
Discrimination in Public Contracting

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HOW MUCH DISCRIMINATION is there in contemporary public contracting in the United States? Because these contracts cover almost everything available in commercial markets and because virtually all governments need to make purchases and have the authority to do so, no definitive answer can be given to a question of such scope and complexity. Nevertheless, forming a reliable estimate is essential for at least two reasons.

First, public purchasing is one of government's most important functions. Its effective use or potential abuse can have a substantial impact on governmental efficiency, the income of particular companies and communities, and the financial burden on taxpayers. Current purchases by the federal government are about \$180 billion a year, while state and local governments purchase about \$465 billion more. It would be intolerable if governments used this formidable economic power to discriminate against businesses because of the race, ethnicity, or gender of their owners.

Second, in recent years public purchasing practices have undergone enormous scrutiny to determine whether or not discrimination exists.

There may be more publicly accessible information measuring discrimination in this area of public life than in any other. A multitude of studies about federal, state, and local public contracting have been completed that permit not only an assessment of their conclusions but also an evaluation of the political context of accusations and denials regarding discrimination.

The Development and Defense of MBE Programs

The source of the recent attention paid to discrimination in public contracting is the 1989 Supreme Court's decision in *City of Richmond v. Croson*.¹ In that case, the Court confronted one example of the hundreds of state and local minority business enterprise (MBE) programs that had been developed in the preceding decade. These programs sought to place firms that were certified as being owned by designated minorities (usually African American, Hispanic, Asian American, and Native American) in favored positions for public contracts. Some programs included women-owned businesses (WBEs) as well.

A variety of preferential techniques have been used. Certain contracts were set aside for MBE firms or were given price preferences in bidding against non-MBE firms. Often non-MBE prime contractors were required to hire a certain percentage of MBE subcontractors to meet a goal necessary for contract award.

In addition, since 1976, a number of federal MBE programs have been established.² The oldest is the Small Business Administration's 8(a) program, which sets aside about \$4 billion of federal contracts a year for MBEs. There are also 10 percent MBE goal requirements in a wide variety of federal programs, including the \$210 billion 1998 highway program. In October 1998, the Clinton administration also began a program of 10 percent price preferences for MBE bidders on contracts covering about 76 percent of all federal purchases.³

Sometimes these MBE programs were seen by their sponsors as economic development stimuli for minority communities, sometimes as rem-

edies for general racial injustices, and sometimes as payoffs to emerging political power in minority communities. The policies usually reflected symbolic or redistributive politics and rarely were designed to respond to clearly identified problems. There was very little scholarly analysis of them, and bureaucratic reports covering them were often self-serving or incomplete. The consequences of altering conventional public purchasing programs by MBE programs were almost never evaluated. Which firms were helped, which were hurt, and how much these programs cost were questions almost never asked.

Croson, which covered state and local programs, and *Adarand v. Peña* in 1995, which applied the constitutional standard of strict scrutiny to federal MBE programs, changed all that.⁴ In *Croson*, Justice Sandra Day O'Connor stated that before a local jurisdiction could use racial classifications it was necessary to make

proper findings . . . to define the scope of the injury and the extent of the remedy necessary to cure its effects. Such findings also serve to assure all citizens that the deviation from the norm of equal treatment of all racial and ethnic groups is a temporary matter, a measure taken in the service of the goal of equality itself.⁵

Justice O'Connor further noted that the judiciary would have a responsibility to examine those findings:

Absent searching judicial inquiry into the justification for such race-based measures, there is simply no way of determining what classifications are "benign" or "remedial" and what classifications are in fact motivated by illegitimate notions of racial inferiority or simple racial politics.⁶

Since the *Croson* decision, more than 145 state and local jurisdictions have commissioned so-called "disparity studies" to determine whether they had a sufficient evidentiary basis to initiate, maintain, or expand MBE programs. At least \$65 million has been spent on this activity.⁷

Unfortunately, many of these studies do not meet federal court standards. For example, Judge James Graham of the Southern District of Ohio, Eastern Division, held:

A municipality which is considering the enactment of legislation which creates race-based and gender-based preferences in the award of public contracts must, in fairness to all of its citizens, fairly and fully investigate the issue of whether or not discrimination has actually occurred in the employment of minorities and females in the construction industry in its community and whether such discrimination has actually occurred in its award of contracts and in the award of subcontracts by the prime contractors it has employed. Only if a thorough and impartial investigation of the facts supports a finding that discrimination has occurred is the municipality justified in considering a scheme in which some of its citizens and firms are excluded from competing for a portion of its total contract dollars.⁸

Many disparity studies are neither “thorough” nor “impartial.”

