minority groups.)

We also collected qualitative evidence of discrimination against African Americans within the Columbus area marketplace concerning barriers to forming businesses. (The body of qualitative evidence compiled was too small to make such a determination for other minority groups.)

Evidence of Discrimination Against Female-Owned Firms

As with evidence of discrimination for MBEs, four broad types of evidence of discrimination against female-owned firms are presented here. Each form tends to confirm and support the evidence identified in the other areas.

1. **Disparities in City utilization.** For goods, services and construction, City utilization of FBEs fell below availability as measured based upon the Bidder Registration File and based upon 1987 Census data. All utilization statistics presented below refer to firms owned by white and by minority women.

Goods. The study team found a disparity between City utilization of FBEs in goods purchases (2.1 percent of total dollars from 1983-July 1991) and availability as measured by the Bidder Registration File (8.1 percent). Utilization also fell below availability as measured by the 1987 Economic Census (15.9 percent). Both disparities were statistically significant.

The study team also examined utilization and availability for four of the largest categories of goods purchases. Statistically significant disparities were found for each of the four specialized areas of goods purchases.

Elements of City ordinances to encourage utilization of FBEs in goods purchases were either not implemented or were ineffective. There was

no substantial change in FBE goods firm utilization after the City discontinued affirmative action efforts in 1989.

Case studies of 40 City contracts and purchase orders for goods and services were examined to determine representation of MBEs and FBEs among firms contacted, firms submitting bids, determinations of responsiveness and quoted prices. Case studies indicate that the City may be less likely to solicit bids from female-owned firms than from available majority-owned firms. FBEs were not any more likely to be deemed non-responsive than majority-owned firms. In some cases, FBEs were price competitive while in other instances, FBE prices were substantially higher than competitors'.

Services. Including white and minority female-owned firms, 2.8 percent of City services expenditures from 1983 through July 1991 went to FBEs. Statistically significant disparities were evident comparing utilization with either measure of availability (11.8 percent from the Bidder Registration File or 29.8 percent from the 1987 Economic Census).

Utilization and availability were also compared for three of the largest areas of services purchases. Disparities were identified for each of the three categories. The disparities were statistically significant for two of those areas.

As mentioned above, elements of City ordinances to encourage utilization of FBEs in goods purchases were either not implemented or were ineffective. There was no substantial change in FBE goods firm utilization after the City discontinued affirmative action efforts in 1989.

Construction. Including only prime contracts, 1.4 percent of City construction dollars went to female-owned firms from 1983 through July 1991. This is below both of the two measures of availability applied in this analysis. The City's goals programs from 1983 through 1989 did not have an effect on utilization of FBEs as prime contractors.

Only including contracts awarded after the local subcontracting goals program was discontinued (1990 through mid-1991) and accounting for contract amounts to be performed by prime contractors and subcontractors, 2.5 percent of City construction contract dollars was awarded to female-owned firms. Even only examining 1990 and 1991, the utilization data still reflect State and Federal affirmative action efforts on some contracts (e.g., certain airport and highway-related contracts).

Statistically significant disparities exist for FBEs for both of the two measures of availability for construction for 1990-1991 (10.9 percent availability based upon the Bidder Registration File and 4.8 percent availability based upon the 1987 Economic Census). Disparities existed even though the utilization data were somewhat influenced by the presence of Federal or State affirmative action programs.

2. *Disparities in private marketplace utilization.* There has been a statistically significant disparity between private sector utilization of FBEs compared with availability of female-owned firms within the Columbus MSA. Based upon 1987 U.S. Bureau of the Census Economic Census data and only examining proprietorships, partnerships and Subchapter S corporations, female-owned firms received 14.0 percent of Columbus MSA revenues (primarily private sector sales). This was significantly below FBE representation in the Columbus Area (30.7 percent). FBEs also had lower revenues per employee compared with all firms.

Services. Statistically significant disparities were found between FBE utilization (12.7 percent) and availability (39.0 percent). (This excludes "C" corporations, usually the largest and often publicly held corporations.)

Construction. The study team did not find statistically significant disparities between private sector utilization (5.6 percent) and availability of FBEs in the Columbus MSA (5.5 percent of proprietorships, partnerships and Subchapter S corporations).

3. *Disparities in rates of business ownership.* Disparities in the rates of business ownership were analyzed based upon 1980 U.S. Census data for the Columbus MSA. Results by industry are reported below:

Goods. The rate of business ownership among white females working in the wholesale trade industry was only 15 percent of the rate for white males in 1980. This difference was statistically significant.

Services. For legal, engineering and other professional services, white females were four times less likely to own firms than white males. For automotive repair and services, females were five times less likely to own firms. Females were one-half as likely to own firms in the other business and repair services field. All disparities were statistically significant.

Construction. The rate of business ownership for white females among those working in the construction industry was one-third of the rate for white males. This disparity was statistically significant.

4. **Qualitative evidence of discrimination.** The study team collected qualitative evidence of discrimination against female-owned construction, goods and services firms by the City, by prime contractors employed by the City and by others within the Columbus area marketplace.

Qualitative evidence of discrimination against women within the Columbus area marketplace was also collected concerning barriers to forming businesses.

- ! Evidence of discrimination was identified for both white women and minority women.

Conclusions

From the evidence presented in Parts II and III of this report, the study team concludes that there is both substantial quantitative and qualitative evidence more than sufficient to establish a prima facie case of discrimination against blacks and women in the goods, services and construction industries in the Columbus MSA. Quantitative evidence of discrimination relates to City utilization of MBEs and FBEs, private sector utilization of MBEs and FBEs, and rates of business ownership for minorities and women. Anecdotal evidence collected in this study identifies many of the forces creating the disparities demonstrated in City utilization and private sector utilization of black-owned firms and FBEs. Evidence indicates that the City has been a direct participant and a passive participant in discrimination practiced by private industry. In sum, the City of Columbus has a strong basis in evidence to consider remedial action to address discrimination against black-owned and women-owned firms.

Insufficient evidence of discrimination was collected as part of this study to provide a strong basis in evidence for remedial action for Hispanic, Asian and Native American-owned firms. This is solely due to constraints in the data collection process; it is not an indication that discrimination against these firms is less pervasive than for black-owned firms. First, City utilization could not be accurately compared with availability for individual racial and ethnic groups. Black-owned firms comprise about three-quarters of the MBEs in the Columbus MSA, and only a small proportion of firms are Hispanic, Asian or Native American. Just by the composition of the MBE community, analysis of utilization and availability primarily pertains to African

American-owned firms. Thus, quantitative analysis, alone, could not be employed to establish a basis for affirmative action for non-black MBEs. Also, insufficient anecdotal evidence of discrimination was collected for Hispanics, Asians and Native Americans in the Columbus MSA that would support the quantitative evidence of discrimination found for minority-owned firms overall. Despite study team efforts to obtain interviews with a broad cross-section of MBEs, almost all of the interviews to collect qualitative evidence of discrimination were with blacks and with women.

The methods used by the study team to research specific evidence of discrimination were not intended to be exhaustive. In fact, the research was intentionally designed to remain independent of previous studies of quantitative and qualitative evidence of discrimination. We recommend that the City examine these other sources of information in addition to this Predicate Study in weighing the quantum of evidence necessary to proceed with remedial action. Specifically, the City may have or may be able to collect additional qualitative evidence of discrimination that would definitively determine whether remedial action for Hispanic, Asian and Native American-owned firms is also appropriate.

The following section of the report considers whether the City can effectively remedy discrimination through race and gender-neutral means. The next section concludes with a discussion of race and gender-based remedies.

(06)

**PART I.
SECTION E.
CONCLUSIONS AND RECOMMENDATIONS**

Part D summarized the evidence of discrimination against minorities and women in the goods, services and construction industries. We conclude that there is a strong basis in evidence of discrimination both by the City itself directly and as a passive participant in private industry discrimination.

To determine the appropriateness of race and gender-conscious remedies, the Supreme Court requires one to consider several factors, including the efficacy of neutral remedies. Such remedies must be considered and determined insufficient to remedy the discrimination before adopting a race or gender-based program. The Court explained in *Croson* that if the barriers to minority and women participation in the relevant industries appear to be race and gender neutral, eliminating those barriers (through the use of neutral remedies) will, logically, increase MBE/FBE participation.

(16) Our findings led us to consider the alternatives described in this section. In the discussion that follows, we identify the neutral barriers found, possible means for removing those barriers and the likely effect of such removal in light of all the evidence. Race and gender-based remedies are then considered. This section concludes with the study team's recommendations.

Race and Gender-Neutral Measures to Redress Discrimination

In order to be effective, race and gender-neutral as well as race and gender-based remedies must address the particular disadvantages businesses face. For this analysis, neutral disadvantages can be summarized into four components. This is only a partial list, limited to some of the more important types of barriers.

1. **Lack of information about bid opportunities/lack of incentives for staff to utilize new firms.** Several MBE/FBEs said they are not contacted or not informed of City purchasing opportunities. Firms may not be able to obtain sufficient information to bid in a timely fashion. Some firms might find the bidding procedures to be cumbersome. In addition, agencies and buyers might be inclined to utilize firms or products with which they are familiar and which have

a proven track record on City contracts. For small purchases, it is administratively easier to secure goods or services from a firm that is already under contract to the City.

2. **Difficulty in obtaining bonding, insurance and financing.** For certain contracts, bonding and/or insurance requirements are a barrier. Also, certain firms might not have the necessary financing to maintain operations. This is particularly a problem if they are not promptly paid by the City. (This barrier may sometimes be caused by race or gender discrimination, as discussed in Part III.)
3. **Unnecessarily restrictive contract specification.** Because of product specification by the City, lack of manufacturer distributorships for certain products and lack of consideration of alternatives, certain firms might not be able to respond to bids.
4. **Price disadvantages.** Even if they have access to suppliers, MBE/FBEs might not receive the same prices as do larger majority-owned firms competing for the contract. (Sometimes such price differentials are due to volume discounts, or they may be due to race/gender discrimination as discussed in Part III.)

This study has found that each of these are important in understanding underutilization of MBEs/FBEs. Each barrier is examined in detail below, and potential neutral remedies are discussed.

Lack of information/lack of incentives to utilize new firms. Small or newly formed firms in general might not be aware of procurement opportunities with the City and are limited in their ability to market to buyers and City agencies. A complicated bidding process may discourage some small businesses. Also, City departments do not have an incentive to utilize new firms.

Larger firms have staff who can actively market their products and services to individual City agencies. Firms acknowledged the importance of making personal contacts and developing relationships with key people in the industry but stated that the small business owner who, out of economic necessity, is running all aspects of the business personally does not have time to pursue those activities.

This disadvantage might manifest itself in several ways. City agencies specify preferred vendors in each requisition. In some cases, their specifications of the desired

product might be based upon the vendor's marketing information. Also, agencies can place small orders directly with a firm of their choosing. Purchases of this type tend to go to firms with well established relationships with City agencies. In fact, it is easiest to use a firm already under contract with the City.

Minority and women-owned businesses may not be aware of many opportunities to bid. When a purchase for materials exceeds \$10,000, the buyer mails a copy of the bidder's packet containing specifications and delivery terms to at least three vendors. Additionally, the buyer must publicly advertise an invitation to bid. The City Bulletin includes these advertisements for bid. Bids are also posted at the Purchasing Division's reception area. Some MBEs/FBEs do not routinely access these sources of information.

In addition, firms complained of the complicated bidding process and amount of paperwork required to do business with the City. Again, these complaints relate to the fact that a small business does not have a large staff, if any staff at all, to do this work. Some firms believe that their time and effort is better spent pursuing work that requires less time and money for the firm to be considered.

(92) Furthermore, there is a lack of incentives for City staff to utilize new firms. Presently, departments are allowed to call firms with which they are already familiar to obtain quotes for purchases under \$500. For purchases between \$500 and \$10,000, departments and/or Purchasing staff choose which firms they contact for quotes (a minimum of three vendors are to be contacted). Often, buyers contact firms that already have City contracts for similar items or services or those firms known to have competitive prices from previous bids. Notices are also posted, for a minimum of 24 hours.

It might be difficult to break into procurement work in private industry and especially with the City because the buyers like to work with the same people they have dealt with in the past. The MBEs and FBEs for the most part understand that the system encourages buyers to do this because the end users want their product as soon as possible; it is easy for a buyer to identify as a possible supplier someone they have worked with before and for whom they know what the response time will be. There is little incentive for a buyer to do any extra work to identify additional or alternate sources of supplies or services, to learn about those new firms or to try them out. Speed

and reliability are rewarded. The effect of returning to the same sources time and time again is to retard the development of new businesses and to limit the effects of competition. In addition, the practice has an adverse impact on MBEs and FBEs where there is an historical pattern of underutilization.

In the absence of discriminatory intent, the factors described above might work to the disadvantage of any newly formed or small businesses, including MBE/FBEs, that have not had past involvement in City purchasing. Some minority and women-owned firms contacted reported that they were no longer interested in bidding on City contracts after previous efforts proved unsuccessful. Several business owners believed that it is not productive for minority and women-owned firms to pursue City contracts.

Several possible race and gender-neutral measures should be considered to address the problems of lack of information and lack of incentives to try different firms.

- *Better manage and enforce departments' efforts to provide opportunities to MBEs/FBEs.* Based upon interviews with City staff and analysis of utilization statistics, we conclude that most individual departments did not comply with previous City ordinances encouraging utilization of minority and female-owned firms on non-construction projects. Starting in 1981, City agencies were required to utilize MBEs for at least 10 percent and FBEs for at least 2 percent of total non-construction dollars expended. In fact, departments rarely listed an MBE or FBE among the vendors they wished to include in bid solicitations. We found lack of action among most departments in order to comply with the City ordinance. We also found that the City failed to measure department compliance with these goals. Department managers were not reviewed based upon their performance in these areas. Overall, the City departments were more effective in complying with the construction components of City affirmative action efforts. Data were compiled, even if sometimes inaccurate or incomplete, and there was some accountability for department managers with respect to compliance for construction contracts.

A comprehensive training program for City staff and management responsible for contracting might be conducted. Requirements of MBE/FBE outreach efforts would be clearly outlined and performance expectations reviewed. Conformance with program guidelines should be tracked and documented in order to hold department managers accountable. Departments which meet or exceed expectations should be recognized and rewarded.

- *Better manage and enforce Purchasing efforts.* Interviews with buyers indicated confusion regarding City requirements as to how to provide opportunities for MBEs and FBEs. While Purchasing staff took more steps to include MBEs and FBEs than most departments, buyers' efforts could still be improved. For example, some buyers did not take advantage of MFBD's MBE/FBE directory. Bidder worksheets containing information from the Purchasing Division's Bidder Registration File did not show minority or female-owned status. Better standards for buyer performance, and measurement and evaluation of that performance, might improve efforts to provide opportunities for MBE/FBEs.

! Again, training might be provided to ensure that buyers thoroughly understand program objectives and requirements. Buyers would be able to provide guidance to both City staff and vendors. Buyer performance evaluations should also include a review of their conformance to MBE/FBE objectives.

- *Introduce a small business networking/technical assistance program.* The City might increase necessary resources to identify local small businesses, educate these firms on the City procurement process, and encourage buyers and agencies to contact these firms for bids.

Additional efforts could be undertaken, such as developing networking connections with local women and minority business groups. Trade shows are a useful source of contacts and networking opportunities.

- *Broaden advertising of invitations to bid.* The City could place its advertisements in a publication other than the City Bulletin to reach a wider circulation among small businesses. This would provide any firm with a better opportunity to be informed of City purchasing opportunities. Minority publications might be investigated as a potential vehicle for City purchasing information.
- *Enact a City policy to encourage utilization of small businesses.* The City could adopt a policy that small or newly formed businesses be given the maximum opportunity to receive City contracts. Buyers would be encouraged to solicit bids from small businesses whenever possible. Each small business would be formally or informally designated as such to facilitate monitoring. Buyers would be evaluated in part on their outreach efforts and proportion of contracts awarded to small firms.

Difficulties in obtaining bonding, insurance and financing. Small businesses experience disadvantages related to bonding and insurance. City bonding and insurance requirements are most often imposed for activities related to construction and remodeling. (Such requirements are usually not placed on other goods and services contracts.) In addition, small firms might not have the internal resources or access to financing necessary for operations, especially if payments for City work are not made promptly.

- *Reduce or eliminate bonding and insurance requirements.* Currently, contractors are required to obtain a minimum 10% bid surety and 50% performance bond on all contracts for public improvements. This requirement could be waived in special circumstances. For example, small businesses pre-qualified through analysis of their past financial performance could have bonding requirements waived for contracts under \$100,000.
- *Accelerate payment on City contracts.* Progress payments for small businesses could be accelerated, or larger percentages paid up front. An alternate consideration could be to award more lenient payment terms; for example, net 15 days instead of net 30, for certified disadvantaged businesses.

Lack of access to specified product. City agencies develop product or service specifications with the assistance of the Purchasing Division buyer. While agencies typically have access to specifications for particular products, buyers are instructed to avoid brand name specifications. Allowing a brand name to be used as a specification creates a situation where prospective vendors must prove at the pre-bidding stage that their products are acceptable substitutes. This proof is frequently required to be presented to a designing engineer or agency employee who has discretion to reject a proposed substitute on minimal grounds. Even when a substitute is proposed by a vendor and approved by the project engineer, the approval may "slip through the cracks" and the substitute may not be accepted at bid opening. This discretion combined with an inefficient system to process substitute proposals creates a great potential for abuse, for bidding to effectively be limited to one or a few bidders, and for viable substitutes to be disallowed for little or no reason. The ultimate effect of brand name specifications is to exclude those firms that have traditionally lacked distributorship agreements with those suppliers or manufacturers (e.g., many MBE/FBEs).

In other instances, the products purchased (even if not brand name) are specialized or are in a field dominated by only a few firms so that only a limited number of vendors have access to the product.

Several race and gender-neutral initiatives are directed toward addressing these issues.

- *Improve specifications for products and services.* Requests for "no substitute" or "sole source" procurements should be evaluated through a process which includes a point of view other than the requesting agency or designing engineer or architect.
- *Develop an advocacy program in developing access to manufacturers and suppliers.* A barrier to MBE/FBE wholesalers and suppliers, and small businesses in general, is lack of access to particular manufacturers. One remedy is for the ultimate buyer, the City in this case, to use its leverage to encourage more widespread access if a manufacturer is unduly restricting access of a product to firms. The City might be able to use its purchasing leverage to open some opportunities to small businesses traditionally excluded from distributorship opportunities. This would require an advocate for the City and its vendors to be designated and delegated the authority to persuade manufacturers to open these doors.

(94) Price disadvantages. Small firms often experience major price disadvantages in competing with larger firms for certain types of contracts. In City commodities procurement, price alone is usually the deciding criterion in awarding the contract. Larger firms can obtain the same products at more favorable prices (better buy brackets) than smaller firms because of the volume of products they purchase. Quality of service and other factors for which smaller firms might have an advantage are usually not considered by the City (professional services is an exception). The City might exacerbate the problem by grouping many purchases into a single, large contract. This is particularly troublesome for small firms that would be able to perform relatively small contracts but are not large enough to perform all of the work included in a large universal term contract (UTC).

Typically, the City does not give consideration to the degree to which a particular vendor can provide greater overall value by being more responsive or more qualified,

while not being the lowest bid price. Additionally, the City does not typically consider the long term lifecycle cost of products or services.

- *Reduce size of certain contracts.* The City might reevaluate many buyers' focus on accumulating small orders into large annual contracts. This practice appears to work to the disadvantage of small firms (and therefore MBE/FBEs). However, in other ways these large contracts might work to the advantage of the City in both pricing and efficiency of Purchasing staff. Each case should be evaluated to determine the most effective way to balance cost and opportunities for smaller firms.
- *Place greater consideration on service provision, quality, and other non-price factors.* When a product is requisitioned, the product is described, in terms of function, required capacity and perhaps even brand name, and qualifications of the vendor are specified, such as having been in business for two years or able to supply repair service within 48 hours. All vendors who meet these specifications and are deemed responsible are then evaluated based on price. The contract is awarded to the lowest responsible bidder who has met the specification threshold. However, although both meet the specification threshold, one product may be superior to another. One may be more reliable, easier to service, operate at a lower cost, last longer, be more "user friendly," or perform better in a given application. Similarly, service which exceeds the specification threshold may be highly desirable.

The City might institute a different evaluation process for certain goods and services for which non-price factors are important and are not easily evaluated as minimum standards. Bid evaluation would consider non-price criteria, and select products and services from the bidder who offers the most advantageous combination of low price, responsiveness, quality and other factors. This process is similar to the evaluation framework currently applied by the City in selecting professional services firms. While it offers several advantages, it is more subjective and open to possible abuses compared to current systems.

- *Introduce a small business goals program.* The City might develop a goals program to encourage utilization of small businesses. The prime contractor or joint venture participants would need to demonstrate a certain proportion of the contract would be supplied by or performed by small businesses. Further guidelines could encourage utilization of particular types of small firms, such as those newly formed. One of the key benefits of such a program is that it begins to build relationships among firms that might continue outside the program.

An example is the City of Minneapolis program to encourage use of emerging small businesses on all city contracts. Every contract over \$100,000 must include 20 percent utilization of emerging small businesses or demonstration of good faith efforts to comply with this requirement. Discussions with Minneapolis officials indicates that this program has operated to encourage utilization of MBE/FBEs rather than small business in general. While an emerging small business program might be effective in Columbus in creating opportunities for more firms, experience around the U.S. indicates that, over time, the benefit to MBE/FBEs may be highly diluted as small nonminority firms become active in taking advantage of the program.

Conclusions on race and gender-neutral measures. The barriers to minority and women-owned business participation discussed in this section are the product of factors other than race or gender. The neutral remedies outlined could be effective in addressing these non-specific barriers. Also, many of these measures should be implemented by the City in order to enhance opportunities for small businesses in general, including MBE/FBEs. However, race and gender-neutral measures alone will not be effective in addressing the effects of past and present discrimination in the Columbus marketplace. This conclusion is based on several factors.

(95) First, the range of discriminatory activities in the City is extensive, and many of the barriers to minority and female-owned firms have been found to be race and gender specific. The neutral measures outlined do not redress denials of market access that are based upon various outright forms of discrimination identified in the study, such as stereotypical attitudes and denials of opportunities to bid.

Second, the City does not purchase a sufficiently large share of goods, services and construction to impact discrimination across the private marketplace with neutral measures alone. Private industry discrimination will not be overcome by neutral efforts directed at streamlining City processes, such as prompt payment, broader advertising and improved specifications. Therefore it stands to reason that neutral remedies alone will not be effective in the future in eradicating the effects of discrimination.

Third, several of the race and gender-neutral remedies discussed have been in place in the City in the past. Various outreach and assistance programs have shown no sustained, significant gains in MBE/FBE utilization in goods and services. Evidence

indicates that these programs have not effectively eliminated discrimination from the Columbus marketplace.

Finally, because the neutral measures outlined would largely apply to any small firm, the economic and other impacts on minority and women-owned firms would be highly diluted. Without deliberate and race-conscious efforts to ensure minority and female participation on City projects, such participation will remain negligible.

Race and Gender-Based Measures to Redress Discrimination

Although several of the race and gender-neutral alternatives are recommended for implementation by the City, we believe they would not be totally effective at redressing the identified discrimination. Because of the nature and pervasiveness of the discrimination found, we believe a comprehensive solution will also require race and gender-based measures.

Several different forms of race and gender-specific discrimination have been found to exist in the Columbus marketplace. Some of the more pervasive barriers to minority and female participation include the following.

1. **Stereotypical attitudes.** This barrier perhaps underlies all forms of discrimination identified in this study. These attitudes adversely impact MBEs' and FBEs' ability to compete for the City's business. Part III documents evidence which illustrates the pervasiveness of stereotypes and the barriers MBEs and FBEs face as a result.
2. **Discrimination in previous employment.** Past employment discrimination also has a continuing negative effect. Discrimination experienced in past employment may directly affect the ability of MBEs and FBEs to develop experience or knowledge which may contribute to their successful entry into the Columbus marketplace.
3. **Refusals to work by majority employees.** A few MBEs have reported potential majority employees refusing to work for minority-owned companies. This may prevent MBEs from maintaining the most qualified workforce to compete for work.
4. **Denials of opportunities to bid.** Evidence has shown that some MBEs/FBEs have been denied the opportunity to bid in both the public and private marketplace solely because of their MBE/FBE

status. This could occur through non-competitive procurement and selection procedures or through intentional outright acts of discrimination.

5. **Exclusion from the "Good Old Boy" network.** The presence and maintenance of the "good old boy" network which often excludes MBEs and FBEs contributes toward their inability to compete fairly for City business.
6. **Bid shopping.** General contractors may announce the lowest subcontractor quotes to other subcontractors, in the hope that a lower price may be obtained from one of them. This appears to happen frequently among majority contractors who bid shop minority subcontractors against each other.
7. **Bid manipulation.** There is some evidence that majority firms have subverted the bidding process by manipulating bids in some manner to exclude MBEs/FBEs from participating.
8. **Unfair denials of contract awards.** Some MBEs/FBEs have reported that although they were given an opportunity to bid on a project, the contract was awarded unfairly.
9. **Double standards in evaluating performance.** Differing performance standards have been reported in the Columbus marketplace. There is evidence that MBEs and FBEs are held to a higher standard of performance by some City and private sector officials than like majority firms.
10. **Harassment.** Several MBEs/FBEs have reported acts of harassment committed by majority contractors, inspectors and others.
11. **Utilization of MBE/FBE fronts.** Evidence exists that some majority-owned firms engage in practices which take unfair advantage of affirmative action measures. These activities cause MBEs and FBEs to lose legitimate contracting opportunities.
12. **Governmental resistance to MBE/FBE participation.** Finally, it appears that City government, through certain conduct and omissions on its part, has contributed to discriminatory activity which has adversely affected the ability of MBEs and FBEs to have equal access to contracting opportunities.

While not all of these barriers to MBE/FBE participation in the Columbus marketplace can be directly addressed by City measures, a number of steps can be taken to redress the majority of adverse effects.

Four main types of programs have been employed by local governments and private industry attempting to redress discrimination within construction, goods and services purchasing:

- (1) Small contracts procedures
- (2) Project goals
- (3) Bid preference
- (4) Sheltered market

Each program element might be used individually or in combination to achieve program objectives. A summary discussion of each alternative is presented below.

Small contract procedures. Typically, state and local governments have some flexibility in procurement procedures below a certain dollar level of expenditure. For the City of Columbus, departments can purchase goods on their own for any purchase under \$500. For purchases between \$500 and \$10,000, procedures for Purchasing staff, are more flexible than larger procurements. Some jurisdictions have used the flexibility in small purchases to target more purchases toward minority and women-owned firms. In some cases, the jurisdictions require that at least one of the vendor contacts is an MBE or FBE. Other jurisdictions require that all vendor contacts for a small purchase be an MBE or FBE. In such cases, these small purchase programs are similar to the sheltered market programs discussed subsequently in this section.

Goals. "Goals" programs divide into two groups. The first can be described as "annual goals" whereby a jurisdiction sets forth a target for MBE and FBE utilization without necessarily specifying the means. For example, under Ordinance 2337-81, the City of Columbus had a goal of 10 percent MBE utilization and 2 percent FBE utilization for total non-construction expenditures. Means of achieving these goals were not identified with any specificity, nor were data effectively collected to measure whether goals were achieved. This annual goal had no mechanisms attached for measurement or accountability, and we believe that the goal in itself had little effect on MBE/FBE utilization. MBE utilization was 1.2 percent for goods and 3.8 percent for services from 1983 through 1988, FBE utilization was 1.6 percent for goods and 1.7 percent for services

during this period. Overall MBE/FBE utilization for goods and services did not change after goals were suspended in 1989.

Another type of goal is project specific: each prime contractor has a goal of including a specific level of participation of MBEs and FBEs on a proposed project team, usually for construction or professional design contracts where subcontracting is common practice. The City operated a subcontracting program from July 1981 through September 1989. In 1981, each construction prime contractor was to include MBEs and FBEs among their subcontractors in the proposed project team, or show good faith efforts in attempting to meet these goals. The goals were 10 percent of total subcontract dollars for MBEs and 2 percent for FBEs. The goals were increased in 1989 to 21 percent for MBEs and 4 percent for FBEs. This program was effective in increasing MBE and FBE utilization as subcontractors on City construction projects.

Subcontracting goals suffer from several limitations:

- Often, the same firms are repeatedly used to meet the subcontracting goals. This was found for the City of Columbus program. There is a danger that firms might become too reliant on the City's program and that newly formed MBEs and FBEs do not benefit from the program.
- Only a narrow group of construction specializations might be used to meet the goals. For example, prime contractors often only used cleaning, security, site prep and trucking firms to meet the subcontracting goals in the Columbus program.
- Experience throughout the U.S. suggests that when suppliers are counted at full value toward subcontracting, some prime contractors might simply funnel purchases through MBE or FBE brokers in order to meet the goals.
- Subcontracting goals, by definition, are not effective in increasing MBE and FBE prime contractor utilization. Depending upon which data source is examined, MBEs received a maximum of 4 percent of construction prime contracts and FBEs received at most 2 percent of construction prime contracts while the City's goals program was in effect. There was no noticeable effect on utilization of MBEs/FBEs as prime contracts after the program was discontinued.

Subcontracting goals programs are most readily implemented for construction, where subcontracting is common industry practice. Project goals do not apply as easily

for non-construction projects. For most goods and services, the vendor does not normally include subcontractors in his or her bid. Exceptions exist for some large professional design contracts and certain other professional services assignments and for particular types of goods that require assembly by more than one firm (e.g., heavy duty trucks). In other cases, contracts will include goods purchases and an associated maintenance agreement; these might be provided by two different firms. Some jurisdictions have enacted goals programs for goods and services where the supplier must carve out a portion of the contract to be met by an MBE or FBE wholesaler. Other governments allow a firm to meet a goal through their internal purchases (e.g., their own office supplies, printing or other services purchased for use by the firm). For example, the City of Minneapolis enacted a program to encourage use of emerging small businesses on all city contracts over \$100,000. Vendors must include 20 percent emerging small businesses through a variety of means or show good faith efforts to comply with this requirement.

Nevertheless, subcontracting is not normal business practice within the private marketplace for most goods and services. Any such efforts by a local jurisdiction has the potential to establish an "artificial" contracting environment that is not replicated within the private market where most MBEs and FBEs have to rely on their business.

Price preference programs. The City has a bid preference program for firms located within Franklin County. For small contracts, local firms receive a price consideration equal to 5 percent of the lowest bidder's price. For larger contracts, local firms receive a 1 percent price consideration up to a maximum of \$5,000. In other words, a local firm with a bid of \$100,000 would beat a non-local firm with a price of \$99,100. This same approach can be used to give a preference to minority and women-owned vendors. Prince George's County, Maryland has operated a bid preference program for certain contracts over \$15,000. MBE/FBEs based in the county receive a 10 percent bid preference and out-of-county based MBE/FBEs receive a 5 percent bid preference on contracts up to \$500,000. Similarly, MBE/FBEs bidding on professional services contracts receive an automatic 15 percent point bonus in evaluating proposals. Prince George's County also utilizes subcontracting goals and sheltered market programs. (Last year, Prince George's County spent \$143 million in construction and commodities with 35 percent going to MBE/WBEs). Seattle/King County has also used an MBE/FBE preference program for certain types of purchases. The City of Los

Angeles has operated a program giving a 5 percent preference to Los Angeles-based small businesses including qualified MBE/FBEs.

