

**solid waste
authority
of palm
beach
disparity
study**

Study Findings

Eleanor Mason Ramsey, Ph.D.

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Mason Tillman Associates

- Established in 1978
- Public Policy Research and Marketing Professionals

Award-Winning Company

- Equity Service Division
 - Business Affirmative Action
 - Corporate Communication



Project Manager Profile

Eleanor Mason Ramsey, Ph.D.

- Doctorate degree from University of California, Berkeley
- **Federally certified disparity study expert witness**
 - 5th and 7th circuits
 - Served on litigation team for three agencies
- Instrumental in creating Mason Tillman's *Croson* study methodology
 - Managed 136 **unchallenged** disparity studies
- Evaluates and designs **constitutionally sound** M/WBE, DBE, and SBE programs nationwide
- More than **30 years of experience** in core supplier diversity and inclusion services



Distinguishing Qualifications

- Disparity study industry pioneers and influencers
 - **Only disparity study consultant without a legal challenge**
 - Performed nation's second study commissioned in 1990
 - Most experienced **core staff** in the industry
 - Methodology approved by two federal circuit courts
 - Governments' preferred consultant

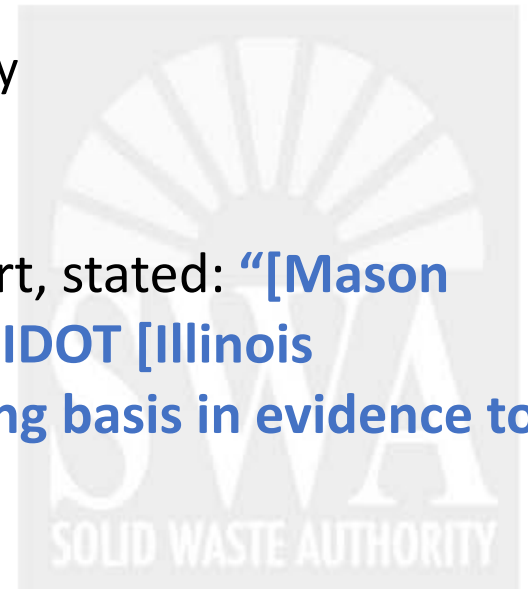


Mason Tillman Court-Approved Method

- *Kossman Contracting Co. v. City of Houston*
 - Retained to perform post-enactment study
- *Midwest Fence Corporation v. Illinois Department of Transportation*
 - Retained to perform post-enactment study
 - Retained as expert witness



Honorable Judge Hamilton, 7th Circuit Court, stated: “[Mason Tillman’s disparity study] helps show that IDOT [Illinois Department of Transportation] had a strong basis in evidence to adopt its program.”



Legal Standard

Croson and Its Progeny



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Croson Standard

State/Local

*Richmond v.
Croson*

Federal

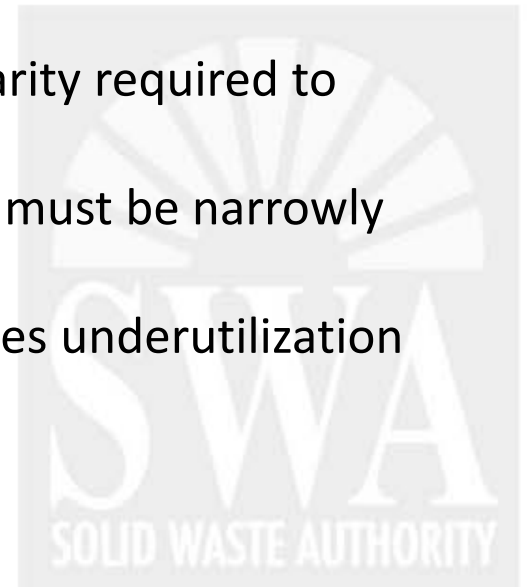
*Adarand v.
Pena*

- Compelling Interest
 - Evidence of systemic racial discrimination
- Narrowly Tailored
 - Remedy documented discrimination
- Update Periodically
 - Assess effectiveness of remedy