Flawed Conclusions

At first glance the disparity studies’ consensus about discrimination in public contracting seems virtually unanimous and quite damning. The New York City study concluded: “In our view, the cumulative effects of discrimination by banks, bonding companies, general contractors, private companies, and public agencies is responsible for the gross underrepresentation of businesses operated by minorities and women in construction, services, and commodities.”⁹ But one might be a little suspicious about this sweeping conclusion because the identical language appears in at least two other studies completed by the same consultants regarding very different jurisdictions (San Antonio, Texas, and Hayward County, California.)¹⁰

The federal government has made similar conclusions. At the behest of the Justice Department, the Urban Institute analyzed 58 disparity studies and concluded that MBEs received only 57 cents for every public contracting dollar they were expected to receive.¹¹ When the United States Commerce Department analyzed federal procurement, they found DBEs underutilized in 51 of 74 Standard Industrial Codes.¹²

But on closer analysis, these statistical conclusions appear to be deeply flawed. Every time disparity studies have been challenged at trial, judges

have found them unreliable, and a number of jurisdictions have settled cases rather than subject their studies to judicial scrutiny.¹³

In *Croson*, the Court provided guidelines for an appropriate statistical analysis by stating:

Where there is a *significant* statistical disparity between the number of *qualified* minority contractors *willing and able to perform a particular service* and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion *could arise*.¹⁴ (emphasis added)

In short, to infer discrimination, the statistical comparison must be between comparable contractors—an apples-to-apples comparison of qualified, willing, and able firms. Partly because of a substantial growth rate in recent years, MBEs are in general smaller and newer businesses. To assume that utilization in government contracts of MBEs and non-MBEs, which include large stockholder-owned corporations, should be the same may create a false inference of discrimination when statistical analysis based on headcounts of firms is carried out. Indeed, the Urban Institute acknowledged that probability in a private report to the Justice Department and then ignored its own conclusion in its public report.¹⁵

Anecdotal Research

In addition to statistics, most disparity studies collect anecdotes about discrimination. Properly done, anecdotes could be helpful in understanding the statistics and in pinpointing where, if at all, the discrimination exists. In practice, the anecdotal sections of most disparity studies reach conclusions of discrimination that are almost inevitable given the flawed methods used but that nevertheless serve to buttress MBE programs.

Generally two methods are used to gather anecdotal information: surveys and interviews. The disparity study surveys have been plagued with low response rates and poorly designed questions. Rarely have the surveys

had a 20 percent response rate. When 80 percent of potential respondents throw the survey into the wastebasket, there is always the possibility that the tiny minority that does respond may be atypical. One federal court described the problem this way:

First, whether discrimination has occurred is often complex and requires a knowledge of the perspectives of both parties involved in an incident as well as knowledge about how comparably placed persons of other races, ethnicities, and gender have been treated. Persons providing anecdotes rarely have such information. What looks like discrimination may involve nothing more than aggressive business behavior to overcome barriers faced by all new or small businesses.

Second, when the respondent is made aware of the political purpose of questions or when questions are worded in such a way as to suggest the answers the inquirer wishes to receive, “interviewer bias” can occur. In addition, “response bias” may be a problem. The persons most likely to answer the survey are those who feel the most strongly about a problem, even though they may not be representative of the larger group.

Third, individuals who have a vested interest in preserving a benefit or entitlement may be motivated to view events in a manner that justifies the policy. Consequently, it is important that both sides are heard and that there are other measures of the accuracy of the claims. Attempts to investigate and verify the anecdotal evidence should be made.¹⁶

The most important question is whether the anecdotes about discrimination are true. Some may be, while others are perhaps the consequence of honest misunderstanding or the result of purposeful exaggeration. Almost no disparity study has ever discussed whether the incidents it reported were factually correct, although they are usually described not just as feelings or perceptions but as facts that characterize the universe of business transactions in which discrimination is rampant. The DJ Miller company, which has completed scores of disparity studies, at least mentions that its anecdotes are “unsubstantiated” because “time did not permit a full investigation of these perceptions of discrimination during the study period time frame.”¹⁷ Asked whether the anecdotal information contained in the \$600,000 Memphis–Shelby County study was true, the project manager

testified that he didn't know that it was "untrue."¹⁸ The chief architect of millions of dollars of disparity studies completed by the National Economic Research Associates was even more succinct. He testified:

Q. Did NERA follow up the information in the surveys to determine if any of the allegations of discrimination in the survey are true?