Preference programs have the advantage of encouraging MBE/FBE participation beyond a specific target, and can be used for both prime contracts and projects with subcontracting opportunities. A jurisdiction could establish a program where prime contractors are given a price credit equal to a percentage of the dollars allocated to MBE and FBE subcontractors. As a hypothetical example, two contractors submit construction bids, the first at \$995,000 and the second at \$1,000,000. The first contractor has no MBE/FBE participation while the second includes MBEs/FBEs for 20 percent of the work (\$200,000). The second prime contractor would receive a credit equal to \$200,000 times the amount of price preference for this particular assignment, say 3 percent. In this instance, the second prime would receive a \$6,000 price credit and have an "effective" bid of \$994,000. The second prime would be awarded the bid and paid \$1 million for the work given documentation that the MBEs/FBEs received at least \$200,000 in subcontracts.

(96)

Sheltered market programs. Under a sheltered market purchase, bids for certain purchases are only solicited from MBEs and/or FBEs. Sheltered market programs have been used by other jurisdictions for procurement programs but remain untested in the post-Croson environment. Nevertheless, it is a highly effective option as it can be narrowly targeted for specific types of procurements and toward firms, in order to achieve the greatest impact on the MBE/FBE business community while minimizing negative effects on other firms.

Recommendations

The City of Columbus represents less than one percent of total economic activity within the local marketplace. Almost all of the business opportunity for local firms is in sales to the private sector. Even if all of City contracts were awarded to MBEs and FBEs, these efforts would have only a minimal long term impact on development of the local minority and women-owned business community. Of course, a 100 percent goal for utilization of MBEs and FBEs may be neither practical nor legally defensible. Rather, we recommend that City affirmative action programs be designed to create opportunities for minority and women-owned firms to go on to effectively compete

within the private marketplace, while avoiding undue burdens on majority-owned firms and minimizing the disruption and costs of ongoing City procurement.

The recommendations presented in this section are based upon the following objectives:

- Provide opportunities for MBEs and FBEs to enhance their capabilities and experience through City work in order to become more competitive in the private marketplace. Only through work in the larger and often more financially lucrative private sector will MBEs/FBEs become competitive with majority-owned firms in future City procurement.
- Build relationships between MBEs/FBEs and larger majority-owned firms that can carry over into the private marketplace.
- Address barriers to MBE/FBE competitiveness and market access that are common to both City work and private sector work.
- Ensure that awards of City contracts build rather than damage the capacity of MBEs and FBEs. (In our experience with other federal and local programs, we have found that some contracts set aside for MBEs/FBEs are those with the least opportunity for profit).
- Target efforts toward MBEs and FBEs in the stage of their development where this assistance is most beneficial and ensure that the remedies are directed toward firms that have been affected by past or present discrimination.
- Maximize program flexibility and minimize economic or administrative burdens to majority-owned firms. Ensure consistent, fair and straightforward procedures for majority-owned firms to work with any MBE/FBE programs.
- Minimize administrative burdens to MBEs and FBEs participating in City programs.
- Minimize added costs to purchases as well as administrative burdens and costs to the City associated with MBE/FBE programs.
- Incorporate a self-enforcing review process to minimize potential abuses of the program.
- Incorporate an ongoing evaluation process to refine, modify and eventually discontinue each aspect of the program.

The following recommendations on specific program elements attempt to meet the objectives discussed above.

Race and gender neutral measures – recommend consideration. A number of neutral remedies identified in the previous portion of this section should be considered by the City:

- First, better management and enforcement of agencies' and Purchasing's efforts to provide opportunities for MBEs and FBEs would be an important step. Previous City ordinances were not complied with, and tools that were in place in the past (e.g. the MBE/FBE directory) were underutilized. Training and monitoring will be required to improve the program and ensure its continued success.
- A small business networking and technical assistance program would allow the City to participate in the development and education of small businesses in general. In addition, local minority and women's business organizations often welcome representatives from potential customers to give presentations. Participation with such groups as the MBOC and WBOC is also recommended to maintain visibility and gain exposure to potential MBE/FBE suppliers.
- The City should also consider placing bid advertisements in publications that reach a wider minority audience than the City Bulletin. The City may also want to investigate enacting a policy to encourage the utilization of small business.
- Reducing or eliminating bonding and insurance requirements, and accelerating payments on City contracts, could be utilized where appropriate to help MBEs/FBEs overcome related disadvantages.
- Improved contract specifications and an advocacy program to assist MBE and FBE suppliers in gaining access to products may prevent the unfair exclusion of these firms from City business.
- Price disadvantages experienced by many small firms may be remedied by smaller contract sizes, greater consideration of non-price factors, and the introduction of a small business goals program.

All of these measures will contribute toward meeting the objectives described above. These alone, however, are not adequate to sufficiently redress the effects of past discrimination. Therefore, we recommend implementing additional race and gender-based measures.

Small contracts program. – recommend consideration. We suggest that this program could be easily introduced and administered by the City of Columbus, but that it will only impact relatively small or newly formed MBEs and FBEs.

Administration of this program would be relatively straightforward, particularly for expenditures through the Purchasing Division. When possible, buyers would include MBEs and FBEs among the three vendors called for a quote. In some cases, all of the vendors contacted might be MBEs or FBEs. For departments, it is more difficult to have a current list of MBE/FBE vendors for specific types of purchases. An MBE/FBE directory and computerized database would need to be maintained for use by department staff in making small purchases.

Even as far back as 1975, City ordinance directed contracting agencies to increase the level of minority participation on negotiated contracts to at least 20 percent of total dollars expended for all contracts up to \$2,500. Reports were to be sent to City Council. Ordinance 2337-81 encouraged departments to "make every effort to increase the level of participation of minority business enterprises and/or female business enterprises on contracts to at least 20 percent of the total dollars expended for all contracts of \$5,000 or less." Our evaluation indicates that departments have historically not complied with this portion of past ordinances.

For several reasons, we suggest that this program alone would be of limited effectiveness in remedying past discrimination against MBEs/FBEs:

- This remedy has no application to the inability of MBEs/FBEs to compete on large procurement opportunities. The program aids MBEs and FBEs where they least need assistance: competing for small contracts.
- In our experience, the effect of such small purchases programs is to distribute a small volume of work to a large number of firms.

- While small contracts procedures might provide assistance to some firms and provide some exposure to City purchasing; overall, the program alone would be ineffective in addressing discrimination against MBEs and FBEs. If total City purchasing represents less than 1 percent of total economic activity within the Columbus MSA, City small purchases represent an even smaller share of the local economy. It is not realistic to expect a program that directs small purchases to MBEs and FBEs to have an impact on the development of the minority and female business community.

Methods of encouraging buyers and department staff to give MBEs and FBEs an equal opportunity in bidding should be incorporated into any City affirmative action program. The City should also design an effort to assist MBEs/FBEs in marketing their services directly to department staff involved in purchasing. This training can be of further value as small MBEs/FBEs market themselves to large private sector organizations.

Subcontracting goals program for construction – recommend consideration as one option (with a price preference program as a potentially more effective option). The only part of the City's prior affirmative action program that clearly had an impact on minority and women-owned business utilization was its subcontracting goals program in construction. Ordinance 2337-81 enacted by the City in July 1981 established goals of 10 percent of subcontracting dollars for MBEs and 2 percent for FBEs. Ordinance 2322-89 increased these goals to 21 percent for MBEs and 4 percent for FBEs.

The City should consider a reformulated subcontracting goals program for construction. We recommend that a price preference program for construction subcontracting might be a more effective means to the same overall objective, however.

If the City considers re-enacting a goals program for construction subcontracting, we suggest the following modifications:

- Annual goals should be separated from flexible, project-specific goals. For example, on some projects, MBE and FBE goals might be set at zero. For projects where high utilization of MBEs and FBEs might be more easily achieved, project goals might be set higher than annual goals.

- These goals should be applied to total dollars within a construction contract, not just subcontracting dollars. In this way, prime contractors are encouraged to develop subcontracting opportunities for MBEs and FBEs rather than retain this work within their own firm. This is the method usually applied by other jurisdictions in MBE/FBE contracting programs.
- The City should consider annual goals lower than the 21 percent for MBEs enacted in Ordinance 2322-89. Currently about 3 to 4 percent of construction firms within the marketplace are minority-owned. Less than 10 percent of the Columbus MSA 1980 construction employment was minority. Even if goals could be legally established based upon minority share of the metropolitan area population (14 percent for the Columbus MSA based on 1990 Census data), this would not support a goal as high as 21 percent. We recommend a level for annual goals closer to the 10 percent set in Ordinance 2337-81. This goal should apply to firms predominantly owned and controlled by African-Americans, all of which have owned construction firms within the Columbus marketplace. Unfortunately, at this time there is insufficient data available to determine whether Hispanic, Asian-American, or Native Americans can properly be included in the remedy. These firms may be subsequently added to the yearly program should additional evidence warrant it.
- Annual goals should be maintained or raised from the 4 percent for FBEs enacted in Ordinance 2322-89. FBEs currently account for 5 percent of Columbus MSA construction firms and women were about 10 percent of the metropolitan area construction industry employees in 1980.
- The City should also encourage to include MBEs/FBEs on contract modifications.
- Dollars for supplies purchases should not receive full value in evaluating whether a prime contractor met the MBE/FBE goals.
- Goals should be applied consistently across departments.
- Construction contracts that have no subcontracting opportunities should not be subject to goals, but may, under certain circumstances be subject to price preferences or sheltered market.
- Workers from mandatory MBE participation goals should be available to prime contractors unable to meet project goals. The good faith efforts process should be well documented and consistently applied.

(100)

- The City should consider a graduation requirement for MBEs and FBEs based upon revenues of firms relative to median sales for the industry. Once graduated, these firms would compete for subcontracting opportunities on the same footing as non-minority firms.
- The City should better enforce compliance with certification and utilization requirements. Criminal penalties should be imposed for program fraud. Accurate utilization statistics should be maintained.
- The program should include periodic review of annual goals.
- The City should periodically review the need for the program.

Subcontracting program through price preference for MBE/FBE subcontractors – recommend as a preferred alternative to goals program. The price preference subcontracting program would apply to construction, professional design and other contracts where subcontracting would be normal business practice. Prime contractors would receive a credit off of their bid based upon the dollars to be awarded to MBE and FBE subcontractors. As an example, if the preference percentage were established at 5 percent for a project, a majority prime contractor with a bid of \$10 million with \$5 million of the total contract allocated to MBEs/FBEs would receive a \$250,000 price preference. The "effective" bid would be \$9,750,000. This bid would beat a bid of \$9,800,000. The \$250,000 premium paid for MBE/FBE participation would be paid to the prime contractor once the prime contractor completed the work and documented participation of, and payment to, the MBE/FBE subcontractors.

The program could be implemented in a number of different ways. Preference percentages could be established for each project based upon the amount of the project that would likely be subcontracted and the opportunities to include MBEs/FBEs as subcontractors. Preference percentages could also be adjusted based upon City experience with the price differences between bidders. For example, highly price competitive projects where there are a large number of MBEs and FBEs available as subcontractors might succeed in ensuring MBE/FBE utilization with relatively low preference percentages. Less competitive projects might require greater incentives to include MBEs and FBEs.

Preference percentages could also apply to the individual firm. For example, a 5 percent price preference might apply to carpentry firms serving as subcontractors, while

only a 1 or 2 percent preference might apply to trucking or site preparation firms. If the City found that the 5 percent preference was still not enough incentive for prime contractors to involve MBE/FBE carpentry firms, the percentage might be increased, or the City might resort to mandatory subcontracting goals.

One of the advantages of a price preference subcontracting program over a goals program is that the "good faith efforts" process is inherently built into the program. A contractor that cannot, for any reason, include MBEs and FBEs as subcontractors can be the winning bidder as long as that contractor has the lowest bid after considering the price preferences for other contractors. If no MBEs or FBEs are available or interested in a certain type of construction activity, then none of the prime contractors will include MBE/FBE subcontractors and no contractor will be at a disadvantage in the bidding process. However, we believe the competitive construction market will usually take advantage of the incentives offered through the price preferences. If not, the City should reinstate the mandatory subcontracting goals program as an alternative.

Many of the same program recommendations made for the subcontracting goals program also would apply to the subcontracting price preference program. For example, small construction contracts with minimal subcontracting opportunities should not be included in the program. The City should continuously monitor MBE/FBE utilization in the program and adjust preferences accordingly. The City should also periodically review whether the program is needed.

We also recommend that the City only pay the prime contractor the contract amount less the price preferences until the prime can document that MBE/FBE subcontractors worked on the project and have been paid.

Targeted sheltered market program for construction prime contractors -- recommend consideration by the City. The City's past goals program had very little effect on utilization of MBE and FBE construction firms as prime contractors. We recommend that the City consider devoting a portion of small construction and remodeling contracts, possibly contracts of less than \$100,000, be designated as sheltered market contracts. Firms would apply for participation in this program based upon capabilities and experience, past revenues, bonding capacity, evidence of past discrimination and other factors. Once accepted, firms could only participate in the program for a limited time period (e.g., three to five years). When a construction

contract is designated for award through the sheltered market program, the City would select a small number of firms in the program to bid on the contract. Firms would be selected for bidding on the contract in order to provide maximum opportunity for development of the firm. Past work, past maximum contract size, and current work volume would be considered in selecting the firms to be allowed to bid. In some cases, the City might negotiate the contract with a single firm.

For example, a small painting firm would benefit most by receiving a significantly larger painting contract than previously performed but one with an extended performance period. The City would assist with bonding (or, if possible, waive bonding requirements), ensure timely payment, and advise the firm on project management. On the other hand, a medium size general contractor might benefit most by receiving a contract that is somewhat larger than performed in the past, or a contract that furthers the type of work performed in the past. A medium size general contractor might also benefit by receiving a contract on a highly visible or prestigious construction project.

The City would need to periodically review performance of the program and examine whether need for the program still existed.

In order for the sheltered market program to be implemented, the City Charter would need to be reviewed and revised to exempt certain purchases from the competitive bidding requirement.

Joint venture programs -- recommend consideration by the City. The sheltered market program described above would not be open to the largest MBE and FBE general contractors. In order to further develop the capabilities of larger general contractors, the City might consider requiring MBE or FBE joint venture partners with majority firms on certain large construction contracts. We foresee that this program would include only two or three large joint ventures annually as the City infrequently embarks on very large construction projects amenable to such an initiative. A similar process is being followed in Atlanta and for construction of the new major league baseball stadium in Denver.

As with other program elements, periodic review of effectiveness and need for this initiative would be required.

Targeted sheltered market program for services purchases -- recommend consideration by the City. In order to have the maximum beneficial impact on MBEs and FBEs while minimizing burdens on majority-owned firms, we recommend that the City consider a targeted sheltered market program for small and for medium size services contracts. Possibly \$1 to \$2 million in services contracts might be included under this program each year (3 to 6 percent of total services purchases). Each department would need to coordinate with the Purchasing Division in implementing this program. Types and sizes of procurements would be identified at the beginning of each year. In some cases, large universal term contracts (UTC's) would be split between the UTC and sheltered market program. In other cases, one-time services contracts for which there are MBE and FBE vendors capable of performing these services would be placed in the program.

Restrictions on MBE and FBE participation in sheltered market purchases could be similar to those described for the construction sheltered market program. Firms would be pre-qualified to bid on these contracts based not only on capabilities to perform the service but also objective criteria as to the development stage of those businesses. Effectiveness and need for the program could be reviewed over time.

Targeted sheltered market program for goods purchases -- recommend consideration by the City. Again, several innovative approaches to developing small MBE and FBE wholesale businesses are possible. Small wholesale firms are limited in competitiveness due to their "buy brackets" with suppliers. Large volume wholesalers receive better prices than smaller volume purchasers. This is a vicious circle for the small wholesaler: they often can't compete on price because they are small, and they can't get bigger because they can't compete on price. Other MBE and FBE wholesalers might be constrained because they lack distributorship relationships with key manufacturers.

The objective of the program would be to increase the volume of particular types of sales for MBEs and FBEs in order for those firms further develop their businesses, expand their supplier relationships, and achieve more favorable pricing from suppliers for future bidding in both the public and private sector.

(102)

The Purchasing Division would be responsible for identifying types of procurements that could be awarded through the targeted sheltered market program. Only those types of goods purchased in large volume in the private marketplace should be included in the program. Otherwise, the sheltered market program would build dependency among MBEs and FBEs on public sector contracts. Vendors would be pre-qualified for bidding based upon capabilities and size. For example, a \$100,000 supply contract might be restricted to very small vendors already in that business line. A \$1 million goods contract could be open to larger MBEs and FBEs. If bidding is not restricted to firms of similar size, larger MBE and FBE wholesalers would usually beat smaller MBEs and FBEs on price, defeating the business-building purpose of the program. Each contract should be multi-year, subject to performance of the vendor. In this way, the MBE or FBE can effectively plan the development of the individual firm. It is possible that \$1 to \$3 million in goods contracts could be effectively awarded through this process (2 to 8 percent of goods purchases analyzed in this study.)

If enacted, the City would need to review effectiveness and need for this program as it evolved over time.

Conclusions

The combined quantitative and qualitative evidence of discrimination against minority and female-owned firms forms a sufficient factual predicate for remedial actions by the City. Race and gender-neutral remedies should be considered by the City, but we conclude that alone they will not be sufficient to fully remedy the effects of past and present discrimination. Therefore, a basis exists for the City to consider narrowly tailored race and gender-based remedies.

Past City affirmative action efforts clearly demonstrate that no one program element can effectively encourage MBE/FBE participation for City goods, services and construction purchases. While past City efforts did encourage MBE utilization as subcontractors on City construction contracts, MBE/FBE utilization as prime contractors in construction or as suppliers of goods and services was not addressed.

Even if 100 percent of City purchases went to MBEs and FBEs, this would still represent only 1 percent of total sales of wholesaling, services and construction firms in the Columbus area. Realistically, MBEs and FBEs must look to grow and develop

within the private marketplace. Only through private sector sales can minority and women-owned firms as a whole become competitive with majority-owned firms on City contracts. Therefore, we recommend a multi-dimensional affirmative action strategy, narrowly targeting the programs to provide maximum assistance to MBEs and FBEs at the formative stages of development for individual firms.

The City will need to make a strong commitment to implementation, administration and periodic review of any affirmative action program elements. Any program will only be as effective as the infrastructure and procedures for implementation. We believe the City's past implementation efforts fell short of what was needed to ensure a successful program.

The City also faces a challenge to fully explain the developmental nature of the proposed programs to the MBE/FBE business community and majority business community. The programs recommended here are not as easily explained as percentage goals programs. The objective of City affirmative action efforts should not be to ensure that a specific dollar amount of City purchases goes to MBEs/FBEs, rather that City purchasing opportunities further develop the MBE/FBE business community to attempt to redress past discrimination. Under the recommended programs presented, here, not all MBEs/FBEs would be eligible to participate in certain programs. In addition, the City will need to communicate to the majority business community that a small volume of purchasing opportunities would be targeted toward MBEs and FBEs, with the objective of strengthening MBEs and FBEs contribution to the local business community.

The initiatives recommended in this section require an intensive City effort to effectively implement, monitor, evaluate and modify programs to respond to changing procurement opportunities and a changing market place.

Courts have clearly placed the burden of reviewing the continued need for such programs on the jurisdiction. Our analysis of past affirmative action efforts of the City concludes that particular provisions of certain ordinances were ineffectively implemented or not implemented at all. Substantially more effective monitoring and review of affirmative action initiatives will be required of the City to maintain legally defensible programs.

PART II.
ANALYSIS OF QUANTITATIVE EVIDENCE OF DISCRIMINATION

PART II.
SECTION A.
MBE AND FBE PARTICIPATION IN CITY PURCHASING

Part II of the Predicate Study Report presents an analysis of quantitative evidence of discrimination. The legal framework for this examination is set forth in Section B of Part I. Section A of Part II focuses on City utilization of minority and female-owned firms. Section B presents our analysis of evidence of disparities within the private marketplace regarding minority and female business utilization. An appendix to Part II provides supporting detail on availability of minority and women-owned firms.

The study team worked with City payment data to examine utilization of minority and female-owned firms for three categories of City purchases: goods, services and construction. The study team estimated the percentage of prime contract dollars paid to MBEs, FBEs and majority-owned firms from January 1983 through June, 1991. This time period was selected based upon availability of computerized payment data. Subcontracts were also examined for construction and professional design services.

Utilization statistics alone do not give any indication whether the City "under" or "over" utilized MBEs/FBEs. In order to assess whether disparities exist, the proportion of City purchasing going to MBEs and FBEs was compared with estimates of the relative availability of firms ready, willing and able to perform this work. For example, if only 2 percent of City purchasing dollars went to MBEs, but there were only ten minority firms among the 1,000 firms ready, willing and able to perform work for the City (e.g., MBEs were 1 percent of available firms), then we would infer that the City had not under-utilized MBEs relative to availability. We examine two different measures of availability in this section.

The study team also examined utilization and availability for ten specific types of goods, services and construction activities corresponding to some of the highest dollar volume areas of City purchases. These areas included three types of construction (water and sewer construction, building construction and repair, and street construction), four areas of goods (chemicals, equipment and machinery parts and supplies, trucks, and motor vehicle parts and supplies) and three types of services

(104)

(professional design, automotive maintenance and repair and data processing equipment rental).

These analyses were designed to identify any gross statistical disparities, but are limited in their ability to identify factors explaining how these disparities might have occurred. For this reason, additional quantitative analysis was conducted to identify specific processes in City procurement or forces within the marketplace in general that appeared to affect minority and women-owned firms differently from majority-owned firms.

Steps Necessary to Develop Utilization Data

The study team identified and evaluated many different sources of purchasing information for use in this study. As discussed in Part I, the City Auditor's vendor payment history file is the only comprehensive source of City purchasing information. This database contains each City warrant paid to businesses conducting work for the City. Several codes are included for each record including the "minor object code" identifying the type of good, service or construction the vendor performed for the City.

The vendor payment history database suffers from several limitations. Only prime contractors are included, individual payments rather than specific purchases are identified, there is no information as to whether payments correspond to new purchases versus universal term contracts, and MBE/FBE status is not specified. The following discussion details how each of these potential shortcomings have been addressed in this study.

Individual payments. Each record in the Auditor's vendor payment history file is a warrant issued to City vendors. For purposes of this study, Auditor's Office staff summed all payments to each vendor made for each minor object code for each calendar year. Some payments correspond to contracts completed in the preceding year. Also, there might be some contracts for which vendors had not received payments; these purchases are simply not included in our analysis.

New independent purchases versus ongoing purchases off of universal term contracts. It is important to determine the number of independent purchases for purposes of statistical analysis. As a hypothetical example, assume only one contract

for office supplies was awarded for \$1 million in 1990, and this contract was awarded to a majority-owned company. Assume further that 200 purchase orders for this firm appeared in the 1990 Auditor's vendor payment history file. (The Auditor's vendor payment history file does not relate purchase orders to universal term contracts.) It would be a mistake to determine a statistically significant difference between M/FBE utilization (0 percent of City dollars) and relative availability (assume some number above 0 percent) based upon the assumption that one was observing 200 independent purchasing decisions. The sample size is really only "1" in this example; all the purchase orders were only the means of implementing this one decision. A sample size of one is insufficient to make a statistical inference. Similarly, statisticians could not be confident that a disparity did not occur by chance even if 10 contracts were issued for \$1 million to majority-owned firms and none were issued to MBEs/FBEs, regardless of the number of purchase orders issued off of this contract.

For these reasons, it was important for the study team to devise estimates of the number of "independent" purchase awards to minority, women and majority-owned firms that would not have any possibility of overestimating the true number of independent awards. There is no straightforward approach based upon data from the Auditor's database. Two methods were employed:

- **Minimum estimates of goods, services and construction purchases.** In order to develop a minimum estimate of the total number of independent purchases for 1983 through June 1991 for goods, the study team counted the number of vendors receiving payments for each minor object code classified as goods. Any vendor paid for purchases for a minor object code in any year was counted only once. This undercounts total independent purchases. The effect of undercounting the number of independent purchases is to make it more difficult to determine statistical significance. These same procedures were followed for services and for construction.
- **Estimates for detailed procurement areas.** Additional steps were taken to further examine number of purchases by type for the ten procurement areas selected for detailed study. The Purchasing Division provided a listing of Universal Term Contracts (UTCs) for 1987 through 1991. The study team backed out the number of purchase orders under UTCs from total purchase orders. This tends to undercount number of independent procurements received from the City. Because the data were not available, analysis could not be completed for 1983 through 1986.

Identification of MBEs/FBEs. The Auditor's vendor payment history file does not include an identification of minority, female or majority ownership status. This required the study team to identify ownership status based upon available data from the City and other sources. Every effort was made to avoid any potential for underreporting minority and women-owned vendors receiving City purchases. The following procedures were utilized. A vendor was coded as minority and/or women-owned if:

- the firm is identified as MBE, FBE (or MFE, owned by minority women) in the City's Contract Compliance database, or
- the firm is designated as pending MBE/FBE/MFE certification from records at MFBD, or
- the firm is identified as MBE/FBE/MFE in past MFBD directories, or
- the firm is identified as MBE/FBE/MFE in subcontracting reports or in departmental reviews of the study team's subcontracting database, or
- the firm identified itself as an MBE/FBE/MFE in the Purchasing Division's bidder registration files, or
- the firm is identified as MBE/FBE/MFE according to secondary sources such as the Columbus Minority Purchasing Council list, the Chamber of Commerce, the State of Ohio or the Columbus Housing Authority, or
- the firm identified itself as minority or women-owned in BBC's 1992 telephone survey of firms within certain subindustries located within the Columbus MSA.

From the analysis above, a firm identified as an MBE, FBE or MFE for any point in time is assumed to have that status for all years from 1983 through 1991. Accordingly, there may have been some purchases that were reported as being from MBE/FBE firms in years in which those firms may actually have been majority-owned firms.

Based upon our analysis of City payment data, any firm identified as MBE, FBE or MFE through this process that received over \$100,000 in City payments in any year was contacted by telephone to confirm status. Based upon these contacts, final MBE, FBE and MFE status was recorded in the database. While the study team attempted to

develop comprehensive data on the race and ethnicity of MBEs, this was not possible given available data sources. We do know from certain data from the City and from the study team's telephone interviews with firms that most MBEs receiving work from the City were owned by African-Americans. Many fewer MBEs were owned by Asian-Americans and very few were Hispanic or Native American-owned. By definition, FBEs are owned by white females. Minority female-owned firms are designated as MFEs and individually identified throughout this analysis to avoid double counting of MBE and FBE utilization. (To determine total utilization for minority male and female-owned firms, one must aggregate the MBE and MFE statistics; similarly FBEs and MFEs must be added to examine total utilization of female-owned firms.)

Analysis of MBE/FBE and majority firm utilization was "bottom up," that is, totals were determined based upon examination of each record within the City Auditor's vendor payment history file. Because individual records were examined, the study team was able to take the additional steps of excluding public organizations from the utilization analysis. Since these organizations are neither minority nor majority-owned, true MBE utilization compared to majority-owned firms would be understated if these firms were not removed from the analysis. Coupled with the steps to exclude types of procurements which are non-competitive as discussed in Part I (e.g., purchases of utilities), we believe that this analysis presents a representative picture of MBE, FBE, MFE and majority firm utilization.

The study team did not use any of the MBE/FBE status information developed by previous consultants to the City or by City staff in prior analyses of utilization. It is possible that the study team identified some firms as minority or women-owned that were not identified as such in previous analyses. Because of the methodology utilized, it is also possible (but we believe less likely) that firms identified as MBE or FBE in prior examinations were not coded as minority or women-owned in this study.

Prime contract/ subcontract dollars. Based upon interviews with City officials, and our past experience with government procurement, two areas of purchasing were most likely to include significant subcontracting opportunities: construction and professional design services. As discussed in this section, a large volume of construction contracts was performed by subcontractors. This was less evident for professional design. The City's past goals program was structured to encourage MBE/FBE participation as subcontractors, so research regarding utilization of

subcontractors is important. Sole reliance upon the Auditor's vendor payment history file might present an inaccurate picture of participation of minority and female-owned firms in City construction contracts.

In response to this concern, the study team investigated alternative data sources that would reveal subcontractor participation. The best available source was the subcontractor participation report that the prime contractor is required to submit to the City before the contract can be signed. Typically, the individual agency or department receives this report and forwards it to the Minority and Female Business Development Division (MFBD) for review. If satisfactory, MFBD personnel issue a contract compliance number for that contract.

MFBD staff have conducted several analyses of the subcontractor participation data and presently enter these data into a computer database. A tabulation was also conducted by the Legislative Research Office. To ensure the highest integrity of the data analysis, however, the study team conducted a completely independent compilation of subcontractor participation.

(107) The study team first constructed a new database by entering name and identification number of the contract, name and contract compliance number of the prime or subcontractor, type of work performed, dollar volume of work and majority, minority or women-owned status (if available) for each of the prime and subcontractors identified in the files located at MFBD. Both first tier and second tier subcontractors, when identified, were recorded. We relied upon original subcontracting reports located in the MFBD office. The study team also independently analyzed MBE and FBE status of these firms following the procedures described previously.

Once this database was constructed, the study team forwarded a copy to each department for their review and additions of any missing contracts based upon any agency records or other knowledge of these contracts. Any discrepancies were then resolved. Further, MBE and FBE status was confirmed by telephone for any subcontractors receiving over \$100,000 in work in any year. While no database can be completely accurate, we believe that this approach substantially enhanced the accuracy of information compared with previous efforts. We believe the key limitation to these data is that they are based upon prime contractor statements as to division of work among subcontractors prior to commencement of the project. It is not known whether

subcontractors actually performed the specified assignments or received identified payments.

Because of the extensive research required to develop this information, only selected years were examined based upon the signing date of the contract compliance letter. Contracts for 1984 were analyzed as this was the first full year after introduction of the 1983 goals program. Contract data for 1990 and January through June 1991 were entered in order to investigate utilization after suspension of the MBE/FBE goals. The years 1986 and 1988 were then selected to give a representative view of utilization after introduction of the goals program. These years of analysis were chosen prior to any knowledge of the level of utilization during this period. Any modifications or additions to these contracts were also entered, regardless of the date of the contract modification. Contract modifications are shown in the year signed or in the previous year for modifications in 1985, 1987 or 1989.

Utilization of MBEs and FBEs as Prime Contractors

The following discussion examines payments to MBEs, FBEs and majority-owned firms based upon our analysis of the City Auditor's Office vendor payment history file. These data only pertain to prime contracts. To the extent possible, these data do not include payments to governmental organizations or individuals.

Total 1983-1991. About \$1.3 billion in City of Columbus payments to prime contractors for goods, services and construction were examined from January 1983 through June 1991. About \$29 million of these prime contract payments went to firms the study team identified as minority-owned (males). About \$21 million in contract dollars were paid to firms the study team identified as owned by non-minority women. Firms owned by minority-women received \$5 million in prime contracts. Adding each of these three groups together, the payments to minority or female-owned firms totaled \$55 million. Table II-A-1 summarizes these results. These findings are based upon the methodology described previously in this section.

