

Louisville and Jefferson County Metropolitan Sewer District M/WBE Disparity Study

Findings and Next Steps

July 23, 2018

Meeting Agenda

- Introduce Study Team
- Discuss Legal Standard
- Present Study Findings
- Discuss Proposed Recommendations
- Offer Next Steps
- Address Questions

Study Team

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Mason Tillman Associates, Ltd.

Team Member	Education	Disparity Studies	Years with Firm	Quantitative Analysis	Qualitative Analysis	Legal Analysis	Program Design
Eleanor Mason Ramsey, Ph.D. Project Manager	University of California, Berkeley, Hunter College	145	37	●	●	●	●
Attorney Don O'Bannon Outside Legal Counsel	University of Virginia Law School, Dartmouth College	35	8		●	●	●
Attorney Allura Scott Legal Advisor	Howard University School of Law, Cal State University, Dominguez Hills	97	16	●	●	●	●
Antonina Salina, MS Database Manager	St. Petersburg State Institute for Information Technology	38	7	●			●
Aminatu Yusuf, BS Assistant Project Manager	University of Utah, Salt Lake City, Westminster College	38	7	●	●		●
Mike Leong, MS Lead Statistician	University of California, Berkeley	136	25		●		
Robert Ramsey, MS Statistician	University of California, Berkeley Cal State University, East Bay	51	7		●		
Nicholas Negoro, BA Survey Manager	California State University, Chico	32	2	●	●		

Subconsultants

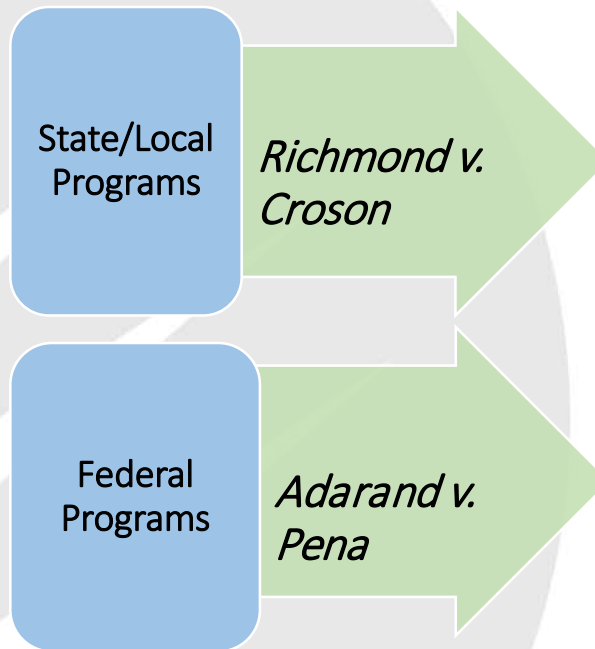
Subconsultant	Task
Ellington Management Services	Data Collection and Analysis
SRL Consulting	Procurement Policy Review
New Age Communications	Community Meeting Logistics
The Voice of Your Customer	Anecdotal Interviews, Website Development, and Data Collection

Legal Standard

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U.S. Supreme Court Decisions



- **Compelling Interest**
 - Evidence of Systemic Racial Discrimination
- **Narrowly Tailored**
 - Remedy Documented Discrimination
- **Update Periodically**
 - Assess Effectiveness of Remedy

Narrowly Tailored Remedy

- Separate Prime and Subcontract Disparity Analysis
- Ethnic, Gender and Industry Specific Disparity Findings
- Race- and Gender- Remedies Limited to Disparity Findings
- Subcontract Goals Defined by Availability
- Sunset Provision for Subcontract Goals

Court Reviewed Methodology Without Legal Challenge

- *Kossman Contracting Co. v. City of Houston*, No. H-96-3100 (S.D. Tex 1996).
 - Retained to Perform Post-enactment Study
- *Midwest Fence Corporation v. Illinois Department of Transportation, et. al.*, No. 10-CV5627 (N.D. Ill. 2011); affirmed 840 F.3d 932 (7th Cir. 2016)
 - Pre-Trial Services
 - Conducted Post-enactment Study
 - Litigation Support Services
 - Expert Witness Services

