
Executive Summary

for

The Jackson Municipal Airport Authority
Disparity Study

Submitted By

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BACKGROUND AND INTRODUCTION

The goal of this disparity study is to evaluate the need and basis for the Jackson Municipal Airport Authority, hereinafter referred to as the JMAA, to continue its Disadvantaged Business Enterprise programs in their present form. As an attempt to remedy decades of blocked access to business opportunity, the JMAA is striving to engineer this set of programs such that they not only address the needs of capable minority and women business owners, but also render a more diverse and equitable business environment. However, these initiatives can be formulated into a continuous programmatic framework only after they have been evaluated against legal paradigms which surfaced out of the 1989 U.S. Supreme Court decision in the City of Richmond v. J.A. Croson Company, 488 U.S. 469 (1989) and Adarand Constructors, Inc. v. Peña 515 U.S. 200, 115 S.Ct. 2097 (1995). The City of Richmond case set the legal precedent for the "strict scrutiny" of local and state programs whose goal is to grant opportunity based on race. The Adarand decision subsequently extended this standard of scrutiny to federal programs.

LEGAL FRAMEWORK (PRECEDENTS AND STRICT SCRUTINY)

On January 23, 1989, the U.S. Supreme Court held, in the matter of City of Richmond v. J.A. Croson Company, that the Minority Business Enterprise ("MBE") ordinance, previously enacted by the City of Richmond's City Council, violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The Court struck down the City's MBE Program, which mandated that the City should encourage its prime contractors to subcontract at least thirty percent (30%) of construction contract dollars to minority-owned firms. In a six-to-three majority decision, the Court held that local and state programs which allocate, or "set aside," a portion of public contracting opportunities exclusively to minority-owned businesses must be judged by a "strict scrutiny" standard if race, a suspect classification, is involved. As a result, local MBE programs must now provide a "strong basis in evidence" in order to operate an affirmative action program in which race is a factor.

The Croson Case represented a precedent-setting decision by the Court to adopt a "strict scrutiny" standard for testing the legality of race-conscious affirmative action programs. It is also important to note that strict scrutiny is the most restrictive standard applied by the Supreme Court in this matter of race. Conversely and interestingly, some subsequent lower court decisions have applied an "intermediate" level of scrutiny to programs that assist women-owned businesses.

Under the strict scrutiny standard, often referred to as the Croson standard, the Court fashioned a two-pronged analysis of race-based legal action. First, in order for a local governmental entity to constitutionally enact a contract-awarding MBE in which race is a factor, it must show a "compelling governmental interest." Demonstrating particularized findings of past discrimination, thereby emphasizing that mere reliance on societal discrimination is not enough to justify race-based measures must then prove this compelling interest. Second, the MBE program must be "narrowly tailored" to address the effects of demonstrated discrimination. Stated more clearly, the programs must not be over-broad, rather they should be designed to address the specific forms of discrimination identified within the jurisdiction. Generally, it is the court's preference that less restrictive remedies should be considered first. More restrictive approaches can then be enacted if the less restrictive means are ineffective at remedying the effects of specific discriminatory practices.

In Adarand Constructors v. Pena, the Supreme Court further discussed the strict scrutiny standard and augmented its reach into Federal race-conscious affirmative action programs. Adarand held that Congress, when it enacted race-conscious affirmative action programs, was, like local governments under Croson, subject to the strict scrutiny standard. Justice O'Connor stated for the Court in a plurality opinion that:

"...All racial classifications, imposed by whatever Federal, state or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that

further compelling governmental interests. To the extent that Metro Broadcasting is inconsistent with that holding it is overruled."¹

The Adarand decision explicitly states that strict scrutiny is not intended to put an end to governmental race-based remedies in affirmative action plans. The Court recognizes the unfortunate reality of racial discrimination and states that a government is not disqualified from acting in response to "the practice and lingering effects of racial discrimination against minority groups in this country."² Adarand also clarifies the notion that a program is constitutional only if it is properly supported by a "strong basis in evidence" which demonstrates the compelling need for a race-conscious remedy. As such, under strict scrutiny, there must exist strong evidence to support a government entity's conclusion of systematic exclusion of minorities.

Furthermore, the strict scrutiny standard "requires courts to make sure that a governmental classification based on race . . . is legitimate, before permitting unequal treatment based on race to proceed."³ The Court's statement in Adarand echoes its statement in Croson that subjecting race-conscious remedies to strict scrutiny is designed to " 'smoke out' illegitimate uses of race."⁴

The Croson Decision

In Croson, the Supreme Court ruled that the City of Richmond's MBE program failed to satisfy both prongs of the strict scrutiny standard. The City failed to show that its minority set-aside 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 African-American) and awards of prime contracts to minority-owned firms (0.67 percent to African-American firms) was an irrelevant statistical comparison and insufficient to raise an inference of discrimination. Justice O'Connor opined that the relevant statistical comparison would be one between the percentage of MBEs in the market qualified to do contracting work (including prime contractors

¹ Adarand, 515 U.S. 200, 227, 115 S.Ct. 2097, 2113.

² Id. at 237, 2117.

³ Id. at 228, 2113.

⁴ City of Richmond v. J.A. Croson Co., 488 U.S. 469, 493, 109 S.Ct. 706, 721.

and subcontractors) and the percentage of total City contracting dollars awarded to minority firms.

Additionally, identified *anecdotal* accounts of past discrimination could also provide the basis to establish a compelling interest for local governments to enact race-conscious remedies. However, conclusory claims of discrimination by City officials would not suffice. Regarding the second prong of the strict scrutiny test, the Court ruled that the City's MBE program was not narrowly tailored to redress the effects of discrimination. The City did not consider this program to be remedial in nature because it provided preferential treatment to minorities such as Eskimos and Aleuts, groups for which there was no evidence of discrimination in Richmond.

Strict Scrutiny- Narrow Tailoring

Thus, in order for states, municipalities, and other local governments to satisfy the narrow tailoring prong, the Croson Court suggested analyzing the following factors:

- (1) Whether the M/WBE program covers minorities or women for which there is evidence of discrimination (i.e. statistical disparity, anecdotal evidence, etc.);
- (2) Whether the size of the M/WBE participation goal is flexible and contains waiver provisions for prime contractors who make a "good faith" effort to satisfy M/WBE utilization goals. However, these contractors are unsuccessful in finding any ready, willing and able M/WBEs;
- (3) Whether there was a reasonable relationship between the numerical goals set and the relevant labor pool of M/WBEs capable of performing the work in the marketplace;
- (4) Whether race-neutral alternatives were considered before race-conscious remedies were enacted; and
- (5) Whether the M/WBE program contains sunset provisions or mechanisms for periodic review to assess the program's continued need.

Intermediate Scrutiny

Courts determine the appropriate standard of equal protection review by examining the protected classes embodied in the statute. The courts then apply *strict scrutiny* to review an ordinance's race-based preference scheme to evaluate whether the law is narrowly tailored to achieve a compelling governmental interest. Conversely, gender-based classifications are evaluated under the *intermediate scrutiny* rubric, which provides that the statute must be substantially related to an important governmental objective.⁵ Therefore, race-conscious affirmative action is subject to a much higher standard of judicial review than gender-conscious affirmative action.

The courts have held that since all racial classifications are viewed as legally suspect, the governing body must show a "sound basis in the evidence" of discrimination in order to justify its enactment of race conscious legislation. Merely stating a "benign" or "remedial" purpose does not constitute a "strong basis in evidence" that the remedial plan is necessary, nor does it establish a *prima facie* case of discrimination. Thus, the local government must identify the discrimination it seeks to redress.⁶

The types of evidence routinely presented to show the existence of a compelling interest include statistical and anecdotal evidence.⁷ Where gross statistical disparities exist, they alone may constitute *prima facie* proof of a pattern or practice of discrimination. Anecdotal evidence, such as testimony from minority contractors, is most useful as a supplement to strong statistical evidence.⁸ However, anecdotal evidence is rarely so dominant that it can, by

⁵ Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 724, 102 S.Ct. 3331, 3335. See Engineering Contractors Association of South Florida, Inc., et al v. Metropolitan Dade County, et al, 122 F.3d 895 (11th Cir. 1997) (Eleventh Circuit explaining U.S. Virginia, and the appropriate gender-based affirmative action equal protection analysis).

⁶ Id. at 500-501, 725.

⁷ Id. at 501, 725-26. See, United Black Firefighters Assn. v. City of Akron, 976 F.2d 999, 1009 (6th Cir. 1992). See also, Engineering Contractors, 122 F.3d 895 (11th Cir. 1997).

⁸ Concrete Works, 36 F.3d 1513, 1520. (10th Cir. 1994). See Engineering Contractors, 922 F.3d 895, 925-26 (11th Cir. 1997); Ensley Branch v. Seibels, 31 F.3d 1548, 1565 (11th Cir. 1994).

itself, establish discrimination under Croson. The "combination of anecdotal and statistical evidence," however, is viewed by the Courts as "potent."⁹

The second prong of the strict scrutiny test was designed to determine whether the M/WBE program is narrowly tailored to redress the effects of discrimination. In Croson, the Court considered four factors:

- (1) whether the entity has first considered race-neutral measures, but found them to be ineffective;
- (2) the basis offered for the goals selected;
- (3) whether the program provides for waivers; and,
- (4) whether the program applies only to MBEs who operate in the geographic jurisdiction covered by the program.