Table II-A-1
City Payments to Minority, Female and Majority-Owned Businesses
Goods, Services and Construction Purchases, 1983 - 1991
(Prime Contract Dollars Only, Thousands)

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
1983	\$1,739	\$1,604	\$282	\$3,625	\$86,663	\$90,288
1984	2,437	3,397	497	6,331	72,838	79,169
1985	2,756	2,091	586	5,433	89,055	94,488
1986	1,918	2,221	501	4,640	122,537	127,177
1987	4,723	1,638	513	6,874	189,952	196,826
1988	3,984	2,231	1,172	7,387	152,190	159,577
1989	3,477	2,175	270	5,922	154,621	160,543
1990	5,585	3,370	566	9,521	204,768	214,289
1991**	2,868	2,065	343	5,276	135,960	141,236
1983-1991**	\$29,487	\$20,792	\$4,730	\$55,009	\$1,208,584	\$1,263,593

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms).
 **January through June 1991.

Source: BBC, Inc. from City of Columbus vendor payment history file.

Based upon these estimates of payments to minority, female and majority-owned firms, MBEs received 2.3 percent of total prime contract dollars paid from 1983 through June, 1991, FBEs received 1.6 percent and minority females-owned firms (MFEs) were paid 0.4 percent of total prime contract dollars. MBE, FBE and MFE percentages of prime contracts were about the same during implementation of the City MBE/FBE program as after suspension of the program in 1990 and 1991. MBE utilization for prime contracts increased in 1990-1991, while FBE and MFE utilization decreased. City affirmative action efforts did not appear to have a measurable impact on overall utilization of minority and women-owned firms as prime contractors. Please note that certain Federal and State affirmative action programs might have influenced MBE/FBE utilization while the City's local program was in effect and after the local program was suspended, particularly for certain construction contracts.

Table II-A-2
Percent of City Payments to Minority, Female and Majority-Owned Businesses
Goods, Services and Construction Purchases, 1983 - 1991
(Prime Contract Dollars Only)

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
1983	1.9%	1.8%	0.3%	4.0%	96.0%	100.0%
1984	3.1	4.3	0.6	8.0	92.0	100.0
1985	2.9	2.2	0.6	5.7	94.3	100.0
1986	1.5	1.7	0.4	3.6	96.4	100.0
1987	2.4	0.8	0.3	3.5	96.5	100.0
1988	2.5	1.4	0.7	4.6	95.4	100.0
1989	2.2	1.4	0.2	3.8	96.2	100.0
1990	2.6	1.6	0.3	4.5	95.5	100.0
1991**	2.0	1.5	0.2	3.7	96.3	100.0
1983-1991**	2.3%	1.6%	0.4%	4.3%	95.7%	100.0%
Full program years: 1984-1988	2.3%	1.8%	0.5%	4.6%	95.4%	100.0%
Post program years: 1990-1991**	2.4%	1.5%	0.3%	4.2%	95.8%	100.0%

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms).
 **January through June, 1991.

Source: BBC, Inc. from City of Columbus vendor payment history file.

Goods, 1983-1991. Utilization of minority and women-owned firms differs somewhat among goods, services and construction purchases. Only analyzing 1983 to 1991 payments under City minor object codes the study team designated as "goods," \$3 million of City expenditures went to MBEs, \$5 million were paid to FBEs, \$1 million went to MFEs and \$266 million were paid to majority-owned firms. The highest annual purchases for MBEs was in 1985, with about one half million dollars paid to firms owned by minority males in that year. A single MBE accounted for over \$300,000 of those purchases, however. Purchases from FBEs peaked in 1990, with over \$1 million in payments. One Police Department contract to a white female-owned supply company represented about \$400,000 of the 1990 payments to FBEs. Most of the dollars to minority female-owned firms (MFEs) from 1983 to 1991 were to a minority women-owned tire distributor. From 1983 through June 1991, over one-half of each year's payments to MBEs and FBEs could usually be accounted for by one or two firms.

Table II-A-3 summarizes these results.

Table II-A-3
City Payments to Minority, Female and Majority-Owned Businesses
Goods Purchases 1983 - 1991
(Prime Contract Dollars Only, Thousands)

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
1983	\$172	\$194	\$8	\$374	\$18,616	\$18,990
1984	374	231	10	615	18,989	19,604
1985	499	282	8	789	25,725	26,514
1986	283	571	19	873	29,551	30,424
1987	408	661	25	1,094	32,652	33,746
1988	344	734	805	1,883	35,306	37,189
1989	345	644	34	1,023	39,605	40,628
1990	379	1,038	18	1,435	38,306	39,741
1991**	115	361	242	718	27,220	28,438
1983-1991**	\$2,919	\$4,716	\$1,169	\$8,804	\$266,470	\$275,274

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms).

**January through June 1991.

Source: BBC, Inc. from City of Columbus vendor payment history file.

MBEs received 1.1 percent, FBEs received 1.7 percent and MFEs were paid 0.4 percent of total prime contract dollars for goods purchases from 1983 through June 1991. While the percentage of goods purchased from FBEs increased over time, this trend was not apparent for MBEs. Firms owned by minority males received between 0.4 percent and 1.9 percent of goods purchases each year since 1983. A very small percentage of contract dollars went to firms owned by minority women. Because of the low volume of purchases from MBE/FBEs since 1983, it is not clear that suspension of the City's goals program had any effect on MBE or FBE utilization. In fact, analysis of program efforts suggest that little was put into place to encourage City purchases from MBE/FBE goods firms.

Table II-A-4
Percent of City Payments to Minority, Female and Majority-Owned Businesses
Goods Purchases, 1983 - 1991
(Prime Contract Dollars Only)

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
1983	0.9%	1.0%	0.0%	1.9%	98.1%	100.0%
1984	1.9	1.2	0.0	3.1	96.9	100.0
1985	1.9	1.1	0.0	3.0	97.0	100.0
1986	0.9	1.9	0.1	2.9	97.1	100.0
1987	1.2	2.0	0.1	3.3	96.7	100.0
1988	0.9	2.0	2.2	5.1	94.9	100.0
1989	0.8	1.6	0.1	2.5	97.5	100.0
1990	1.0	2.6	0.0	3.6	96.4	100.0
1991**	0.4	1.3	0.9	2.6	97.4	100.0
1983-1991**	1.1%	1.7%	0.4%	3.2%	96.8%	100.0%
Full local program years: 1984-1988	1.2%	1.6%	0.5%	3.3%	96.7%	100.0%
Post local program years: 1990-1991**	0.7%	2.1%	0.4%	3.2%	96.8%	100.0%

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms).

**January through June 1991.

Source: BBC, Inc. from City of Columbus vendor payment history file.

Services, 1983-1991. The City spent a larger amount of money on "services" minor object codes than on the types of "goods" examined in this study. Of the \$391 million in services expenditures analyzed from 1983 through June, 1991, \$366 million went to majority-owned firms. MBEs received \$14 million, FBEs were paid \$8 million and MFEs received \$3 million. Table II-A-5 examines these results.

Table II-A-5
City Payments to Minority, Female and Majority-Owned Businesses
Services Purchases 1983 - 1991
(Prime Contract Dollars Only, Thousands)

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
1983	\$1,062	\$418	\$273	\$1,753	\$27,342	\$29,095
1984	1,571	448	488	2,507	20,704	23,211
1985	1,955	552	545	3,052	32,576	35,628
1986	1,149	643	468	2,260	45,521	47,781
1987	1,529	725	359	2,613	48,916	51,529
1988	1,940	1,315	207	3,462	51,865	55,327
1989	1,325	1,192	221	2,738	53,209	55,947
1990	2,050	1,808	209	4,067	58,724	62,791
1991**	954	1,211	60	2,225	22,213	29,438
1983-1991**	\$13,535	\$8,312	\$2,830	\$24,677	\$366,070	\$390,748

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms).

**January through June 1991.

Source: BBC, Inc. from City of Columbus vendor payment history file.

(110)

Minority and women-owned firms received a greater share of services purchases than goods purchases. Of total prime contract dollars paid for services purchases from 1983 through June 1991, MBEs received 3.5 percent, FBEs received 2.1 percent and MFEs received 0.7 percent. As shown in Table II-A-6, there is no large change in MBE utilization after suspension of the City's goals program in 1989. FBE participation was higher in 1990-1991 than in program years. As with goods, we believe little was actually implemented by the City to encourage MBE/FBE participation as prime contractors in services.

Table II-A-6
Percent of City Payments to Minority, Female and Majority-Owned Businesses
Services Purchases, 1983 - 1991
(Prime Contract Dollars Only)

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
1983	3.7%	1.4%	0.9%	6.0%	94.0%	100.0%
1984	6.8	1.9	2.1	10.8	89.2	100.0
1985	5.5	1.5	1.5	8.5	91.5	100.0
1986	2.4	1.3	1.0	4.7	95.3	100.0
1987	3.0	1.4	0.7	5.1	94.9	100.0
1988	3.5	2.4	0.4	6.3	93.7	100.0
1989	2.4	2.1	0.4	4.9	95.1	100.0
1990	3.3	2.9	0.3	6.5	93.5	100.0
1991**	3.2	4.1	0.2	7.5	92.5	100.0
1983-1991**	3.5%	2.1%	0.7%	6.3%	93.7%	100.0%
Full local program years: 1984-1988	3.8%	1.7%	1.0%	6.5%	93.5%	100.0%
Post local program years: 1990-1991**	3.2%	3.3%	0.3%	6.8%	93.2%	100.0%

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms).

**January through June 1991.

Source: BBC, Inc. from City of Columbus vendor payment history file.

Construction prime contracts, 1983-1991. Payments to prime contractors were also estimated for minor object codes designated as primarily construction related. These figures do not incorporate any analysis of payments to subcontractors (this is accomplished later in this section of the report). Because many of these contracts

contain work subcontracted to other firms, payments to prime contractors present only a narrow view of City utilization.

About \$13 million of the \$598 million in City construction payments to prime contractors from 1983 through June 1991 went to MBE prime contractors. Less than \$8 million was paid to FBEs and about \$1 million went to MFEs. The highest utilization of FBEs as prime contractors was in 1984, a total of \$2.7 million. Most of this was accounted for by one FBE contractor receiving \$2.1 million in payments in that year.

Table II-A-7 examines results for construction prime contracts. (Please note that the term "prime contractors" is used whether or not there were any subcontractors involved in the assignment.)

Table II-A-7
City Payments to Minority, Female and Majority-Owned Businesses
Construction Purchases, 1983 - 1991
(Prime Contract Dollars Only, Thousands)

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
1983	\$506	\$992	\$1	\$1,499	\$40,704	\$42,203
1984	492	2,718	0	3,210	33,145	36,355
1985	302	1,257	34	1,593	30,754	32,347
1986	486	1,006	15	1,507	47,465	48,972
1987	2,786	253	128	3,167	108,383	111,550
1988	1,701	182	160	2,043	65,018	67,061
1989	1,807	339	14	2,160	61,807	63,968
1990	3,157	523	339	4,019	107,738	111,757
1991**	1,798	492	41	2,332	81,027	83,359
1983-1991**	\$13,035	\$7,763	\$732	\$21,530	\$576,041	\$597,572

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms.)
**January through June 1991.

Source: BBC, Inc. from City of Columbus vendor payment history file.

MBEs received 2.2 percent of total prime contract dollars paid for construction from 1983 through June 1991, FBEs received 1.3 percent of this total and 0.1 percent went to MFEs. MBE utilization as prime contractors increased in 1987. FBE participation declined at that time. There was no substantial change in total MBE and

FBE utilization between the time immediately prior to suspension of the goals program and the two years after the program was discontinued. It is likely that Federal and State programs had more influence on MBE/FBE utilization as prime contractors than did the local program.

Table II-A-8
Percent of City Payments to Minority, Female and Majority-Owned Businesses
Construction Purchases, 1983 - 1991
(Prime Contract Dollars Only)

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
1983	1.2%	2.4%	0.0%	3.6%	96.4%	100.0%
1984	1.4	7.5	0.0	8.9	91.1	100.0
1985	0.9	3.9	0.1	4.9	95.1	100.0
1986	1.0	2.1	0.0	3.1	96.9	100.0
1987	2.5	0.2	0.1	2.8	97.2	100.0
1988	2.5	0.3	0.2	3.0	97.0	100.0
1989	2.8	0.5	0.0	3.3	96.7	100.0
1990	2.8	0.5	0.3	3.6	96.4	100.0
1991**	2.2	0.6	0.0	2.8	97.2	100.0
1983-1991**	2.2%	1.3%	0.1%	3.6%	96.4%	100.0%
Full local program years: 1984-1988	1.8%	1.9%	0.1%	3.8%	96.2%	100.0%
Post local program years: 1990-1991**	2.5%	0.5%	0.2%	3.2%	96.8%	100.0%

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms.)

**January through June 1991.

Source: BBC, Inc. from City of Columbus vendor payment history file.

Summary. Analysis of City payments to prime contractors from 1983 through June 1991 shows about 4 percent of City dollars going to MBEs, FBEs and MFEs, combined. This proportion was somewhat higher for services purchases and somewhat lower for goods purchases. There was no indication that utilization was affected after the goals program was suspended in 1989. Review of City affirmative action efforts suggests that race and gender-based remedies to encourage MBE/FBE participation as prime contractors were not carried out by the City. Rather, City programs focused on MBE/FBE participation as subcontractors on construction and professional design projects. Thus, these utilization data reflect a "without local program" view of City

utilization of MBEs/FBEs in goods and services and for MBEs/FBEs as prime contractors in construction.

Utilization of MBEs and FBEs as Prime and Subcontractors in Construction and Professional Design

The following analysis incorporates the study team's compilation of available City subcontracting data for the years 1984, 1986, 1988 and 1990 through June 1991. The dollar values reported in Table II-A-9 reflect our analysis of 983 construction contracts. As the data are based upon contract documents prior to commencement of work, the findings relate to anticipated distribution of work to perform each contract rather than the actual distribution of payments upon performance of the work. To best ensure consistency of information, the year in which the contracting information is reported represents the year in which a contract compliance letter was issued, even if work might not have started or contractors paid until subsequent years. Results for a multi-year project are counted entirely for the year in which the contract compliance letter was signed. Modifications, however, are reported for the year in which these were signed (or the previous year if an odd year). There are some contracts designated as construction or professional design in the Auditor's vendor payment history file for which we could not identify subcontracting records. Some contracts might not have involved subcontractors; for others, subcontractor participation records might be missing. For all of these reasons, the data presented here do not directly correspond to the analysis of payments to prime contractors from the Auditor's vendor payment history file.

Prime contractors. Table II-A-9 reports total construction contract dollars by ownership status of prime contractors for those projects included in the subcontracting database. A total of \$384 million in construction contracts were examined as part of this investigation. MBEs were the prime contractors for \$15 million of this work. FBEs were primes on \$4 million of construction contracts. MBE utilization data reported here are somewhat higher than estimated actual payments data reported in Table II-A-7. Discrepancies could be due to a number of differences in the City's data collection methods as discussed above. We believe the payments data provide the more reliable indication of overall utilization of MBE/FBEs as prime contractors.

Table II-A-9

City Construction Prime Contract Awards to Minority, Female and Majority-Owned Businesses, Selected Years
(Prime Contract Dollars Only, Thousands)

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
1984	\$884	\$48	\$0	\$932	\$33,603	\$34,535
1986	2,113	820	0	2,933	117,766	120,699
1988	2,761	301	150	3,212	62,936	66,148
1990	6,526	1,372	176	8,074	76,428	84,502
1991**	2,897	1,457	0	4,354	73,781	78,135
All years**	\$15,181	\$3,998	\$326	\$19,505	\$364,514	\$384,019

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms).

**January through June 1991.

Source: BBC, Inc. from City of Columbus construction contract compliance documents.

As shown in Table II-A-10, MBEs were prime contractors on about 4 percent of the construction work examined here. The proportion of work going to MBE prime contractors actually increased in 1990 and 1991, after the City goals program had been suspended (State and Federal programs stayed in place, however). FBEs were prime contractors on less than one percent of the City's construction activity. Very few dollars went to MFE prime contractors. Again, these data are useful, especially when combined with subcontracting information; however, we believe vendor payment history file data more accurately portray MBE/FBE utilization as prime contractors in construction. It is also important to remember that Federal or State affirmative action programs applied to certain construction contracts throughout the study period.

(112)

Table II-A-10
Percent of City Construction Prime Contract Awards to Minority, Female and Majority-Owned Businesses, Selected Years

Year	MBE Firms	FBE Firms	MFE Firms*	Total M/FBE Firms	Majority Firms	Total Firms
1984	2.6%	0.1%	0.0%	2.7%	97.3%	100.0%
1986	1.8	0.7	0.0	2.5	97.6	100.0%
1988	4.2	0.5	0.2	4.9	95.1	100.0%
1990	7.7	1.6	0.2	9.5	90.4	100.0%
1991**	3.7	1.9	0.0	5.6	94.4	100.0%
All years**	4.0%	1.0%	0.1%	5.1%	94.9%	100.0%
Full local program years: 1984-1988	2.6%	0.5%	0.1%	3.2%	96.8%	100.0%
Post local program years: 1990-1991**	5.8%	1.7%	0.1%	7.6%	92.4%	100.0%

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms).

**January through June 1991.

Source: BBC, Inc. from City of Columbus construction contract compliance documents.

Subcontractors. Based on construction contract compliance documents, MBE and FBE participation as subcontractors was much higher than as primes. Among the contracts studied, MBEs were listed as subcontractors for \$35 million in work, representing 32 percent of the \$108 million in total subcontract dollars. FBEs accounted for \$6 million in subcontracts, or 6 percent of total subcontract dollars.

(11)

Table II-A-11
City Construction Subcontract Awards to Minority, Female and Majority-Owned Businesses, Selected Years
 (Subcontract Dollars Only, Thousands)

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
1984	\$ 2,001	\$ 467	\$ 0	\$ 2,468	\$ 3,511	\$ 5,979
1986	19,155	2,422	30	21,607	18,611	40,218
1988	6,364	486	20	6,870	15,958	22,828
1990	5,672	2,607	243	8,522	16,336	24,858
1991**	1,525	396	21	1,942	11,799	13,741
All years**	\$34,717	\$6,378	\$314	\$41,409	\$66,215	\$107,625

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms).

**January through June 1991.

Source: BBC, Inc. from City of Columbus construction contract compliance documents.

As shown in Table II-A-12, the proportion of subcontract dollars going to MBEs declined markedly after the goals program was suspended in 1989. For 1984, 1986 and 1988, MBEs accounted for 40 percent of the subcontractor dollars. In 1990, the first full year after suspension of the goals program, MBEs were listed for 23 percent of the subcontract dollars. For the first six months of 1991, MBEs were identified for only 11 percent of subcontract dollars. It appears that existence of the goals program had a substantial effect on the level of MBE utilization as subcontractors on City projects. Utilization exceeded the specified annual local goals of 10 percent MBE and 2 percent FBE from 1983 through 1988 (goals were 21 percent MBE and 4 percent FBE in early 1989). However, this utilization reflects the effects of both local goals and State and Federal programs. Utilization of MBEs drastically declined since the local goals program was discontinued (State and Federal programs remained in effect). Suspension of the local goals did not appear to have a negative impact on FBE utilization as subcontractors, however.

Not only did MBE utilization as subcontractors decline after suspension of the goals program, but the proportion of construction contracts that were subcontracted might have also declined. In 1984 through 1988, the subcontractors listed comprised 31 percent of the total contract amounts. In 1990 and 1991, this share declined to 24 percent. Without the goals program, prime contractors might have conducted more of

the work with their own resources, with fewer opportunities resulting for smaller firms. It also could be that prime contractors have not been as accurate in reporting subcontractors after goals were discontinued.

Table II-A-12
Percent of City Construction Subcontract Dollar Awards to Minority, Female and Majority-Owned Businesses, Selected Years

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
1984	33.5%	7.8%	0.0%	41.3%	58.7%	100.0%
1986	47.6	6.0	0.1	53.7	46.3	100.0
1988	27.9	2.1	0.1	30.1	69.9	100.0
1990	22.8	10.5	1.0	34.3	65.7	100.0
1991**	11.1	2.9	0.2	14.2	85.8	100.0
All years**	32.3%	5.9%	0.3%	38.5%	61.5%	100.0%
Full local program years: 1984-1988	39.8%	4.9%	0.1%	44.8%	55.2%	100.0%
Post local program years: 1990	22.8%	10.5%	1.0%	34.3%	65.7%	100.0%
1991	11.1%	2.9%	0.2%	14.2%	85.8%	100.0%

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms).

**January through June 1991.

Source: BBC, Inc. from City of Columbus construction contract compliance documents.

The study team conducted more detailed examination of 1990 and 1991 prime and subcontracting data. Table II-A-13 below breaks each contract into the dollars allocated to the primes and the subcontractors only for new contracts after the local goals program was discontinued (certain Federal and State programs remained in effect). This table offers the best available estimates of total City utilization of MBEs and FBEs in construction absent a local goals program. (In Table II-A-9, dollars for prime contractors represent total contract amounts, not the actual dollars distributed to primes after allocation for subcontractors and these data also include modifications to contracts in prior years.)

Combining construction contract dollars going to primes and subcontractors, MBEs were awarded \$10 million in 1990 through June, 1991. FBEs were awarded \$3

million in prime and subcontracts. Utilization of MBEs and FBEs declined between 1990 and 1991. In 1990, MBEs accounted for 10 percent of combined prime and subcontract dollars. This share fell to less than 4 percent in 1991. More than one-third of this utilization was one large prime contract. Other high MBE utilization appeared to be achieved on several Federal contracts. In total, four firms accounted for 80 percent of the MBE utilization from January through June 1991.

Utilization of FBEs declined from 4 percent in 1990 to 1 percent in 1991. Discussions with knowledgeable City staff suggest that utilization of MBEs and FBEs has declined further between July 1991 and July 1992. These data were not available at the time of the Predicate Study analysis, however.

Table II-A-13
Detailed Analysis of City Construction Contract Awards, 1990-1991
(Dollars Distributed to Prime and Subcontractors)

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
Dollars (thousands)						
1990	\$7,283	\$2,685	\$292	\$10,260	\$64,582	\$74,842
1991**	2,712	634	8	3,352	68,406	71,765
1990-91**	\$10,000	\$3,319	\$300	\$13,619	\$132,988	\$146,607
Percent						
1990	9.7%	3.6%	0.4%	13.7%	86.3%	100.0%
1991**	3.8	0.9	0.0	4.7	95.3	100.0
1990-91**	6.8	2.3	0.2	9.3	90.7	100.0

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms).

**January through June 1991.

Source: BBC, Inc. from City of Columbus construction contract compliance documents.

Professional design. While nearly 1,000 contracts were examined by the study team to compile the construction statistics, only 71 professional design contracts were identified in MFBD records through this analysis. These professional design contracts represent only a small subset of all City expenditures on professional design as identified in the vendor payment history file. As such, this subcontracting information is somewhat suspect.

(114)

MBEs and FBEs were about one-quarter of all prime contractors in the identified contracts. Only 45 subcontractors were reported in these professional design contract documents. MBEs and FBEs accounted for over one-half of the identified subcontractors. Of the \$6.9 million in professional design work examined, \$1.5 million was reportedly subcontracted. MBEs and FBEs represented about one-quarter of the prime contractor dollars and one-half of subcontractor dollars. Because of the small number of contracts, it is not possible from these data to determine the effect of discontinuing the local goals program. As presented later in this section of the report, we believe that these subcontracting records pertain to only a very small portion of the City's aggregate professional design procurement. They do not present an accurate picture of MBE/FBE utilization.

Comparison of City Utilization with Relative Number of MBEs and FBEs Ready, Willing and Able to Work for the City

While the utilization statistics presented above found that City payments to MBEs, FBEs and MFEs were a small share of total expenditures, particularly for prime contracts, these figures alone do not indicate any underutilization of minority and female-owned firms. Utilization must be compared with the proportion of firms ready, willing and able to perform work for the City that are owned by minorities and women. In other words, how does the proportion of work going to MBEs and FBEs compare to the availability of these firms? And, are any disparities between utilization and availability statistically significant?

Approaches to measuring availability. No one measure of availability presents an entirely accurate picture of the representation of firms ready, willing and able to perform work for the City. This subsection of the report examines the two best possible measures of availability given data constraints.

City Bidder Registration File. One approach is based upon the number of self-reported minority and women-owned firms and majority-owned firms that have completed bidder registration information currently on file with the City's Purchasing Division. This measure best gauges MBE, FBE and MFE representation among firms that have actively sought business with the City, regardless of where these firms are located. The Bidder Registration File current as of 1991 was available for this analysis. The cumulative nature of this database ensures that these data are fairly indicative of

availability during the 1983 to 1991 period of utilization analysis. One limitation of these data is that MBE and FBE status is self-reported. While Purchasing staff did not favorably treat self-reported MBEs and FBEs in the Bidder Registration File, this fact might not have been known by potential vendors. It is possible that majority firms misrepresented themselves as minority or female-owned in the hopes that this would increase their chances that they would be contacted for bids. Our analysis of the Bidder Registration File suggests that this problem, if it exists, is minor. Also, the self-reported MBE and FBE status in the Bidder Registration File was also used to identify status of firms receiving City payments. To the extent that the Bidder Registration File overstates MBE and FBE availability, our methodology also overstates MBE and FBE utilization.

The Bidder Registration File includes firms that reported capabilities of providing goods, services and construction work for the City. Purchasing is typically only involved in goods and a few services purchases, however. The Bidder Registration File would not normally be used to solicit construction bids. Only 203 of the firms in the Bidder Registration file firms reported construction capabilities compared with 4,550 goods firms and 1,242 services firms. Also, the number of MBE and FBE construction firms filling out bidder registration forms might be influenced by the presence of the construction subcontracting goals program. MBEs and FBEs might have had more incentive to submit bidder registration forms than majority-owned firms. (An opposite hypothesis is also credible: an MBE or FBE in goods, services or construction that completed the MFBD certification forms might have assumed that the certification would automatically put the firm on lists to receive solicitations, not taking the extra step of completing a bidder registration form. In practice, certification with MFBD would not place the MBE or FBE on a solicitation list unless the firm had also filled out the bidder registration form.) Because of these problems and the relatively small number of construction firms in the database, the Bidder Registration File is a poorer gauge of firms ready, willing and able to provide construction for the City than it is for goods and services.

U.S. Bureau of the Census data. The second approach to measuring availability looks at all firms within the marketplace, relying upon data for MBEs, FBEs and total firms within the Columbus MSA in 1987 from the U.S. Bureau of the Census (the most recent comprehensive marketplace data available). These 1987 data represent the mid-point of our 1983 to 1991 period of analysis.

The study team obtained published data on MBEs and FBEs and unpublished Census data on total firms. Only proprietorship, partnerships and Subchapter S corporations are included in any of these Census data, however. (Subchapter S corporations have a small number of stockholders, most large incorporated firms are "C" corporations.) Because data on C corporations were lacking, the study team estimated the number of C corporations for each sector within the Columbus MSA based upon the percentages of firms within each industry in the U.S. that are C corporations. We assumed that each C corporation was majority-owned (clearly a highly conservative assumption). The resulting estimates of availability would tend to somewhat understate true availability of MBE/FBEs.

Analysis of BBC's 1992 telephone survey of firms within the Columbus MSA found that MBEs and FBEs are more likely than majority-owned firms to be interested in work for the City of Columbus. Therefore, market-wide data would tend to understate representation of minority and women-owned firms among those firms ready, willing and able to perform work for the City. On the other hand, MBEs and FBEs tend to be smaller and perhaps are less likely to have the capabilities to provide goods, services and construction for the City. In this case, marketplace data would somewhat overstate availability of MBEs and FBEs ready, willing and able to perform work for the City.

These data only pertain to the Columbus MSA. Because the relevant geographic market for some types of procurements extends beyond this area, these Census data might not be truly representative of MBE/FBE availability. We believe the effect of limiting the availability estimates to the Columbus MSA is somewhat understating the representation of MBEs and FBEs among the pool of firms available to work for the City. The proportion of firms that are minority-owned is greater in the U.S. as a whole: 5 percent of non-C corporation firms are MBE in the Columbus MSA versus 9 percent nationwide. Appendix II-A further details the steps in this analysis.

Limitations of the two approaches. Both of these approaches suffer from one serious flaw. If discrimination has historically depressed the rate of business formation and success for minorities and women, any measure of availability based upon the number of businesses that exist today will understate what availability might have been absent past discrimination.

In a hypothetical example, past discrimination might have limited the rate of formation of MBEs so that they only equal 1 percent of the total firms available to perform work for a particular jurisdiction. If that jurisdiction's utilization of MBEs were only 1 percent, or if utilization exceeded 1 percent, no disparities between utilization and current availability would be evident. This example demonstrates that absence of disparities between utilization and availability might occur when discrimination has affected formation of MBEs and FBEs in the private marketplace. Absence of disparities should not necessarily be interpreted as a finding that discrimination has not occurred.

Other approaches to measuring availability Several approaches to estimating availability were considered and rejected for this study. To become certified as MBEs or FBEs, minority and women-owned firms go through an application and review process with the City's Minority and Female Business Division. Some MBEs and FBEs complete the certification process in the hope that this will assist them in obtaining business from the City. There is no equivalent certification process for majority-owned firms considering doing business with the City. Only when a contract is awarded must all firms fill out a certification form. Therefore, there are no statistics on majority-owned firms seeking business from the City with which to compare the number of certified MBEs and FBEs. There were other reasons for not analyzing certification records. A number of minority and women-owned firms identified in this study received work from the City but were not certified as MBEs and FBEs by the MFBD. In other instances, our phone calls to firms identified as minority or female-owned by MFBD found that status to be inaccurate (any identified inaccuracies were corrected in our analysis of utilization). MFBD's methods and procedures for collecting and filing certification information have been poor.

The study team also completed a telephone survey of firms in construction and in specific types of wholesaling and services sectors. We attempted to contact every firm within specific Standard Industrial Classification (SIC) codes that had a business telephone number and were located within the Columbus MSA. In most instances, the number of completed surveys for these specific procurement areas were too low to allow reliable estimates of availability. The sole exception was for the construction industry. We found that these survey data for construction were consistent with the U.S. Bureau of the Census information for the Columbus MSA reported for 1987. Because the Census information is more comprehensive, these data were used; telephone survey data were only used in supporting the reliability of the Census data.

Utilization and availability using Bidder Registration File data. Table II-A-14 presents a comparison of utilization of MBEs, FBEs and MFEs and the proportion of firms in the City's Bidder Registration File that reported themselves to be minority or women owned. Results for goods, services and construction are discussed in turn.

Goods. From January 1983 through June 1991, 1.1 percent of the City's goods purchases examined in this study went to firms owned by minority males. As discussed previously, our analysis of goods purchases excluded areas such as electricity sales and other items unrepresentative of competitive City contracts. As much as possible, the utilization analysis also excluded purchases from government enterprises. The statistic for MBE utilization for goods only represents prime contracts; however, available information indicates that subcontracting has been uncommon in goods purchases.