Study Findings

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According to an U.S. Department of Commerce Study Released 2016

*“Contracting disparity remains wide-spread; **MBEs** typically obtain lower number and dollar value of contracts in proportion to the number of available MBEs in the comparable market”*

Business Size by Employees

Businesses	Jefferson County	State of Kentucky	United States
Less than 5 employees	47.51%	50.41%	54.36%
Less than 10 employees	66.26%	70.49%	72.74%
Less than 20 employees	80.56%	84.23%	85.43%
Over 100 employees	3.68%	2.73%	2.44%
Minority-owned Businesses	18.08%	8.28%	28.94%
Woman-owned Businesses	33.21%	32.14%	35.95%

Source: United States Census 2016 Business Patterns, 2012 Survey of Business Owners

Small Purchases Award Amounts Analyzed by Industry

Industry	Dollar Range
Construction	\$10,001 - \$20,000
Construction-related Services	\$10,001 - \$20,000
Engineering and Professional Services	\$10,001 - \$20,000
Materials, Commodities, Services	\$10,001 - \$20,000

Prime Purchase Order Award Amounts Analyzed by Industry

Industry	Dollar Range
Construction	\$20,001 - \$1,710,000
Construction-related Services	\$20,001 - \$500,000
Engineering and Professional Services	\$20,001 - \$460,000
Materials, Commodities, Services	\$20,001 - \$350,000

Utilization of Prime Contractors

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Construction Small Purchases: \$10,001 to \$20,000

Ethnicity	Number of Purchase Orders	Percent of Purchase Orders	Amount of Dollars	Percent of Dollars
African Americans	22	13.75%	\$289,458	11.96%
Asian-Pacific Americans	15	9.38%	\$237,194	9.80%
Asian-Indian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	1	0.63%	\$17,500	0.72%
Native Americans	8	5.00%	\$131,081	5.41%
Caucasian Females	6	3.75%	\$83,160	3.43%
Non-minority Males	108	67.50%	\$1,662,839	68.68%
Total	160	100.00%	\$2,241,232	100.00%

Construction Purchase Orders: \$20,001 to \$1,710,000

Ethnicity	Number of Purchase Orders	Percent of Purchase Orders	Amount of Dollars	Percent of Dollars
African Americans	45	11.66%	\$2,314,507	3.59%
Asian-Pacific Americans	4	1.04%	\$180,914	0.28%
Asian-Indian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	4	1.04%	\$920,933	1.43%
Native Americans	2	0.52%	\$206,643	0.32%
Caucasian Females	86	22.28%	\$9,374,313	14.53%
Non-minority Males	245	63.47%	\$51,537,158	79.86%
Total	386	100.00%	\$64,534,468	100.00%

Construction-related Services Small Purchases: \$10,001 to \$20,000

Ethnicity	Number of Purchase Orders	Percent of Purchase Orders	Amount of Dollars	Percent of Dollars
African Americans	5	3.76%	\$68,232	3.52%
Asian-Pacific Americans	0	0.00%	\$0	0.00%
Asian-Indian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	9	6.77%	\$141,588	7.30%
Caucasian Females	37	27.82%	\$539,769	27.85%
Non-minority Males	82	61.65%	\$1,188,709	61.33%
Total	133	100.00%	\$1,938,297	100.00%

Construction-related Services Purchase Orders: \$20,001 to \$500,000

Ethnicity	Number of Purchase Orders	Percent of Purchase Orders	Amount of Dollars	Percent of Dollars
African Americans	22	9.02%	\$1,831,794	5.90%
Asian-Pacific Americans	5	2.05%	\$281,632	0.91%
Asian-Indian Americans	3	1.23%	\$834,875	2.69%
Hispanic Americans	2	0.82%	\$578,900	1.86%
Native Americans	7	2.87%	\$1,397,468	4.50%
Caucasian Females	15	6.15%	\$2,074,111	6.68%
Non-minority Males	190	77.87%	\$24,053,295	77.46%
Total	244	100.00%	\$31,052,075	100.00%