Other considerations include the flexibility and duration of the program, that is, whether the program contains a sunset provision or other mechanisms for periodic review of its effectiveness. These mechanisms ensure that the program does not last longer than its intended remedial purpose, and; furthermore, keeps the relationship of numerical goals to the relevant labor market pure, as well as the impact of the relief on the rights of third parties.¹⁰ In Ensley Branch NAACP v. Seibels, 31 F.3d 1548 (11th Cir. 1994), the Eleventh Circuit also held that four factors should be taken into account when evaluating whether a race or ethnicity-conscious affirmative action program is narrowly tailored:

- (1) the necessity for the relief and the efficacy of alternative remedies;
- (2) the flexibility and duration of the relief, including the availability of waiver provisions;
- (3) the relationship of the numerical goals to the relevant labor market; and
- (4) the impact of the relief on the rights of innocent third parties.¹¹

The Courts have also ruled that general societal discrimination is not a compelling interest which justifies the use of race-based measures.¹² Rather,

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

¹⁰ Adarand, 515 U.S. 200, 238, 115 S. Ct. 2097, 2118.

¹¹ Ensley Branch, 31 F.3d 1548, 1569 (11th Cir. 1994).

there must be some showing of prior discrimination by the governmental actor involved, either as an "active" or "passive" participant.¹³ The governmental entity must point to an identified discrimination in the area, and in the industry to which the plan applies. A prima facie case of intentional discrimination is deemed sufficient to support a local entity's affirmative action plan. However, generalized assertions that there has been past discrimination in an entire industry provides no guidance for a legislative body to determine the precise scope of the injury it seeks to redress.¹⁴

Anecdotal Evidence

The majority decision in Croson impliedly endorsed the inclusion of personal accounts of discrimination.¹⁵ However, and according to the Croson standard, selective anecdotal evidence about MBE experiences alone would not provide a sufficient and strong enough basis in evidence to demonstrate public or private discrimination in a municipality's construction industry.¹⁶ Nonetheless, personal accounts of actual discrimination or the effects of discriminatory practices may complement empirical evidence. In addition, anecdotal evidence of a municipality's institutional practices that provoke discriminatory market conditions is particularly probative. Thus, courts have required the inclusion of anecdotal evidence of past or present discrimination.¹⁷

¹² Id. at 496-97, 723. See Miller v. Johnson, 515 U.S. 900, 922, 115 S.Ct. 2475, 2491 (1995).

¹³ Id. at 498, 724.

¹⁴ Id. at 498-99, 724. See Miller, 515 U.S. 900, 921, 115 S.Ct. 2475, 2491.

¹⁵ Croson, 488 U.S. at 480, 109 S.Ct. at 714-15 (noting as a weakness in the City's case that the Richmond City Council heard "no direct evidence of race conscious discrimination on the part of the city in letting contracts or any evidence that the city's prime contractors had discriminated against minority-owned subcontractors").

¹⁶ See Concrete Works, 36 F. 3rd 1513 (10th Cir. 1994).

¹⁷ See Contractors Assn., 6 F.3d 990, 1002-03 (3rd Cir. 1993) (weighing Philadelphia's anecdotal evidence); Coral Construction Co. v. King County, 941 F.2d 910, 919 (9th Cir. 1991) ("[T]he combination of convincing anecdotal and statistical evidence is potent"); Cone Corp. v. Hillsborough County, 908 F.2d 908, 916 (11th Cir. 1990) (supplementing Hillsborough County's statistical evidence with testimony from MBEs who filed complaints to the County about prime contractors' discriminatory practices), cert. denied, 498 U.S. 983, 111 S.Ct. 516, 112 L.Ed.2d 528 (1990); Engineering Contractors, 122 F.3d at 925-26.

Statistical Data

Croson additionally held that an inference of discrimination may be made with empirical evidence that demonstrates "a significant statistical disparity between the number of qualified minority contractors . . . and the number of such contractors actually engaged by the locality or the locality's prime contractors."¹⁸ A governmental action must therefore demonstrate that gross statistical disparities exist between the proportion of MBEs awarded government contracts and the proportion of MBEs in the local industry "willing and able to do the work," in order to justify its use of race conscious contract measures.¹⁹ In order to adequately assess statistical evidence, there must be evidence identifying the basic qualifications of minority contractors "willing and able to do the job" and the Court must determine, based upon these qualifications, the relevant statistical pool with which to make the appropriate statistical comparisons.²⁰ Subsequent lower court decisions have provided considerable guidelines for statistical analyses sufficient for satisfying the Croson factual predicate.

- *Disparity Index*

To demonstrate the under-utilization of M/WBEs in a particular area, parties can employ a statistical device known as the "**disparity index**".²¹ The disparity index is calculated by dividing the percentage of M/WBE participation in government contracts by the percentage of M/WBEs in the relevant population of local firms. A disparity index of 1 demonstrates full M/WBE participation, whereas the closer the index is to zero, the greater the M/WBE under-utilization. Some courts multiply the disparity index by 100, thereby creating a scale between 0 and 100, with 100 representing full M/WBE utilization.

- *Standard Deviations*

The number calculated via the disparity index, is then tested for its validity through the application of a standard deviation analysis. Standard deviation analysis measures the probability that a result is a random deviation from the

¹⁸ Croson, 488 U.S. 469, 509, 109 S.Ct. 706, 730.

¹⁹ Ensley Branch, NAACP 31 F.3d 1548, 1565 (11th Cir. 1994).

²⁰ Peightal v. Metropolitan Dade County, 26 F.3d 1545, 1553-54. (11th Cir. 1994).

²¹ See Contractors Assn. 6 F.3d 990, 1005 (3rd Cir. 1993) (Third Circuit joining the First, Ninth, and Eleventh Circuits in relying on disparity indices to determine whether a municipality satisfies Croson's evidentiary burden).

predicted result - the more standard deviations, the lower the probability the result is a random one. Social scientists consider a finding of two standard deviations significant, meaning that there is about one chance in 20 that the explanation for the deviation could be random and the deviation must be accounted for by some factor. The Eleventh Circuit has directed that "where the difference between the expected value and the observed number is greater than two or three standard deviations" a presumption of discriminatory conduct is raised.²²

- *Disparity Index and Croson*

Courts have used these M/WBE disparity indices to apply the "strong basis in evidence" standard in Croson. For instance, the Eleventh Circuit held that a 0.11 disparity "clearly constitutes a prima facie case of discrimination indicating that the racial classifications in the County plan were necessary" under Croson.²³ Based on a disparity index of 0.22, the Ninth Circuit upheld the denial of a preliminary injunction to a challenger of the City of San Francisco's MBE plan based upon an equal protection claim.²⁴ Accordingly, the Third Circuit held that a disparity of 0.04 was "probative of discrimination in City contracting in the Philadelphia construction industry."²⁵

In sum, the appropriate method to determine disparities is a comparison between utilization (i.e., the percentage of dollars of contract awards or contract payments going to MBEs) and availability (i.e., the number of minority firms available to perform work as a portion of all such firms within the relevant geographic market). Moreover, the utilization and availability statistics must pertain to the same market. Ultimately, however, there is little guidance regarding what kinds of data should be applied in developing availability measures.

²² Peightal II, 26 F.3d 1545, 1556 (11th Cir. 1994).

²³ Cone Corp., 908 F.2d 908, 916 (11th Cir. 1990).

²⁴ AGC v. Coalition for Economic Equity, 950 F.2d 1401, 1414 (9th Cir. 1991).

²⁵ Contractors Assn. 6 F.3d 990, 1005 (3rd Cir. 1993).

Geographic Scope of the Data

Croson observed that because discrimination varies across market areas, state and local governments cannot rely on national statistics of discrimination in the disputed industry to draw conclusions about prevailing market conditions in their respective regions.²⁶ However, to confine the permissible data to a governmental entity's strict geographical borders would ignore the economic reality that contracts are often awarded to firms located in adjacent areas. Thus, Courts closely scrutinize pertinent data related to the jurisdictional area of the municipality.

Generally, the scope of the statistical analyses pertains to the geographic market area from which the government entity makes most of its purchases. That is, the marketplace is the **Metropolitan Statistical Area ("MSA")** in which the jurisdiction is located.²⁷ It has been deemed appropriate to examine the existence of discrimination against MBEs/WBEs within these MSAs even when these areas go beyond the political boundaries of the local jurisdictions. In addition, disparities concerning utilization, employment size and formation are also relevant in determining discrimination in a marketplace.

Remedies

- Narrowly Tailored

Under the Croson framework, any affirmative action plan must be narrowly tailored to ameliorate the effects of past discrimination found to justify the use of a race conscious remedy. Subsequent Croson cases have provided significant guidance on how remedies should be narrowly tailored. The Eleventh Circuit has set forth four considerations in determining whether a plan is narrowly tailored:

- (1) consideration of race neutral alternatives,
- (2) flexibility of plan,
- (3) relationship of plan's numerical goals to relevant labor market, and

²⁶ Croson, 488 U.S. 469, 504, 109 S.Ct. 706, 727.