The Bidder Registration File included 319 firms reported to be owned by minority males among the 4,550 firms that included goods commodity codes in the type of work performed by the firm. Thus, MBEs represented 7.0 percent of all goods firms in the Bidder Registration File. MBE utilization (1.1 percent) fell substantially below MBE availability. Further statistical analysis determined that utilization and availability were significantly different at the 95 percent confidence level. In other words, this difference passed the test of being 95 percent sure that results could not have simply happened by chance. This level of statistical confidence (sometime known as the "two standard deviation test") is the commonly accepted level of assurance in both employment discrimination and post-Croson studies. Results are presented in Table II-A-14.

(117)

Table II-A-14
Comparison of City Utilization and Availability
of Minority and Women-Owned Firms
 (1983-91 Utilization, Availability based upon 1991 Bidder Registration File)

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
Goods						
Utilization	1.1%	1.7%	0.4%	3.2%	96.8%	100.0%
Availability (BRF)	7.0	6.4	1.7	15.1	84.9	100.0
Difference	(5.9)**	(4.7)**	(1.3)**	(11.9)**	11.9**	-
Services						
Utilization	3.5%	2.1%	0.7%	6.3%	93.7%	100.0%
Availability (BRF)	11.4	8.9	2.9	23.2	76.8	100.0
Difference	(7.9)**	(6.8)**	(2.2)**	(16.9)**	16.9**	-
Construction (dollars in 1990-91 prime and subcontracts)						
Utilization	6.8%	2.3%	0.2%	9.3%	90.7%	100.0%
Availability (BRF)	21.2	8.4	2.5	32.1	67.9	100.0
Difference	(14.4)**	(6.1)**	(2.3)**	(22.8)**	22.8**	-

* Firms owned by minority women (must be added to MBE and FBE statistics to accurately calculate total utilization of all minority and/or women-owned firms).
 **Statistically significant at the 95 percent confidence level. †

Source: BBC, Inc. from City Auditor's vendor payment history file and Purchasing Division Bidder Registration File, 1991.

† Statistical significance was determined via a two-tailed hypothesis test about the difference between the proportions of two populations. In statistical notation, the hypothesis test is constructed as follows:

$$t = (p_1 - p_2) / \sqrt{p(1-p) / (1/n_1 + 1/n_2)}$$

p_1 = the proportion of population 1 or availability as a percentage of Bidder's Registration File (BRF);
 p_2 = the proportion of population 2 or utilization as a percentage of dollars in the vendor payment history file;
 p = is the pooled estimate of proportion which, as seen above, is a component of the standard error of the proportions calculation. p is computed as $(n_1 p_1 + n_2 p_2) / (n_1 + n_2)$;
 n_1 = the size of population 1 or the total number of firms listed in the BRF;
 n_2 = the size of population 2 or the total number of procurement opportunities (including discrete contracts, purchase orders, legislation, and encumbrances) in the vendor payment history;
 t = the test statistic used to determine statistical significance. At the 95 percent confidence level, a t score in excess of the absolute value of approximately 2 implies a statistically significant difference.

Further examination of goods purchases indicates that utilization of FBEs (1.7 percent of all goods purchases) fell below the representation of FBEs that had registered with the City (6.4 percent of all goods firms). This difference was also statistically significant at the 95 percent confidence level. MFEs also received a share of goods purchases below their relative availability. Majority-owned firms received almost 97 percent of goods expenditures while accounting for about 85 percent of the goods firms in the Bidder Registration File.

Services. Based upon the relative number of minority and women-owned services firms in the Bidder Registration File, there are statistically significant disparities between MBE, FBE and MFE utilization and availability. MBEs represented over 11 percent of firms reporting that they could provide one or more types of services to the City in the Bidder Registration File; yet MBEs received only 3.5 percent of services dollars (prime contracts only). The difference between utilization and availability is statistically significant at the 95 percent confidence level. As demonstrated in Table II-A-14, similar disparities were found for FBE and MFE services firms. While the utilization statistics for services do not include subcontracting, available information City suggests that subcontracts only account for a small portion of services expenditures.

Construction. Because of the importance of subcontracting and the presence of the City's goals program for 1983 to 1989, we used a somewhat different approach to analyze construction utilization. Only contract awards in 1990 and 1991 were examined. Even among these years, we believe there is a residual effect of the local goals program, and some influence of Federal and State affirmative action programs. Use of MBEs and FBEs as subcontractors dramatically declined between 1990 and 1991. In 1990, 9.7 percent of combined prime and subcontract construction dollars were awarded to MBEs; this declined to 3.8 percent in the first six months of 1991. FBE utilization declined from 3.6 percent of construction dollars in 1990 to 0.9 percent in 1991. City officials suggest that there have been even further declines in MBE and FBE utilization since June, 1991.

Several additional measures were also taken to ensure as accurate an analysis as possible. No contract modifications for 1990 and 1991 were included in the analysis because many of these were modifications of prior years' contracts. Utilization reflects dollars ultimately going to prime contracts and subcontractors (subcontracts were

deducted from prime's total contract amounts to determine dollars ultimately retained by primes). Because these data are based upon documents submitted at contract award, they might not reflect the actual payments to these firms.

Comparison of utilization with the representation of construction firms within the Bidder Registration File presents some evidence of statistical disparities. Over 21 percent of the firms reporting that they could provide construction services to the City were self-reported MBEs. About 8 percent were FBEs. Utilization fell far below these measures of availability. However, because of the limitations of the Bidder Registration File in measuring availability of construction firms, we do not believe that these disparities represent conclusive evidence of discrimination for construction.

Utilization and availability using U.S. Census data. As discussed previously, another measure of availability was also examined in this study. U.S. Bureau of the Census data for firms for the Columbus MSA (adjusted to reflect "C" corporations) provide a second indication of the relative number of MBEs and FBEs ready, willing and able to provide goods, services and construction to the City of Columbus.

MBEs comprise a smaller proportion of the total marketplace than found in our analysis of firms completing vendor information in the Bidder Registration File. However, a greater proportion of firms in the marketplace were FBEs than found in the Bidder Registration File. MBEs, including firms owned by minority women, were about 2.8 percent of all wholesaling firms in the Columbus MSA in 1987 (two-thirds of these firms were black-owned, 8 percent Hispanic-owned, 24 percent Asian and Native-American-owned). FBEs, also including firms owned by minority women, were about 16 percent of all wholesale sector firms. (Because firms owned by minority women are included in both the Census MBE and FBE statistics, total number of minority and women-owned firms could not be determined nor could MFE availability be separated.)

Availability of MBE services firms was relatively higher (5.4 percent). Three-quarters of the MBEs were owned by African-Americans. FBEs comprised over one-third of Columbus MSA services firms. In construction, MBEs and FBEs accounted for about 3 percent and 5 percent, respectively, of local firms. Three-quarters of MBE construction firms were black-owned.

Including firms owned by minority women, MBE utilization for goods purchases was 1.5 percent between 1983 and June 1991. FBE utilization (including minority women) was 2.1 percent. Utilization in services was 4.2 percent and 2.8 percent for MBEs and FBEs respectively (data adjusted to include minority women for both MBEs and FBEs). Based on these data, there were disparities between City utilization and the availability of MBEs and FBEs for both goods and services. City utilization of FBEs also fell below availability for construction. Table II-A-15 shows these results.

MBE utilization as construction primes and subcontractors in 1990 and 1991 exceeded availability based upon U.S. Census data. Again, because of the rapidly diminishing utilization between 1990 and 1991 and presence of Federal and State programs, the findings for construction are difficult to interpret.

Table II-A-15
Comparison of City Utilization and Availability
of Minority and Women-Owned Firms
(1983-91 Utilization, Availability based upon 1987 Census Data)

Year	MBE Firms*	FBE Firms*
Goods Utilization	1.5%	2.1%
Availability (Census)	2.8	15.9
Difference	(1.3)**	(13.8)**
Services Utilization	4.2%	2.8%
Availability (Census)	5.4	34.6
Difference	(1.2)**	(29.8)**
Construction (dollars in 1990-91 prime and subcontracts)		
Utilization	7.0%	2.5%
Availability (Census)	3.0	4.8
Difference	4.0**	(2.3)**

*Firms owned by minority women (MFEs) are added to MBE and FBE statistics.
**Statistically significant at the 95 percent confidence level.²

Source: BBC, Inc. from City Auditor's vendor payment history file, City construction contract compliance documents and selected U.S. Census documents and unpublished data.

Conclusions from the analysis of City utilization and availability for goods, services and construction. Data from the Bidder Registration File and from the U.S. Bureau of the Census are the best available measures of the relative number of MBEs and FBEs ready, willing and able to perform work for the City. Each set of statistics clearly demonstrated disparities between City MBE and FBE utilization in both goods and services compared with MBE and FBE availability. Disparities were also clearly evident for FBE utilization and availability in construction. Each of the identified

² Statistical significance was determined via a two-tailed hypothesis test about the difference between the proportions of two populations. In statistical notation, the hypothesis test is constructed as follows:

$$t = (p_1 - p_2) / [(p^* - p_1) / \sqrt{(n_1/n_1) + (n_1/n_2)}]$$

p₁ = the proportion of population 1 or availability as a percentage of total firms;
p₂ = the proportion of population 2 or utilization as a percentage of dollars in the vendor payment history file;
p* = is the pooled estimate of proportion which, as seen above, is a component of the standard error of the proportions calculation. p* is computed as (n₁p₁ + n₂p₂) / (n₁ + n₂);
n₁ = the size of population 1 or the total number of firms;
n₂ = the size of population 2 or the total number of procurement opportunities in the vendor payment history file;
t = the test statistic used to determine statistical significance. At the 95 percent confidence level, a t score in excess of the absolute value of approximately 2 implies a statistically significant difference.

disparities was statistically significant at the level generally accepted as standard for this type of research.

While a statistically significant disparity was identified for MBE construction firms based upon Bidder Registration File data, this was not evident when applying the availability measure from U.S. Bureau of the Census data. The measure of MBE availability from the Bidder Registration File (21 percent) was inconsistent with U.S. Census data for the marketplace (3 percent). In early 1992, the study team performed a telephone survey that attempted to reach all Columbus MSA construction firms that had a business telephone number. About 4 percent of firms that reported capabilities and interest in conducting work for the City were MBEs. Analysis of U.S. Census data for race of self employed persons in construction for the Columbus MSA in 1980 found that 4 percent of all self-employed construction workers were black. Further, the Bidder Registration File was not normally used by the City to identify construction firms for bid solicitation. Based upon these facts, we conclude that the U.S. Census data are more representative of recent availability of construction firms than the Bidder Registration File data.

(120) Still, it is difficult to make any inferences from these MBE utilization and availability data for construction. As discussed above, the City's local goals program appeared to have an eroding impact on MBE utilization after the program was discontinued in 1989. Utilization dropped in 1990 and again in 1991, and discussions with City staff suggest that utilization has continued to decline into 1992. Certain contracts (e.g. airport or some highways) were subject to Federal or State goals programs. It is likely that the 1990-1991 data reported here are artificially inflated and do not reflect a true "without program" observation period. We suggest that the City refer to estimates of MBE utilization from July 1991 through today in considering the results of this study. Also, there is both quantitative and anecdotal evidence that the rate of business formation of local construction firms has been depressed for minorities. Three percent availability of MBEs is not considered representative of availability absent the effects of past discrimination.

In sum, analysis of City utilization and availability of MBE construction firms is not conclusive. Other quantitative analyses augmented by qualitative information are necessary to evaluate the nature and extent of evidence of discrimination against MBE construction firms.

Comparison of Utilization and Availability for Detailed Procurement Areas

The preceding analysis clearly demonstrated disparities between MBE and FBE utilization and availability for goods and services as a whole. Are these same disparities evident when examining specific procurement areas? The following discussion addresses this question.

The study team identified ten of the largest procurement areas within goods, services and construction for detailed utilization analysis. These areas were selected based upon relatively high dollar volume and large number of individual purchases. The study team also selected relatively discrete areas (e.g., "other construction" or "other goods" were not useful for this analysis). No information on MBE or FBE utilization was used in making these selections (in fact, no data were available at time of selection).

Four goods and three services were selected:

- Chemicals
- Equipment - trucks and other motorized vehicles
- Equipment and machinery supplies and parts
- Vehicle supplies and parts

- Professional design
- Auto maintenance
- Rental of data processing equipment

The study team also attempted to analyze construction expenditures for three specific types of construction. While results from the vendor payment history file were available for water and sewer, building construction and street construction prime contracts, we found these to understate actual utilization of MBEs and FBEs if subcontracts were included. For example, MBE utilization was 1.3 percent for water and sewer, 4.4 percent for buildings and 3.9 percent for streets when only prime contract payments were examined. The database developed for prime and subcontractors was not amenable to accurate analysis by these detailed procurement areas.

Table II-A-16 presents City payments to prime contractors for detailed procurement areas from 1987 through June 1991 (data on number of purchases were only available for this period). MBE and FBE purchases were highest for equipment and machinery parts and supplies and for professional design services. Several MBEs, FBEs and MFEs also received large contracts for vehicle parts and supplies. Most of these large contracts were for tire purchases. In contrast, MBEs and FBEs received relatively little volume for trucks and other industrial vehicles and almost no contracts for rental of data processing equipment.

Table II-A-16
City Payments to Minority, Female and Majority-Owned Businesses
Detailed Procurement Areas
January 1987 - June 1991
(Prime Contract Dollars Only, Thousands)

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
Goods:						
Chemicals	\$165	\$88	\$3	\$256	\$40,471	\$40,727
Trucks	56	110	0	166	34,974	35,140
Equip parts	490	797	14	1,301	31,256	32,557
Vehicle parts/supplies	291	220	578	1,089	19,585	20,674
Services:						
Professional design	\$10,166	\$287	\$1,153	\$11,606	\$111,571	\$123,177
Auto maintenance	562	392	5	959	9,594	10,553
Rental of DP equip.	0	2	0	2	9,151	9,153

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms).

Source: BBC, Inc. from City of Columbus vendor payment history file.

Table II-A-17 expresses MBE and FBE utilization on a percentage basis. MBEs and FBEs together received less than 1 percent of chemical purchases. Utilization for trucks and other industrial vehicles was also less than 1 percent. About 2 percent of equipment and machinery parts and supplies purchases went to MBEs. FBEs received 2 percent of these expenditures. MBEs received 1 percent, FBEs received 1 percent and MFEs received 3 percent of vehicle parts and supplies purchases.

A relatively large share of professional design prime contract dollars went to MBEs based upon vendor payment history file data. This is consistent with discussions with City departmental staff responsible for these contracts. City staff reported that, through the 1980s, certain departments attempted to distribute professional design contracts widely among firms available in the local market, paying particular attention that larger minority firms received City design contracts. Recent changes in the City's procurement process for services limits staff ability to pursue this strategy.

A high percentage of auto maintenance expenditures also went to minority and female-owned firms. There was almost no utilization of MBEs and FBEs in rental of data processing equipment, another large area of total expenditures for the City.

Table II-A-17
Percent of City Payments to Minority, Female and Majority-Owned Businesses
Detailed Procurement Areas
January 1987 - June 1991
(Prime Contract Dollars Only)

Year	MBE Firms	FBE Firms	MFE Firms*	Total M/FBE Firms	Majority Firms	Total Firms
Goods:						
Chemicals	0.4%	0.2%	0.0%	0.6%	99.4%	100.0%
Trucks	0.2	0.3	0.0	0.5	99.5	100.0
Equip parts/supplies	1.5	2.4	0.0	3.9	96.1	100.0
Vehicle parts/supplies	1.4	1.1	2.8	5.3	94.7	100.0
Services:						
Professional design	8.3%	0.2%	0.9%	9.4%	90.6%	100.0%
Auto maintenance	5.3	3.7	0.1	9.1	90.9	100.0
Rental of DP equip.	0.0	0.0	0.0	0.0	100.0	100.0

*Firms owned by minority women (must be added to MBE and FBE utilization to accurately calculate total utilization of all minority and/or women-owned firms).

Source: BBC, Inc. from City of Columbus vendor payment history file.

Utilization and availability can be compared for these detailed procurement areas. As shown in Table II-A-18, statistically significant disparities exist between MBE utilization and availability (based upon Bidder Registration File data) for each of the seven procurement areas examined. For FBEs, utilization is below availability for all

seven areas; these disparities are statistically significant for six of these areas. Results were mixed for MFEs (minority female-owned firms).

Table II-A-10
Comparison of City Utilization and Availability of Minority and Women-Owned Firms, Detailed Procurement Areas
(1987-91 Utilization, Availability based upon 1991 Bidder Registration File)

Year	MBE Firms	FBE Firms	MFE Firms*	Total M/FBE Firms	Majority Firms	Total Firms
Chemicals						
Utilization	0.4%	0.2%	0.0%	0.6%	99.4%	100.0%
Availability (BRF,n=378)	12.4	5.3	1.9	19.6	80.4	100.0
Difference	(12.0)**	(5.1)**	(1.9)**	(19.0)**	19.0	-
Equipment-parts						
Utilization	1.5%	2.4%	0.0%	3.9%	96.1%	100.0%
Availability (BRF,n=728)	7.1	6.4	1.8	15.3	84.7	100.0
Difference	(5.6)**	(4.0)**	(1.8)**	(11.4)**	11.4	-
Equipment-trucks						
Utilization	0.2%	0.3%	0.0%	0.5%	99.5%	100.0%
Availability (BRF,n=362)	10.5	5.2	0.8	16.5	83.5	100.0
Difference	(10.3)**	(4.9)**	(0.8)	(16.0)**	16.0	-
Vehicle parts/supplies						
Utilization	1.4%	1.1%	2.8%	5.3%	94.7%	100.0%
Availability (BRF,n=305)	9.2	6.6	0.7	16.5	83.5	100.0
Difference	(7.8)**	(5.5)**	2.1	(11.2)**	11.2	-
Professional design (primes)						
Utilization	8.3%	0.2%	0.9%	9.4%	90.6%	100.0%
Availability (BRF,n=97)	25.8	3.1	3.1	32.0	68.0	100.0
Difference	(17.5)**	(2.9)**	(2.2)**	(22.6)**	22.6	-
Maintenance-vehicles						
Utilization	5.3%	3.7%	0.1%	9.1%	90.9%	100.0%
Availability (BRF,n=126)	7.9	5.6	0.0	13.5	86.5	100.0
Difference	(2.6)**	(1.9)	0.1	(4.4)**	4.4	-
Data processing rental						
Utilization	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
Availability (BRF,n=50)	10.0	10.0	0.0	20.0	80.0	100.0
Difference	(10.0)**	(10.0)**	0.0	(20.0)**	20.0	-

*Firms owned by minority women (must be added to MBE and FBE statistics to accurately calculate total utilization of all minority and/or women-owned firms).

**Statistically significant at the 95 percent confidence level.

Source: BBC, Inc. from City Auditor's Vendor Payment History File and Purchasing Division Bidder Registration File, 1991.

(122)

This analysis was not meant to be exhaustive, only to test whether disparities present between utilization and availability for broad Industries were also apparent upon inspection of detail areas. The seven areas examined demonstrate that, at least for goods and services, the overall disparities result from disparities present within individual subcomponents of these Industries.

Case Studies

The preceding analysis focused on broad comparisons of MBE/FBE availability with MBE/FBE utilization by the City of Columbus. The study team augmented this general analysis of MBEs/FBEs in Columbus with a more specific look at how those firms won (or lost) City business.

The study team chose 25 representative City contracts and 15 representative City purchase orders that were awarded in 1990 and 1991 as case studies of how MBEs/FBEs fare in the procurement process. Because the City uses different processes to award contracts than purchase orders, it is important to analyze the two types of procurement separately. Data were only readily available for goods and services.

Contracts. If any planned purchase is over \$10,000, City of Columbus purchasing regulations require that buyers solicit potential vendors by mail. These large purchases include both "one time buys" of equipment and "Universal Term Contracts" (UTCs) for ongoing supply needs.

The Division of Purchasing keeps a hard copy of all contract bid folders. These folders include the original letter of request from a City agency, a list of suggested vendors from that agency and a copy of the solicitation including specifications on the item or service in question. Also kept in the bid folders are bidder's mailing list of all firms who received the solicitation, all responses to the solicitation from bidders, any correspondence with bidders, and the buyer's "tab sheets" showing how the winning bidder was chosen.

In order to ensure that our case studies would provide a representative view of the contract process, the study team followed a three step sampling methodology. We first identified all contracts which potentially included those minor object codes (MICs) chosen for detailed analysis in this study. Second, the study team developed a non-

biased skip pattern to manually sample hard copy bid folders in the Division of Purchasing offices. Finally, we employed this skip pattern until 25 contracts within the appropriate MICs were chosen.

Our analysis of the 25 contract case studies focused on seven points in the award process. It is informative to examine each point in turn, with a particular focus on the representation of MBEs/FBEs.

The procurement process for one-time contracts and UTCs starts when a City agency submits a letter of request to the Division of Purchasing. This letter is supposed to include specifications for the desired good or service, as well as three suggested vendors for Purchasing to include on the bidder's mailing list. Less than half of all requesting agencies in our sample suggested three (or any) potential vendors. The ethnic and gender breakdown of "suggested" firms is summarized below:

Total Firms Suggested:	47
Majority Firms Suggested:	43 (92%)
MBEs Suggested:	3 (6%)
FBEs Suggested:	1 (2%)
MFES Suggested:	0 (0%)

By comparison, 15 percent of goods firms and 23 percent of services firms in the Purchasing Division's Bidder Registration File were minority or women-owned firms. The second step in the procurement process is for the Division of Purchasing to compile a master bidders' mailing list. This list is typically composed of those firms suggested by the requesting City agency and those firms which have filled out a bidder's application with the Purchasing Division.³ The ethnic and gender status of firms contacted by mail is summarized below:

Total Firms Contacted:	913
Majority Firms Contacted:	768 (84%)
MBEs Contacted:	84 (9%)
FBEs Contacted:	54 (6%)
MFES Contacted:	7 (1%)

³ City of Columbus buyers typically did not consult the Minority and Female Business Division's (MFBD) listing of certified MBEs/FBEs when compiling a bidder's mailing list. This practice means that some MBEs/FBEs which had expressed interest in working for the City did not receive solicitations if they had not contacted the Division of Purchasing as well as the MFBD. In one extreme example, a solicitation for janitorial service was not sent to 33 MBEs/FBEs which had registered with MFBD but not with the Division of Purchasing.

(123)

It is interesting to note that the Division of Purchasing's mailing lists included more minority and female firms than the group of vendors suggested by City agencies. Moreover, Purchasing achieved this greater representation without using MFBD certification information to any great degree.

The next step in the procurement process occurs when firms that were not included on the bidder's mailing list come into the Division of Purchasing offices and pick up copies of the solicitation. These firms typically learn about the solicitation in two ways: (1) through word of mouth in the industry, and (2) through examining the hard copies of all solicitations posted in the Purchasing office.

Total Firms "Coming In":	36
Majority Firms "Coming In":	29 (81%)
MBEs "Coming In":	4 (11%)
FBEs "Coming In":	3 (8%)
MFES "Coming In":	0 (0%)

The fourth step in the procurement process is dictated by the number of firms which respond to the City's solicitation. Only about one-third of all firms which were aware of the solicitations (through getting a mailed copied or picking one up) actually responded to the City. A major reason that a low percentage of firms responded to City solicitations was because the Division of Purchasing tended to mail them out to many firms which could not supply the specific good or service. This "over mailing" occurred because the City's commodity codes were not sufficiently specific. For example, the City might have mailed a "teflon sleeve valve" solicitation to all firms with a plumbing commodity code while only certain plumbing supply vendors carried teflon sleeve valves.

The types of firms which responded to City solicitations are summarized below:

Total Firms Responding:	343
Majority Firms Responding:	303 (88%)
MBEs Responding:	20 (6%)
FBEs Responding:	19 (6%)
MFES Responding:	1 (0%)

The percentage of minority and female firms which responded to City solicitations was noticeably lower than the percentage which were aware of those solicitations. To obtain

additional insights, the study team contacted eight MBEs/FBEs which did not bid on contracts included in our sample of 25. (Because of its small size, this is not a statistically reliable sample, but nevertheless informative.) Several MBEs/FBEs told us that they did not respond to the solicitation because it was for an item they did not carry. Four of the firms we contacted felt positively about doing business with the City of Columbus, although they acknowledged receiving many solicitations for goods and services they could not provide. However, one of these satisfied MBE/FBE firms admitted that they were often the high bidder.

On the other hand, two MBEs/FBEs vendors expressed negative sentiment about City contracting procedures. One vendor felt frustrated that the Division of Purchasing would not tell him why he lost bids. Consequently, he thought that doing business with the City was "not worth it" and entailed "lots of red tape." The other unsatisfied vendor did not enumerate his complaints with the City. Again, these results reflect a very small number of firms contacted. Part III of the study provides a much more extensive analysis of qualitative evidence of discrimination.

Not all of the firms which responded to City solicitation submitted formal bids. In fact, over 70 percent of firms sent "No Bid" notices back to the Division of Purchasing. These notices typically inform Purchasing that the vendor is not able to bid on a particular solicitation, but desires to be included in future mailings for solicitations of similar goods and services. The ethnic and gender composition of firms which "No Bid" is summarized below:

Total Firms "No Bidding":	248
Majority "No Bidding":	219 (88%)
MBEs "No Bidding":	15 (6%)
FBEs "No Bidding":	14 (6%)
MFES "No Bidding":	0 (0%)

The reasons for submitting a "No Bid" are similar to those for not responding in the first place -- not specializing in a particular good or service and price, regulatory, or discrimination concerns among MBEs/FBEs. Perhaps consequently, the percentage of MBE/FBEs which "No Bid" is almost identical to the percentage which responded at all. In other words, minority and female firms are neither more nor less likely to "No Bid" than majority-owned vendors.

(124)

The sixth step in the purchasing process occurs when City buyers evaluate the remaining formal bids for responsiveness. Any bid which is deemed non-responsive by a buyer may not be considered for award of the contract. A buyer may decide a bid is non-responsive if it is not complete or suggests different goods or services than those solicited.

Total Non-Responsive Firms:	13
Majority Non-Responsive :	12 (92%)
Non-Responsive MBEs:	1 (7%)
Non-Responsive FBEs:	0 (0%)
Non-Responsive MFEs:	0 (0%)

So few firms were declared "Non-Responsive" that it is inappropriate to draw any statistical conclusions about the representation of MBEs/FBEs at this stage in the procurement process.

The seventh and final step in the purchasing process occurs when the Division of Purchasing chooses a winner from among the remaining responsive bids. There were more winners than contracts because the Purchasing staff decided to split some contracts between multiple vendors. At the same time, several of the contracts we sampled had not yet been awarded, and one was being protested.

Total Firms Winning:	32
Majority Firms Winning:	29 (91%)
MBEs Winning:	1 (3%)
FBEs Winning:	2 (6%)
MFEs Winning:	0 (0%)

Although there are not enough winning vendors to draw strong statistical conclusions, it is interesting to note that the percentage of MBEs winning contracts is roughly only half as large as the percent which responded to the solicitation.

As mentioned above, City employees and some MBEs/FBEs reported that minority and female-owned firms are often not price competitive. In order to test this, the study team examined prices for all MBEs and FBEs that submitted responsible bids. The results of our examination are presented below:

- One of the two contracts won by an FBE was for Honda motorcycle parts. The FBE was the low bidder by \$31, or 3 percent of the contract amount.
- The other contract won by an FBE was for exhaust system repairs. In this instance, the FBE was \$735 higher (28 percent) than the low bidder (reason for awarded to higher bidder not available).
- The one contract won by an MBE was for hydraulic pumps. The MBE was \$130 (12 percent) less expensive than the second lowest bidder.
- An MBE was the low bidder for a vibrating pan conveyor part contract, which had not yet been awarded at the time of this analysis. The MBE was \$253 (13 percent) less expensive than the second lowest bidder.
- On the three contracts (and their constituent parts) for which they had responsive bids but still lost, MBEs were 9 percent, 10 percent, 24 percent, 29 percent, and 75 percent higher than the lowest bidder.
- An FBE was the high bidder for a front box truck contract, which had not yet been awarded at the time of this analysis. The FBE was \$1,090,326 (577 percent) more expensive than the second lowest bidder.
- On the two contracts for which they had responsive bids but still lost, FBEs were 3 percent and 11 percent higher than the lowest bidder.
- On the one contract for which it submitted a responsive bid, the lone MFE bidder was 13 percent higher than the lowest bidder.

The above results suggest that minority and female business are often substantially higher priced than their majority-owned competitors. In several instances, however, MBEs/FBEs won, or appeared to have won, contracts based on lower prices than majority competitors. In one unusual situation, an FBE won a City contract despite not being the low bidder.

Purchase orders. The study team chose fifteen purchase order (P.O.) case studies through a process similar to the one described above for contracts.

The P.O. procurement process is simpler than the contract process. A City agency sends the Division of Purchasing a requisition known as a "green." This document usually includes three suggested vendors from the City agency. A Division of Purchasing buyer contacts all of the vendors suggested by the agency over the telephone or by mail, and only rarely contacts additional firms. Based on quotes received, the buyer awards the P.O. to the lowest responsible bidder. Unlike the contract process, MBEs/FBEs do not have an opportunity to physically pick-up information about purchase orders. Findings are summarized as follows:

- For the 15 purchase orders in our sample, City agencies suggested 35 potential vendors. Some "greens" were meant to be sole source requisitions so the Agency only listed one firm. The Purchasing Division added 15 additional vendors. Overall, City buyers phoned 50 vendors. None of these vendors were MBEs; three were FBEs. One of the female-owned firms was suggested by a City agency, the other two were added by the Division of Purchasing.
- Of the 50 vendors contacted, 10 did not choose to bid on the item. Two vendors specifically commented that they could not bid because they did not stock the particular item. All three FBEs gave price quotes.
- One FBE won a P.O. for wasp and hornet spray. The female-owned firm was \$82 (28 percent) less expensive than the second lowest bidder.
- The remaining two FBEs both lost the same P.O. for laser printer cartridges. They were 8 percent and 18 percent higher than the lowest bidder.

Conclusions from case studies. The case studies are instructive in giving real examples of how disparities between City utilization and availability of MBEs/WBEs might have occurred.

First, firms do not win work with the City unless they are informed of the opportunities. Of the 82 vendors suggested by departments for solicitation for contracts and purchases, only three were MBEs. None of the 50 firms contacted for quotes on purchase orders were MBEs. We also found that the Purchasing Division overlooked 33 MBEs/FBEs certified with MFBD when sending out solicitations for janitorial services.

It is not surprising that a low percentage of contracts and purchase orders were awarded to MBEs.

Second, once firms respond, price almost exclusively determines who gets the award. In these case studies, very few firms that submitted bids were deemed non-responsive. If MBEs and FBEs face price disadvantages as a result of past or present discrimination, they will win a disproportionately small share of City purchases.

Conclusions

When combined, the analysis presented in this section clearly demonstrates quantitative evidence of discrimination related to City utilization of MBE, FBE and MFE goods and services firms and FBE construction firms. Because of limitations in the utilization data, clear conclusions cannot be drawn for MBE construction firms. Analysis of private sector disparities for goods, services and construction are examined in the following section.