Engineering and Professional Services Small Purchases: \$10,001 to \$20,000

Ethnicity	Number of Purchase Orders	Percent of Purchase Orders	Amount of Dollars	Percent of Dollars
African Americans	2	1.60%	\$29,640	1.61%
Asian-Pacific Americans	1	0.80%	\$10,720	0.58%
Asian-Indian Americans	4	3.20%	\$53,418	2.91%
Hispanic Americans	4	3.20%	\$67,160	3.66%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	23	18.40%	\$339,976	18.51%
Non-minority Males	91	72.80%	\$1,336,014	72.73%
Total	125	100.00%	\$1,836,928	100.00%

Engineering and Professional Services Purchase Orders: \$20,001 to \$460,000

Ethnicity	Number of Purchase Orders	Percent of Purchase Orders	Amount of Dollars	Percent of Dollars
African Americans	12	2.85%	\$1,537,411	2.97%
Asian-Pacific Americans	1	0.24%	\$23,405	0.05%
Asian-Indian Americans	7	1.66%	\$1,073,777	2.07%
Hispanic Americans	9	2.14%	\$727,055	1.40%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	45	10.69%	\$5,194,626	10.02%
Non-minority Males	347	82.42%	\$43,293,266	83.50%
Total	421	100.00%	\$51,849,539	100.00%

Materials, Commodities and Services Small Purchases: \$10,001 to \$20,000

Ethnicity	Number of Purchase Orders	Percent of Purchase Orders	Amount of Dollars	Percent of Dollars
African Americans	6	1.69%	\$79,461	1.54%
Asian-Pacific Americans	6	1.69%	\$92,273	1.79%
Asian-Indian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	9	2.53%	\$160,960	3.12%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	9	2.53%	\$146,945	2.85%
Non-minority Males	326	91.57%	\$4,671,582	90.69%
Total	356	100.00%	\$5,151,221	100.00%

Materials, Commodities and Services Purchase Orders: \$20,001 to \$350,000

Ethnicity	Number of Purchase Orders	Percent of Purchase Orders	Amount of Dollars	Percent of Dollars
African Americans	5	1.42%	\$126,209	0.51%
Asian-Pacific Americans	10	2.85%	\$572,449	2.31%
Asian-Indian Americans	3	0.85%	\$220,781	0.89%
Hispanic Americans	1	0.28%	\$24,920	0.10%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	7	1.99%	\$265,212	1.07%
Non-minority Males	325	92.59%	\$23,558,574	95.12%
Total	351	100.00%	\$24,768,145	100.00%

Utilization of Subcontractors

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Construction Subcontracts

Ethnicity	Number of Subcontracts	Percent of Subcontracts	Amount of Dollars	Percent of Dollars
African Americans	55	3.31%	\$12,579,043	7.67%
Asian-Pacific Americans	7	0.42%	\$4,795,532	2.92%
Asian-Indian Americans	4	0.24%	\$152,558	0.09%
Hispanic Americans	16	0.96%	\$12,529,733	7.64%
Native Americans	4	0.24%	\$1,316,141	0.80%
Caucasian Females	220	13.22%	\$19,516,411	11.90%
Non-minority Males	1,358	81.61%	\$113,129,067	68.97%
Total	1,664	100.00%	\$164,018,486	100.00%

Disparity Findings:

Prime Purchase Orders

Disparity in Construction Purchase Orders: \$10,001 to \$20,000

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	30.37%	11.96%	Disparity
Asian-Pacific Americans	2.62%	9.80%	No Disparity
Asian-Indian Americans	1.57%	0.00%	No Disparity
Hispanic Americans	3.66%	0.72%	Disparity
Native Americans	1.05%	5.41%	No Disparity
Caucasian Females	18.32%	3.43%	Underutilized
Non-minority Males	42.41%	68.68%	

Disparity in Construction Purchase Orders: \$20,001 to \$1,710,000

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	30.37%	3.59%	Disparity
Asian-Pacific Americans	2.62%	0.28%	Disparity
Asian-Indian Americans	1.57%	0.00%	Disparity
Hispanic Americans	3.66%	1.43%	Disparity
Native Americans	1.05%	0.32%	No Disparity
Caucasian Females	18.32%	14.53%	Underutilized
Non-minority Males	42.41%	79.86%	