11th Circuit Opinions

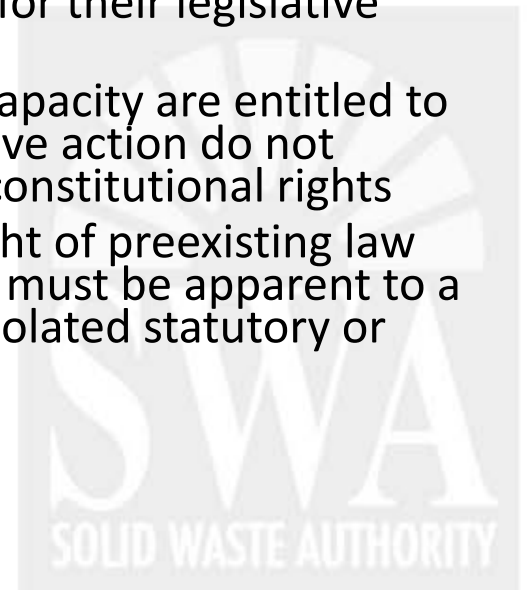
- *AGC v. State of Florida*
 - AGC argued M/WBE goals violate the 14th amendment of the U.S. Constitution
 - **11th Circuit Court disagreed**, stating that:
 - Government has compelling interest to remedy discrimination in public contracting
 - Statistically significant finding of disparity required to justify race-conscious remedies
 - Race-conscious contracting programs must be narrowly tailored
 - Gender-conscious remedy only requires underutilization



11th Circuit Opinions

- *Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, Florida*

- Hershell Gill argued that the Commissioners were liable for damages
- **11th Circuit Court rejected argument:**
 - Commissioners had absolute immunity for their legislative actions
 - Commissioners in their administrative capacity are entitled to qualified immunity even if their legislative action do not violate clearly established statutory or constitutional rights
 - “Clearly established” requires that in light of preexisting law the constitutional or statutory violation must be apparent to a reasonable official, unless the actions violated statutory or constitutional rights



Study Methodology

Court-Approved Without Legal Challenge



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Approved Method

Two Federal Circuits

- Utilization analysis
 - Separate prime contract and subcontract analyses
 - Remove outliers from the analysis
- Availability analysis
 - Separate prime contractor and subcontractor analyses
 - Enumerate available contractors using government and non-government sources
 - Verify contractor willingness
 - Assess prime contractor capacity
- Disparity analysis
 - Separate prime contract and subcontract analyses
- Narrowly tailored recommendations



SWA Disparity Study Elements

- Legal framework
- Procurement analysis
- Utilization analysis
 - Prime contractor
 - Subcontractor
- Market area analysis
- Availability analysis
 - Prime contractor
 - Subcontractor
- Disparity analysis
 - Prime contractor
 - Subcontractor
- Anecdotal analysis
- Historical analysis
- Recommendations
 - Race/gender-neutral
 - Race/gender-conscious