PART II
SECTION B.
ANALYSIS OF EVIDENCE OF MARKETPLACE DISCRIMINATION

The previous section of Part II focused solely on City of Columbus utilization of minority and female owned firms. This section examines disparities present in the Columbus area marketplace. Several hypotheses are tested:

1. Are there disparities in overall utilization of MBEs/FBEs and majority-owned firms?
2. Are there disparities in utilization of MBEs and FBEs among firms with paid employees?
3. Are there disparities in the utilization and employment size of MBEs/FBEs and majority-owned firms within the same economic sectors?
4. Are the number of minority and female-owned businesses underrepresented relative to white male-owned firms?
5. Are there disparities in the distribution of MBEs/FBEs among economic sectors?

Disparities in Private Sector Utilization and Availability

U.S. Census data for 1987 for the Columbus MSA are instructive in comparing utilization of minority, women and majority-owned firms. These data only include proprietorships, partnerships and Subchapter S corporations. C corporations, usually the largest firms in a market area, are not included in these Census data. Exclusion of C corporations, which often have both male and female, white and minority stockholders, strengthens the ability to compare MBEs, FBEs and majority firms on an "apples to apples" basis. As discussed in Part I of this report, City of Columbus purchases account for less than one percent of total economic activity for firms within the Columbus MSA. At least 99 percent of firm revenues are from non-City of Columbus sources; this is the best available estimate of non-City, or in fact, private sector utilization of MBEs (available data indicate that a small percentage of firm revenues come from all public sources).

All sectors. Table II-B-1 provides revenues and employment data for all proprietorships, partnerships and Subchapter S corporations within the Columbus MSA

in 1987, the last year for which Census data are available. Previous years' census data were not examined as unpublished data for non-minority firms were not available.

As shown below, minority male-owned firms had substantially lower revenues, on average, than majority-owned firms. In 1987, MBE sales averaged \$47,000 per firm while majority-owned firms averaged \$185,000 in revenues. In other words, the average MBE had one quarter of the revenues of the average majority-owned firm. Mean sales for minority female-owned firms were even lower, \$31,000. There were also disparities for Anglo female-owned firms (\$67,000 for FBEs compared with \$185,000 for Anglo male-owned firms).

(127)

Table II-B-1
Overall Utilization and Availability, Minority, Female and Majority-Owned Firms
Proprietorships, Partnerships and Subchapter S Corporations,
Columbus MSA, 1987

Year	MBE Firms	FBE Firms	MFE Firms*	Total MBE/FBE Firms	Majority Firms	Total Firms
Mean revenues (thousands)						
All firms	547	567	531	564	5185	5144
Firms with emp.	139	453	146	386	398	553
Mean employment						
Firms with emp.	3.0	6.3	4.2	5.8	7.3	7.0
Revenues per employee (thousands)	546	570	535	567	582	579
Comparison of utilization and availability: all firms						
Utilization ^{***}	1.0%	13.6%	0.4%	15.0%	85.0%	100.0%
Availability ^{****}	3.1	28.9	1.8	32.8	66.2	100.0
Difference	(2.1) ^{***}	(15.3) ^{***}	(1.4) ^{***}	(18.8) ^{***}	18.8 ^{***}	-
Comparison of utilization and availability: firms with employment						
Utilization ^{***}	0.8%	13.0%	0.3%	14.1%	85.9%	100.0%
Availability ^{****}	3.1	16.0	1.2	20.3	72.7	100.0
Difference	(2.3) ^{***}	(3.0) ^{***}	(0.9) ^{***}	(6.2) ^{***}	6.2 ^{***}	-
Comparison of employment and availability: firms with employment						
Employment ^{***}	1.4%	14.8%	0.7%	16.9%	83.1%	100.0%
Availability ^{****}	3.1	18.0	1.2	20.3	72.7	100.0
Difference	(1.7) ^{***}	(1.2) ^{***}	(0.5) ^{***}	(3.4) ^{***}	3.4 ^{***}	-

*Firms owned by minority women (must be added to MBE and FBE statistics to accurately calculate total utilization of all minority and/or women-owned firms).

**Statistically significant at the 95 percent confidence level.⁴

***Primarily private sector revenues (99 percent non-City revenues).

****Based on number of firms.

Source: BBC, Inc. from U.S. Bureau of the Census, Survey of Minority-Owned Business Enterprises, 1987 Economic Censuses, 1990; U.S. Bureau of the Census, Women-Owned Businesses, 1987 Economic Censuses, 1990; U.S. Bureau of the Census, unpublished data.

⁴ Statistical significance was determined via a two-tailed hypothesis test about the difference between the proportions of two populations. In statistical notation, the hypothesis test is constructed as follows:

$$t = (p_1 - p_2) / \sqrt{p^*(1-p^*) / (n_1 + n_2)}$$

p_1 = the proportion of population 1 or availability as a percentage of total firms;

p_2 = the proportion of population 2 or utilization as a percentage of total industry revenues;

p^* = is the pooled estimate of proportion which, as seen above, is a component of the standard error of the proportions calculation. p^* is computed as $(n_1 p_1 + n_2 p_2) / (n_1 + n_2)$;

n_1 = the size of population 1 total (number of firms);

n_2 = the size of population 2 or the total number of procurement opportunities (assumed as minimum to equal number of firms);

t = the test statistic used to determine statistical significance. At the 95 percent confidence level, a t score in excess of the absolute value of approximately 2 implies a statistically significant difference.

The Census information separates all firms (with or without employees) and only those firms with paid employees. Only considering firms with paid employees, disparities are still evident for average revenues for MBEs, FBEs and MFEs. In 1987, MBEs with employees had mean sales of \$139,000, only 23 percent of the mean revenues of majority firms (\$598,000). White female-owned firms came closer to the average for white male-owned firms (\$453,000 versus \$598,000).

Even after controlling for number of employees in the firm, MBEs/FBEs had lower revenues relative to majority-owned firms. Among firms with paid employment, MBEs averaged \$46,000 in revenues per employee versus \$82,000 per employee for majority-owned firms. FBE revenues per employees were also depressed relative to majority-owned businesses (\$70,000 versus \$82,000).

Disparities between overall MBE/FBE utilization and availability can be examined from these data. While minority male-owned firms accounted for 3.1 percent of firms (proprietorships, partnerships and Subchapter S corporations) available to conduct work, they received only 1.0 percent of total revenues. Based upon these data for 1987, minority male-owned firms received only one-third of the private sector revenues expected based upon availability within the local marketplace.

Disparities exist for FBEs as well. While accounting for 28.9 percent of non-C corporation firms in the Columbus MSA, non-minority FBEs received only 13.6 percent of the corresponding revenues. These white women-owned firms received less than one-half of the revenues expected based upon availability. Minority women-owned firms were 1.8 percent of total firms, but accounted for only 0.4 percent of revenues (less than one-quarter of "expected" revenues). Each of these disparities are statistically significant at the 95 percent confidence level. Disparities were also identified between overall utilization and availability for each of the race and ethnic categories examined (Black, Hispanic, Asian and Native American). Disparities were statistically significant for black-owned firms. Because of the small number of Hispanic, Asian and Native American firms, these disparities were not statistically significant at the 95 percent confidence level.

Results discussed above relate to all firms, whether or not they had paid employees. Additional data were analyzed for only those firms with payroll. MBEs comprised 3.1 percent of sole proprietorships, partnerships and Subchapter S

corporations with paid employees in 1987. MBEs only accounted for 0.8 percent of total revenues, however. While female-owned firms represented 16.0 percent of firms with payroll, and 13.0 percent of revenues. MFEs were also underutilized relative to availability (0.3 percent of revenues versus 1.2 percent of firms with employment).

Table II-B-1 also reports relative employment among MBEs/FBEs and majority-owned firms. MBEs accounted for 1.4 percent of all paid employees for Columbus MSA firms (not including C corporations). MBEs were 3.1 percent of firms with employment. Disparities also existed for FBEs and MFEs.

Services and construction. Similar results are evident for the Columbus MSA construction and services industries. (MBE revenues data for wholesale trade were not disclosed in the Census publications, so no detailed analysis of the "goods" sector is possible for Columbus.) Data are available for all minority firms, all women-owned firms and total firms (proprietorships, partnerships and Subchapter S corporations). It is not possible from these data to distinguish minority women-owned firms of to calculate totals for all MBEs and FBEs.

The 1987 Census data indicate private sector disparities for MBE construction firms and MBE and FBE services firms. (As with all firms, most of the revenues for construction and services firms come from sales to the private sector.) Disparities were not evident from these data for female-owned construction firms. As shown in Table II-B-2, MBE construction firms averaged \$44,000 in revenues in 1987 compared with \$172,000 for all firms. In other words, MBE construction firms earned one-quarter of the revenues of the average firm. Average revenues for FBEs were slightly higher than all firms (\$176,000 versus \$172,000). Census information is not available to break out average sales for majority-owned firms, however, the data suggest that average majority firm revenues would be higher than \$172,000 and not substantially different from FBE average sales.

For services, MBE average revenues were less than one-half that for all firms (\$62,000). MBE services firms revenues averaged 40 percent of the overall mean, while FBE revenues were one-third of the overall average.

Table II-B-2
Overall Utilization and Availability
Minority, Female and Majority-Owned Construction and Services Firms
Proprietorships, Partnerships and Subchapter S Corporations
Columbus MSA, 1987
(Dollars in Thousands)

Year	MBE Firms	FBE Firms	Total Firms
Mean revenues			
Services	\$27	\$20	\$ 62
Construction	44	176	172
Construction*			
Revenues	0.9%	5.6%	100.0%
Number of firms	3.4	5.5	100.0
Difference	(2.5)**	0.1	
Services*			
Revenues	2.6%	12.7%	100.0%
Number of firms	6.0	39.0	100.0
Difference	(3.4)**	(26.3)**	

* Proprietorships, partnerships and Subchapter S corporations, included firms with and without paid employees.

** Statistically significant at the 95 percent confidence level (see footnote for Table II-B-1).
Source: BBC, Inc. from U.S. Bureau of the Census, Survey of Minority-Owned Business Enterprises, 1987 Economic Censuses, 1990; U.S. Bureau of the Census, Women-Owned Businesses, 1987 Economic Censuses, 1990; U.S. Bureau of the Census, unpublished data.

Comparing utilization with availability, MBEs comprised 3.4 percent of non-C corporation construction firms in the Columbus MSA in 1987, but received only 0.9 percent of corresponding revenues. This disparity was statistically significant. Revenues for female-owned construction firms closely matched availability, however.

In 1987, MBEs accounted for 6.0 percent of all services firms, but received 2.6 percent of revenues. FBEs were 39 percent of available services firms and only accounted for 12.7 percent of revenues. Disparities between utilization and availability were also evident for MBE and FBE services firms when only firms with paid employees were analyzed (such data were not disclosed by the Bureau of the Census for MBE goods and construction firms, however).

Survey data. BBC, Inc. completed telephone surveys of over 3,500 construction, wholesale and services firms within the Columbus MSA in early 1992. Respondents

(129)

were asked to identify race/ethnicity and gender of the firm's ownership, specific type of work performed, employment and revenues.

On average, MBEs and FBEs responding to the revenues question reported substantially lower revenues than majority-owned firms. However, we have concerns whether these results are statistically reliable, because a relatively low percentage of firms gave valid responses to this question. We conclude that the 1992 survey data are insufficiently strong to include as evidence of marketplace disparities.

Conclusions. These data clearly indicate disparities in utilization of minority and women-owned firms overall and for minority construction and services firms and FBE services firms in particular within the Columbus MSA. These disparities are similar to those found when examining national Census statistics.

Rates of Business Formation

This part of Section II-B addresses the question of whether rates of business formation and success have been depressed for minorities and women relative to white males.

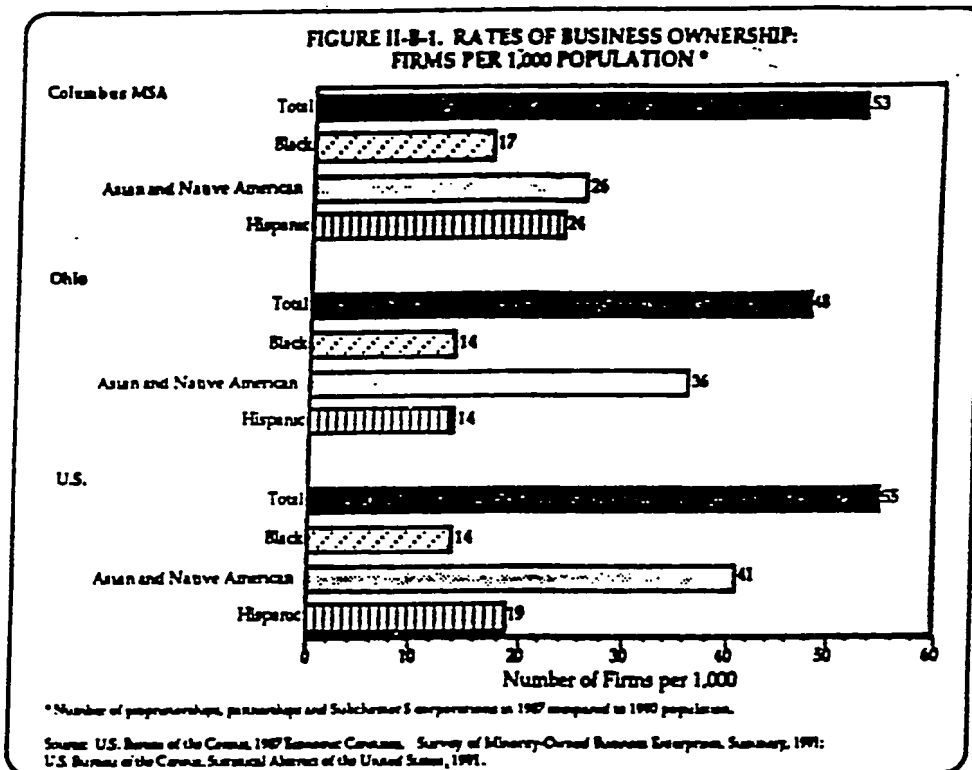
Relative numbers of MBEs, FBEs and majority-owned firms are examined from several different perspectives. First we review statistics on number of businesses per 1,000 population. Further analysis then focuses on number of self-employed persons by economic sector relative to the number of employed persons within that sector.

Rates of business ownership. Rates of business ownership were calculated by race and ethnicity for the Columbus MSA. Data sources used to calculate these rates are the 1987 Survey of Minority-Owned Business Enterprises and 1990 Census of Population, both from the U.S. Bureau of the Census. As such, these rates only pertain to proprietorships, partnerships and Subchapter S corporations.

Overall, the Columbus MSA averaged 53 businesses per 1,000 population using 1987 business data and 1990 population statistics. However, there were only 17 black-owned firms per 1,000 black persons. This is one-third the overall rate for the Columbus MSA. There were 26 Asian and Native American-owned firms per 1,000 population and 24 Hispanic-owned businesses per 1,000 Hispanic population. Figure

II-B-1 compares these rates of business ownership with all of Ohio and for the U.S. as a whole. Disparities are apparent for African-Americans, Asians and Native Americans and Hispanics. As shown, depressed rates of business ownership in the Columbus MSA follow state-wide and national patterns.

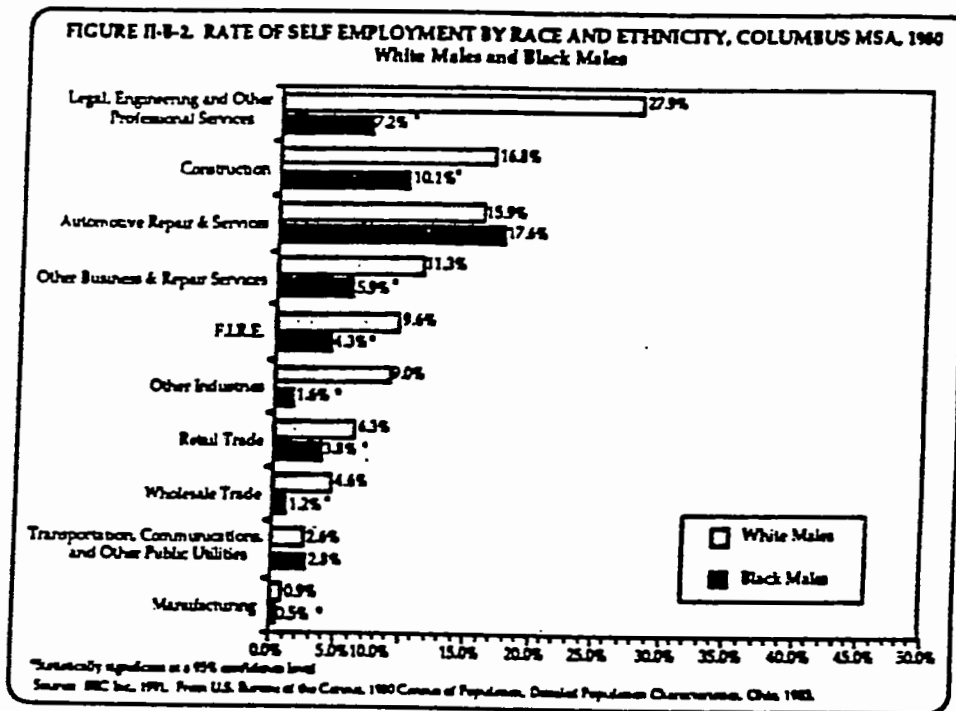
(130)



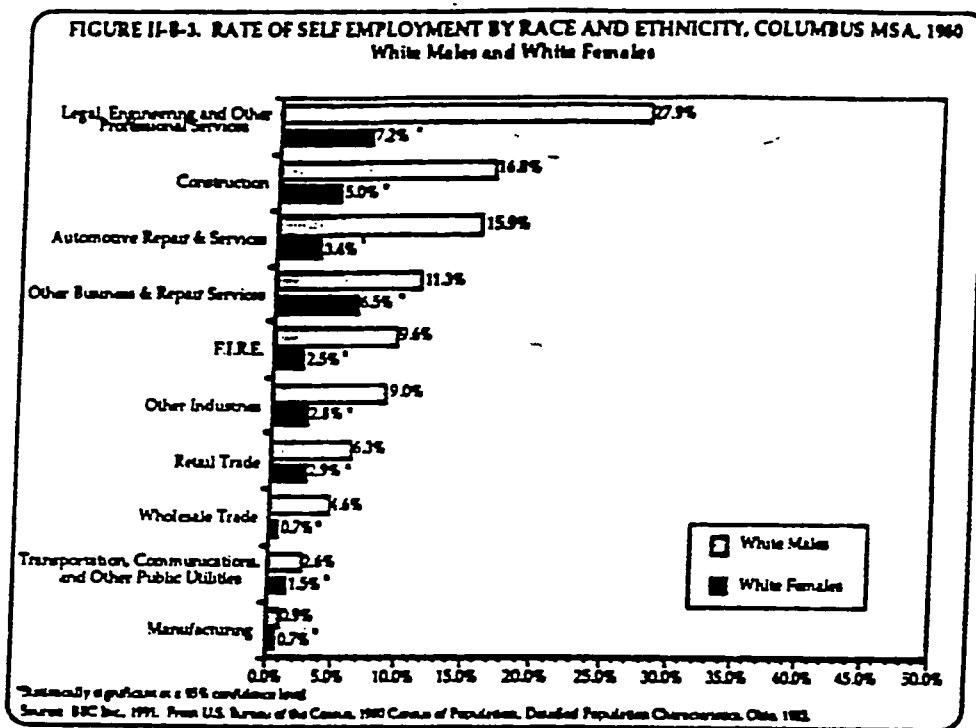
Rates of self-employment. The most recent data on race and ethnicity of all employed persons and self employed persons (a proxy for business owners) come from the 1980 U.S. Census of Population. The study team compared the ratio of self employed persons to total persons employed within a specific sector of the economy to gauge the rate of firm formation among different groups. Statistics show the likelihood that an individual employed within a particular industry would be working for his or her own firm. Data are for the Columbus MSA. While these data only reflect persons that started businesses by 1980, historical rates of entrepreneurship have a lasting effect on the number of MBE and FBE businesses through today.

Figure II-B-2 illustrates the disparities in the rate of self employment for white males and black males (data were not available for other minority groups). For example, 27.9 percent of white males employed in legal, engineering and other

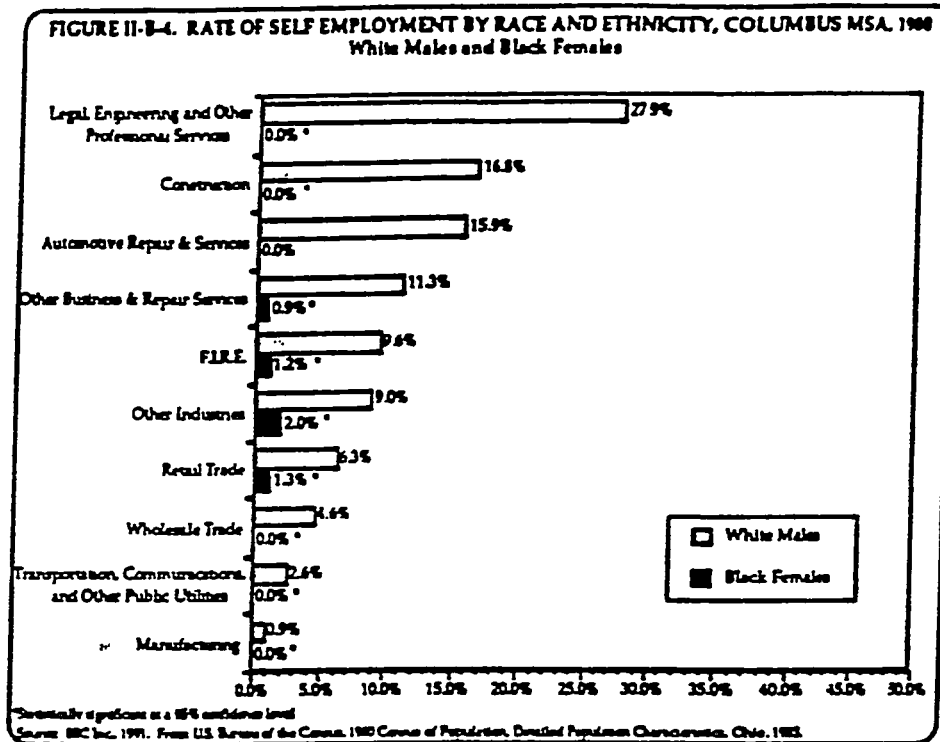
professional services in the Columbus MSA in 1980 were self employed. Only 7.2 percent of black males in the same sector were self employed, however. For eight of the ten sectors studied, the rate of self employment was lower for black males compared to white males. Because 1980 Census of Population data were used, statistical significance tests could be performed. Differences in the rates of white male and black male self employment were statistically significant at the 95 percent confidence interval for each of these eight sectors. In automotive repair and services and the transportation, communications, and other public utilities sector (including a substantial number of trucking businesses), rates of self employment were higher for black males versus white males.



Rates of self employment are compared for white males and white females in Figure II-B-3. Females were less likely to be self employed for each of the ten sectors examined. Results were statistically significant for each of these sectors.



As shown in Figure II-B-4, black females exhibited the lowest rates of self employment.



Together, the analyses of business ownership and self employment indicate disparities in the rate of business formation and success of minority-owned and women-owned firms relative to white male-owned firms in the Columbus area. Examination of rates of self employment also suggested disparities between female and male business formation. This quantitative analysis does not indicate root causes of these disparities, however, only that they exist.

Concentration by Sector

Differences in rates of overall business formation discussed above indicate disparities between minorities, women and white males. The number of minority and women-owned firms are below what would be expected absent historical disparities. Additional analysis suggests that those firms that are formed by minorities and women in the Columbus area are more likely to be in certain sectors compared to total firms.

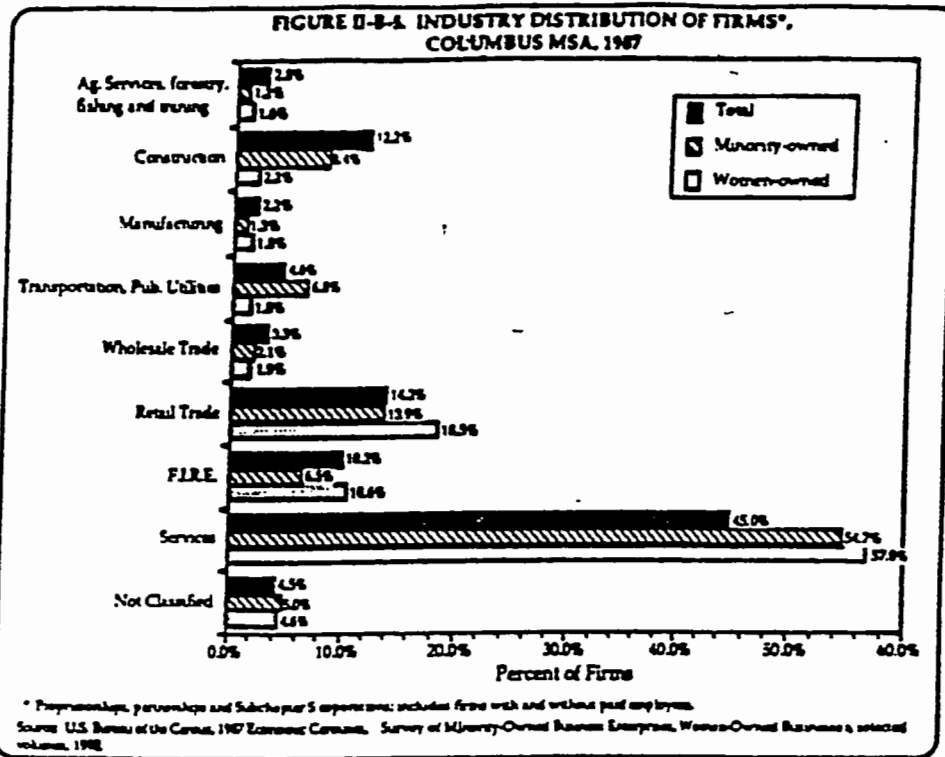
Differences in distribution of firms among sectors were studied for MBEs, FBEs and total firms within the Columbus MSA in 1987. Data only pertain to proprietorships, partnerships and Subchapter S corporations. These statistics include both firms with employees and businesses without payroll.

As shown in Figure II-B-5, 45 percent of all firms in the Columbus MSA are services businesses. A greater proportion of minority-owned firms are services enterprises: 55 percent. An even larger share of FBEs are services firms (57 percent).

MBEs are also more likely to be in the transportation, communications and public utilities sector than expected from the examination of total firms. About 7 percent of minority-owned firms are distributed within this sector, compared with 5 percent of total firms. Transportation, communications and utilities include trucking, a large category of minority businesses in the Columbus area.

All other sectors exhibit a smaller share of total MBEs. For example, 8 percent of MBEs are construction firms. This is one-third lower than the proportion of total firms that are in the construction sector (12 percent). About 2 percent of MBE firms are in wholesale trade compared with 3 percent of all firms.

Concentration of FBEs follows a somewhat different pattern. In addition to showing a higher concentration in services compared with total firms, a greater share of FBEs are in the retail trade sector and finance, insurance and real estate industry. On the other hand, only 2 percent of all FBE firms are in the construction sector compared to 12 percent of all firms. FBEs are also less likely to be distributed in transportation and public utilities and in wholesale trade.



Conclusions

Available data clearly demonstrate disparities in private sector utilization of minority, female and majority-owned firms within the Columbus MSA. Disparities were identified overall as well as for individual sectors of the economy. The rate of formation and success of minority and female-owned firms is depressed relative to overall business community. In addition, MBEs and FBEs were differently distributed among sectors compared with total firms. Particularly important for this study, MBEs and FBEs were less likely to be in the construction and wholesale trade sectors than expected from the distribution of all firms.

APPENDIX II-A

U.S. CENSUS DATA ON AVAILABILITY OF MBES/FBES

The U.S. Census Bureau has a series of economic census data on minority and women-owned firms. The most recent statistics are for Black, Hispanic, Asian and Native American and women-owned firms for the Columbus MSA for 1987. The study team also obtained comparable unpublished data on total firms from the U.S. Census Bureau.

As shown in Table A-II-A-1, the U.S. Census reported a total of 2,775 black, 260 Hispanic, 588 Asian and Native American and 22,394 women-owned businesses in the Columbus MSA in 1987. Minority businesses are somewhat over represented to the extent that black and Asian and Native American firms are also categorized as Hispanic. Also, some women-owned businesses are owned by minority women.

Of the 588 firms reported as Asian and Native American in the Survey of Minority-Owned Business Enterprises, 231 were identified as Asian Indian, 97 as Chinese and 88 as Korean. Other Asian ethnicities include Japanese (56 firms), Vietnamese (14 firms), Filipino (14 firms), and other Asian and Pacific Islander (39 firms). There were 36 American Indian firms identified in the Survey within the Columbus MSA. Hispanic-owned businesses were divided among owners of Mexican (51), Puerto Rican (42), Cuban (55), other Central or South American (71) European Spanish (40) and other Hispanic decent (1).

The federally-defined Columbus MSA presently includes Delaware, Fairfield, Franklin, Licking, Madison, Pickaway and Union Counties. Almost all of the minority-owned firms within the Columbus MSA are located in Franklin County (e.g., 94 percent of African American-owned firms). Franklin County represents about three-quarters of the women-owned firms in the Columbus MSA.

Table A-II-A-1.
Number of Minority and Women-Owned Firms Identified by the U.S. Bureau of the Census, Columbus MSA
All Firms, 1987*

Sector	Black	Hispanic**	Asian and Native American	Total MBE	FBE
Agricultural services, forestry, fishing and mining	33	2	9	44	364
Construction	230	50	24	304	484
Manufacturing	24	11	13	48	394
Transportation and public utilities	227	5	14	246	402
Wholesale trade	52	6	19	77	434
Retail trade	362	29	114	505	4,151
Finance, insurance and real estate	197	22	17	236	2,364
Selected services	1,507	127	348	1,982	12,773
Industries not classified	143	8	30	181	1,028
Total	2,775	260	588	3,623	22,394

*Only includes business with receipts of at least \$500, data somewhat undercount total firms as they do not include C corporations.

**Might somewhat double count black, Asian or Native American-owned firms.

Source: U.S. Bureau of the Census, 1987 Economic Censuses, Survey of Minority-Owned Business Enterprises, Women-Owned Businesses, selected volumes, 1990.

(137)

U.S. Census data are also available on the number of minority and women-owned firms that have paid employees. As shown below, 460 Black, 66 Hispanic, 187 Asian and 2,808 women-owned firms with paid employees were identified in 1987 for the Columbus MSA.

Table A-II-A-2.
Number of Minority and Women-Owned Firms Identified by the U.S. Bureau of the Census, Columbus MSA
Firms with Paid Employees, 1987*

Sector	Black	Hispanic**	Asian and Native American	Total MBE	FBE
Agricultural services, forestry, fishing and mining	8	2	1	11	67
Construction	70	14	2	86	156
Manufacturing	7	3	4	14	105
Transportation and public utilities	49	3	5	57	64
Wholesale trade	11	0	3	14	104
Retail trade	72	16	80	168	806
Finance, insurance and real estate	21	5	4	30	185
Selected services	211	23	81	315	1,252
Industries not classified	11	0	7	18	69
Total	460	66	187	713	2,808

*Only includes business with receipts of at least \$500, data somewhat undercount total firms as they do not include C corporations.