Disparity in Construction-related Services Purchase Orders: \$10,001 to \$20,000

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	22.47%	3.52%	Disparity
Asian-Pacific Americans	0.56%	0.00%	No Disparity
Asian-Indian Americans	0.56%	0.00%	No Disparity
Hispanic Americans	2.81%	0.00%	Disparity
Native Americans	0.56%	7.30%	No Disparity
Caucasian Females	21.91%	27.85%	No Disparity
Non-minority Males	51.12%	61.33%	

Disparity in Construction-related Services Purchase Orders: \$20,001 to \$500,000

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	22.47%	5.90%	Disparity
Asian-Pacific Americans	0.56%	0.91%	No Disparity
Asian-Indian Americans	0.56%	2.69%	No Disparity
Hispanic Americans	2.81%	1.86%	No Disparity
Native Americans	0.56%	4.50%	No Disparity
Caucasian Females	21.91%	6.68%	Disparity
Non-minority Males	51.12%	77.46%	

Disparity in Engineering and Professional Services Purchase Orders: \$10,001 to \$20,000

Ethnicity/ Gender	Availability	Utilization	Disparity
African Americans	13.33%	1.61%	Disparity
Asian-Pacific Americans	1.33%	0.58%	No Disparity
Asian-Indian Americans	3.11%	2.91%	No Disparity
Hispanic Americans	4.44%	3.66%	No Disparity
Native Americans	0.44%	0.00%	No Disparity
Caucasian Females	25.33%	18.51%	Disparity
Non-minority Males	52.00%	72.73%	

Disparity in Engineering and Professional Services Purchase Orders: \$20,001 to \$460,000

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	13.33%	2.97%	Disparity
Asian-Pacific Americans	1.33%	0.05%	Disparity
Asian-Indian Americans	3.11%	2.07%	No Disparity
Hispanic Americans	4.44%	1.40%	Disparity
Native Americans	0.44%	0.00%	No Disparity
Caucasian Females	25.33%	10.02%	Disparity
Non-minority Males	52.00%	83.50%	

Disparity in Materials, Commodities and Services Purchase Orders: \$10,001 to \$20,000

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	10.14%	1.54%	Disparity
Asian-Pacific Americans	1.09%	1.79%	No Disparity
Asian-Indian Americans	0.36%	0.00%	No Disparity
Hispanic Americans	1.09%	3.12%	No Disparity
Native Americans	0.36%	0.00%	No Disparity
Caucasian Females	19.93%	2.85%	Disparity
Non-minority Males	67.03%	90.69%	

Disparity in Materials, Commodities and Services Purchase Orders: \$20,001 to \$350,000

Ethnicity/Gender	Availability	Utilization	Disparity
African Americans	10.14%	0.51%	Disparity
Asian-Pacific Americans	1.09%	2.31%	No Disparity
Asian-Indian Americans	0.36%	0.89%	No Disparity
Hispanic Americans	1.09%	0.10%	No Disparity
Native Americans	0.36%	0.00%	No Disparity
Caucasian Females	19.93%	1.07%	Disparity
Non-minority Males	67.03%	95.12%	

Disparity Findings: Construction Subcontracts

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Disparity in Construction Subcontracts

Ethnicity	Availability	Utilization	Disparity
African Americans	18.23%	7.67%	Disparity
Asian-Pacific Americans	1.42%	2.92%	No Disparity
Asian-Indian Americans	1.99%	0.09%	Disparity
Hispanic Americans	1.99%	7.64%	No Disparity
Native Americans	0.57%	0.80%	No Disparity
Caucasian Females	14.81%	11.90%	Underutilized
Non-minority Males	60.97%	68.97%	