²⁷ See Contractors Assn., 6 F.3d at 1003-09 (considering data from the Philadelphia Metropolitan Statistical Area ("MSA")).

(4) effect of plan on third parties.²⁸

Post-Croson cases have followed the general guidelines listed below in construing the elements of the narrow tailoring prong:

- (1) Relief is limited to minority groups for which there is identified discrimination;
- (2) Remedies are limited to redressing the discrimination within the boundaries of the enacting jurisdiction;
- (3) The goals of the programs should be flexible and provide waiver provisions;
- (4) Race and/or gender neutral measures should be considered; and
- (5) The program should include provisions or mechanisms for periodic review and sunset.

Within a legal framework, M/WBE programs must be designed so that the benefits of the programs are directed toward those firms that faced discrimination in the local marketplace. To withstand a challenge, relief must extend to those minority groups for which there is evidence of discrimination. M/WBE firms from outside the local market must show that they have unsuccessfully attempted to do business within the local marketplace in order to benefit from the program.

Court rulings have held that neutral measures must be considered, but not necessarily exhausted, in order for M/WBE programs to be enacted. Moreover, some courts have held that such measures could be enacted concurrently rather than enacted before race or gender-conscious measures. Cases such as Concrete Works, suggest the kinds of neutral measures considered by the courts.

Inherent in the above statements is the notion that M/WBE programs must provide flexibility. Courts have suggested project-by-project goal setting and waiver provisions. Additionally, some courts have indicated that goals need not

²⁸ Peightal II, 940 F.2d 1394, 1406 (11th Cir. 1991). See also Engineering Contractors, 122 F.3d 895, 927 (citing Ensley Branch NAACP at 31 F.3rd 1548,1569).

directly correspond to current availability if there are findings that availability has been adversely affected by past discrimination. Lastly, "review or sunset" provisions are necessary components to guarantee that remedies do not out-live their intended remedial purpose.

Conclusion

Despite eight years of litigation, several district court and United States Court of Appeals rulings, as well as another U.S. Supreme Court decision, the law in this area (associated with the Croson case) is far from settled. It is very clear that the law requires that all race and gender conscious affirmative action programs be reviewed periodically. What remains unclear is what standards should be used to judge whether a program that has achieved success has so completely eliminated the vestiges of the initially identified discrimination, so as to no longer require any race or gender conscious affirmative efforts.

Therefore, in order to help answer that question we have conducted additional anecdotal interviews, public hearings and surveys to supplement the work done in previous studies. We have also conducted additional quantitative analysis. This additional information is contained in the subsequent sections of this summary.

ANALYSIS OF EVIDENCE OF DISCRIMINATION

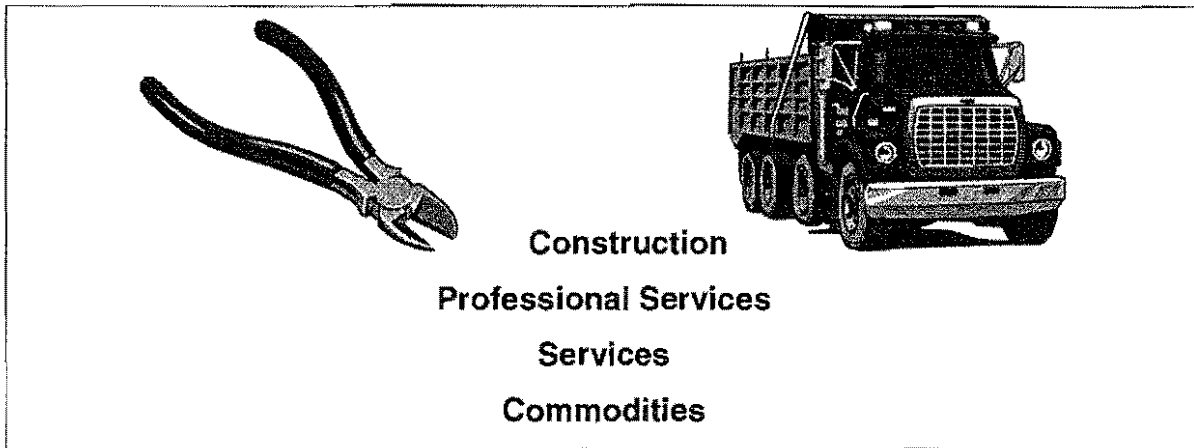
- Analysis of Quantitative Evidence of Discrimination

Introduction

This chapter examines the issue of whether or not disparity exists between the availability of Disadvantaged Business Enterprises (DBEs) and their utilization by the Jackson Municipal Airport Authority (JMAA). Before discussing the existence of disparities in the relevant market areas to the JMAA, we provide an overview of the racial and ethnic composition of the population in the Jackson, MS metropolitan statistical area (MSA), the State of Mississippi, and provide a profile of the local economy using census data. The profile of the local economy ends with an analysis of market disparity ratios in the Jackson, Mississippi MSA.

Within the first section of this summary's quantitative overview, our research team included an economic market analysis, followed by an explanation for the framework for the analysis in the second section. In addition, this section of the study discusses the data collection methodology as well as the relevant market concepts that drive this analysis. The third section provides a framework for the availability concept and discusses how we, as a research team, apply this concept to firms doing business with the JMAA. The fourth section discusses the Airport Authority's contracting history and M/WBE utilization by procurement categories. The last section is an analysis of disparity between the availability and utilization of M/WBEs by the JMAA. Afterwards and finally, inference statistics are presented.

The purpose of the statistical analysis is to examine whether or not a disparity exists between the availability of M/WBEs and their utilization by the Jackson Municipal Airport Authority. The Griffin & Strong team examined the following procurement categories in an attempt to gain an overall understanding of JMAA's contracting activity:



Economic Market Analysis

This section provides a description of socioeconomic variables that impact the establishment and growth of DBE firms in the Jackson, Mississippi Metropolitan Statistical Area (MSA)²⁹ as well as throughout the State of Mississippi.

An analysis of the general economic market in the Jackson, MS MSA was performed by our researchers to develop a profile of the general availability of MWBE firms in the area. This economic analysis presents information on key characteristics forming the overall economic framework of Jackson, MS. The information resulting from the study of this MSA is telling of the specific racial, ethnic, gender groups of interest, and also includes estimates of the availability of DBEs in the metro Jackson, MS economy, and their utilization by the general economy. Several factors indicating the ability to establish and expand businesses are also examined. These factors include household income from wages and salaries, income from non-farm and farm self-employment, income from social security, income from public assistance, and social security.

The utilization of DBE firms by the general business community and the business receipts of these businesses are indicative of the barriers and opportunities they have in the marketplace in metropolitan Jackson, MS. This

²⁹ The Jackson, MS MSA includes Hinds County, Madison County, and Rankin County.

analysis reveals a factual snapshot of the effects of discrimination on M/WBEs' existence and ability to compete in the marketplace. Key economic characteristics show that minorities and women in metro Jackson, MS possess fewer financial advantages and other resources that would enable them to establish and expand businesses. Our research has also uncovered that DBE businesses, even after successful establishment, are grossly underutilized by the general economy, and industry to which they belong.

Of particular note are the following observations:

- 1) Very few members of minority groups and women are self-employed;
- 2) Members of minority groups and women are less likely to own their own businesses than are Whites;
- 3) White households are far more likely than minority households to receive income from sources other than wages and salaries;
- 4) White households are much more likely to have income from self employment than are members of minority groups and women;
- 5) White households make more income than members of minority groups and women;
- 6) White households are markedly more likely to garner income from interest, dividends, and rents; and
- 7) More members of minority groups and women receive income from public assistance than do whites.

Quantitative- (Demographics, Utilization, Availability, Disparity)

General Demographics

The general demographic picture of Jackson Mississippi is shaped by a White population which has increased in number, but decreased as a percentage of the total population from 1980-1990; a Black population which has increased in overall numbers and as a percentage of the population; an Asian population which has increased by 126.63% from 1980-1990; and, what has been deemed a

category of racial "Others" whose population has declined to make up only .10 of population by 1990.

White and Asian families possess similar financial structures, including similar median incomes of \$34,053 and \$32,015 respectively and similarly. Not surprisingly, they similarly receive the majority of their income from wages and salaries, social security, and public assistance, as well as from interest, dividends and rental income. Black and American Indian families round out the bottom of the spectrum with household median incomes of \$16,086 and \$15,500 respectively, with the majority of income in Black households coming from wages, salaries, social security, and public assistance. The families in this study who did not identify with a particular ethnic or racial classification represent the true "middle class" with a median income of \$21,249, subsequently deriving this income from wages and salaries, interest, dividends and rent

General Business Demographics

Jackson, Mississippi is home to 757 minority and women business enterprises that specialize in construction. This number represents 26.07% of the total construction industry. African-American firms are the most numerous of the minority firms numbering at 509 and 17.72%. 13.40% of Black firms have paid employees. There are 229 women-owned firms representing 7.97% of the construction firm population, with 14.46% of these firms having paid employees. The 19 "Other" firms represent .66% of the total population.