**Might somewhat double count black, Asian or Native American-owned firms.

Source: U.S. Bureau of the Census, 1987 Economic Censuses, Survey of Minority-Owned Business Enterprises, Women-Owned Businesses, selected volumes, 1990.

Unpublished Census data are also available for total proprietorships, partnerships and Subchapter S corporations. In 1987, the Census estimated a total of 72,778 such firms within the Columbus MSA. MBEs comprised 5 percent and FBEs represented 31 percent of these firms. Only including firms with paid employees, MBEs were 4.4 percent and FBEs were 17.2 percent of total firms.

The statistics cited above pertain only to proprietorships, partnerships and Subchapter S corporations. Only these types of firms are included in Census data because ownership status is more readily defined than for C corporations that may have thousands of stockholders. In an attempt to overcome this limitation in the data, BBC developed estimates of MBE and FBE representation based upon the assumption that no

C corporations in the Columbus MSA in 1987 were principally owned by minorities or women. Because there are in fact minority and women-owned C corporations, this generates a "minimum estimate" of the availability of MBEs and FBEs using Census sources. Estimates of the proportion of total firms by sector that are C corporations were developed based upon U. S. Internal Revenue Service, Statistics of Income data for the U.S. Nationally, 14 percent of all U.S. businesses in 1987 were C corporations. This analysis could only be accomplished for all firms with and without employees.

Based upon these assumptions, MBEs represented a minimum of 4.4 percent of all Columbus MSA firms in 1987. FBEs were 27 percent of all firms. MBEs comprised a minimum of 3.0 percent of construction firms, 2.8 percent of wholesale trade businesses and 5.4 percent of services firms. FBEs represented a minimum of 4.8 percent of construction firms, 15.9 percent of wholesale firms and 34.6 percent of services businesses.

(138)

PART III.

SUMMARY OF QUALITATIVE EVIDENCE OF DISCRIMINATION

**PART III.
SECTION A.
INTRODUCTION**

The factual predicate study for the City of Columbus is comprised of three parts. Part III, titled "A Summary of Qualitative Evidence Regarding Discrimination in the Marketplace" was authored by MBELDEF legal personnel Franklin M. Lee, Esquire, Chief Counsel, and Tyrone D. Press, Chief, Investigations and Research.

Its contents constitute a categorized summary of anecdotal evidence of contemporary discrimination found to exist within the City's relevant geographic market area. Included also is a description of the methodology used to collect the evidence.

The particularized accounts of marketplace discrimination contained in this volume should be considered in tandem with the quantitative evidence regarding marketplace disparities summarized in Part II.

Together, Parts II and III form the foundation for the findings and recommendations contained in the Executive Summary, Part I.

The anecdotal evidence summarized here is intended to identify, with some particularity, the factors (racial and gender-based, as well as racial and gender-neutral) affecting the formation, development, availability, and participation of MBEs and FBEs in Columbus, Ohio's relevant marketplace. This summary of qualitative evidence isolates those factors that are attributable to racial or gender discrimination and classifies them according to their impact upon MBEs.

The framework for the collection and analysis of anecdotal evidence for this study has been suggested by the Supreme Court decision issued in City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989). In that case, the Court held that particularized anecdotal accounts of discrimination could establish a compelling interest for a local government to institute a race-conscious remedy. Moreover, such evidence can provide a local government with a firm basis for fashioning a program that is "narrowly tailored" to remedy identified barriers to minority business participation in the marketplace.

**PART III.
SECTION B.
METHODOLOGY**

The anecdotal/qualitative evidence of discrimination contained in this volume was gathered through conducting confidential in-depth interviews of persons with experience in, or knowledge of, the workings of the Columbus, Ohio marketplace. On average, the length of each interview was generally between two and three hours. In general, each interviewee was interviewed simultaneously by two representatives of MBELDEF. However, on some occasions more than one interviewee was present in an interview. On a few other occasions, only one MBELDEF representative conducted the interview.

Fifty-four confidential interview sessions were conducted by MBELDEF. These interviews included:

- two past and present employees of City government;
- six minority and majority trade association representatives;
- eight individual civic leaders and/or civic organization representatives;
- one Majority/MBE (Black) joint venture;
- forty-seven past and present minority contractors and vendors from various ethnic and gender groups.

More specifically, the latter group consisted of thirty-eight Black MBEs, one Native American MBE, and eight FBEs, four of whom were also Black. Of the thirty-eight MBEs interviewed, twenty-five were engaged in construction, three engaged in commodities and ten engaged in the provision of services. Of the eight FBEs interviewed, four were engaged in construction, two engaged in commodities and two engaged in the provision of services. The MBE/Majority joint venture was engaged in construction and construction-related services. (Inasmuch as several interviewees qualified for inclusion in more than one category, totals of sub-groupings may exceed the total number of interviews conducted.)

Potential interviewees were identified through referrals from trade association representatives, civic organization representatives, public administrators, survey responses, and other interviewees. In addition, introductory "contact letters" from MBELDEF were mailed to the 373 certified minority and female business enterprises listed in the City of Columbus' MBE/FBE Directory to invite them to schedule interviews regarding possible barriers to MBE/FBE participation in City contracts.

Confidential Interview Reports were drafted by the MBELDEF representatives conducting each interview session reflecting the nature of the views and responses of the interviewees.¹

Citations to confidential Interview Reports refer to relevant passages in those reports that support the factual assertions made in preceding text. Such citations are intended to be illustrative, and by no means exhaustive, of supporting evidence contained in the body of confidential Interview Reports prepared in the course of the study.

Citations contained herein relate to Interview Reports referred to in this volume and should be understood as follows:

(IR. 1, p. 3) means Interview Report No. 1, paragraph 3;

(IR. 2, p. 4-6) means Interview Report No. 2, paragraphs 4 through 6; and

(IR. 3, p. 6, 7, 9-11) means Interview Report No. 3, paragraphs 6, 7, and 9 through 11.

¹The Interview Reports cited in portions of this volume are maintained in a locked file cabinet by Franklin M. Lee, Esq. at 220 I Street, N.E., Suite 280, Washington, D.C. 20002, (202) 543-0040. The Reports can be released only upon an express waiver of confidentiality by the interviewee, or under a protective order from a court of competent jurisdiction.

**PART III.
SECTION C.
CONTEMPORARY EVIDENCE REGARDING DISCRIMINATION IN
THE COLUMBUS, OHIO MARKETPLACE: IDENTIFIED FORMS OF
DISCRIMINATION AND OTHER ADVERSE MARKET CONDITIONS**

The anecdotal accounts obtained from scores of interviews conducted during the course of this Study identified many different forms of discrimination that appear to be presently afflicting the Columbus, Ohio marketplace. Each form of discrimination and adverse market condition identified below poses a significant obstacle to the full integration of MBE/FBEs into the mainstream of the public and private sectors of the local economy:

1. Stereotypical Attitudes

Closely related to, and perhaps underpinning all of the forms of discrimination identified in this Study, are the stereotypical attitudes many whites and males (both within and outside the business community) hold regarding minorities and women. Such attitudes may include notions of inability to own or manage a business, incompetence, laziness, dishonesty and other pejorative prejudices. Although not an actionable form of discrimination *per se*, mere possession of these prejudices can create barriers to MBE/FBE participation because they may serve as the basis of certain non-action or forbearance which nonetheless hamper, thwart, frustrate and/or prevent MBE/FBE success. Confrontation with these attitudes may adversely affect or influence MBE/FBE decision-making relative to whether to go into business, how to operate or market their businesses, or their expectations. The following examples are presented:

- An MFE engaged in construction asserts that "People have a premeditated conception of you before you walk in the door, if they know you're black." On a hardwood flooring project for the State of Ohio, her company tried to establish a relationship with a large manufacturer from Indiana. For purposes of clarification on a particular issue, the manufacturer's representative asked her permission to contact the State purchasing department directly, which permission was granted. In a subsequent telephone conversation, the Indiana rep later informed her that an employee at the State purchasing department had made a derogatory racial remark about

her ("nigger") and further said "those people don't need to be in business." This MFE later demanded a written apology from the State and received it. (IR. 2, p. 18-19)

- This same MFE asserted that as a woman, the biggest obstacle she has had to overcome was that people did not take her seriously. She had to demand respect. (IR. 2, p.20)
- A black MBE related an incident arising from a business venture in which an MBE set-aside contract for computer and electrical goods was won at Ohio State University. However, when they delivered certain goods under the contract, the purchasing officer at OSU told them that he had already ordered the goods from another firm because he (the purchasing officer) did not think they would be able to deliver. Upon complaint to President Jennings of OSU, the purchasing officer's actions were overridden. (IR. 3, p. 17)
- Another black MBE observes that suppliers with whom he has dealt sometimes believe his company cannot survive because it is minority-owned. (IR. 4, p. 24)
- A female dealing in commodities asserts that FBEs must constantly prove themselves in order to "get a foot in the door." (IR. 5, p. 10) She also observes that she is treated differently than her husband who also works in the business. When calling on customers, they have to decide which one would be best to handle the situation. She realizes that since the decision-makers and the moneymakers are all men, it is important to have a male handling a substantial amount of the company's business affairs. The company has lost business opportunities as a result of sexist decision-making. Accordingly, there are certain situations when she consciously does not market the firm as a "FBE". She believes her company would be less successful if she did not have her husband present. (IR. 5, 25-26) When visiting factories, for example, she receives comments such as "Oh, a woman?!" and "Here comes a skirt!" (IR. 5, p. 27)
- Upon visiting a construction site where an MBE was working, a white foreman from a large majority-owned construction company is reported as having commented, "There are too many Negroes out there." (IR. 7, p. 37)
- An MBE engaged in personal service contracting believes that if his company was white-owned, it would experience less resistance from white customers and get more business from black customers. He stated that some whites prefer not to do business with blacks at all; and that white companies will only use MBEs when they are mandated by law to do so. On one occasion, a white employee for a large majority-

(142)

owned competitor advised a white customer not to use his company "because he is a nigger." This MBE also stated that he constantly encounters customers who think his company should charge less than white firms because he is black. (IR. 8, p. 19-20)

- Another MBE contractor explained that once prospective white customers learn his company is black-owned, they express doubt whether his company can do the work. "They always want to inspect your equipment." (IR. 9, p. 17)
- There is also an attitude that says, "I'm not gonna' make the nigger rich." (IR. 25, p.25)
- Similarly, an MBE engaged in personal service contracting observes as follows: "There's a myth that black people can't do this kind of work [highly technical computer services] efficiently; and that we can't perform large jobs." He also observes that "white bureaucrats don't want to see black men get rich when they have a \$25,000 - \$30,000 salary." (IR. 10, p. 13-14)
- This MBE also intentionally hires white personnel to protect himself from the prejudices held by some potential clients. He knows race and gender can determine whether or not he gets business. He believes that part of the reason he has been so successful in his business is because he is able to recognize and "exploit" [racial prejudice]. So, when necessary, he dispatches a white person to represent his company. "I know contractors who wouldn't deal with me if I walked in the door, so I send in a gray-haired white man." (IR. 10, p. 13-14)
- An MBE stated that negative stereotypes of black contractors are common in the construction industry. For example, he has overheard the owner of a large majority excavator say "typically MBEs are undependable and always late." Similarly, an employee of the State of Ohio's Architects Office has said that "MBEs don't work as well as others." In addition, perceptions exist that MBEs "can overprice jobs just because they are MBEs," and therefore don't have to be competitive. (IR. 11, 30-31)
- The interviewee expressed his greatest frustration in the following manner: "no matter how great a job you do, you have to prove yourself over and over again if you're black. There is a general stereotype that you can't perform on a job, you're always lumped with other blacks in spite of your proven ability to perform." (IR. 10, p. 25)
- The typical attitude of majority contractors is that black businesses could not perform on projects. [We] were required to prove constantly that they were able to do the job. The majority contractor's

attitude was "we got an MBE, so we are going to have to carry them." (IR. 16, p. 19)

- On a City construction project, a City inspector told one MBE, "We're not going to have any sloppy work on this one like you did on the last job." The MBE was confused by that statement because his company did not work on the job to which the inspector had referred. "During the entire project, the inspector did under-handed things to discredit us. He wouldn't turn in the right pay quantities and told one of my employees that the only reason we got the contract was because we're an MBE. We ... had to go over his head to have him pulled off the job." (IR. 17, p. 15)
- "General contractors don't think we can do the work. Many think we can't supply the job. [M]any general contractors said his company was slow." (IR. 18, p. 15)
- One MBE concludes that many white inspectors believe that MBEs get a certain amount of profits just because they are MBEs. On a project in 1988, one of his white workers overheard an inspector say "just like a typical nigger company," while the inspector was evaluating his work on the project. (IR. 19, p. 24)
- Another MBE contends there is a perception that black companies do not know what they are doing. He believes that this type of thinking prevails within the City government. By way of comparison, this MBE recalls that when he was an employee of a large corporation performing City work his ability and qualifications were never questioned. But now that he is on his own, they think he doesn't know what to do. (IR. 30, p. 27-28)
- Most majority contractors seem to think that they should not have to pay blacks equally for services rendered. On one job, a white customer looked at the bill [I] handed him for fixing his furnace and declared, "I could have gotten Jesse Howard (a white male) to do the work for this price." (IR. 28, p. 15)
- Another FBE adds: "men don't like to see women in business, especially construction." She, therefore, stays away from the sites of big commercial jobs. She adds that one of her female employees is often the victim of jeers and laughter from other crews. She said the attitude of male contractors is very patronizing. (IR. 34, p. 16)
- The attitude of general contractors reflects that they are not confident in the MBEs' ability to do quality work in a timely manner. (IR. 35, p. 22)

- "On one job, I ... was to do remodeling for [the Bank's] tenants. A bank official said, 'we have worked with minorities before and have had problems.' He said it as though these incidents were what he could expect of me. So, I have to take the burden of all blacks, while they (whites) look at themselves as individuals. I go through this all the time. It's probably standard. It happens all the time. ...While whites tell you about the blacks they know, they still have preconceived ideas about us. We have to educate them." (IR. 38, p. 18-19)

2. Discrimination in Previous Employment

A second market condition adversely affecting MBE/FBEs in the Columbus area appears to be the present effects of past employment discrimination occurring prior to going into business. Although MBE/FBEs engaged in construction shared the most common experiences, a few MBE/FBEs in other fields also indicated they had been subjected to discrimination in employment. Not unlike stereotypical attitudes, these experiences also may have an adverse effect on MBE/FBEs in a variety of ways including hampering the acquisition of technical knowledge, experience and competency directly affecting the ability of these firms to compete; or may otherwise adversely affect MBE/FBE formation and/or market access:

- One interviewee recalled an incident from the 1960's. Ohio State University called Local 200 (Carpenters Union) searching for black carpenters, but was told none were available. He then took three black union carpenters to the union business agent, who then gave them their permits to go to the project. At that time the general rule was "The Union does not send blacks out." (IR. 24, p. 23)
- Another MBE recalled that when he enrolled in the union's apprenticeship training, no white classmates spoke to him and few in the field wanted to work with him. The first white to speak to him was quickly called a "nigger lover" by many of the other classmates. He was called "nigger" constantly and, at one time, someone threatened to throw him off of a roof. The racist attitudes and incidents were so bad that the other three blacks in the program dropped out. (IR. 29, 19)
- One MBE says he left his union in 1962 because of continuous harassment. His work was always criticized. He says the tension was constant and he was fined frequently for things for which white contractors were not even reprimanded. He believes racism was the basis of this treatment. (IR. 25, p. 31)

- An MBE engaged in electrical contracting indicated blacks were excluded from the electrical union from the "mid-1960's." Prior to going into business, he worked in the electrical contracting industry for ten years but never sought work through the union because he thought he would not be hired. As an entrepreneur, he recalls that on one private sector project, he took his crew to the site to do the electrical work. Simultaneously, the union sent a number of its white members to hook up a compressor. When the white workers saw his crew, they refused to work on the project. The foreman told us to leave because we were "non-union." He wanted to know how the foreman knew his company was non-union. The foreman replied indignantly, "I know you're non-union." The foreman knew there were no existing black electrical union companies at that time. He informed the owner that he would pull his crew off the job. The owner, however, gave the union employees an ultimatum to work with the black crew or to leave the site. After they had made a few phone calls the union workers decided to stay on the job with his crew. (IR. 12, p. 4, 21)
- The owner of a second MBE electrical firm noted that unlike his white counterparts, he did not enter the electrical contracting industry by way of the unions. To his recollection, Local 683 did not even admit blacks until 1969. (IR. 14, p. 4) He also recalled being unemployed when he obtained his electrician's license. On one occasion, when he went to the unemployment office to pick up a check he saw a white electrician hanging fixtures. "I told the clerk that it did not make sense to give me a check for doing nothing when I could be doing something like that." The clerk referred him to a supervisor who said there was "no way" he could help. The supervisor at the unemployment office did not even suggest he try to get on with the union because he (the supervisor) knew unions didn't accept blacks. He felt frustration because he had three years electrical engineering experience and an electrician's license but could not find work. (IR. 14, p. 26)
- An MBE who was able to gain admission to the electrical union stated he was discriminated against with threats and lies about job availability. On one occasion, he was threatened by a man with a knife who said, "we don't want any niggers here." Additionally, for a period of two years, he went without work because he believed the union's business agent's claims that there was no work. (IR. 23, p. 23)
- An MBE engaged in mechanical contracting indicated that there is prejudice in his union as well. Since 1969, there have been few blacks admitted to the pipe fitters and plumbers union. Presently, there are only 75 blacks in the 1,800 member union. (IR. 4, p. 21)
- One MBE now engaged in construction recalls that when he began his career in construction, racism was common practice in the trade

unions. When he graduated from carpenter's apprenticeship training in 1972, blacks "were few and far between." Forty blacks had entered into apprenticeship training in that year, however, as a result of a class action suit filed against Local 200 of the International Carpenters Union and a federal government mandate to increase apprenticeships. During his subsequent employment, he was constantly being "treated like I didn't know how to do the job by a number of white contractors who were used to treating blacks that way." He walked away from three different contractors because he was getting "sh_" [expletive] jobs (demolition and "clean up stunky jobs") instead of carpentry work. His white classmates, on the other hand were being trained to do carpentry work exclusively. The foremen were always "bitching" at him and deliberately "showing him up as a bad example." Many times he was called names such as "nigger" and "boy." Later, he started his own company because he "was tired of being treated like an idiot" in his employment. (IR. 11, p. 2-4, 32)

- An MBE engaged in masonry recalls that because of racial discrimination, not only was he denied admission to the union in his home state (West Virginia), he had difficulty finding work and getting admitted to a union apprenticeship program after relocating to Ohio. (IR. 16, p. 17-18)
- Another MBE engaged in construction indicated that one incident prompted him to go into business for himself. At his last place of employment, foremen could be paid by the hour or by salary. He was originally paid by the hour and the other foremen (white) were paid a salary. The other foremen began to complain when he started making more money than they did. He was then placed on salary, but at a level below the other foremen. After he balked at this obvious pay cut his salary was later increased. But his salary then remained constant for six years while every other employee received increases. He believes his treatment was due to the fact that he is black. (IR. 17, p. 4-5)
- Disparate treatment in previous employment was reported by an MBE who worked for the federal government at the Defense Contractors Supply Center (DCSC). He made application for a carpentry job and the lady at the desk initially said there were openings. Then she went into the back room, came back and said the only jobs that were available were as warehousemen. After taking the job as a warehouseman, he later acquired a carpenter's job; and after a while took the Civil Service exam and became a post engineer. (IR. 20, p. 16-17)
- Currently, there is a shortage of minority tradesmen. One MBE noted that experienced personnel are hard to find in highway and bridge

construction because "everyone can't build bridges." He pointed out that it was extremely difficult to employ minorities because they had been historically excluded from the unions, especially the operating engineers, ironworkers, and carpenters unions. He said that many of the white members of the union were admitted to the union because they were related to an existing member. (IR. 19, p. 12)

- A second MBE indicates it experiences difficulty securing minority labor from the union halls. The unions are perceived to be a drawback to the state EEO requirements because the unions are not training enough blacks nor are they making any attempts to train them. The unions are considered by this MBE to be the biggest discriminators in America (IR. 20 p. 10)
- A black journalist recalled the lack of employment opportunities he faced when he lost his job from Columbus' black newspaper and filed for unemployment. Knowing there were no opportunities at any white newspaper, the clerk at the Bureau of Employment Services suggested he "make up" with the black publisher. The clerk said, 'we don't have anywhere else to send you.' (IR. 40, p. 20)
- An MBE now engaged in another field recalled that while working as a salesman for Nationwide Insurance Company, he attempted to sell insurance to a large furniture dealer in Columbus to sell some insurance. He did all the ground work, but was turned down. A few weeks later, the furniture dealer bought the same insurance package from a white Nationwide salesman who received a \$15,000 commission. The only commission approaching that size that this MBE had ever received was when he sold a policy to a black firm. The furniture dealer was determined not to do business with him, despite his excellent reputation as a Nationwide salesman. The interviewee believes race was the reason the furniture company would not deal with him. (IR. 10, p. 16)

3. Unequal Access to Financing for Start-up and/or Expansion of Business

MBE/FBEs also related instances of discrimination found within the local banking industry. Of the MBE/FBEs interviewed, several indicated they had difficulty securing commercial loans from banks for the start-up or subsequent financing of their business ventures and attributed their lack of success to racial or gender discrimination. The following anecdotes and comments were given.

- One MBE asserts that "financing is not open to a black man in Columbus, Ohio." He believes different rules and guidelines exist for

blacks that don't apply to white business owners. In 1988, this MBE sought to borrow money under a loan package between his bank, the City of Columbus and a Minority and Small Business Investment Corporation (MSBIC). Initially, both his bank and the City refused to even look at the deal. The City then sent a recent college graduate (a 23 year old white male) to evaluate his business affairs. After reviewing this MBE's investment portfolio, the first question posed by the young man sent by the City was "How could you own all of these assets and not be involved in drugs?" The MBE believes that if he were white, he would not have been asked that question. The City's loan officer then told the MBE that his recommendation to the City would be that "they not lend [him] a dime." This MBE was frustrated and confused. He believes the treatment he received was based on the fact that he was black and not based on any objective review of his financial records. The MBE later received a letter from the City denying his loan request. The letter was stamped at 11:00 a.m. Friday morning, which was five hours before the City's loan approval committee was scheduled to meet that same day to consider his loan. The City's loan officer also contacted the MSBIC to recommend that it not approve a loan to the MBE. The MSBIC became nervous and backed out of its commitment on the loan. He hired an attorney to file suit against the City, but was convinced not to file suit by a friend and neighbor. (IR 1, p. 16-25)

- Another MBE states that prior to 1985, he could not secure a loan with any of the Columbus banks. From 1964-1988 he says he tried to do so "hundreds of times." In 1968, he was able to get a loan for \$10,000.00, but only because a white multi-millionaire co-signed for him. Even after he had paid the loan back in full, he was still told that he would need a co-signer to secure other loans. (IR 3, p. 27)
- An MBE contractor reports having applied for a \$245,000.00 loan from a local bank to finance the purchase of some equipment. The bank required him to place a \$100,000.00 down payment on the equipment and to assume a note of \$30,000.00 per month for six months with unusually high interest. Because he had a major project at jeopardy, he agreed to the terms. He spent the next six months breaking his back and almost going out-of-business paying back the loan. This MBE believes the high interest rate and short repayment period were imposed because of his race. (IR 7, p. 31) In addition, he pointed out, some equipment finance companies allow white construction firms to skip payments during the "slack" construction months of December, January, and February, but have required him to continue payments on his equipment. He identified two companies as examples of majority firms that "did not give brothers a break." (IR 7, p. 34)

- A fourth MBE states that for the past 10 years, his bank has refused every loan for which he has applied. In addition, he has applied for loans at 13 different banks, but has received only one. On one occasion, he sought a loan to finance a particular subcontract. After he had applied for a loan, the loan officer suggested that he sell some shares of his company to a majority-owned company. He declined to transfer any shares; and the bank then refused to proceed with the loan even though he offered to secure the loan with his own collateral and another contractor (who was a depositor with that bank) offered to guaranty the loan. [REDACTED] stated that a white contractor who was working with the same development company, received a loan. (IR 11, p. 13-16)
- Another MBE described the first time he applied for a loan in the early 1950's. He went to a bank and applied for a \$200.00 loan to buy an electric range. The loan was approved. He paid the money back in half the time allotted. He went back to the same bank to ask for the same amount as a commercial loan and was turned down. The president of the bank told him "you don't have any collateral and you're renting" and escorted him out of the door. When the MBE tried to explain that he had borrowed the same amount for an electric range without any collateral, the bank president did not listen. This MBE states that due to undercapitalization, his business was always "cash and carry" and he could never pay off his debts. As a result, he could not expand his business at a rate for him to stay successful. The lack of capital, combined with slow payments, caused him to terminate the business and to obtain a job with a steady income so as to meet his obligations to his family. (IR 14, p. 24-25)
- One MBE who was extended a line of credit had his account terminated apparently without cause. He had never missed a payment and was led to believe that this arrangement and his relationship with the bank would continue. Unfortunately, the bank manager who had extended the line of credit was transferred. His replacement (a 24-year old white male) immediately questioned him on how he was able to get the loan. The new loan officer demeaned and berated him and told him not to expect any more credit. Without this, this MBE claims he could not meet his payroll needs and was forced out-of-business. He holds the bank responsible for the demise of his company. (IR 15, p. 11)
- Another MBE stated that he has been unable to secure financing from the Small Business Administration and several banks in the Columbus area. The SBA declined claiming he didn't need any help. He also went to the City of Columbus Department of Development for \$50,000.00 of funding, but the City never responded. He went back to eight banks but still did not meet with success. At one bank, "the guy

...looked at our 1st quarter of sales of 1991. He denied the loan because, 'we had a drop in sales during the winter months.' He didn't think this was a good reason because the winter months are slow for all contractors. (IR 18, p. 12-17)

- This same MBE reports that in 1985-86, he approached a bank for a commercial loan and was turned down. The reason given by the bank was the MBE's "lack of money." This occurred after the MBE had purchased a car through the same bank. The bank was willing to make an automobile loan, but unwilling to give his company a loan for commercial purposes. A second bank required the MBE principals to put up their homes as collateral. The bank was requesting \$130,000.00 of collateral for a \$30,000.00 loan. (IR 18, p. 12-17)
- One MBE revealed that his company has been able to get access to capital because one of his white partner's family has long-standing relationships with the local banks. Having access to credit allowed him to survive through difficult times. This MBE admitted, "If he (the white partner) weren't here, it would have been very difficult to stay in business. We were able to get credit on a signature, which is unheard of for MBEs." (IR 19, p. 21)
- Another MBE asserted that, "the size of the loan has nothing to do with financial barriers. The only difference is the magnitude of the problems. The bank will tell you that you have financial constraints." He said that when his company tried to use real estate as collateral, the banks would only lend if the buildings had full occupancy. The MBE also recalled that in 1963, he approached two banks in the Columbus area for a line of credit. Although he had checks amounting to \$100,000.00, the banks would not allow him more than \$50,000.00. This MBE said that the \$50,000.00 limit was set because the company was black-owned. On another occasion he was told that "being a black man, he couldn't borrow too much money." (IR 21, p. 19-21)
- An FBE also reports having experienced difficulty. When she went into business, her company was denied a \$35,000.00 loan. The attitude of the loan officer at the bank was unreasonable. After three interviews, the loan was denied even though it was 90% SBA guaranteed. The bank wanted her to put up \$35,000.00 in collateral for a \$35,000.00 loan. She reported taking a similarly packaged loan to another bank, and was granted a loan. An SBA officer later told her that there was no business reason why she should have been denied a loan. (IR 23, p. 11)
- An MBE recalled many instances when he has had to turn down jobs because of a lack of financing. He says, "If I were white, I'd be rich." "I've seen white guys who didn't know half of what I did, but could go

out and get contracts and then go to the bank or get money on those contracts. I couldn't get a loan even with collateral." He told of a case in 1956 when he approached a bank for a \$10,000.00 loan. He says several companies owed him money in excess of \$10,000.00 and he promised to sign the checks over to the bank. The bank still said no to his request. This MBE feels that this was, without doubt, racial discrimination. He knows of many black businesses which have gone out of business because the only loans they were able to get were "non-traditional" loans at astronomical rates such as 25%." (IR 25, p. 15-17)

- Another FBE also revealed she encountered difficulty in trying to get a loan when she first started. Although she had an account at a Columbus bank, it would not give her a loan without her husband's signature and her home as collateral. She recalls that she was finally able to get a loan from another bank on her own signature. (IR 34, p. 11)
- Similarly, another MBE disclosed having difficulty obtaining financing under the City's loan program. This MBE had problems with both the bank and the government. Once the City finished the paperwork, which took six months (far too long), the bank didn't want to give us the money. The bank manager said, "I'm the bank manager and I can do what I want with my money." We called the City. He finally gave up the money. However, we went down there two or three times before we could pick up the check." (IR 37, p. 51)
- This same MBE stated he was denied financing by a local bank on a real estate venture. "We wanted to buy an apartment building, a 24-unit complex. We used the certified appraiser and the appraisal company that the bank uses. The lowest appraisal of the property was worth \$75,000.00 dollars, more than the asking price. We then took our financial statements to the bank. If the bank financed 100% of the total asking price, the income generated would have handled the total debt service and gave us a net profit each month. The bank looked at everything and called a meeting. The bank said we had a good company and had built it properly. We were also profitable. But the bank's representative just didn't feel comfortable lending us the money. There was a racial element to the decision, because numbers don't lie. We had good credit, the property would have serviced the debt, and provided a positive cash flow. Additionally, he said he didn't feel comfortable with our management degrees." (IR 37, p. 52)

4. Unequal Access to Bonding

A significant number of MBE/FBEs and other persons interviewed during the course of the Predicate Study indicated that MBE/FBEs have had, and continue to have,

(146)

difficulty obtaining bonding; increasing their bonding limits and/or obtaining the bonds at competitive prices:

- An MBE/FBE indicated it was denied bonding in 1986 and 1987. The rationale given was that their financial reports "did not look strong enough." When the company was finally able to secure bonding, they were able to get more work. However, they were being charged 5% or more for their bonds while many other companies were being charged 1% or less. (IR 2, p. 18)
- One of the largest problems black enterprises face in this city is an inability to secure bonding. If they are lucky enough to get bonding, they pay premium prices. Bonding could be waived, but "people won't do it for minorities." Several black businesses lost the opportunity to do business with the government because they can't get bonding. (IR 3, p. 18)
- Only recently was this MBE able to secure the first bond he ever obtained on his own. It was worth \$30,000 and it took over 40 years in business for him to get it. (IR 7, p. 33)
- Bonding has historically been a problem for blacks. One MBE once went to one surety company who said he wasn't bondable at all. With the same qualifications he later went to another bonding company which told him there was "no problem" and gave him a bond. (IR 14, p. 15)
- One MBE does not bid on jobs over \$300,000.00. This is due to his bonding limits, which have been established at \$300,000.00. This has a highly restrictive effect on his business. (IR 17, p. 11)
- Another MBE believes his bonding capacity is too low. He indicated that although his bonding capacity is only \$1.5 million to \$2 million, he has the capacity to do much more. He says his overall business expansion has been severely influenced by his inability to get more bonding. He says he talks to similarly situated white companies with the same capacity as his firm (including dollar volume per year) but have bonding levels up to as much as \$30 million. (IR 19, p. 18)
- Still another MBE stated that he has had to change bonding companies six times because the bonding companies would not increase his bonding capacity. He is convinced the failure to increase his bonding occurs because he is black. (IR 21, p. 22)
- On one occasion, a speaker addressing a meeting of a predominantly white trade association was heard to say, "We don't have to worry about bonds. The only people that GC's (general contractors) require -

bonding from are minority contractors." The MBEs present believe the speaker forgot they were in attendance. (IR 23, p. 12)

- Another MBE explains that before 1970, blacks could not obtain bonding in the State of Ohio, and so he, like others, had to seek bonding from out of state. He also explained that although general contractors often carried blanket bonds which covered the subcontractors, this practice was discontinued when blacks began to participate. Even when they did carry it, "You didn't find out about it" he said. He thinks that bonding was used as a convenient tool to keep MBEs out of construction. (IR 24, p. 13)
- An MBE with \$1 million worth of bonding under the State of Ohio's bonding program commented as follows: "It is an excellent program, and it is a big part of my success. Without the program, I would not be where I am today ... We couldn't get any bonding before the program, because the business had few assets. We were turned down six times by surety companies, even though we were in the state program for two years. I don't think the reasons for our being turned down were legitimate." He believes his present limit of \$1 million should be raised. (IR 27, p. 12-14)
- Another MBE also held the State's bonding program in high regard. "You don't get bonding from the private sector unless your financial statements are perfect." He regards the Ohio State bonding program as "the saviors." The program provides bonding up to \$1 million dollars for MBEs. He no longer bothers to go to the bonding companies because of his past inability to obtain bonds from them. (IR 35, p. 14)
- The black principal of an MBE which was formerly owned, in part, by a white male, alleged that after his white partner left the company, all the bonding companies withdrew and he was unable to get bonding for four years. (IR 29, p. 15)

5. Unequal Access to Supplies and Fair Pricing

Some MBE/FBEs complain that they have difficulty obtaining goods and materials needed because some majority/male-owned suppliers will not sell to them or will not sell the goods at competitive and fair prices. While many of those interviewed acknowledged the existence of non-discriminatory reasons which may account for their lack of access to certain goods and materials (such as limited distributorships) and/or different pricing structures (such as "volume discounting"), some nonetheless asserted

opinions that the adverse decisions and actions of the suppliers were influenced by race and/or gender.