Construction Subcontracts Analyzed by Award Amounts

Subcontract Award Amounts	Percent of Total Subcontracts Awards				Percent of Total Subcontracts Awarded	Total Subcontract Award Amounts
	Minority		Non-minority			
	Females	Males	Females	Males		
Under \$10,000	0.00%	0.54%	3.97%	49.40%	53.91%	\$2,108,546.53
\$10,000 - \$19,999	0.06%	0.30%	1.56%	5.47%	7.39%	\$1,791,985.94
\$20,000 - \$49,999	0.12%	0.48%	3.31%	10.16%	14.06%	\$7,611,230.69
\$50,000 - \$99,999	0.00%	0.72%	2.04%	5.59%	8.35%	\$9,580,378.37
\$100,000 - \$249,999	0.60%	0.78%	1.20%	5.53%	8.11%	\$21,302,229.88
\$250,000 - \$499,999	0.24%	0.36%	0.72%	2.40%	3.73%	\$22,020,872.71
\$500,000 - \$999,999	0.06%	0.36%	0.30%	1.80%	2.52%	\$28,805,323.25
\$1,000,000 - \$2,999,999	0.06%	0.42%	0.12%	1.08%	1.68%	\$40,504,577.53
\$3,000,000 and greater	0.00%	0.06%	0.00%	0.18%	0.24%	\$30,293,341.17
Total	1.14%	4.03%	13.22%	81.61%	100.00%	\$164,018,486.06

Recommendations

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Recommendations

Race and Gender-Conscious Actions

Prime Purchase Order Incentive Credits

Prime Purchase Order Bid Discounts

Minority-owned Business Construction Subcontract Goal

Women-owned Business Construction Subcontract Goal

Recommendations

Race and Gender-Neutral Actions

Revise Insurance Requirements	Formalize Prompt Payment Process
Unbundle Contracts	Institute Payment Verification Program
Institute Small Purchases Rotation	Establish Dispute Resolution Standards
Pay Mobilization to Subcontractors	Modify Prime Purchase Order Financial Management System
Establish Financing Options for MWBEs	Implement SLBE Goals
Debrief after Contract Award	Create Business Advisory Council

Recommendations

Community Benefits Program	
Workforce Development	Apply workforce goals on Integrated Overflow Abatement Plan and Critical Repair and Reinvestment Plan projects
	Partner with pre-apprenticeship and apprenticeship programs
	Support careers in wastewater and construction through prime contracts and project labor agreements
Economic Development	Offer mentorship to SLBEs
	Provide SLBEs with estimating, project scheduling, and cash-flow management training
Education Initiatives	Partner with non-profits and schools to support eco-literacy curricula
	“Adopt a School” in locations impacted by MSD
Environmental Justice	Support innovative urban agriculture initiatives including community gardens, urban farms, and greenhouses
	Provide technical assistance for mold prevention, remediation, or energy efficiency upgrades

Next Steps

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Steps to Achieve Parity

Action
Take Action to Adopt Disparity Study Findings and Recommendations
Revise Interim Supplier Diversity Policy
Modify Procurement Manual
Initiate Community Benefits Program
Train Staff on Enhanced Supplier Diversity Program Components
Promote Supplier Diversity Program to Market Area Businesses
Promulgate SLBE Policy
Promote SLBE Program to Market Area Businesses
Produce Bi-annual Verified M/WBE Utilization Report
Produce Bi-annual Verified SLBE Utilization Report

Timeline

Accept Disparity Study Report	July 2018
Revise Supplier Diversity (SD) Policy	January 2019
Revise Procurement Regulations	January 2019
Initiate Community Benefits Program	January 2019
Train staff on enhanced SD program components	March 2019
Promote SD program to market area businesses	March 2019
Produce quarterly verified M/WBE utilization reports	July 2019
Promulgate Small Local Business Enterprise (SLBE) Policy	July 2019
Promote SLBE program to market area businesses	September 2019
Produce quarterly verified SLBE utilization reports	January 2020

Supplier Diversity Updates

- Construction Field Monitoring Implementation
 - Hired 2 Supplier Diversity Personnel
 - Compliance Administrator & Compliance Investigator
 - Commercially useful function
- Compliance Investigation Manual Developed
 - Serves as guide for Supplier Diversity field monitoring
 - Outlines general instructions for SD Team on construction projects
- On-Site Visits Initiated
 - Prescreened Certification Recognition Applicant Process
 - Announced/Unannounced Site Visits by Industry Classification
 - Validate Certification Recognitions