The demographics above infer an interesting trend when coupled with sales receipt information for minority firms within construction. The revenue of African-American firms during the studied period was only 5.34% of the total construction revenue, in comparison to the sales of Women-owned firms' which were in excess of \$99,930 annually, accounting for 26.36% of total construction revenue. The "Other" firms recorded \$1,357 in annual receipts representing .36% of total construction revenue.

Hence, the market disparity ratios below (the ratio of availability to utilization of firms) give statistical credence to a picture of overall inequity that comes more clearly into focus as our summary progresses:

- M/WBE : .81
- Black: 3.32
- Hispanic: N/A
- Women: .30
- Other: 1.83

Please note that market disparity ratios differ from market disparity indices. The disparity index is One (1) divided by the Disparity Ratio (1/Disparity Ratio), denoting an inverse relationship. Thus, the figures above reflect the availability of firms versus their utilization.

When our firm studied the availability of minority enterprises (using calculated estimates) within Jackson, we learned that Black Male firms, Hispanic firms and White Female firms are available within the construction industry by an estimate of 20.23, 0.00, and 9.52 percent respectively. Native American firms were not estimated to be available within the construction market. White Male firms were estimated to be available at a rate of 70.25 percent.

Within the Services category, Black Male firms are available at a rate of 6.86, Hispanic firms at a rate of 0.00 percent, Asian firms at a rate of 0.00 percent, and White Female Business Enterprise firms at a rate of 1.96%. White Male firms dominate this category with an availability estimate of 91.17%.

In contrast to availability, the procurement, or participation of minority firms in a particular industry is dependant upon the revenue dollars which are generated in a given fiscal period by a business enterprise. Overall, 8.17% of total construction dollars and 10.47% of Professional Services revenue was received by minority firms within the five-year period studied by this firm. Additionally, 17.08% of Procurement dollars in Services as well as 3.61% of Procurement in Commodities were garnered by minority firms.

Our investigation of minority firm utilization within the construction industry reveals no distinct fiscal trend or proportionality towards the awarding of contract dollars to DBE firms during the five year period studied by this firm. In 1994, and 1995 White Female firms experienced the most utilization within Construction garnering the majority of DBE contracting dollars awarded in those years (100% in 1994 and 77% in 1995). In 1996 and 1998, Black Male firms took the lead in utilization dollars in Construction as they were awarded 74% and 76% of the utilization dollars respectively.

Those minority firms seeking contracts within the niche of Professional Services have experienced equally inconsistent patterns of contract award dollars as the construction firms above. Within this category, Hispanic firms experienced utilization at 3.83, 3.21 and 5.54 percent throughout the 1996-1998 period studied by this firm. Conversely, African American female firms were utilized only once during this period in 1998 at 1.78% of the total award dollars. African American Male firms consistently possessed the majority of the total DBE contracting dollars throughout the period studied by this firm. Asian firms appeared during the years of 1994, 1997 and 1998 to win .26, 1.10, and 4.76 percent of the DBE contract award dollars awarded in those years,

The statistics gathered by these consultants for the Services industry within Jackson reveals that, besides marginal participation by White Female firms in 1994, 1995, 1997, and 1998, African American Male firms dominated the DBE share of award dollars. These firms garnered over 90% of the award dollars in every year studied by this firm.

The distribution of DBE award dollars in the Commodities category was more evenly spread between African American Male firms and White Female firms than within the categories above. During the period studied by this firm, There was no participation in the Commodities industry by Asian, Hispanic or Black Female firms, nor was there any evidence of participation from firms classified as "Other." Between 1993 and 1995 and subsequently in 1998, White

Female firms were awarded the majority of contract dollars, while Black Male firms were awarded the majority of contract dollars in 1997 solely.

The summary discussion thus far serves as an iteration of the statistical disparity between utilization and availability of minority firms found within each category of municipal contracting. Disparities in each of the following categories were calculated to exist:

Construction:

- Overall, DBE firms were underutilized four years out of the period studied by this firm. Individually, African American Male firms were underutilized in 1997 with a disparity index of .09, and White Female firms were under-utilized in 1998 as demonstrated by their disparity index of .27.

Services

With the exception of the years 1993 and 1996, in which there existed no disparity for White Female firms, the disparity indices for each year studied, within the categories of African American Male and White Female firms reveal that there was a significant under-utilization of these firms.

Professional Services

- The overall disparity between availability and usage of DBE firms is an indice of .34 over period studied by this firm, which demonstrates a significant under-utilization of these firms.
- It is interesting to note that individually, none of the firms within each category experienced under-utilization singularly, but in the aggregate, there exists under-utilization in every year studied.

Commodities

- Disadvantaged Business Enterprises aggregate disparity index approximates that these businesses experienced significant under-utilization, overall, during the period of 1993-1998.

Summary

Upon examining the Jackson Municipal Airport Authority's record of contract award dollars (fiscal year 88 through fiscal year 97), our research team found disparities between utilization and availability of Disadvantaged Business Enterprises. We discovered these disparities not only in reference to total DBE utilization and availability, but also within all the major racial and ethnic minorities that were studied (African American, Asian, Hispanic, Native American and White Women). **Our research team has included sample charted versions of these findings on the next 4 pages.** A final conclusion should not be based on these findings separately, but should take into account findings in other chapters of the study.

The significance of these charts lies in their ability to provide a more visual interpretation of the disparity issue. Selected from the information contained in Tables 21 (Disparity Indices for DBEs in Construction), 22 (Disparity Indices for DBEs in Professional Services), 23 (Disparity Indices for DBEs in Services), and 24 (Disparity Indices for DBEs in Commodities), these charts cover the period of study, for each type of minority service provider, in each of the exemplified procurement categories. We designed these particular charts with the disparity index of 1 (Y axis) representing the point of reference for our analysis. From prior discussions about the disparity index, it is easy to infer from the graph that values below the Index 1 reference point represent an under-utilization of a particular group of firms at a particular juncture. Values above the Index 1 reference point represent an over-utilization of a particular group of firms at a particular juncture. It is important to note during this analysis that not all issues of over, or under-utilization are viewed as statistically significant or problematic. However, most of the instances of under-utilization studied by this firm have been deemed statistically significant by our statisticians, as well as under the legal precedents guiding this study.

Charted Disparity- JMAA Construction (Table 21)

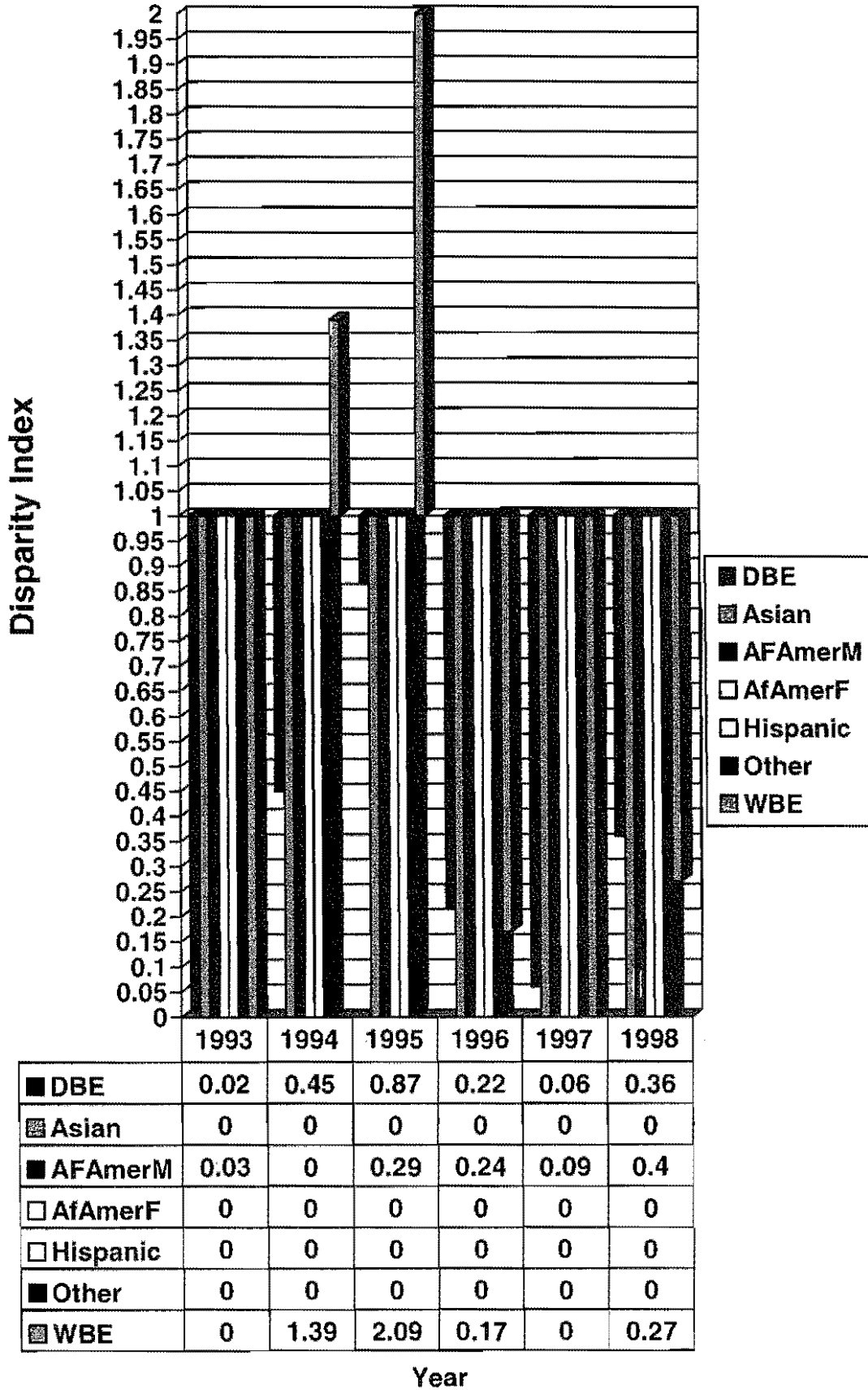


Figure 1

Chartered Disparity- JMAA Professional Services (Table 22)