A. No.

Q. Do you know if any of them are true?

A. No.

Q. Do you know if any of the anecdotes in any of the Denver-related studies are true?

A. No.

Q. Do you know if any of the anecdotes in any NERA study with which you have been connected is true?

A. No.¹⁹

Some allegations of discrimination cannot be verified because they are "he said-she said" incidents. But when a company claims it was the low bidder on a public contract or could not get on a vendor list, that can be verified. Yet the disparity consultants do not check their facts, and the governments often cannot. Most studies regard the sources of anecdotal information as confidential and will not turn over transcripts or interview notes, even with names deleted, to the public sponsors that paid for the study. Therefore, cities or other governmental authorities involved usually know very little about the reputation of the person making the charge of discrimination or its context. Nevertheless, as sponsors of the disparity study, they will act as though all the complaints are true.

The use of anecdotal evidence is strange and alarming. On what other subject would governments consistently commission "research" that consists of rumors or is based on unverified sources? In what other area of public life would millions of dollars of tax funds be used to subsidize the gathering and publication of damaging allegations by one racial or ethnic group about another with so little concern for whether these complaints are factually accurate?

The willingness of governments and consultants to engage in this

activity is a telling sign that most of these studies are results oriented—that is, they are designed to support a predetermined conclusion.²⁰ Finding discrimination is a prerequisite to maintaining or expanding an MBE program, and that is what many of these studies are designed to do. As the Eleventh Circuit found, after reviewing the context and conclusions of the Dade County disparity studies: “It is clear as window glass that the County gave not the slightest consideration to any alternative to a Hispanic affirmative action program. Awarding construction contracts is what the County wanted to do, and all it considered doing, insofar as Hispanics were concerned.”²¹

Judges regularly assess the reliability of evidence, and fortunately they have been highly skeptical of the anecdotal information before them. In *AGC v. Columbus*, the federal district court established “Standards for the Collection of Anecdotal Evidence of Discrimination” and excoriated the consultants for bias in gathering anecdotes.²² Similarly, in a Dade County case, the judge complained:

Without corroboration, the Court cannot distinguish between allegations that in fact represent an objective assessment of the situation, and those that are fraught with heartfelt, but erroneous, interpretations of events and circumstances. The costs associated with the imposition of race, ethnicity, and gender preferences are simply too high to sustain a patently discriminatory program on such weak evidence.²³

In a May 1998 decision, a court dismissed the anecdotes in the State of Florida’s disparity study and stated:

Individuals responding to FDOT’s telephone survey have described their perceptions about barriers to FDOT’s bidding procedures. But FDOT has presented no evidence to establish who, if anyone, in fact engaged in discriminatory acts against Black and Hispanic businesses. The record at best establishes nothing more than some ill-defined wrong caused by some unidentified wrongdoers; and under *City of Richmond [Croson]* that is not enough.²⁴

The Future of MWBE Programs

The growth of minority- and women-owned businesses, propelled by basic demographic and economic factors, will continue regardless of the fate of MWBE programs. Between 1982 and 1992, according to the Census Bureau, the number of black-owned firms grew by 67 percent, Hispanic-owned firms by 189 percent, Asian-owned firms by 177 percent, women-owned firms by 162 percent, and non-MWBE firms by 24 percent. Perhaps MBE programs had an impact, but most firms market themselves in the private economy unaffected by public contracting programs.

Although firms owned by African Americans are the principal intended beneficiary of MWBE programs, those companies had the slowest growth rate of any MWBE group. There are now more than four times as many firms owned by Hispanics and Asian Americans and thirteen times as many owned by women than by blacks, which means that black firms will get decreasing shares of the benefits of MWBE programs in the future.

More time and money may have been spent in disparity studies investigating public contracting discrimination than in any other area of social research in our nation's history. And yet after this enormous public expenditure, the studies have documented no pattern of discrimination against MBEs by government purchasing procedures, by prime contractors against subcontractors, or by professional and trade organizations. Indeed, the studies have almost never identified any agency, procurement officer, or private firms where discrimination took place. This does not mean that such problems will not be found in the future or that we as a society are discrimination-free any more than we are crime-free or pollution-free. Nevertheless, the news about public contracting is basically good.²⁵ The procedures and ethics in the public procurement process are basically fair, in spite of sweeping politically motivated claims to the contrary.