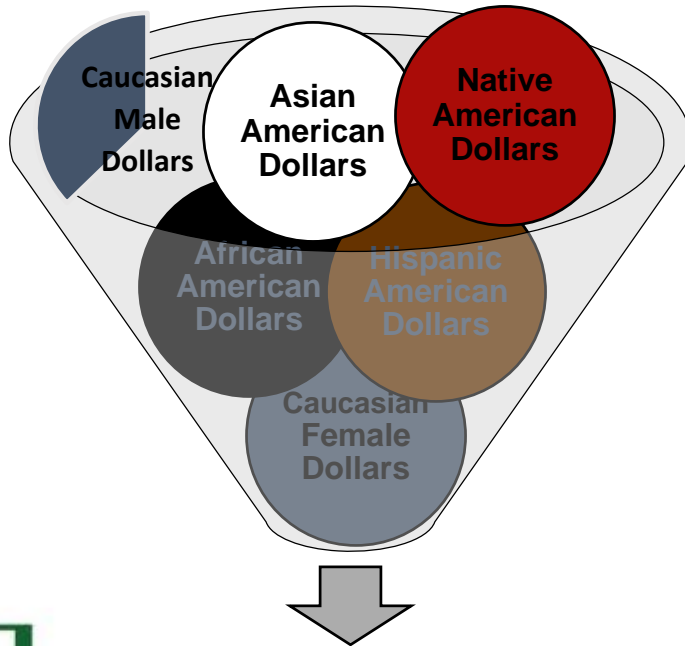
Data Cleaning Process

- Normalize contract records
- Identify and exclude
 - Payments to non-profits
 - Payments to government agencies
- Identify and recode
 - Contracts with incorrect industry
 - Payment and award discrepancies
 - Contracts with multiple prime vendors
 - Purchase orders without contract number



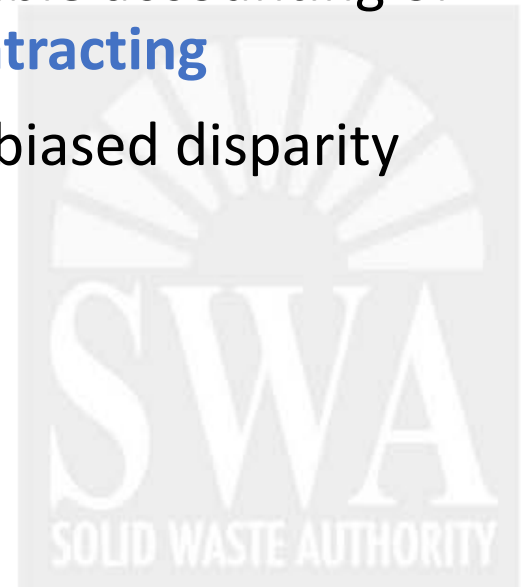
Subcontract Data

Agency Provided



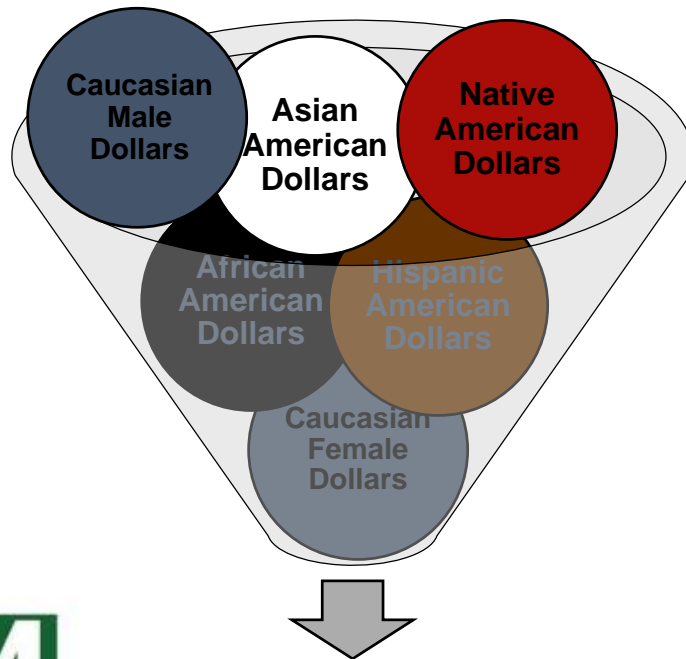
Incomplete Data

- Does not track total non-M/WBE utilization
- Undercounts non-M/WBE utilization
- Not a reliable accounting of **all subcontracting**
- Produces biased disparity findings