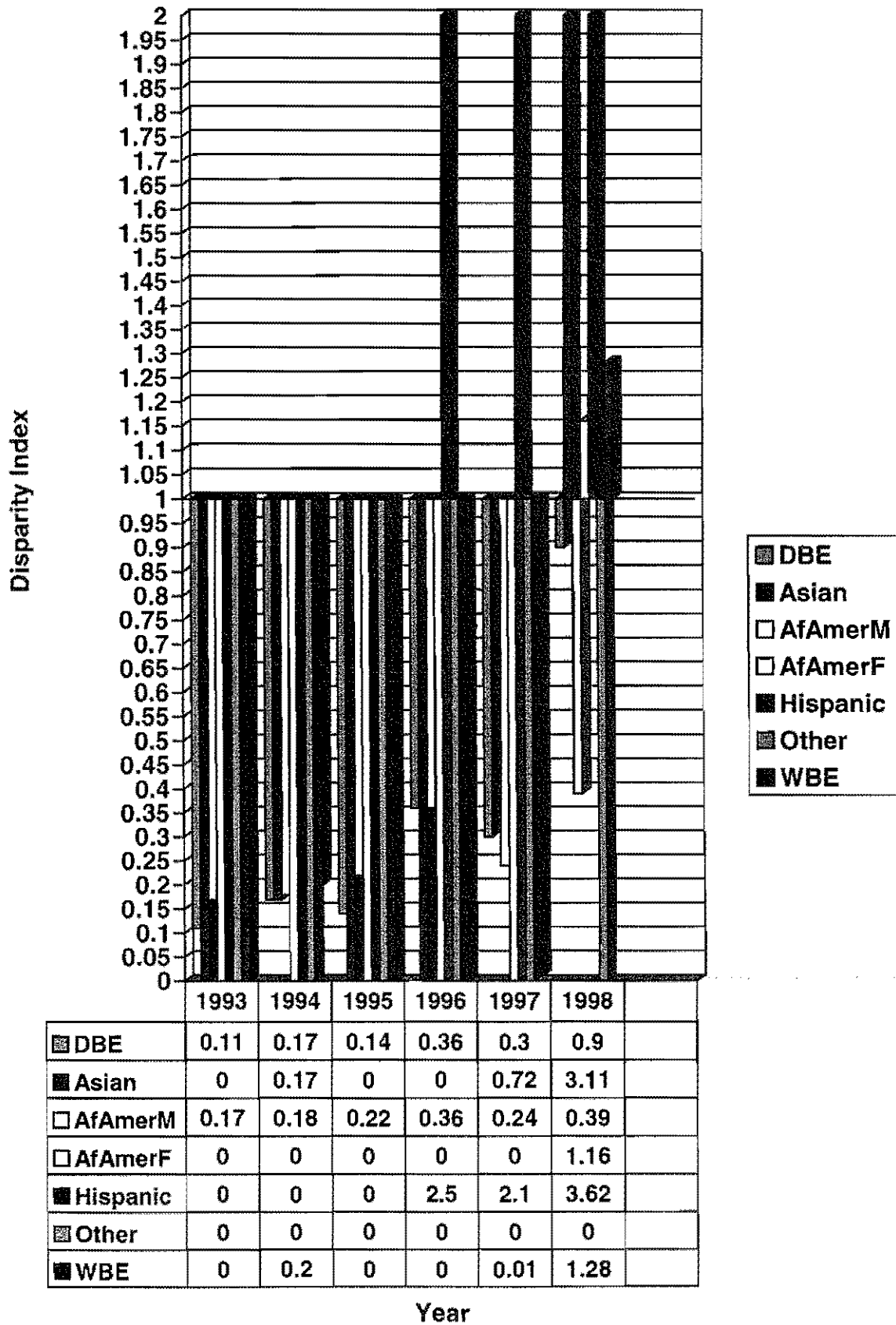
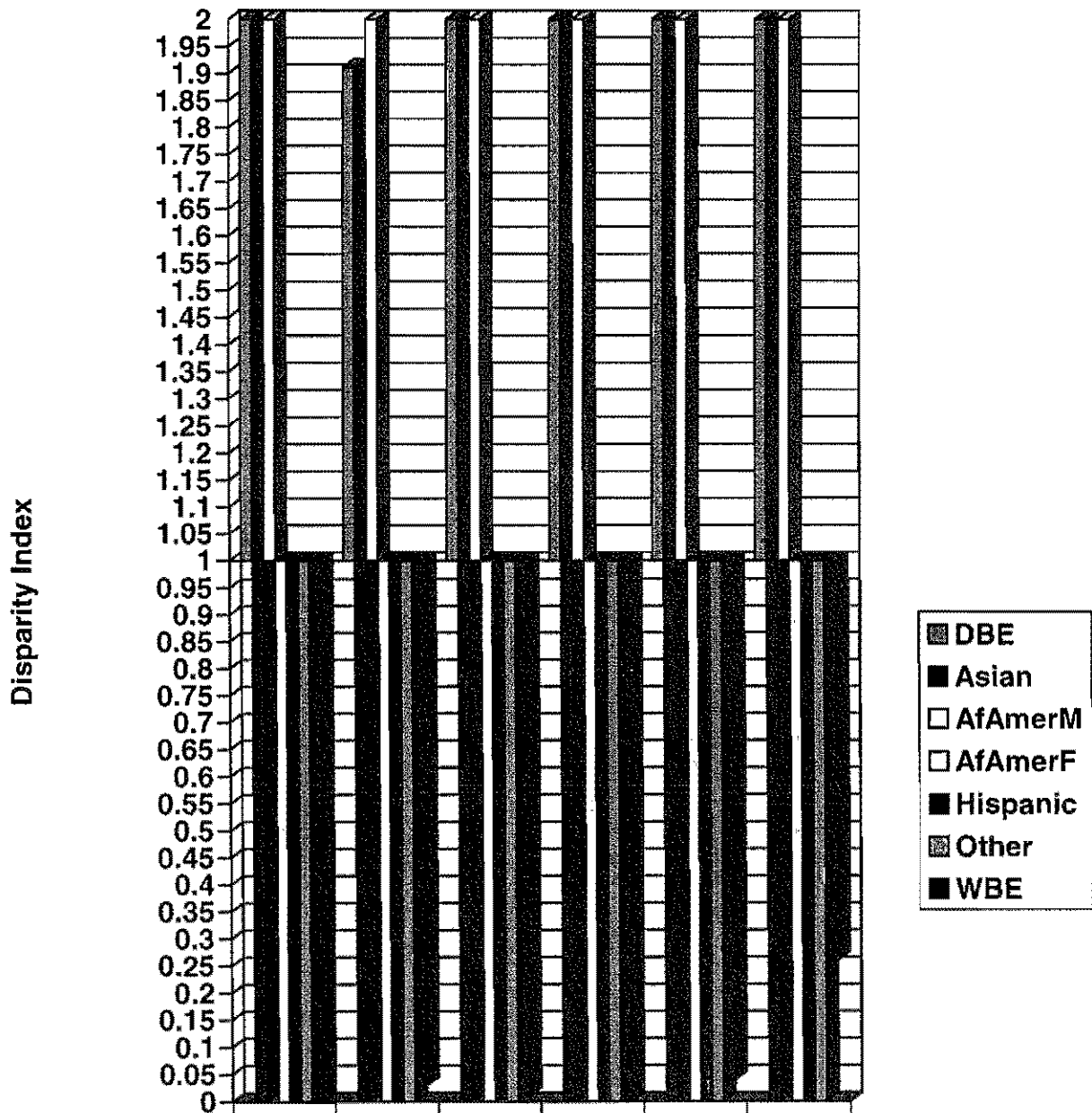


Figure 2

**Charted Disparity- JMAA Services
(Table 23)**



	1993	1994	1995	1996	1997	1998
▨ DBE	2.14	1.91	2.15	3.26	2.87	4.34
■ Asian	0	0	0	0	0	0
□ AfAmerM	2.76	2.45	2.76	4.19	3.68	5.51
□ AfAmerF	0	0	0	0	0	0
■ Hispanic	0	0	0	0	0	0
▨ Other	0	0	0	0	0	0
■ WBE	0	0.03	0.01	0	0.04	0.26