Supplier Diversity Updates

- Contract Documents
 - Good Faith Efforts (GFE) Program
 - Subcontractor Utilization Plan Template
- Strategic Partnerships
 - Current – NMSDC, WBENC, U.S. SBA, NWBOC
 - New – U.S. DOT SBTRC, NAWIC
- Increased Outreach
 - Can You Dig It?, Joint Utility Reception (*Annually*)
 - Monthly - How To Do Business with MSD (*Monthly*)
 - MSD Supplier Diversity Program Orientation (*Quarterly*)
 - Project Specific - Targeted Outreach; Pre-bid Meetings (*As Needed*)

Prompt Vendor Payments

Accounts Payable

- FY2018 EUM - 75% of invoices would be paid on-time
 - Results - 77% of invoices paid on-time
 - Two years ago - Less than 50%
- Phase II – Automated Invoice Payment process
 - Receives invoices electronically and auto pay when there is a match
 - Rollout October 2018

MSD SUPPLIER DIVERSITY CONTRACTING SYSTEM

msd
Safe, clean waterways

[OUR MAIN SITE](#) [CONTACT SUPPORT](#)

Supplier Diversity Management System

Log In

Vendor Certification	Outreach	About the System
Search and/or join our database of certified vendors:	Outreach for M/WBE businesses to obtain potential MSD work	Learn more about this system and how it works today
Apply for / Renew Certification	View Outreach Opportunities	Information for Vendors
Search Certified Vendor Directory		
System Training	Account Access	
Learn how to fully utilize our system with a live trainer	Lookup Vendor accounts or reset user passwords	
Training and Events	Account Lookup	
	Forgot Password	