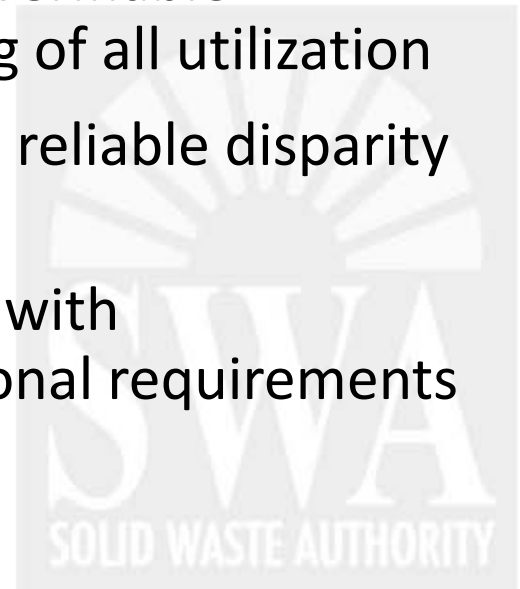
Subcontract Data

Consultant Reconstructed



Comprehensive Data

- Identifies non-M/WBE utilization
- Avoids overcount of M/WBEs
- Produces verifiable accounting of all utilization
- Generates reliable disparity analyses
- Comports with constitutional requirements



Assessment of Capacity

- Contracts
 - Review size distribution of awarded contracts
 - Identify largest contracts awarded to M/WBEs
 - Calculate prime contract size threshold to eliminate outliers from the analysis
- Contractors
 - Assess capacity-related economic factors of M/WBEs capacity compared to similarly situated non-M/WBEs



Study Findings

Study Period: FY 2009 - 2013

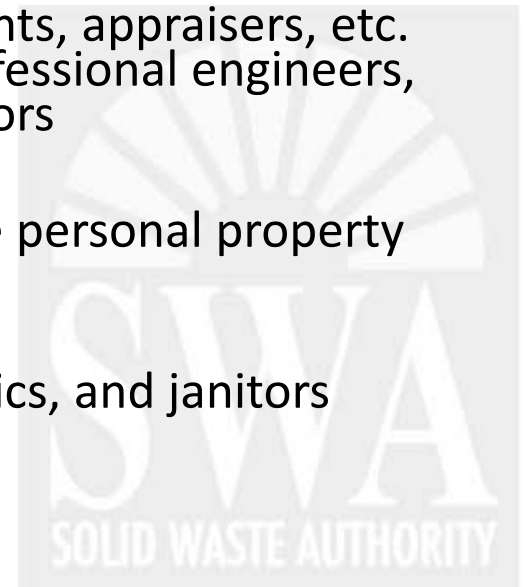


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Study Parameters

- Study period
 - October 1, 2008 to September 30, 2013 (FY 2009 – 2013)
- Industries
 - **Construction:** building, altering, improving, demolishing, repairing, or renovating a structure or building, improvements to real property
 - **Professional services:** attorneys, consultants, appraisers, etc. and services performed by architects, professional engineers, landscape architects, or registered surveyors
 - **Commodities and other services:** tangible personal property other than services or real property
 - **Trade services:** welders, printers, mechanics, and janitors



Geographic Market Area

Palm Beach County

- Court definitions of market area:
 - Extra-jurisdictional evidence – area encompassing the location of businesses that received more than 90% of the dollar value of all contracts
 - Coterminous evidence – contiguous with boundaries of the jurisdiction
 - Jurisdictional evidence – geographical boundaries of the government entity



Business Size by Employees

Businesses	Palm Beach County	State of Florida	United States
Less than 5 employees	65.98%	61.79%	54.60%
Less than 10 employees	80.60%	78.25%	73.30%
Less than 20 employees	89.96%	88.72%	86.00%
Over 100 employees	1.70%	1.95%	2.34%
Minority-owned Businesses	26.20%	44.36%	28.94%
Woman-owned Businesses	29.01%	38.69%	35.95%

Source: US Census Bureau 2013, Business Pattern and Survey of Business Owners





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Utilization

Prime Contractor



Prime Contracts Analyzed

Total Dollars	\$284,234,026
Total Prime Contracts	4,222
Total Utilized Vendors	746