- An MBE described the problems he experienced at the hands of a white employee of the City. The employee contacted white suppliers and told them that if they supplied products to blacks he would "get the government on them." One of the suppliers informed this MBE about the telephone call and wrote a letter to the City at the MBE's request. The employee was terminated. (IR. 22, p. 21)
- Price discrimination happens a lot, especially on State of Ohio contracts. It was common 20 years ago and it's common now. For example, material suppliers won't quote the minority contractor a price, and if they do they quote a price it's on the high side. (IR. 3, p. 26)
- One MBE asserted the following: Minority companies have to pay more for supplies because of the "lack of respect" for MBEs as business people. Minority companies are not part of the "good old boy network," and thus, do not have a track record. Blacks are continuously stereotyped by majority suppliers as "not being able to deliver." (IR. 4, p. 23)
- An MBE recalled that one supplier offered to sell him a \$245,000.00 steel-cutting sheer under terms which he felt was ludicrous: \$10,000.00 down and \$30,000.00 per month. Other rental companies typically charge a rental of \$12,000.00 per month for the same equipment. (IR. 7, p. 30)
- Another MBE became a wholesale dealer for a paper supplier so as to obtain a 40% discount on paper. He later found out that a white competitor was getting 60% off its price for the same paper. (IR. 9, p. 11)
- In 1989, an MBE construction firm asserts, it was quoted higher prices than his white competitors by some cabinet suppliers. The MBE had to have its supplies shipped in from Canada to get a more competitive price. This MBE constantly has to buy his lumber supplies from an out-of-town supplier because the majority lumber suppliers in the Columbus area refuse to do business with him. (IR. 11, p. 23-24)
- In addition, one supplier currently refuses to sell certain laboratory equipment to him claiming he's "not qualified" to install the equipment. But he had satisfactorily installed \$10 million worth of the supplier's equipment on a past project. (IR. 11, p. 25)

- This Interviewee stated that in the 1970's he filed a complaint with the FBI after observing that a white salesman for a majority-owned electrical supplier sold the identical "Romex" wiring to a black MBE for \$6 more per thousand than it sold to a white contractor. The FBI agent said that it was a private matter and that the salesman could sell the wire for whatever price he wanted. (IR. 14, p. 22-23)
- A critical aspect of survival in the construction industry according to one MBE is to be able to purchase materials at a reasonable price. He would keep material prices down by shopping around. But in many cases the specifications in the bid would require him to purchase materials from a particular source. For a while, he had a white project manager whom he had befriended purchase the materials for him because the project manager could always get better prices. (IR. 15, p. 17)
- An MBE related one incident where his company was bidding for a State project. They needed special shelving. He placed a bid through his fax machine. A white salesman came out to their offices in Plain City (which is considered to be in a "white area"). "The salesman asked for [me] and when he saw me, he turned red." The salesman required the total cost of the shelving (\$167,000) as a cash payment. The industry standard for payment due however is 30 days. The salesman "had no idea we were black." The MBE does not think a white contractor would have received similar treatment. (IR. 20, p. 21-22)
- On a waste water treatment project, "we had bid a subcontract to [a white firm]." ... "In establishing our numbers, the prime challenged us. It became obvious our material and equipment numbers were 2% higher than theirs. We discovered that our suppliers quoted us different numbers. We called them up and asked them about it. With regards to prices, no matter who the MBEs are, irrespective of value, it's very common for them to have higher numbers than majorities. How do I know? I have talked to minority and majority contractors to see what their quotes are." (IR. 37, p. 48-49)
- Another interviewee recalled the experiences of an MBE retailer who opened a business selling hats, ties, and underwear. A white competitor told his supplier that if the supplier sold to the MBE, he (the white merchant) would discontinue buying from the supplier and would urge others to boycott the line of clothes." (IR. 40, p. 16)

6. Refusals to Work by Majority Employees

A few MBEs report experiences demonstrating that some potential majority employees are reluctant or have refused to work for minority-owned companies. Such

discrimination may adversely affect the ability of MBEs to obtain qualified personnel and to compete :

- During the late seventies and early eighties, one incident underscored this MBE's labor difficulties. The Local sent out an ironworker. He saw that the company was black. This particular worker went back and told another worker that he wasn't going to work for a black-owned company. (IR. 18, p.18)
- Another MBE stated that on occasion, majority subcontractors and competitors have asked his white project managers, "Why do you work for that nigger?" This MBE explained that he is not bothered by these attitudes since he knows that his employees are happy with the favorable working conditions provided by his firm. (IR. 21, p. 24)
- Similarly, another MBE principal stated that many white employees did not like working for him because he was black. They would work around him in order to maintain good relations with his white partner, but they would not speak to him. His white partner informed him that many of the employees called him "nigger" behind his back. (IR. 29, p. 17, 20)
- An MBE has received reports from his workers that white guys called him "nigger," but he says, "if you worry about that it can eat you up inside." (IR. 32, p. 21)
- "For MBEs, it's almost a certainty that you will get inferior guys [from the unions]. The guys come late, miss work, or are straight out saboteurs." (IR. 37, p. 30) This same MBE asserts that on one particular project, "the business manager of the union said he was going to put the 'nigger' out of business. ... The union did everything they could to hurt us. They would take my men off the job before stopping to notify my superintendent. This is never done. But, it happened to us on several occasions." (IR. 37, p. 35-37)
- In some southern Ohio cities, it was difficult getting union construction workers to accept jobs working for black contractors. On one job in Chillicothe, when [I] went out to the site for the first time and was identified as the contractor, all of the workers stopped working and stared at [me]. [I] then heard comments such as "I didn't know this was a black company," or "I'm not gonna' work for no nigger." [I] reported the situation and he was told that [I] did not have to pay the men for half a day's wages. Eventually the union officials corrected their members on that occasion, because the next day all the workers showed up for work. (IR. 15, p. 19)

(149)

- An MBE reports that as late as last year (1991), a white man on a project at Ohio State University refused work saying, "I don't want to work for no nigger company." "We told him he didn't have to work for us, and he left." (IR. 23, p. 24)

7. Unnecessarily Restrictive Contract Specifications and Bidding Procedures

A few of the MBE/FBEs interviewed asserted that they are not able to bid on certain construction projects or other contracting opportunities because one or more of the specifications contained in the bid plans and/or bidding procedures have the effect of eliminating them from competition:

- One MBE expressed concern with regard to requirements pertaining to the Ameriflora contract for T-shirt concessions. The MBE found them to be unnecessarily restrictive because they required too much up-front money. (IR. 9, p. 14)
- Another MBE finds some bidding requirements on public personal service contracts to be restrictive as well. The average minority contractor is out of the running when it comes to [bidding on] large contracts, because the qualifications in the RFPs exceed the capabilities of most minority-owned firms. For example, an RFP may call for a company or corporation with 10 years' experience in managing large projects and require a project manager who has managed several projects of over \$5 million each in the last five years. This effectively excludes most black firms. If they have been in business for 10 years, few (if any) have managed "several projects of over \$5 million." As a general rule, this MBE doesn't competitively bid on such contracts unless they are MBE set-asides. (IR. 10, p. 9)
- A third MBE asserted that the paperwork required by state and local authorities is too voluminous, especially on MBE set-aside projects. In addition, agencies may require certain ["brand name"] specifications that have an adverse impact on MBEs. For example, the Ohio Department of Transportation (ODOT) lets out a number of bids on re-roofing projects. They require "Durcelast Roofing" which comes from a specific manufacturer and distributor in the midwest. If a company has the capacity to bid every day (like many majority contractors), then the majority contractor gets a better price [on supplies] than the MBE. MBEs suffer in disproportion because they [cannot] bid as frequently, do not have the same relationships [with suppliers] and, therefore, do not get the same credit lines established with suppliers. (IR. 19, p. 14)

(150)

- A fourth MBE decried unnecessarily restrictive brand name specifications. "[T]he City or State will often go to their buddies [contractors/suppliers with whom the agency has done business for long periods of time] and have them write the specs based on their particular product." The specifications are often determined by the relationship with a particular company. (IR. 22, p. 20)
- Similarly, an FBE asserts that incidents of unnecessarily restrictive contract specifications occur all the time, "especially with City contracts." She believes it is because they hand-pick vendors that they want to do business with and they tailor the contract so that only that specific vendor will fit all the specifications. In fact, she alleged that, "the vendor helps the City write the specs." She recalls that the City of Columbus did not publicly and competitively bid its privatized contract for the processing of traffic violations and infractions. After a complaint was made to the City, the contract was publicly bid the following year. But the bid specifications were written by and for the company that had the contract previously. (IR. 26, p. 11, 14)
- A fifth MBE indicated that problems with "sophisticated exclusionary elements" in bids diminished when it became clear that there was no choice but to deal with MBEs. (IR. 24, p. 14)
- Another MBE thought it ridiculous for the City to require a contractor to obtain performance and bid bonds merely for pulling electrical wiring on a housing project. Such requirements were imposed at Columbus Metro Housing.

8. Denials of Opportunities to Bid

From the responses of a number of MBE/FBEs, another barrier preventing full participation is the denial of an opportunity to bid. This may occur in a variety of ways including, but not limited to, the use of non-competitive procurement and selection procedures as well as intentional acts of rejection:

- An MFE believes that she has been denied opportunities to bid in both the public and private sector because of her race. The company's promotional materials clearly state that it is female and minority-owned. On one occasion, when she saw signs for a new private sector project going up in her neighborhood, she contacted the owner/prime contractor of the development. Initially he was encouraging about the prospect of her company becoming involved. A representative was sent to meet with the owner/prime contractor and the very next day information he requested was forwarded. After what the MFE described as an "unusually large period of time," and without further

explanation, he told them that he had hired someone else. The owner/prime contractor was asked about the possibility of doing other work with him, but his response was not encouraging. (IR. 2, p. 24-25)

- An Interviewee stated that on three separate occasions, an MBE was falsely listed as the MBE supplier although the MBE had no knowledge of the project. On one occasion, someone had forged the MBE's name to a contract. The prime asked the MBE Review Board for a subcontractor waiver. That request was denied and the matter was referred to the Attorney General's Office. The matter of the forged signature was also brought up before the MBE Review Board. The situation was resolved when the prime agreed to purchase goods from the MBE. (IR. 2, p. 36)
- "The State and City are always negotiating non-bid contracts that black people never hear about. State Control Board procedures are done the same way. Normal business procedures are constantly being waived and then the contracts are awarded to non-blacks..." This MBE also asserts that even when MBEs are selected to participate on the negotiated contracts, the same three firms are selected. "They only give it to [a few very successful MBEs]. [But these three firms] are not the only blacks qualified to do the work." (IR. 3, p. 24)
- An MBE asserts that a majority firm has been afforded preferential treatment by public officials in the Columbus area. The firm was declared the sole source winner of a multi-million contract on a corrections facility which was never let for competitive bidding because the Mayor declared he was going to award the contract to the firm based on its "history of community volunteer work." After an uproar was raised by other potential bidders, the company backed away from the project. (IR. 7, p. 12)
- An FBE says that she is not properly informed when the City [lets] a bid. The city never follows up with MBEs or FBEs; and she is not personally informed of the city bidding opportunities. She could not state whether or not it was an oversight. (IR. 5, p. 20-21)
- Another MBE said the City never solicited his company to bid until after the Beatty study, even though he was listed in the City's MBE directory. He said his company was never on the mailing list and never received calls for possible jobs. After the Beatty study was released, he finally received a call for a \$500 job. (IR. 7, p. 14)
- This same MBE stated he has been turned down on bidding jobs in the private sector many times. One reason is [that his majority competitor] would tell private contractors that my company could not get bonds and this would discourage them." In addition, he asserts "on quite a

few' occasions," he would show up to jobs and the prime contractor would see his color and not allow him to submit a bid. (IR. 7, p. 15)

- He also asserts that his efforts to bid work have been met with deception. He had an unpleasant experience attempting to participate on a building project at Ameriflora. Upon submitting a bid, the City told him it required a bid bond. He submitted a bid bond, but did not win the contract. When he asked who had won the bid, the City told him that the job was not bid yet. He asked officials, "If you haven't bid the job, then why are you giving us back our bid bonds?" He was told that his services were not needed anymore on the Ameriflora project. Further, he noted, just two hours prior to his inquiry about the Ameriflora project, Judge Graham had ruled the City's MBE program unconstitutional. The MBE believes that the City's actions were directly [responsive to] the judge's ruling. The City later offered him another job - a less desirable one - which did not require any bid bonds. He told the City to "stick it [the job] up their rear end." (IR. 7, p. 16-17)
- Somewhat similarly, another MBE asserts that he has difficulty accessing the public and private sectors of the local economy. He has ... spent a lot of time becoming certified with the City of Columbus MBE program, but has yet to receive any business. When he made inquiries about business opportunities, City officials would invariably tell him the contract he was seeking to bid on "had not run its course." (IR. 9, p. 9)
- This MBE asserts also that he used to check the City and State bid offices every seven days for opportunities to bid, but he never saw any bids for his services being let competitively. "Even on the (upcoming) Ameriflora project," he said, "the City wanted to send the bid [for T-shirts] out to one company." A local school board also does not use competitive bidding to procure T-shirts. On another occasion, he contacted a representative of a large majority-owned construction company which needed \$80,000.00 worth of blueprinting for the airport project. The representative dismissed the possibility of contracting with his company claiming "he wanted someone who could pick-up and deliver." This was pure subterfuge because anyone could hire a messenger inexpensively to perform that service. This MBE laments that he has been unable to get any business from the public sector. He feels if he could get a percentage of public sector business he could build his business. In the private sector, he knew that a certain charitable organization needed lithographic T-shirts, but the job was never let out to competitive bidding. (IR. 9, p. 10, 15)
- Another MBE indicated that on a few occasions he has responded to customer calls [in the private sector] only to have the door slammed in

his face when they realized his company was black. On one occasion, a painter from Dayton called him about a job and asked whether or not he used black people. Not knowing that the company was black-owned, the painter requested that no "niggers" be sent to perform the service. This MBE insisted that blacks be allowed to prove the good work they could do. The customer agreed to let his company perform the service. The painter subsequently called to apologize. (IR. 8, p. 17-18)

- This same MBE stated that his company was once hired by the a large multi-national corporation, but only because MBE participation was required on a federal government contract. After the multi-national lost its government contract, it did not use his company anymore. (IR. 8, p. 23)
- One MBE posits that white contractors hear about work sooner than minority contractors; and that the conduct or omissions of at least one City department head to deny him an opportunity to bid is intentional. Accessing information from the department head is key to this MBE's business, but the information given to blacks is "intentionally scanty." (IR. 10, p. 12)
- This MBE also related anecdotes pertaining to his efforts in the private sector. Upon retirement, this MBE sought to establish a relationship with his former employer as a supplier, but the company said it wasn't interested. He found out later (from another employee) that the company had been telling all other black MBEs that approached the company for business opportunities that it was already doing business with a minority firm - his firm. "That was pure deception. Call it racism, call it what you want." This MBE asserts that he has also received "the run-around" from an automobile manufacturer having a plant in the Columbus area. His marketing director (a white male), told him that the car manufacturer had five opportunities to hire a firm to deliver the kind of services his company provides, but the manufacturer never responded to his inquiries. (IR. 10, p. 17-18)
- Another Columbus-based firm which does business "around the world" has not responded to his marketing efforts. Recently, this large company hired white firms from Illinois on a series of big contracts for services of the type this MBE can provide. "[My company] wasn't able to get even a subcontract. I called to see what was going on and they replied, 'nothing.' ... We call companies all the time to let them know what we're doing. They don't respond." This MBE stated that because so many black firms are experiencing the same treatment, 50 companies in Columbus have formed the Urban Professional and Business Organization to try to gain market access. (IR. 10, p. 20)

(152)

- According to another MBE, "This happens continuously in the private sector, where the invitations to bid read, 'Invited bidders only.' Majority firms are not required to allow minorities in the door on private sector projects, he laments, "[but] that is their option, because it's private." (IR 11, p. 20)
- Similarly, an MBE observes, majority contractors only joint venture with MBEs where they are required by law to have MBE participation. He pointed out, for example, that a large majority construction company was building two large facilities in the same area of Columbus. On the public sector project, the company had an MBE joint venture partner, but on the private sector project there was no MBE participation at all. (IR 16, p. 21)
- Based on his experience, an MBE engaged in construction contracting opined, "All things being equal, white general contractors or developers will choose a white (subcontractor) over a black one." (IR 12, p. 24)
- Another MBE construction contractor asserts he has missed a number of opportunities to bid on private sector jobs because, "you never know (in time) about jobs where private monies are involved, so you can't bid the job." (IR 13, p. 15)
- One MBE indicated he had been denied an opportunity to bid on a retail store construction project in the private sector. "I asked to bid. They told me the project was too big. Even though, they said they checked around and heard we were good, [but] they still wouldn't give us the bid package." (IR 18, p. 22)
- An MBE recalls that in late 1989, only certain contractors were invited to bid the bridge work on the Ameriflora project. Although he had submitted a Contractor Qualification Statement to demonstrate his ability to do bridge work, he was not contacted. But another MBE who did not do bridge work was invited to bid. (IR 19, p. 15)
- In response to a question regarding the average expected growth of firms in his industry, an MBE contractor stated "I've seen white guys that I have taught make more money in one year than I made in ten years due to their access to private sector markets." He continued, "We don't get into the country clubs. For example, Jack Nicklaus grew up in these surroundings (Columbus Country Club), but my father would have been lucky to shine shoes there." With regard to accessing public sector opportunities by reading public notices, this MBE responded as follows: A white architect told [me] that "reading the paper was not the way you get a job because most of the jobs were already 'in the bag' and certain people knew who was going to do the job before they hit

the papers." As a result, this MBE has never bid on a public job because he felt it was a waste of time. [redacted] says he can't prove it happened, but doubts that any black contractors received information before it was printed in the newspaper. (IR 14, p. 16-17)

- Another MBE asserting denial of access described what he considered a prime example to illustrate the difficulty of accessing the market. The Ameriflora project involved both public and private funds and was supposed to have a minority set-aside. But invitations to bid were going to be sent to only select contractors. The Ohio Contractors Association (OCA) successfully challenged the project and forced Ameriflora to advertise for bids. (IR 17, p. 13)
- An MBE described an incident on a project for Ohio State University in which his company was the lowest bidder on a \$900 electrical item. After the award, he discovered that even before the bids were closed, the Purchasing Director had awarded the contract to a firm with whom the Director usually did business. After this MBE's partners complained to the President of the University, the Director ordered the item from both suppliers. (IR 22, p. 22)
- This same MBE told of an incident on the Martin Luther King Center project when the City Recreation Department had thrown out all the first bids, but did not advise his company of this. He was also not advised of the second bid invitation until after the deadline. The contract was given to a white company from Reynoldsburg, Ohio. The MBE called the Director of Recreation who admitted it was wrong and tried to make amends by giving his company several other contracts. (IR 22, p. 23)
- An FBE described what she considered subtle discouragements in bidding situations. One such incident was in the private sector. After being invited to bid on a shopping center project, she was required to present a "laundry list" of items including the names of their banker, attorney and financial details. She said that non-minority bidders were not required to present such a list. (IR 23, p. 13)
- She also stated that a majority company sent her notices and invitations to bid one day before the closing date for the bid. At that point, it was obvious that her company could not prepare the bid in time. (IR 23, p. 14)
- Eighty percent of [my] earnings were from jobs with an MBE program. "Of the private sector jobs, if white boys didn't need you to satisfy MBE requirements, they wouldn't use you. When an agency had a contract that had no MBE requirements, if we bid, we would not get the job." (IR 29, p. 7)

(153)

- An MBE conveyed that while he was trying to obtain work on the lucrative Ameriflora job, he was virtually ignored and excluded from the bidding process. He made four or five inquiries to bid on the project, but was never given any straight answers. (IR. 30, p. 19)
- This same MBE recalled that there was no open market bidding for certain utility work at the new State Office Tower. Ohio Bell was arbitrarily awarded the contract. When this MBE inquired as to the rationale for this manner of letting the contract, the State employee told him that the State "needed to have continuation of the lines." The MBE said he could not understand how there could be a continuation of the lines when there were no lines to begin with. This MBE said he was not even allowed to be a subcontractor on the project. (IR. 30, p. 22)
- Another MBE stated that on numerous occasions whites calling his office have asked whether the company is a black or white contractor. When he said "black", they hung up the phone. He added that he didn't pursue jobs in the white community. (IR. 33, p. 17)
- An FBE stated that although she knows that bids are not required for City contracts under a certain dollar amount, she has never been able to get any of those contracts. She assumes that they are given to a select group of contractors. (IR. 34, p. 14)
- This same FBE says that she has received invitations to bid on the day the bid closed. That precluded her entering a bid and she thinks that it was intentional. (IR. 34, p. 18)
- An Interviewee recalled how difficult it was for MBEs to get the plans and specifications for an Airport project in the late 1980's from the City and the project's construction manager. "They were not sent to any MBEs that I know. And, they didn't send them to Frank Watson's office in the Minority Business Center. We put pressure on [the construction manager] by calling the City of Columbus. "We called influential people to encourage them to release the prints." Finally, the city sent the plans. (IR. 37, p. 21)
- An Interviewee recalled the difficulty experienced by the Call & Post (a Columbus-based minority-owned newspaper) in its efforts to obtain advertising from the public and private sectors. Its efforts to obtain advertising from the department stores in downtown Columbus were met with resistance. "[The Call & Post] listened to a song and dance for a long time. [The stores] said that the Retail Merchants Association only used dailies. All the while, ...they were sending ads to weeklies owned by whites." Additionally, the City government never used black newspapers for any form of advertising. [The Call & Post] only

recently picked up legal notices. For a long time, [the City's] excuse was that it only used dailies. When federal policies started pushing that minority publishers be used, the City began to respond. However, [the Call & Post] still has a problem with the County government today. It's a political vendetta, due to [the newspaper's] stance against the County commissioners." (IR 40, p. 6-7)

9. Exclusion from the "Good Old Boy" Network

Closely related to denials of opportunities to bid is the presence and maintenance of the "old boy" system or "good old boy" network.

Interviews indicated that this form of discrimination arises out of the symbiotic and often long-standing relationships white male-dominated firms have developed through personal contacts obtained from business, education and/or social activity. Development of a network can be unintentional and informal, as in the case of a personal relationship between a bank loan officer and an officer of a corporate borrower, or the relationship between a prime contractor and one or more of its subcontractors. By contrast, the development of a network can be intentional and formally institutionalized, such as in the case of the creation of trade associations, chambers of commerce, or other special interest groups.

Frequently, "membership" in a network can provide the participants with access (either directly or indirectly) to the "decision-makers" in both government and private companies, knowledge about contracting and employment opportunities, as well as financing, bonding, insurance, suppliers, subcontractors, personnel and other resources which may be needed or desired for the successful conduct of business.

Neither the development of these networks nor the usage of them by the constituent "members" is illegal, unnatural or in any way malum in se. Developing and taking advantage of the "contacts" one makes is probably a natural phenomenon of human behavior pervading all manner of human activity. Nor is it unusual to find the presence of such networks in operation within the business sphere. Indeed, MBE/FBEs develop networks of their own. And, to be sure, there is some truth and justification to the often-heard adage that people prefer to do business with persons with whom they are familiar.

What transforms the operation of the network into a form of discrimination is the extent to which it operates - intentionally or unintentionally - to exclude other potential "members" (including female and minority-owned firms) from participating in the public and private sectors of the marketplace; and particularly so where "membership" may be conditioned upon, or influenced by, race and/or gender. MBE/FBEs often report that they have little or no access because white male firms dominate and control the markets. Even relatively large, older, and financially healthy MBE/FBEs may complain of the barriers created by operation of the "good old boy" network.

- An MBE says he has tried to gain admittance to a predominantly white contractor's association. He pointed out that he has never received any letters from the organization, nor has he been invited to any of their functions. Even though most of his work has been in the private sector, he has been limited to working mostly on residential projects. (IR 13, p. 18)
- An Interviewee recalled an incident from the early 1950's when the black and white contractors within the same trade specialty got together and formed an association. The white members of the association had a picnic, but did not invite the black members. The white members claimed the picnic was not sponsored by the organization, but by private individuals belonging to the trade association and that they were, therefore, justified in their exclusion of blacks. Some twenty years later, the same trade association gave an MBE a plaque "for outstanding contributions to upgrading the ... industry in the city." The Interviewee thought this event to be ironic. He believes that the plaque did not erase the MBE's memory of being excluded from the picnic. (IR 14, p. 20)
- An FBE supplier asserts that after joining a predominantly majority trade association, she [is or feels] excluded from its activities. She was never invited to sit with other members during meetings or luncheons. Further, she asserts, the network locks out MBE contractors because majority contractors are dealing directly with suppliers through their long-standing networks. This happens despite the State's MBE supplier clause. (IR 23, p. 15-16)
- Another MBE described his experiences after joining a trade association of mostly white businessmen. He felt unwelcomed there. He was never invited when plans were being made for lunch and began to excuse himself rather than be exposed to the painful experience of being excluded. The white business community had a brotherhood. In his view, the pervasive attitude was "if you are black, you don't necessarily have to get back, but you'd better not get in the way." (IR 25, p. 20)

- Another MBE observed that in the late 1970's, one had to be a member of a group of white contractors to have access to certain City projects. He added "I doubt if any blacks were members of [that group]." This precluded blacks from bidding on those projects. (IR: 32, p. 17)
- A FBE observes, "At [a certain trade association's] meetings, when they find out who you are, they dismiss you readily and walk away. But I am unsure whether this is due to the fact that I am a woman." (IR 39, p. 17)
- An MBE asserts that he has been never been invited to certain informative seminars sponsored by a local insurance company; nor was he ever invited to any meetings of the [trade associations] in the communications industry. (IR 30, p. 18)
- Another MBE contends that the "good old boy" network is a very real phenomenon in the construction industry. Merely being on a list that provides cursory information or the slightest hint that an opportunity for construction work exists, is precious. "Had it not been for [a program that requires] goals, "I wouldn't have even received a postcard." (IR 15, p. 14)
- An MBE believes that she has been excluded from the "good old boy" network. The key players, she says, are related to each other by blood or marriage. For example, an owner of a large general contracting company is related to a high-level construction inspector employed by the City of Columbus. (IR: 2, p. 29)
- An Interviewee recalls that one or more City employees in the Building Permit Department openly wore hats bearing the name of a Columbus-based majority firm. (IR 7, p. 36)
- An MBE complains that he has never been a part of the "good old boy" network. A majority contractor who he has known and interacted with for almost four years gave a contract he was seeking to a majority company that had been in business for only three months. (IR 4, p. 22)
- Another MBE related an incident after a woman's house burned down. A City building inspector advised the homeowner to use a specific company to perform certain work to clear away the fire-damaged rubble - and not to use the MBE. The inspector did not know he was speaking to the MBE's sister. The inspector gave no reason for recommending the other firm. (IR 7, p. 29)
- One MBE believes there's a thin line between racism and the "old boy" network. He says he is never invited anywhere. The business he

acquires doesn't come from the "old boy" network. Many times he hears about projects from other blacks or through unconventional means. It was a black man who helped him get business at IBM. He believes small companies are also excluded from "the network," but black companies are excluded because they are both small and black. (IR. 10, p. 22)

- This MBE suspects there is something "strange" about the contracting activities of the Columbus Metropolitan Housing Authority, a quasi-public institution. All of the contracts are awarded to white contractors. One majority contractor seems to be "doing all of the work." (IR. 12, p. 19)
- An MBE asserts that "exclusion (of MBEs) from the good old boy network is still a reality." Blacks are excluded because they are never invited to a majority contractor social setting. Sometimes, he hears about projects that are coming up, which the MBE community has not been properly informed. He asserts that MBEs don't get the same flow of information as the majority community unless "you're at a specific meeting and you're aware that some things are going on behind closed doors." (IR. 16, p. 20)
- An MBE suggests "that because many deals are being made over dinner; and because [my competitor] gets into places [I] can't get into, [I] have been excluded from making deals." (IR. 18, p. 23)
- One MBE said he has not been excluded as much as other MBEs because he has white partners. He was able to win a \$1.3 million contract because one of the partners had a relationship with the owner. He has also obtained other contracts from majority contractors due to his white partners' relationships with the contractors. (IR. 19, p. 19)
- Another MBE stated that even though his company has been in business for many years, his firm is only beginning to crack the private sector. "Private construction projects are [made] in private social circles from which blacks are excluded. In the last 10 years I have proven myself, but I still don't get the private sector jobs." The MBE noted that the good old boy network includes white subcontractors and suppliers as well. Suppliers give the local white companies a better price than they give to him and therefore give the whites the competitive advantage in bidding. (IR. 21, p. 29)
- An MBE stated that the good old boy network is "ongoing." He complains that he does not have access to developers in the residential homebuilding industry. He also complains that with respect to the installation of automobile security systems, he has less access to car

dealers than less competent white firms. "We can't get our foot in the door." (IR. 22, p. 24)

- An MBE indicated he had been a victim of a good old boy network several years ago. In the mid-1980's, several schools were being built and his office placed a large number of bids to no avail. One contractor seemed to get all of the work. He later found that several persons involved all went fishing together, drank together, and hung out together. In that setting, they were able to pass the word around about job and contract opportunities. This allowed them to share inside information, and adjust and amend their bids, formally and informally. (IR. 28, p. 13)

The comments of a few MBE/FBEs went so far as to allege that the actions of and relationships between some parties (including government employees and contractors) were so comfortable that they suspected the existence of actual collusion:

- On a project at the Airport, the bids were opened in a room which was out of the public's view. When the announcer read the last bid, he said he "could not make out the figures." The announcer then said that the last bid was the lowest bid and the contract was awarded. The winning firm subsequently submitted many change orders to inflate the amount of the contract. On the same job, the Office of the City Attorney had advised City officials that the firm had not submitted the required MBE utilization plan to qualify for award of the contract. The City waived this "technically" and awarded the contract anyway. (IR. 7, p. 10)
- The State of Ohio once waived a non-compliance determination against a firm on a million dollar state hospital project. Although the firm did not submit the requisite EEO paperwork, the company was awarded the contract anyway because it was "the only contracting company that was able to get a bond." (IR. 7, p. 13)
- Another MBE believes that a number of majority contractors with whom he competes in Columbus are trying to drive him out of business because he is the only MBE in his trade specialty in the State of Ohio. Their reasoning, he surmises, is that if there was no available MBE in the industry, then certain projects would not be set-aside. The MBE stated that these competitors have all become suppliers of the building materials they install to undercut him. For this reason, he is forced to go to other geographic regions to buy many of his supplies. (IR. 11, p. 29)

(155)

10. Bid Shopping

Bid Shopping is a practice general contractors sometimes use to lower the prices submitted to them by subcontractors. After it has received all of the subcontractors' quotes, the general contractor announces the lowest quote to some or all other competing subcontractors in hopes of extracting an even lower price from one or more of them. This practice is considered by many persons within the construction industry to be reprehensible - but it is also acknowledged to occur so frequently that it is considered commonplace. It is one of the reasons the construction industry has earned a reputation for being a very competitive and "tough" business - particularly for subcontractors. Since the entry of MBEs and FBEs into the construction industry however, some persons report the advent of a new variation on this theme. Some MBEs and FBEs state that the practice, however commonplace with the industry generally, is also used to unfairly "squeeze" particular subcontractors only because they are MBEs and FBEs. That is to say, some assert that majority general contractors use the practice with particular enthusiasm and vengeance against MBEs and FBEs. Reasons offered by some MBEs and FBEs to explain why they are victimized range from (a) the general contractors' perception of the MBE/FBEs as weak and easy victims desperate for work, to (b) the use of the practice as a means of protest against MBE/FBE programs. In the latter case, where MBEs or FBEs fail or refuse to lower their prices, a general contractor may seek and obtain a waiver of the MBE/FBE requirements asserting that it attempted "in good faith" to use MBEs and FBEs, "but their prices were just too high." What generally leads MBEs and FBEs to believe their victimization may also be affected by race and/or gender is that rarely are their quotes used to force down the prices of majority subcontractors, but rather other MBEs.