Year

Figure 3

Chartered Disparity- JMAA Commodities (Table 24)

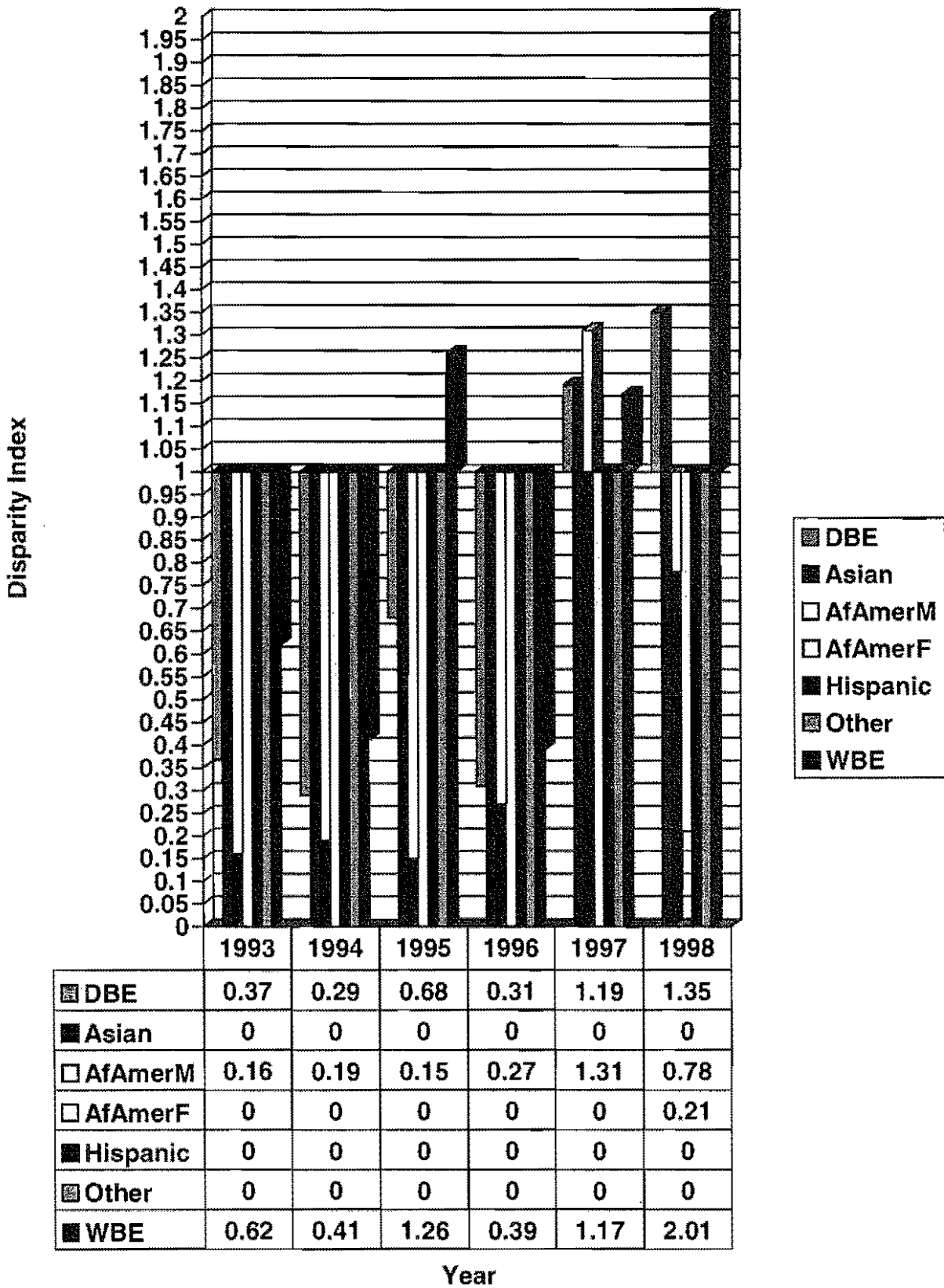


Figure 4

ANALYSIS OF QUALITATIVE EVIDENCE OF DISCRIMINATION:

Survey Data

Survey Summary: Minority And Women-Owned Businesses

In order to provide additional insights to the findings of the Jackson MS MSA economic profile, the statistical analysis of the utilization and availability of DBE firms, as well as to the anecdotal analysis, Griffin & Strong, P.C. administered a market survey to 170 certified firms. The purpose of this survey was to develop a profile of the pool of Disadvantaged Business Enterprises which operate from within the Jackson MSA. We examined and compared key characteristics of DBE firms' business operations. It consisted of thirty two questions covering the subjects:

- The age and education level of the principal owner
- The ethnicity of the owner
- Race and gender of the principal owner
- The general products and services offered
- The year of ownership of business
- The legal form of the business
- The number of employees both full time and part time
- The 1997 gross revenues or receipts
- Information regarding conditions in the awarding of contracts to M/WBEs by the Jackson Municipal Airport Authority, MS; District.

The following is a synopsis of the survey responses:

- 73 firms responded in the Jackson, Miss. MSA
- 75% of the respondents were owners of African-American firms, while 20.55% of survey respondents represented Women-owned businesses. Asian, Hispanic, and Native American business owners responded at a rate of 1.37% each.

- 23% of the firms primarily conducted business within construction
- 41% of the firms surveyed provide professional services
- the manufacturing and non-professional services industry was represented by 4.11 of the survey population
- The majority of respondents possessed college degrees, with 38.36% of the total responding population possessing graduate or professional degrees
- 32% of respondents felt as though their efforts to obtain contracts from the City were perpetually unsuccessful
- 10% of responding firms responded that it usually requires 3 to five bids before obtaining a contract for the Jackson Municipal Airport Authority
- Interestingly, 80% of White female respondents stated that they submit one to two bids to obtain a contract with the City.
- 38% of the responding firms believe that they have experienced discrimination as they attempted to obtain financing within the Jackson, Miss. MSA.
- 27% of African-American respondents strongly agreed that their firms have experienced discrimination in the pursuit of financing.

ANALYSIS OF QUALITATIVE EVIDENCE OF DISCRIMINATION:

Anecdotal Evidence of Discrimination in Jackson

The contents of this section constitute a categorized summary of anecdotal evidence of contemporary discrimination which exists in the Jackson Municipal Airport Authority. The anecdotal evidence summarized here is intended to identify the factors that appear to be affecting the formation, development, availability and participation of DBEs within the Jackson Municipal Airport Authority.

These reported allegations should only be viewed in their totality as reflections of general patterns of marketplace discrimination. Such allegations should neither be relied upon nor acted upon on an individual basis. Rather, they should be viewed in the context of quantitative disparities in assessing whether more than just a few isolated allegations of such discrimination are likely to be valid.

The framework for the collection and analysis of anecdotal evidence in this study is pursuant to the Supreme Court's decision in City of Richmond v. J. A. Croson Co., 488 U.S. 469 (1989), as well as in compliance with subsequent legal decisions.

Methodology

The collection, organization, and preparation of the anecdotal accounts reported herein were culled from several confidential interviews with persons from the Jackson Municipal Airport Authority and/or within the Jackson marketplace. These interviews included over thirty nine (39) DBE contractors, public officials, and related business persons, and each was conducted by this firm in furtherance of the objectives of this study.

Findings

Information taken from a combination of interviews and market surveys infers several common denominators within the general framework of discrimination towards minority business owners in the Jackson, Miss MSA:

- Double Standards in work appraisal
- Discrimination in Bonding
- Discrimination in Financing
- Discrimination in Payments
- Nonspecific criteria for the City's certification process
- Lack of Access to Contracts
- Unnecessarily Restrictive Specifications
- "Stereotypical Attitudes"
- Discrimination in Previous Related Employment
- Denials of Opportunities to Bid
- Bid Shopping
- Bid Manipulation
- Exclusion for the "Good Old Boy" Network
- Unfair Denial of Contract Awards
- Discrimination by End Users
- Discrimination by Suppliers
- Use of Front Companies
- Government Resistance to M/WBE participation
- Unequal Access to Financing
- Unequal Access to Bonding

ACADEMIC/ SOCIAL SCIENCE RESEARCH

To round out our investigation into the aggregate claims of discrimination by business owners in Jackson, we have also included findings from social science research in this field. Mary Rowe's work in subtle discrimination academically states the relevance and pervasiveness of this phenomenon as it relates to the hindrance of minorities in the American workforce.

She explains Microinequities as those nebulous events that exert their influence by "walling out the different person" and making the person of difference less effective. Additionally, when faced with a situation that could be construed as a microaggression, the potential victim could be uncertain about the motives of the said aggressor, therefore causing a paranoia or unwillingness to "make a mountain out of a molehill." Lastly, Rowe deems microinequity or subtle discrimination as quietly persistent because the personal characteristics (i.e. race, sex, religion) of the target of this behavior cannot be changed.