Prime Contract Awards by Ethnicity/Gender

Ethnicity/ Gender	Percent Available	Expected Dollars	Actual Dollars	Difference From Expected Dollars
African Americans	9.58%	\$27,223,504	\$5,287,073	-\$21,936,431
Asian Americans	2.41%	\$6,838,131	\$966,154	-\$5,871,978
Hispanic Americans	9.62%	\$27,352,525	\$2,650,616	-\$24,701,909
Native Americans	0.18%	\$516,085	\$240,802	-\$275,283
Caucasian Females	17.16%	\$48,770,069	\$7,527,111	-\$41,242,958
Non-minority Males	61.05%	\$173,533,711	\$267,562,270	\$94,028,559





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Disparity

Prime Contractors



Construction: \$50,000 and Under

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	12.45%	0.60%	Yes
Asian Americans	1.49%	0.66%	No
Hispanic Americans	13.20%	0.00%	Yes
Native Americans	0.56%	0.00%	No
Caucasian Females	13.75%	61.02%	No
Non-minority Males	58.55%	37.72%	No



Construction: \$600,000 and Under

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	12.45%	2.37%	Yes
Asian Americans	1.49%	0.09%	No
Hispanic Americans	13.20%	3.19%	Yes
Native Americans	0.56%	0.00%	No
Caucasian Females	13.75%	31.58%	No
Non-minority Males	58.55%	62.77%	No



Professional Services: \$50,000 and Under

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	11.76%	6.05%	Yes
Asian Americans	4.59%	0.86%	Yes
Hispanic Americans	11.62%	8.86%	No
Native Americans	0.14%	1.96%	No
Caucasian Females	19.32%	4.17%	Yes
Non-minority Males	52.57%	78.10%	Yes



Professional Services: \$175,000 and Under

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	11.76%	8.70%	Yes
Asian Americans	4.59%	0.89%	Yes
Hispanic Americans	11.62%	6.26%	Yes
Native Americans	0.14%	1.54%	No
Caucasian Females	19.32%	2.25%	Yes
Non-minority Males	52.57%	80.36%	Yes



Commodities and Other Services: \$5,000 and Under

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	7.49%	0.36%	Yes
Asian Americans	1.81%	1.98%	No
Hispanic Americans	8.64%	3.25%	Yes
Native Americans	0.08%	0.00%	No
Caucasian Females	18.85%	8.68%	Yes
Non-minority Males	63.13%	85.73%	Yes



Commodities and Other Services: \$250,000 and Under

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	7.49%	0.37%	Yes
Asian Americans	1.81%	2.07%	No
Hispanic Americans	8.64%	2.17%	Yes
Native Americans	0.08%	0.00%	No
Caucasian Females	18.85%	7.70%	Yes
Non-minority Males	63.13%	87.69%	Yes



Trade Services: \$5,000 and Under

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	8.82%	0.00%	Yes
Asian Americans	0.00%	0.00%	No
Hispanic Americans	7.35%	13.16%	No
Native Americans	0.00%	0.00%	No
Caucasian Females	20.59%	11.17%	Yes
Non-minority Males	63.24%	75.67%	Yes



Trade Services: \$50,000 and Under

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	8.82%	0.00%	Yes
Asian Americans	0.00%	0.00%	No
Hispanic Americans	7.35%	20.10%	No
Native Americans	0.00%	0.00%	No
Caucasian Females	20.59%	11.11%	Yes
Non-minority Males	63.24%	68.78%	No





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Disparity

Subcontractor



Construction Subcontracts

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	11.16%	0.47%	Yes
Asian Americans	1.79%	0.01%	No
Hispanic Americans	11.61%	1.45%	No
Native Americans	0.45%	0.00%	No
Caucasian Females	12.65%	30.02%	No
Non-minority Males	62.35%	68.05%	No



Professional Services Subcontracts

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	11.04%	1.33%	Yes
Asian Americans	4.27%	5.48%	No
Hispanic Americans	11.04%	17.61%	No
Native Americans	0.13%	0.00%	No
Caucasian Females	18.95%	2.96%	Yes
Non-minority Males	54.58%	72.62%	Yes