- Bid shopping by the majority contractor happens a lot particularly on projects requiring minority contract goals. "Unfortunately, we get shopped against each other. That's bothered me for a long time." (IR 2, p. 30)
- Another MBE asserts that on subcontracting bids, whites pit blacks against each other all the time. (IR 10, p. 23)
- A third MBE recalls bidding as a subcontractor on a State hospital project in 1984. He was called by the general contractor and told that his price was too high. He was asked to lower his bid because they had received a lower bid from another MBE. The Interviewee refused to negotiate, decided to bid as a prime contractor and lost the job. Bid shopping happens constantly. On another state hospital project, the

prime contractor asked him to lower his price. The Interviewee refused, telling the prime to take the cheaper price. The prime gave a white company less quantities to bid which allowed it to beat his price. Then the prime permitted change orders which brought the white firm's contract equal to the initial price submitted by his firm. (IR 11, p. 21-22)

- Another MBE recalls bidding on the Wyandott East project in 1965. The majority contractor showed him someone else's bid which was lower than his. The MBE was told that if he matched the lower bid, he would get the job. (IR 13, p. 17)
- In 1984, [I] bid \$1.09 million as a subcontractor to [the prime contractor] on [a correctional facility project]. The prime attempted to get [me] to lower [my] bid to \$900,000, but [I] refused to do that. The prime then called a majority subcontractor, and gave him the bid for \$1.1 million, even though they wanted [me] to take over \$200,000 off the bid of the [majority subcontractor]. (IR 15, p. 16)
- This same MBE reports that in 1981, while in a white contractor's office, he overheard a conversation between a buyer and an unidentified party. The buyer was overheard to reveal the amount of the MBE's bid on a current project which had been submitted two days earlier. After that, the MBE always made it a point to turn in his bid at the latest possible moment to avoid disclosure. (IR 15, p. 15)
- Another MBE indicated that the "practice goes on all the time, when you bid as a subcontractor. Some majority contractors will tell you 'Your bid is too high and you better come on down.' When they need MBE participation on a project, majority contractors will say, 'We have a white contractor who can do the job for a lower amount.' MBEs can go out of business trying to underbid a fictionalized white contractor." (IR 20, p. 13)
- An MBE stated that he and other blacks have suffered as a result of bid shopping, but admitted that it is widespread with whites as well. He described an instance when he had bid on a battery contract as part of the SBA's 8(a) program in 1985. After being informed that he had a "great price," his company was forced to compete against the supplier's prices instead of the prices of other 8(a) firms. When he realized what was being done, he bid below the supplier's price, but still did not get the contract. He also described the situation with Ameriflora when he bid on a contract, but the company would not tell him the winning bid. He later discovered that they had used his bid to beat down the other bidders and ultimately awarded the contract to a white contractor. (IR 22, p. 25-26)

- An FBE recalls having been told by a bid foreman "your bid is too high, you are 50% higher than the other bidder." She responded, "go ahead and give it to them." They gave her the contract anyway. "This is happening all the time." She refers to this treatment as "abuse," which she suffered often when the firm operated as a subcontractor. (IR, 23, p. 17)
- Prime contractors say our bids are too high. "They say they want to work with us, but they want us to knock 10-20 percent off the bid," said another MBE. "Sometimes we have to consider it." (IR, 27, p. 17)
- Another Interviewee said he's had majority contractors ask him for a bid solely to force another contractor's bid down. He also intimated that he thinks this happens frequently regardless of race, but blacks are more victimized than whites. (IR, 29, p. 25)

11. Bid Manipulation

A small number of firms gave examples of bid manipulation wherein majority firms subverted the bidding process by either unethically gaining premature access to bid information or by altering bids after bid opening to effectively exclude MBE/FBEs from participating. Such bid manipulation is also discriminatory to the extent that it is practiced specifically for the purpose of denying contract awards to certain ethnic or gender groups:

- A Franklin County clerk leaked [my] price to a competitor so that the competitor could beat [my] price. [I] sued and obtained an injunction against Franklin County. In certain situations, according to this MBE, white firms lowball bids on set-aside jobs to force the job to be rebid in open competitive bidding. (IR, 8, p. 21)
- An MBE described an incident on a City project where the black contractors were eliminated. The selected white contractor who was said to have had connections with the city fathers was asked to rebid. The MBE insists that the contractor was allowed to see the bids of the black contractors and was allowed to rebid 3 months after the initial bidding. (IR, 24, p. 16)

12. Unfair Denials of Contract Awards

Another form of discrimination related by MBE/FBEs within the Columbus marketplace is unfair denial of contract awards. Here, the MBE/FBE had been given an opportunity to bid, but reported that the award of the contract was unfairly denied.

- An MBE described his experiences on a City project on which he bid as a joint venture partner with a majority contractor from Cleveland. A City official told him "we don't need any out-of-town [companies]." Even though his joint venture submitted the lowest bid, the City awarded the contract to [a Columbus-based firm asserting that there were] "errors" in the MBE's bid. [The initial bid of the Columbus-based firm] was the third lowest. The rejection of the MBE's bid was in direct contrast to the leniency displayed by the City towards the Columbus-based firm on another project. (IR, 7, p. 18)
- In 1990, [I] was low bidder on a Wright Patterson project and was accepted on a Disadvantaged Business Enterprise (DBE) set-aside project. After the bid was common knowledge, Wright Patterson put the project out on the open market eliminating the DBE provision. This time the majority bidder was lower. [I] protested. Wright Patterson was noted for putting out a bid and pulling it back." The majority firms bid low and then request change orders after getting the contract. (IR, 23, p. 19)
- An FBE recalls that on one contract for the City court system, there were only four bids; and three (including hers) were tied for the low bid. According to this FBE, her company was the only one with experience, had the best record of performance and was the only firm meeting the specifications set forth in the RFP. It took between 6 and 8 weeks to award the contract. Three days before the award was announced, she called a City employee to inquire about it and was told it had been awarded to another firm. When she asked why, the City employee told her the Court felt it could save money by using the other firm because that firm had the ability to electronically transfer information between it and the Court. This function, however, was not a part of the bid specifications. The FBE informed the City employee that her company could provide that service as well. The City employee seemed extremely "surprised." The City employee had been informed by another City employee that the FBE could not perform this service, but no one bothered to confirm the truth of this disqualification. The contract was put on hold so as to give this FBE an opportunity to confer with the City employee who disqualified her from consideration, but the City employee never returned her calls. After award of the contract to her competitor was announced in the Columbus Citizen-Journal, the FBE wrote a letter of complaint with

(157)

copies to all parties concerned including Council President. Two of the three persons to whom the letter was sent responded but the substance of her complaint was never addressed. Rather, the only response given was that it was in the City's best interests to select the other firm. Later, a friend advised her "off the record that the deal was done before the contract was awarded." It was, he said, "political." (IR. 26, p. 16-18)

- An FBE described a bid on a private sector project in 1982 with a railroad for whom she had performed work before. "[I] was \$3,000 cheaper than [the bid of a majority contractor]. However, [I] never heard from [the Railroad] and later saw the [majority firm] out there paving. Those who made the decision had a certain relationship with [the majority firm]." (IR. 34, p. 18)

13. Double Standards in Evaluating Performance

Another form of discrimination reportedly suffered by MBE/FBEs in the Columbus, Ohio marketplace is the application of differing or "double standards" in evaluating the performance of MBE firms and majority firms. Here, the MBE/FBEs assert that government officials in the public sector and company officials in the private sector hold MBE/FBEs to a higher standard of performance than firms owned by whites and males; and deal with infractions committed by MBE/FBEs far more severely.

This disparate treatment is often perceived by some MBE/FBEs to be a form of harassment, committed intentionally to put the MBE/FBEs out of business or hasten the termination of their contracts. Because the MBEs interviewed characterized the behavior as a form of harassment, other incidents have been reported under other sections of this Study. (See, e.g., Section 14, *infra*).

- In 1991, State of Ohio Bureau of Worker's Compensation (BWC) inspectors did not like the drywall finishes [performed by my company] and demanded that [I] redo the finishes. [I] refused to redo the work because a white contractor had the same quality of finish on its drywall and the BWC approved the work. IR. 11, p. 26)
- This same MBE described another incident that happened on an Ohio State University project in 1985. [I] had installed some laboratory equipment in the building. The architect and construction manager wrote out a "punch list" (a list of things you are required to do before you get paid) and gave it to [me]. [I] performed some of the tasks, but other tasks had to be negotiated further. Even though the white companies who worked on the project were trained by [me], they were not given "punch lists" before they were paid. (IR. 11, p. 27)

- Another MBE indicated that he saw jobs done by white contractors that would have been unacceptable if he had done them. He said, "I couldn't have gotten away with it, I had to be perfect." (IR. 25, p. 23)
- In 1989, [I] was doing the electrical work on a residential property. A white City inspector gave [me] a citation for installing one wire over the capacity of a wiring box. As a result, [I] was instructed to remove and replace a whole light fixture. Later, [I] had a service maintenance contract in a house that a white contractor had worked on that was manned by the same inspector. When [I] looked at a wiring box on that property, [I] found wires which exceeded the capacity of the box by two inches. Furthermore, the "paddle fan" did not have its proper support. [My] work received far more scrutiny than [my] white colleague. (IR. 13, p. 16)
- Another MBE pointed out that white inspectors required more from him than other white contractors. In 1962, while working on a medical building in the City, the inspector forced him to cover his underground feeder cable in a conduit even though it was outside of the building. Although this work was unnecessary, he performed it because it was easier for him to do it rather than complain about it. It cost him a lot of money to buy the conduit. Since the inspector did not make white contractors do the same thing, the MBE feels the inspectors were trying to run the cost up to make it unprofitable for him to compete with whites. (IR. 14, p. 27)
- Another MBE said that in 1973, he and a white contractor completed similar jobs for Ohio State University; and recalls that a team of 3 inspectors examined the work done by the white contractor, while his work was examined by a team of 17. "Everybody on the staff, including the maintenance people," he said. The MBE added, "Any successful black has got to play the game better than they play it. Racism is never voiced openly, but you feel it all the time." (IR. 21, p. 30)
- On a 1987 project with Ohio State University, an MBE recalls that he was closely critiqued and criticized. Contractors and supervisors constantly looked over his shoulder and second-guessed him on even the most trivial issues. Most of the white contractors, on the other hand, were given "blank checks" and treated with notably more respect. He also contends that white companies were selectively given easier work with less meticulous specification enforcement. (IR. 30, p. 25)
- An interviewee related an anecdote he learned of concerning an MBE painter seeking a contract at OSU. The OSU agents inspected his paint

demonstration with a "white glove," but majority painting contractors were not inspected nearly as close. Although the MBE was the lower bidder, OSU appeared to look for reasons not to hire him. (IR. 31, p. 25)

- An FBE told of instances when she was told that the work was unsatisfactory. She recalls that in meetings with representatives of the prime contractor, she was told she was dumb, and that they weren't happy with her work. But when her husband went out on the job site "it was all taken care of." (IR. 34, p. 17).
- Another MBE opined that "double standards" are the rule, not the exception. "On numerous occasions, we had to dot every 'i' and cross every 't'." (IR. 37, p. 53)

14. Harassment

A few MBE/FBEs interviewed reported acts of harassment committed by majority contractors, inspectors and others persons.

- On one job, [I] was working all day around a little white kid and his mother. When it was time to quit, the little kid came up to me and looked me right in the face and asked was I a nigger. [I] looked at him blankly and then instructed the kid to go ask his mother if she thought [I] was a nigger. (IR. 12, p. 20)
- An Interviewee recalls that early one morning an MBE received a call to appear on the job site. The MBE sent his workmen to the job at 9 o'clock and the white inspector started ranting and raving and threatening to stop the work for lack of a permit. The Inspector knew the MBE didn't have time to get a permit for the work. When the MBE went down to the City to apply for a permit, he was given a warrant for his arrest. The Interviewee could not recall any other occasion on which an arrest warrant was sought for the failure to have a permit. The charges were dropped three days later. The damage, however, was already done. The owner told the MBE that he "was not in good standing downtown" and decided to use another firm. (IR. 14, p. 28)
- On a project for the ODOT, an inspector complained that an MBE's job site trailer did not meet his (the inspector's) specifications and held up the MBE's work for four days until the inspector's demands were satisfied. His requirements included a telephone of a particular color and a comfortable chair on rollers. The MBE made inquiry of other (white) contractors on ODOT projects if they had to comply to these stipulations, and they indicated they did not. (IR. 17, p. 16)

- A supplier once said to [me], "Well, I'm going to tell you boys, I won't be seeing you again." He was imitating Al Jolson. [I] told him not to ever use this language in front of [me] again. (IR. 20, p. 18)
- In the early days of his firm, an MBE recalls, he won a set-aside contract Ohio State University to supply computer paper. Subsequently, complaint was made that the paper supplied would not go through the machines properly. As a result, a date was set to test the product. Representatives of the MBE and of another paper supplier went to observe the test. The paper did, in fact, jam in the machine. The MBE's representative asked that the other supplier's paper be tested as well. That paper also jammed. He then discovered that the machine's controls were set to an improper paper size. When corrected, the paper supplied by the MBE worked without a hitch. He was later told by an employee of that office that someone had intentionally changed the paper size indicator; and that there was a plan to kill his contract and those of all blacks. (IR. 22, p. 27)
- An MFE put it this way: "They don't want you there and you know it." She told of being watched closely on jobs. In one case, the prime contractor called in an advisor who stayed with her for two weeks just watching her employees work. Later when the advisor and she had become friends, he confided in her that he had been brought in to watch her. The MFE believes this would not have occurred to a white firm. (IR. 23, p. 21)
- An FBE asserts that she has been the victim of prime contractors trying to break subcontractors by not being fair to them. There is great potential for abuse. As an example, the contract may state "as per specs and plans, remove all deteriorated masonry and joints." If the prime does not like you, it can manipulate the amount of work you have to perform under this clause to cause you to lose money. In addition, when you are 95% through with the job, they will start another punch list. (IR. 34, p. 13)
- An MBE recalls how a prime contractor complained to the State making false accusations as to his firm's poor workmanship. "He said we were, (1) not performing the work, (2) holding up the schedule, (3) price gauging, and (4) being 100% uncooperative..." The incidents mushroomed. We dealt with continuous harassment. Complaints were made with regard to how much water we supplied to other contractors; and threatening not to approve work with minor deviations. We survived, finished the job, and we started asking for our money in 1989. They lied to us in writing. We haven't been paid ... since 1989. In April 1990, the State of Ohio told them to start processing our claim." (IR. 37, p. 57)

15. Slow Payment and Non-Payment

Another form of discrimination adversely affecting MBE/FBEs arises from failure to issue payment in a timely fashion. MBE/FBEs state that governmental entities and/or majority prime contractors take unfair advantage of them by withholding progress or other periodic payments ("slow payment") or by failing or refusing to pay for work already performed ("non-payment"). Some of the MBE/FBEs reported that these actions are intentional and motivated by race and/or gender. A few believed the actions are taken to eliminate the MBE/FBEs from a job or to put them out of business:

- On one occasion, [I] did some subcontracting work on the City water tower project. [I] knew that [the prime] had gotten paid, but after 3 months [the prime] still hadn't paid [me]. Complaint was made, but the prime did not respond until a City official called to make inquiry as to why [I] had not been paid. Payment was then expedited. (IR. 2, p. 31)
- The State of Ohio still owes [me] \$3,000 on a contract that [I] began for them last June and completed this June. [I] have been owed the money since March [1991]. (IR. 3, p. 28)
- A third Interviewee asserted that slow payment by majority contractors was a major complaint voiced by minority subcontractors. He asserted that the City was partly at fault because it would typically take six months to pay prime contractors. Secondly, the City had no mechanism to inform subcontractors (many of which were minority firms) when the prime contractor had been paid. Furthermore, the City would refuse to intervene when informed that prime contractors were not paying their subcontractors on time. In one instance, the Interviewee recalled, the City refused to release an MBE's retainage for six months. That money was his profit on the project. The MBE threatened to go public and relay his problems to the City Council. The City finally paid him, but the MBE suffered severe financial hardships due to the City's indifference to his plight. (IR. 6, p. 14-15)
- [I] landed a job to remove footers on a project. The construction manager told [me] that [I] had to take the dirt too. [I] charged them for hauling the dirt. They owe [me] \$15,000 and have yet to pay [me]. (IR. 7, p. 35)
- In 1975, [I] was doing the electrical work on a contract for [a majority company]. [The prime] promised to help [me] meet payroll if [I] finished the job within a certain time period. When [I] requested the

money after finishing the job at the designated time..., [the prime] refused to pay [me]. As a result, [I] was forced meet the payroll from personal loans. Slow payments have been a problem for [me], particularly on public sector jobs. Many times majority contractors have not paid [me] and have made up excuses such as the "paperwork was screwed up." (IR. 12, p. 22-23)

- In 1960, [I] was working on a residential job installing receptacle outlets. After finishing, the owner refused to pay because he said "I wasn't neat enough." [I] slapped a lien on his house so that the owner could not sell the house. [I] collected [my] money five years later at 6 percent interest. Around the same time, a white company from Georgia would not pay [me] on another project. [I] put a lien on their property too [I] went several years before he paid on the project. (IR. 14, p. 18-19)
- Another MBE says slow payment to MBEs happens all the time. His company walked off the Ameriflora job. Originally, the construction managers said they would pay him in 30 days. They later changed the date to 60 days. After 78 days, he pulled his workers off the site and threatened to put a lien on the job. He was finally paid. (IR. 19, p. 23)
- Another MBE asserted that slow payment was a constant problem throughout the industry. He described incidents where jobs were completed and black contractors had no idea where to send invoices. He referred to this as the "elusive tactics" used by prime contractors. (IR. 24, p. 20)
- Slow payment and non-payment "happens all the time," according to this MBE. "We have a prompt payment act that needs to be enforced." Prime contractors are already circumventing this law by front loading extras and not considering them as part of the contract. These extras are additional change orders which can be held for one year. Prime contractors also try to get you to sign contracts with clauses which circumvent the State's prompt payment law. Hopefully, in the future, we can get direct payment by signing vouchers. General contractors shouldn't have any contact with our money." (IR. 27, p. 18)
- An MBE recalled that on one occasion in the sixties, he had a conversation with a white carpenter who intimated that he had been paid. Even though they were on the same job, the MBE had not been paid and was not paid for another two weeks. Developers would routinely pay him off slowly. On at least one occasion, he was not paid even though he heard that the checks were ready. After calling, inquiring, and protesting for two weeks, he finally got his check. When he did get the check, it had been backdated. (IR. 28, 16-17)

(160)

- An MBE asserts that he is still owed over half of his \$35,000 on a State contract he completed in 1989 and that the State is four months behind in payments. (IR 30, p. 17)
- Slow payment is a common practice in the industry, ... but it seems to happen more often to blacks than whites. General contractors hold MBEs at their mercy for payment. "You do the job, he gets the money. Then he holds you off until he gets paid the second time." (IR. 32, p. 17)

16. Utilization of MBE/FBE Fronts

"Fronting" is a form of conduct unique to public sector opportunities governed by MBE programs. It consists of a variety of practices by majority-owned and male-owned firms designed to take unfair advantage of affirmative action measures. One practice is that in which a majority-owned contractor or vendor takes fraudulent action to become certified as a minority or women-owned business under an MBE/FBE program, and then seeks to participate in the program by obtaining contract opportunities intended for legitimate MBE/FBE firms. A second form of fronting is where a majority prime contractor assists in the creation of a front which will then serve as the prime's "MBE/FBE subcontractor" on one or more government projects having MBE/FBE requirements. A third form of fronting is more accurately called the "pass-through." Here, a majority prime will enlist the assistance of a legitimate but unscrupulous MBE/FBE to serve as the subcontractor on paper only. The contract opportunity and profits realized are actually passed through the MBE/FBE to a majority subcontractor (or back to the majority prime) who actually performs the work.

The effect on legitimate MBEs and FBEs is a loss of contracting opportunities.

A number of MBE/FBEs interviewed asserted that "fronting" and the use of "pass throughs" are problems within the Columbus, Ohio marketplace:

- An MBE reports that pass-throughs happen all the time. "[One majority prime contractor], they subcontract four jobs to us to fulfill an MBE requirement. But, they told us point blank that they never intended for us to do any work. They explained to us the method contractors use to subvert the system. First, find a certified MBE. Next, offer the MBE some significant sum of money. Then, get him to sign off on the paperwork that goes to the State. Finally, the MBE goes away, sometimes not getting paid at all. This is straight subcontracting?"

[We have been offered this] 8 to 10 times from various contractors ... (IR. 37, p. 44-45)

- With regard to the proper certification of FBEs, the interviewee recalled at least half a dozen cases where majority contractors would place their wives into business and give them a 51% interest in the company. These companies experienced few problems obtaining certification by the City. (IR. 6, p. 17)

17. Governmental Resistance to MBE/FBE Participation

Interviews with a number of knowledgeable persons familiar with the history of the City of Columbus' efforts to increase MBE/FBE participation revealed substantial anecdotal evidence that the City government, by virtue of certain conduct and omissions on its part, has contributed to discriminatory activity adversely affecting the ability of MBE/FBEs to have equal access to contracting opportunities:

- An MBE remembers a project in the late 1980s' which clearly demonstrated the denial of the opportunity to bid. "It was the Brewery District Project on the south side of Columbus, where the City improved a whole neighborhood. They spent \$5 million dollars on it, but only one minority worker (no MBEs), got a chance to work on it. This was due to the fact that the City didn't enforce the MBE participation requirement. This was prior to the dropping of the City's MBE goal." (IR. 37, p. 22)
- An interviewee stated that the City's MBE Office was poorly run, and was characterized by instability, nepotism and turmoil. Throughout its existence there was a high turnover of administrators and personnel. One administrator was terminated after one year because of "nonfeasance." In 1989, the MBE office was shifted to come under the auspices of the Office of Management and Budget (OMB). (IR. 6, p. 6-10)
- MBEs made complaints regarding (a) the application of double standards, (b) job site harassment, (c) repeated racial slurs and (d) work assigned to MBEs under unusually unsafe working conditions. But subordinate employees who informed program administrators of these complaints were retaliated against by City officials. The interviewee asserted that much of the turmoil in the MBE office was due to one administrator's management style and intent to sabotage and dismantle the program. (IR. 6, p. 11-13)
- There existed widespread abuse of the MBE program. Although prime contractors were required to list their prospective subcontractors in

pre-bid meetings, this policy was never enforced. Contractors, who were required to submit MBE utilization reports, were permitted by City officials to turn the reports in late. There were no monitoring procedures to check whether or not the reports submitted were accurate. The efforts of buyers to solicit MBEs on small purchases were not monitored. The MBE office was not doing what it was set up to do because no City department was required to submit MBE utilization reports. MBE goals on projects were never met. (IR 6, p. 11-13)

- Sanctions, including the authorization of the MBE Office to stop payment to majority contractors, were not enforced. On one occasion, in a meeting with City officials, an MBE complained that his equipment was sabotaged and he was harassed by contractors on the Southerly Project. The City's MBE Office, however, took relatively little action on his behalf. (IR 6, p. 11-13)
- With regard to the proper certification of FBEs, the interviewee recalled at least half a dozen cases where majority contractors would place their wives into business and give them a 51% interest in the company. These companies experienced few problems obtaining certification by the City. (IR 6, p. 17)
- MBEs consistently complained about the ineffectiveness of the program, the administrator did nothing about these complaints. The interviewee surmises that the administrator's reluctance to assist MBEs was an indication of the City's lack of interest in improving the utilization of MBEs in the contracting process. (IR 6, p. 18)
- An MBE stated that he doesn't get any work out of the City of Columbus and he is tired of trying. "It's like trying to crack a nut. The personnel in the MBE office don't help people, the department heads do not return phone calls, and they never get bids out to you." In all, he described the City of Columbus MBE program as an "inept, inefficient, and ineffective organization." This MBE considers the MBE offices of Columbus and the State of Ohio as shams. "Nothing is by accident. The administration wouldn't put a strong person in that office who was serious about getting things done." This MBE indicated he has no faith in any of the MBE program's features because "they staff the programs around here with incompetent people." (IR 10, p. 10-11, 26)
- Another MBE, commenting on the difficulties experienced at the hands of prime contractors, stated "They (the MBEs) made no money. The prime contractors saw to this, and the City did not know because there had been no monitoring of contracts since 1987." Further, information gathering was the responsibility of the construction manager who is

supposed to turn it over to the City on request. The City never requested it, because they didn't want to. That's why the City didn't know MBEs were not making any money." (IR 35, p. 6)

(162)

PART III.
SECTION D. SUMMARY: THE ADVERSE EFFECTS OF
DISCRIMINATION UPON MBE/FBES IN THE COLUMBUS, OHIO
MARKETPLACE

The anecdotal accounts obtained from interviews identified evidence many different forms of discrimination that appear to be presently afflicting the Columbus, Ohio marketplace. Based on their effects, these forms of discrimination can be broadly classified or grouped into three categories: discrimination denying market access to MBE/FBES; discrimination adversely affecting the ability of MBE/FBES to compete; and discrimination adversely affecting the availability and capacity of MBE/FBES.

Adverse Effect of Denying Market Access to MBE/FBES

(169) The responses of a number of MBE/FBES indicated that their ability to meaningfully participate in the local economy is frustrated by their lack of open and unrestricted access to the public and private sectors of the marketplace. Such access is denied through a variety of acts, omissions, and adverse market conditions, including denials of opportunities to bid, stereotypical attitudes, exclusion from the "good old boy" network in subcontracting, the utilization of MBE fronts, and passive governmental resistance.

Each of these forms of discrimination and conditions pose significant barriers to MBE/FBE participation and have the effect of artificially limiting MBE/FBES' chances for success.

Adverse Effect on the Ability of MBEs to Compete

Other forms of discrimination and market conditions are those which adversely affect the ability of MBE/FBES to compete within the marketplace. These include many of the forms and conditions affecting market access, but also others such as unequal access to financing, bonding, and unfair prices for supplies; restrictive contract specifications; the application of double standards of performance; and slow and non-payment.

As a result of the presence of these forms of discrimination and market conditions, MBE/FBES appear to be limited in their ability to compete. Without adequate financing, bonding, supply prices, timely payment and/or the ability to complete their contracts, the MBE/FBES find it difficult to bid on larger contract opportunities, increase volume and take advantage of resulting economies of scale, such as volume discounts from suppliers.

Adverse Effect on MBE/FBE Availability and Capacity

Many of the forms of identified discrimination and market conditions also adversely affect the availability and capacity of MBE/FBES. Forms such as the application of double standards of performance, harassment and unequal access to financing, and discrimination in past employment, for example, have the effect of dissuading MBE participation. More than one MBE interviewed indicated that they were no longer desirous of bidding on Columbus contracts or doing business with other governmental entities within its marketplace; and this lack of desire was based, in part, on the bad experiences these MBEs had. Other MBE/FBES have gone out of business as a result of these forms of discrimination, thereby reducing the availability of M/WBES in various markets.

Such experiences may also dissuade, discourage or deter other potential MBE/FBES from going into business or to seek contracting opportunities within the marketplace.

Similarly, MBE/FBE capacity is adversely affected. Such discriminatory practices and market conditions serve to retard the growth and expansion of MBE/FBE firms.

Conclusions

Interviews identified numerous examples of 17 different forms of discrimination. Interviews suggested that this evidence was encountered repeatedly and suggests that discrimination against minority and women-owned firms has been and continues to be pervasive in the Columbus area goods, services and construction industries. Available evidence also suggests that the City played a passive, and in some cases, active role in discrimination against minority and women-owned firms.

U.S. COMMISSION ON CIVIL RIGHTS
Midwestern Regional Office
55 West Monroe Street
Chicago, IL 60603

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300