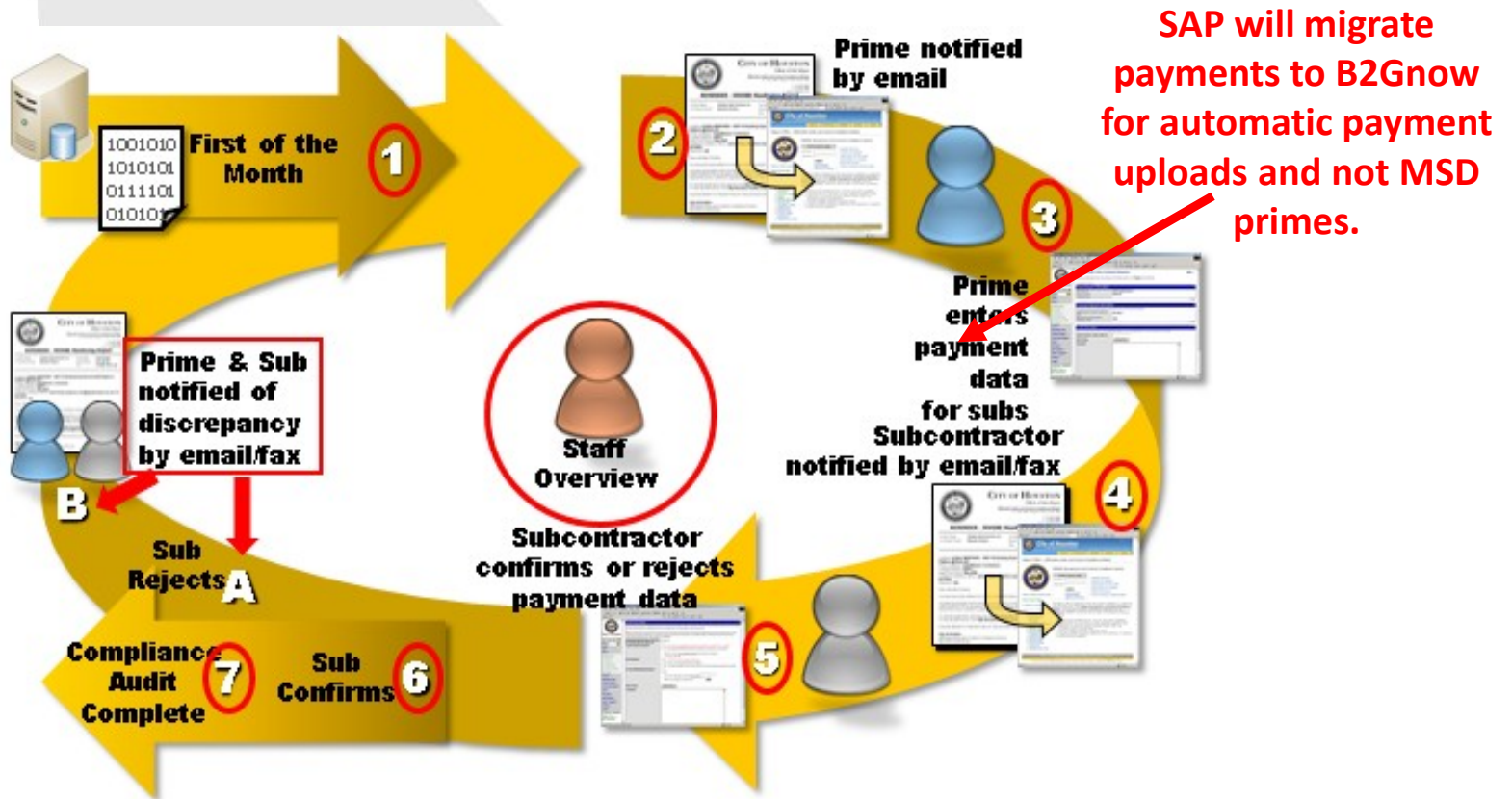
Purpose of B2GNow System

- Supplier Diversity Contracting System One stop shop that offers web-based solutions for contractors to manage subcontractor prompt payment reports, diversity utilization, subcontractor reporting, local labor reports, etc.
- Key Features:
 - Online and automated tracking of MBE/WBE contract utilization
 - Real-time payment reporting and verification
 - Online verification of multi-tier subcontractor payments
 - Streamlined reporting for Louisville MSD requirements

B2GNow System Benefits

- No cost to MSD primes, M/WBE subs or other vendors
- Online reporting of subcontractor utilization
- Vendors can manage their own accounts
- Multiple user accounts accessible to each vendor
- Substantial time savings, increased productivity for SD Team
- Centralized data collected in standard format
- **Future** MSD Disparity Study preparedness

CONTRACT COMPLIANCE PROCESS



Phase I - Implementation

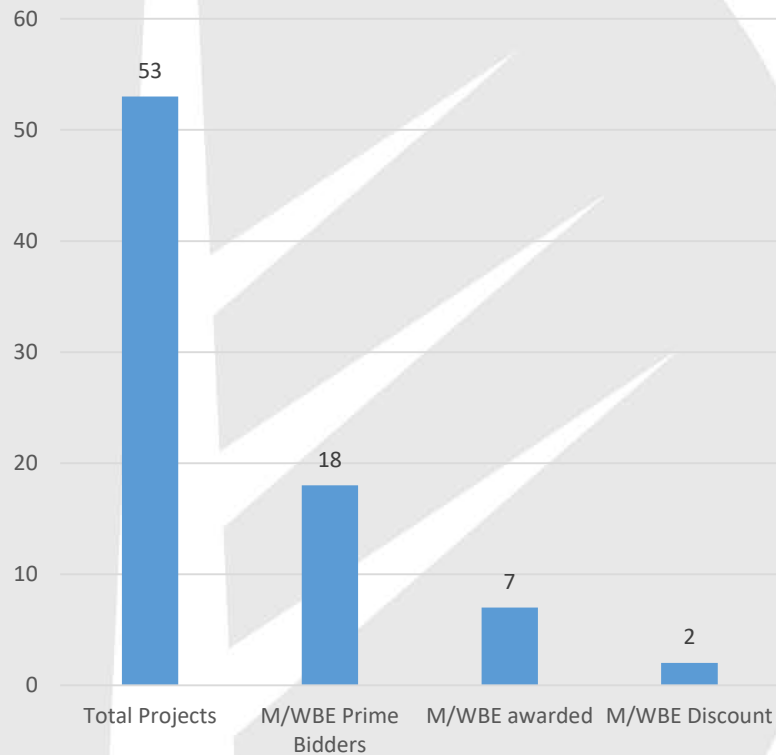
- Engage internal and external stakeholders
 - MSD leadership
 - Advisory Council – appointed by the Executive Director
 - Community Benefits Committee – appointed by Executive Director
 - Community (Primes, M/WBEs, Partner Organizations)
 - Economic Development Community
- Identify MSD Policy and program enhancement opportunities to address the disparities identified in the Study