We also referred to Anthony Robinson's article "The Business of Affirmative Action," which theorizes the many advantages and multiplier effects involved in supporting and advancing traditionally disadvantaged minority enterprise. The several components of this theory are:

- Minority business opportunity programs improve the intransigent problems of unemployment and underemployment among minority communities;
- Creating minority business in urban areas directs the flow of commerce to underutilized segments of the population;
- Federal contract opportunities buttress minority businesses;
- Entrance of minority business into the market enhances overall competition.

CONCLUSIONS AND RECOMMENDATIONS

We, the research team at Griffin & Strong, P.C., feel compelled to conclude that the aggregate sections of this study demonstrate exhaustive and compelling statistical, anecdotal and marketplace evidence of discrimination against minority and women-owned firms in Jackson, Mississippi. In light of this conclusion and the aforementioned phenomenon that serves as its scaffolding, we suggest that a sufficient factual predicate exists for remedial action by the Jackson Municipal Airport Authority. This action should be taken on behalf of minority and women-owned firms within the construction, professional services, services and commodities industries.

Race and Gender-Neutral Measures to Redress Discrimination

Race and gender-neutral measures refer to those remedies that might be extended to all business, or small business in particular, that would address certain exclusionary aspects of a jurisdiction's purchasing and contracting process or barriers within the marketplace as a whole. Examples include reducing bonding or insurance requirements for all firms, or more widely advertising opportunities to bid. Neutral measures also include initiating efforts to assist all small business through general economic development efforts. Outreach efforts to educate small businesses on how to execute commerce with local governments would apply as well. In each of these examples, the jurisdiction would extend no explicit preference or benefit to MWBE firms, thus excluding majority-owned firms.

To be effective, race and gender-neutral remedies must address the particular disadvantages which businesses face in commercial activity with a jurisdiction. For this analysis, race and gender-neutral disadvantages are grouped into the five categories listed below.

Race and Gender-Neutral Disadvantages

1. **Lack of information about bid opportunities and the bidding process.**
Small or newly formed firms might not be aware of procurement opportunities with the Jackson Municipal Airport Authority.
2. **Unnecessarily restrictive contract specifications.**
Because of strict product specifications, lack of manufacturer distributorships for certain products and lack of consideration of alternative products, certain firms might not be able to respond to bids.
3. **Slow payment of vendors, contractors and/or subcontractors.**
Slow payment of invoices by the Jackson Municipal Airport Authority, or by prime contractors, creates working capital problems for many small firms which can lead to difficulty in obtaining bonding and financing.
4. **Difficulty obtaining financing, bonding and insurance.**
Bonding and insurance requirements are a barrier for smaller or newly formed businesses, especially on construction contracts. Also, certain firms might not have the necessary financing to maintain operations or expand their business if their finances are stretched on a large public sector project.
5. **Lack of experience or skills in critical areas.**
Small firms, although they are often technically sound, sometimes lack basic business or other skills that enable them to remain viable in the long term. For example, there are some small subcontractors who might be technically competent but may be weak in estimating and scheduling due to a lack of time and resources to gain training in these critical skills.

The researchers conducting this study have found evidence of each of the above barriers, all of which are important in understanding the under-utilization of DBEs by the Jackson Municipal Airport Authority.

In sum, and in light of the information and evidence reviewed in the previous pages, it is our recommendation that the Jackson Municipal Airport Authority implement a broad range of race and gender-neutral initiatives guided by the new version of the Federal Aviation Regulations which address the aforementioned issues. However, the Griffin & Strong team concludes that they alone will not be sufficient to fully remedy the effects of past and present discrimination by this entity. Therefore, a basis exists for the JMAA to consider narrowly tailored race and gender-based remedies.

Realistically, DBEs must strive to grow and develop within the private marketplace. Only through private sales can minority and women-owned firms as

a whole become competitive with majority-owned firms. Therefore, we recommend a multi-dimensional affirmative action strategy, narrowly targeting the programs to provide maximum assistance to DBE firms.

Finally, the courts are clear on the need for ongoing review of affirmative action programs. Effective monitoring and review of M/WBE efforts will be required of the Jackson Municipal Airport Authority in order to maintain legally defensible programs.

The consulting team of Griffin & Strong, P.C. has designed the following recommendations from data contained within the most recent version of the Federal Aviation Regulations concerning the participation of Minority, Women and Disadvantaged Business Enterprise firms in Department of Transportation Financial Assistance Programs. The following recommendations are not meant to be exhaustive or completely encompassing of possible measures to redress discrimination within these programs, but are driven by Federal regulations which dictate all of the facets of contract compliance in this area.

We would like to place special emphasis on our recommendation that even though the Airport Authority is mandated to participate in these types of programs through its receipt of Federal Funding, this entity should adopt a Minority, Women, and DBE program for *all* of its purchasing and contracting. These types of programs should be implemented without regard to the existence of federal funding.

It is important for us to note that the recommendations of the Federal Aviation Commission very closely mirror our Individual conception of a "better" approach to Minority, Women and DBE programs: goal-setting based on singular projects and Flexibility coupled with heightened discretion by administering authorities.

General Recommendations and Clarification of DOT Regulations and Objectives

Objectives

The objectives of the most recent DOT federal aviation regulations concerning DOT-assisted contracts for DBE's are:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;*
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;*
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;*
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;*
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;*
- (f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and*
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.*

Applicable Parties

If the JMAA is a recipient of any of the following types of lands, the rules and regulations of the DOT concerning DBE participation applies:

- Federal-aid highway lands authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991
- Federal transit funds authorized by Titles I, III, V and VI of ISTEA
- Airport funds authorized by 49 U.S.C. 47101, et seq

Terms

- Refer to Appendix II under the Federal Aviation Regulations for a description of the terms that are employed within this discourse

Prohibited Discriminatory Actions

As established by the regulations of the DOT:

- *The JMAA must never exclude any person from participation in, deny any person the benefits of; or otherwise discriminate in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.*
- *In administering the JMAA DBE program, this Authority must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the*

effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

Departmental Issuance of Guidance and Interpretation

- *The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid and binding, and constitute the official position of the Department of Transportation, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:*

"The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26."

Records to be retained and reported

As a participating entity in this program, the JMAA must continue to provide data about its DBE program to the Department as directed by DOT operating administrations. The JMAA must create and maintain a bidder list, consisting of all firms bidding on prime contracts and bidding or quoting subcontracts on DOT-assisted projects. For every firm, the following information must be included:

- (1) Firm name;
- (2) Firm address;
- (3) Firm's status as a DBE or non-DBE;
- (4) The age of the firm; and
- (5) The annual gross receipts of the firm.

Mutual Assurances between recipients and contractors

(a) For every financial assistance agreement the JMAA signs with a DOT operating administration (or a primary recipient) the following assurance should be included:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

(b) Each contract the JMAA signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) should include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color,

national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Application Procedures for Exemptions and Waivers

The JMAA is eligible to apply for an exemption from any provision of this part. To apply, the JMAA must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances,

The JMAA can apply for a waiver of any provision of *Subpart B or C* (Reference to the format of the Federal Aviation Regulations included in Appendix II) of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers, as advised by the Department of Transportation, are for the purpose of authorizing the JMAA to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

- (1) You must apply through the concerned operating administration.*
 - (2) Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.*
- The JMAA application should demonstrate that--
 - (i) There is a reasonable basis to conclude that it could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;
 - (ii) Conditions in its jurisdiction are appropriate for implementing the proposal;
 - (iii) This proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and
 - (iv) This proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.
 - If the Secretary grants approval for this application, the JMAA may administer its DBE program as provided in the proposal, subject to the following conditions:
 1. DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in Sec. 26.49;
 2. JMAA's application must demonstrate that--
 - *There is a reasonable basis to conclude that it could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;*
 - *Conditions in its jurisdiction are appropriate for implementing the proposal;*

- *This particular JMAA proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and*
- *This proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.*

Administrative Requirements for DBE Programs for Federally-Assisted Contracting

Requirements for Policy Statements

It is recommended that the JMAA issue a signed and dated policy statement that expresses its commitment to the DBE program, stating its objectives, and outlining responsibilities for its implementation. The JMAA must circulate the statement throughout the organization and to the DBE and non-DBE business communities that perform work on DOT-assisted contracts.

Requirements for a Liaison Officer

The JMAA must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of the DBE program, and should be assigned adequate staff to administer the program in compliance with this part.

Recipient relationship to DBE financial institutions

In compliance with the DOT Federal Aviation Regulations, the JMAA must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its community and make reasonable efforts to use these institutions. The Airport Authority must also encourage prime contractors to use such institutions.

Recipient prompt payment mechanisms

It is also recommended that the JMAA establish, as part of its DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than a specific number of days from receipt of each payment you make to the prime contractor. This clause must also require the prompt return of retainage payments from the prime contractor to the subcontractor within a specific number of days after the subcontractor's work is satisfactorily completed.

Requirements pertaining to the DBE directory

The DOT recommends that the JMAA maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in its program. In the listing for each firm, the JMAA must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. The JMAA must revise this directory at least annually and make

updated information available to contractors and the public on request.