The coalition politics that support MBE programs are not hard to understand, but what is not generally known is how few firms actually benefit from these policies.²⁶ Disparity studies do not discuss this issue. Nevertheless, some data exist. For example, in Cincinnati, of the 682 iden-

tified MWBEs in City vendor lists, thirteen firms received 62 percent of all the contracts and 83 percent of the dollars going to MWBEs.²⁷ Nationally there are over 2.2 million minority-owned businesses in the United States, but there are only about 6,000 8(a) certified firms—about 0.0025 percent of the total number of MBEs.²⁸ As administered by the SBA, the 8(a) program functions to give very well-established minority-owned firms privileged access to large amounts of federal contracts. In 1995, in a report to Senator Sam Nunn (D-Georgia), the General Accounting Office stated:

As the value and number of 8(a) contracts continues to grow, the distribution of those contracts remains concentrated among a very small percentage of participating 8(a) firms, while a large percentage get no awards at all. This is a long-standing problem. For example, in fiscal year 1990, 50 firms representing fewer than 2 percent of all program participants obtained about 40 percent, or 1.5 billion, of the total of \$4 billion awarded. Of additional concern is that, of the approximately 8,300 8(a) contracts awarded in fiscal 1990 and 1991 combined, 67 contracts were awarded competitively. In fiscal year 1994, the top 50 firms represented 1 percent of the program participants and obtained 25 percent or \$1.1 billion, of the \$4.37 billion awarded, while 56 percent of the firms got no awards.²⁹

Further, in the 8(a) program, only a small percentage of these favored firms have ever graduated to be market competitive.

Even though litigation has exposed the statistical and anecdotal flaws in the disparity studies, the judicial process is arduous, expensive, and piecemeal. In the meantime, disparity studies with flaws equal to or greater than the ones found unreliable still serve as the basis for allocating billions of dollars in public contracts on the basis of the race and ethnicity of favored owners.

The problem with existing disparity studies is not just that most of them are technically defective. The more important issue is that they so often have made exaggerated claims of discrimination and failed to identify the forms of bias that might exist. They have supported preferential programs based on race and ethnicity and have rarely treated race-neutral solutions seriously. This is harmful to society in a number of ways.

The wounds caused by racial and ethnic conflict are very deep in

America. The healing process is difficult and uncertain but absolutely essential if we are to survive as a pluralistic society. Unfounded accusations of discrimination and thoughtless denials are both damaging.

Conclusions

Preference programs for MBEs have the potential to undermine the general safeguards built into the public purchasing process and to create a return to the era of contract patronage, this time built on racial connections. Politicians who believe that it is appropriate to set aside contracts for particular racial groups may be tempted to steer them to particular companies as well.

Assertions of generalized marketplace discrimination, "old boy networks," and other nebulous forms of bias may actually retard the formation of minority businesses, especially among African Americans. Who would want to make the investment of capital and labor that a new business requires if they were convinced that discrimination was so prevalent that success was highly unlikely?

Further, if discrimination is everywhere, committed by everyone, then it may seem futile to try to eradicate it. Indeed, this is the argument of many MBE program advocates, who believe the appropriate response to allegations of discrimination by whites is preferences for nonwhites rather than enforcement of antidiscrimination laws. Where do such assumptions and policy responses lead in the long run? Can our country endure built on a premise that there is such widespread discrimination by whites that it can only be countered by broad preferences for nonwhites?

Reckless allegations of discrimination tend to produce blanket denials by those accused. Most whites believe that the overt forms of discrimination that characterized American institutions in the past have disappeared. In their place, procedures based on subtle subjective decisions that sometimes reflect biased assumptions often coexist institutionally with affirmative action policies that clearly discriminate against nonfavored classes. Disparity studies generally have failed to document either overt or subtle forms

of discrimination and have ignored the effects of MBE preferences. Unless our society is prepared to require the most careful documentation of where discrimination actually exists and to evaluate the effects of preferential programs, we cannot construct the interracial coalitions necessary to enforce antidiscrimination laws vigorously and improve access and overcome disadvantages in public contracting or anywhere else.

Viewed from this perspective, the Supreme Court in *Croson* sent the right message by emphasizing the dangers of racial politics and stereotyped assumptions and by insisting on analyzing the appropriate data and remedying identified discrimination. Unless that is done, as Justice O'Connor declared, "The dream of a Nation of equal citizens where race is irrelevant to personal opportunity and achievement would be lost in a mosaic of shifting preferences based on unmeasurable claims of past wrongs."³⁰ That is not an appropriate fate for public contracting or any other area of American life.

Notes

1. 488 U.S. 469 (1989).