Phase I - Implementation

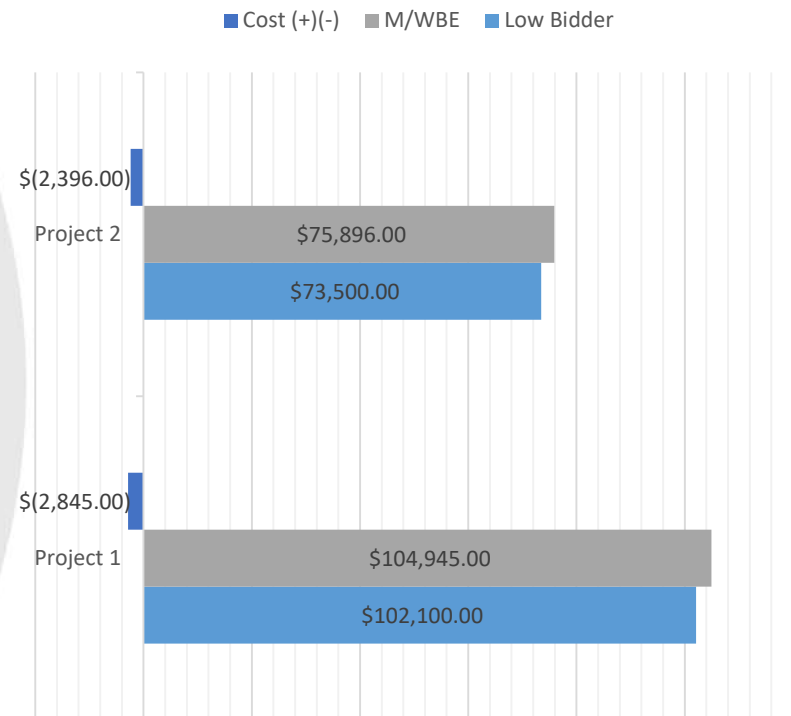
- Implement Bid Discounts
 - Ten percent bid discounts for eligible M/WBE Prime bidders (construction, construction related & material purchases)
 - Ten percent incentive credits for eligible M/WBE Prime consultants (engineering & professional services)
- Implement new subcontracting goals for construction projects
 - African Americans – 18.23%
 - Asian-Indian Americans - 1.99%
 - Caucasian Females – 14.81%
 - Continue Good Faith Efforts program

Bid Discount (example)

Total Construction Projects - FY18



Ten Percent Discount



Phase I - Implementation

- Community Benefits Program
 - Public private community partnerships
 - Workforce development
 - Economic development
 - Education
 - Neighborhood revitalization
- Enhance M/WBE outreach & marketing strategies
- Phase I - Tentative completion date January 2019

Phase II - Implementation

- Implement Small Local Business Enterprise (SLBE) program and procedures
- Engage a SLBE Advisory Committee
- Establish a SLBE Directory
- Promulgate SLBE Policy - July 2019
- Marketing to area business – September 2019

QUESTIONS

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Questions/Comments

Limit Responses to 2 minutes

- **Please state the following:**
 - **Your Name**
 - **Your Business**
 - **Your Organizational Affiliation**

Additional questions/comments can be sent to supplierdiversity@louisvillemsd.org.

According to an U.S. Department of Commerce Study Released 2016

*“Local governments must change their economic development models that enable **MBEs** to grow and create jobs, and serve as positive roles models to disadvantaged youth, and expose residents to innovation and emerging industries to generate wealth creation”*

감사합니다!

cảm ơn!

Merci!

THANK YOU!

¡Gracias!

Спасибо!