Addressing over concentration of DBEs in certain fields

If the JMAA determines that there is a group of DBE firms that are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, it must devise appropriate measures to address this overconcentration. Methods that could possibly be employed are the following:

- Incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures which could include varying JMAA's use of contract goals, to the extent that non-DBEs are not unfairly prevented from competing for subcontracts.

Role of business development and mentor-protégé programs in the DBE program
(Excerpted from the DOT Federal Aviation Regulations):

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) You may establish a "mentor-protégé" program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

Your mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE

program.

Recipient responsibilities for monitoring the performance of other program participants

Appropriate mechanisms should be implemented to ensure compliance by all program participants through the application of legal and contract remedies available under Federal, state and local law. These mechanisms must be set forth in the JMAA DBE program.

JMAA's DBE program must also include a monitoring and enforcement mechanism to verify that the work committed to DBEs at contract award is actually performed by the DBEs. This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms) and include a provision ensuring that DBE participation is credited toward overall or contract goals only when payments are actually made to DBE firms.

Goals, Good Faith Efforts, and Counting

Role of the statutory 10 percent goal

- As stipulated by the DOT, not less than 10 percent of the authorized funds are to be expended with DBEs. This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts. The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

Recipient use of set-asides or quotas as part of this program

The JMAA is not permitted to use quotas or set-aside contracts for DBE participation in DOT-assisted contracts.

Recipient setting of overall goals

(Excerpted from the DOT Federal Aviation Regulations)

- You must set an overall goal for DBE participation in your DOT-assisted contracts.
 - Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts Hereafter, the "relative availability of DBEs¹¹). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.
1. Step 1. You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward

determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

- Use DBE Directories and Census Bureau Data. Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same SIC codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcdlcbp/viewlcbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.
 - Use a bidders list. Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.
 - Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study.
 - Use the goal of another DOT recipient. If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.
 - Alternative methods: Subject to the approval of the DOT operating administration, you may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.
2. Step 2. Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.
- There are many types of evidence that must be considered when adjusting the base figure. These include:
 - (i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;
 - (ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and
 - (iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program

- You may also consider available evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:
 - (i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;
 - (ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.
- If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.
- Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:
 - (1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming fiscal year;
 - (2) If you are an FTA or FAA recipient, as a percentage of all J-TA or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the forthcoming fiscal year. In appropriate cases, the FTA or FAA Administrator may permit you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects.
- If you set overall goals on a fiscal year basis, you must submit them to the applicable DOT operating administration for review on August 1 of each year, unless the Administrator of the concerned operating administration establishes a different submission date.
- If you are an FTA or FAA recipient and set your overall goal on a project or grant basis, you must submit the goal for review at a time determined by the FTA or FAA Administrator.
- You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see Sec. 26.51(c)).
- You are not required to obtain prior operating administration concurrence with the your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the

operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

- If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:
 - (i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and
 - (ii) Avoid imposing undue burdens on non-DBEs.
- In establishing an overall goal, you must provide for public participation. This public participation must include:
 - (1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.
 - (2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority-focused media and trade association publications.
- Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

Recipient means to meet overall goals

The JMAA must meet the maximum feasible portion of its overall goal by using **race-neutral** means of facilitating DBE participation. Race-neutral DBE participation includes any instance in which a DBE wins a prime contract, through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal. Even if there is a DBE goal, this subcontractor wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

Race-Neutral Means include, but are not limited to, the following:

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might

otherwise perform with their own forces);

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

Each instance the JMAA submits its overall goal for review by the concerned operating administration, it must also submit its projection of the portion of the goal that it expects to meet through race-neutral means and the basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of JMAA's overall goal. Contract goals must be established to meet any portion of the overall goal JMAA does not project being able to meet using race-neutral means.

The following provisions apply to the use of contract goals:

- (1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.*
- (2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the*

availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

- (3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.*
- (4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.*

According to DOT regulations, to ensure that the JMAA DBE program continues to be narrowly tailored to overcome the effects of discrimination, it must adjust its use of contract goals as follows:

- (1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year.

Example Your overall goal for Year I is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year I.

- (2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

- (3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example: Your overall goal for Years I and Year II is 10 percent. The DBE participation you

obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example: In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (i.e., from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two consecutive years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration.

Good Faith Efforts and Procedures for Contract Goals

When the JMAA has established a DBE contract goal, it must award the contract only to a bidder/offeror who makes good faith efforts to meet it. When determining that a bidder/offeror has made good faith efforts if the bidder/ offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or
(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, the JMAA must not deny award of the contract on the basis that the bidder or offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidden offeror's good faith efforts.

- In its solicitations for DOT-assisted contracts for which a contract goal has been established, it is recommended that the JMAA require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders/offerors will be required to submit the following information to the recipient:

- (i) *The names and addresses of DBE firms that will participate in the contract;*

- (ii) A description of the work that each DBE will perform; (iii) The dollar amount of the participation of each DBE firm participating;*
- (iii) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;*
- (iv) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and*
- (v) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and*

- It is also strongly recommended that the JMAA ensures that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidden offeror.

If the JMAA determines that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, it must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration. As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. JMAA's decision on reconsideration must be made by an official who did not take part in the original determination that the bidden offeror failed to meet the goal or make adequate good faith efforts to do so.

Additionally, The bidder/offeror must have the opportunity to meet in person with a JMAA reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. Thus, officials from the JMAA must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

- The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Certification Standards

For information concerning:

- Allocation of Burdens of Proof in the certification process
- Rules governing group membership determinations
- Rules governing business size determinations
- Rules governing determinations of social and economic disadvantage
- Rules governing determinations of ownership
- Rules governing determinations concerning control
- Other rules affecting certification

Refer to the Attached Appendix II- DOT's Participation by Disadvantaged Business Enterprises

in Department of Transportation Financial Assistance Programs

Certification Procedures

For information concerning:

- Requirements for Unified Certification Programs
- Rules governing recipients' denials of initial requests for certification
- Procedures used by recipient to remove eligibility from DBE
- Process for certification appeals to the Department of Transportation
- Recipient process following DOT certification appeal decisions

Refer to the Attached Appendix II- DOT's Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs

Procedures for Making Certification Decisions

The JMAA must ensure that only firms certified as eligible DBEs under this section participate as DBEs in its program. It is recommended that the JMAA take all the following steps in determining whether a DBE firm meets the standards of eligibility:

(1) Perform an on-site visit to the offices of the firm. The principal officers of the firm must be interviewed and their resumes and/or work histories must be reviewed as well. JMAA officials must also perform an on-site visit to job sites if there are such sites at which the firm is working at the time of the eligibility investigation in the relevant jurisdiction or local area. The JMAA may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including contracts it has received and work it has completed;

(5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

(6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(7) Require potential DBEs to complete and submit an appropriate application form.

- The JMAA must ensure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.
- JMAA must review all information on the form prior to making a decision about the eligibility of the firm.
- When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information the JMAA has obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), JMAA officials must promptly make the information available to the other recipient.
- When another DOT recipient has certified a firm, JMAA officials, under the direction of DOT regulations, have the discretion to take any of the following actions:
 - (1) Certify the firm in reliance on the certification decision of the other recipient;
 - (3) Make an independent certification decision based on documentation provided by the other recipient, augmented by any additional information JMAA requires the applicant to provide; or
 - (4) Require the applicant to go through a JMAA application process without regard to the action of the other recipient.
- Subject to the approval of the concerned operating administration as part of the JMAA DBE program, the Authority may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.
- The DOT requires that the JMAA safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.
- Once the JMAA has certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of Sec. 26.87 (reference the DOT Regulations in Appendix II). The JMAA may not require DBEs to reapply for certification as a condition of continuing participation in the program during this three-year period, unless the factual basis on which the certification was made changes.

The Role of the DBE Firm-

The DBE firm must provide to the JMAA, every year on the anniversary of the date of its certification, an affidavit sworn to by the firm's owners. This affidavit must be sworn before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part, or any material changes in the information provided in its application form, except for

changes about which it has notified the recipient.

The affidavit shall specifically affirm that this firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of this firm's size and gross receipts. If a DBE firm fails to provide this affidavit in a timely manner, it will be deemed to have failed to cooperate under Sec. 26.109(c).

Role of the JMAA

The JMAA must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. The Airport Authority may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. The JMAA may also establish a different time frame in its DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. JMAA's failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to the DOT.

Subpart F--Compliance and Enforcement

For information concerning:

- Applicable Compliance procedures for recipients
- Enforcement actions applicable to FHWA and FTA programs
- Enforcement actions applicable to FAA Programs
- Enforcement actions applicable to firms participating in the DBE program
- Rules governing information, confidentiality, cooperation, and intimidation or retaliation

Refer to the Attached Appendix II- DOT's Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs

For additional Guidance concerning

- Good Faith Efforts refer to Appendix A to part 26 within Appendix II
- DBE Business Development Program Guidelines refer to Appendix C to part 26 within Appendix II
- Mentor-Protege Program refer to Appendix D to part 26 within Appendix II
- Individual Determinations of Social and Economic Disadvantage refer to Appendix E to part 26 within Appendix II