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Anecdotal

In-Depth Interviews and eSurvey



Data Collection Process

- Businesses identified from:
 - Two business community meetings
 - Utilized prime contractors and subcontractors
 - Availability database



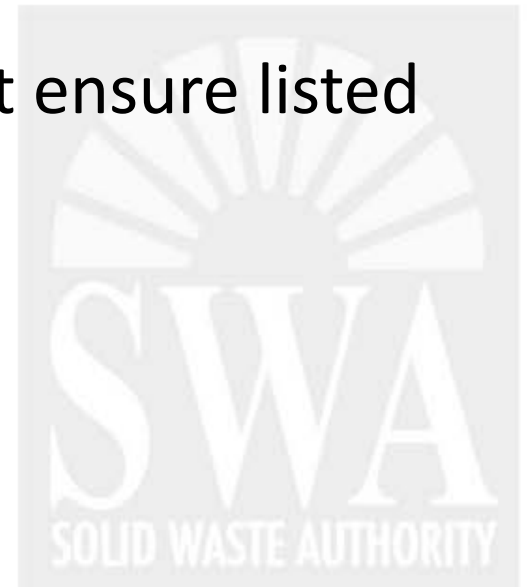
Preferred Contractors

- SWA uses the same contractors repeatedly
- It is hard for new contractors to be awarded an SWA contract
- There are firms that are handpicked for certain contracts



SBE Program

- SWA does not require prime contractors to use SBEs
- SBE program is not beneficial to M/WBEs because they do not have relationships with majority-owned contractors
- SWA's contract language does not ensure listed SBEs are used by the prime



Exemplary Practices

- SWA's management team is very helpful
- SWA's SBE Program keeps small businesses informed of upcoming contract opportunities
- Larger companies are encouraged to mentor small companies and give them opportunities to grow their business



Historical Considerations

- African Americans seeking training as engineers, architects, lawyers, accountants, or craftspeople were not admitted to state universities and colleges prior to 1974
- Minority availability has developed despite generations of racism in public education
- Institutional racism continues to suppress entrepreneurial growth



Recommendations

Race/Gender-Neutral and Conscious

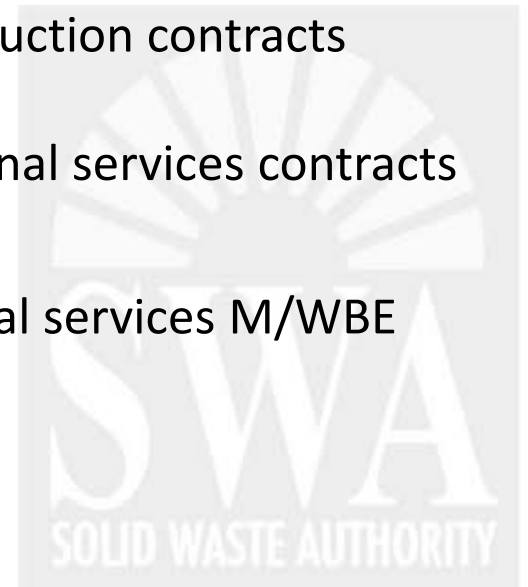


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Race/Gender-Specific

- Promulgate M/WBE Policy
- Establish race- and gender-specific remedies
 - Prime Contracts
 - Apply bid discount to construction, commodities, and trade services prime contracts
 - Revise informal bid process for construction contracts (contract rotation)
 - Assign evaluation points for professional services contracts
 - Subcontracts
 - Establish construction and professional services M/WBE goals



Race/Gender-Neutral

- Implement an expedited payment verification program
- Establish eligibility standards for the small business program
- Establish mandatory SBE goals
- Institute SBE bid discounts
- Establish unbundling policy
- Limit use of master agreements



Tracking and Monitoring

- Conduct routine post-award contract compliance monitoring
- Implement a centralized and uniform data management system
- Report, track and monitor all subcontractor participation



Questions and Comments





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Thank You

SWADisparityStudy@mtaltd.com
(510) 835-9012