2. Federal programs often define the beneficiaries as Disadvantaged Businesses (DBEs), but the definition of social disadvantage is based on identification with a particular racial and ethnic minority. All persons identified with the following groups are presumed to be disadvantaged: Black (a person having origins in any of the original racial groups of Africa; Hispanic (a person of Mexican American, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese origin or culture, regardless of race); Native American (an American Indian, Eskimo, Aleut, or Native Hawaiian); Asian American, including Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, the Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, Nauru, India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands and Nepal. For a discussion of these presumptions, see George R. La Noue and John C. Sullivan, "Presumptions for Preferences: The Small Business Administration's Decisions on Groups Entitled to Affirmative Action," *Journal of Policy History* 6, no.4 (fall 1994).

Three federal district courts have found unconstitutional the concept of presuming that all members of particular racial and ethnic groups are disadvantaged or discrim-

inated against for the purpose of awarding public contracts. Nevertheless, the concept is still at the heart of almost every MBE program. See *Adarand v. Peña*, 965 F. Supp. 1556, 1580 (D. Colo. 1997); *Houston Contractors Association v. Metro Transit Authority*, 954 F. Supp. 1013 (S.D. Tex. 1996); and *In re Sherbrooke*, 17 F. Supp. 2d 1026 (D. Minn. 1998). For a discussion of the issue of which group should receive preferences, see George R. La Noue and John C. Sullivan, "Gross Presumptions: Determining Group Eligibility for Federal Procurement Preferences," *Santa Clara Law Review* 41 (winter 2000).

3. John Sullivan and Roger Clegg, "More Preferences for Minority Businesses," *Wall Street Journal*, August 24, 1998, p. A13.

4. 515 U.S. 200 (1995).

5. *Crosan*, 488 U.S. at 510.

6. *Ibid.*, at 493.

7. See two works by George R. La Noue, *Local Officials Guide to Minority Business Programs and Disparity Studies* (National League of Cities, 1994), and "Social Sciences and Minority Set-Asides," *Public Interest*, Winter 1993.

8. *Associated General Contractors of America v. City of Columbus*, Order June 20, 1990, p. 10.

9. "The Utilization of Minority and Women-Owned Business Enterprises by the City of New York," NERA, 1994, p. 129.

10. "The Utilization of Minority and Woman-Owned Business Enterprises in Bexar County" (San Antonio), NERA, 1992, p. 155, and "The Utilization of Minority and Woman-Owned Business Enterprises by The City of Hayward (California)," NERA, 1993, p. 8-5.

11. "Do Minority-Owned Businesses Get a Fair Share of Government Contracts?" Urban Institute, October 1996.

12. Jeffrey L. Meyer, "Price Evaluations Adjustments and Benchmarking Methodology," U.S. Department of Commerce, June 23, 1998. Commerce has not released enough information for one to be certain how these calculations were completed, but apparently MBEs were counted as available whether or not they actually bid on federal contracts, while for non-MBEs only bidders were counted as available.

13. See, e.g., *Contractors Association of Eastern Pennsylvania v. Philadelphia*, 893 F. Supp. 419 (E.D. Pa. 1995), affirmed 91 F. 3d 586 (3d. Cir. 1996); *Associated General Contractors v. Columbus*, 936 F. Supp. 1363 (S.D. Ohio 1996); *Buddie v. Cleveland*, 1995 (settled); *Prior Tire Company v. Atlanta Public Schools* (No. 1-95-CV-825-JEC, 1997); *Houston Contractors Association v. Metro Transit Authority*, 954 F. Supp. 1013, 1018 (S.D. Tex. 1996); *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 943 F. Supp. 1546 (S.D. Fla. 1996), affirmed 122 F.3d 922 (11th Cir. 1997); *Phillips and Jordan v. Watts*, 13 F. Supp. 1308, 1314 (N.D. Fla. 1998); *Ohio Contractors Association v. Cincinnati*, C-1-98-447, 1998; *Kossmann v. TxDOT*, C.A. No. H-99-0637 (S.D. Tex. 2000); *Concrete Works v. City and County of Denver*, 86 F. Supp.

2d. 1042 (D. Colo. 2000); *Scott v. Jackson*, No. 3: 97CV719BN, affirmed 199 F.3d 206 (5th Cir. 2000); *Association for Fairness in Business v. New Jersey*, 82 F. Supp. 353 (D. N.J. 2000); *Webster v. Fulton County*, 82 F. Supp. 1375 (N.D. Ga. 2000); *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore*, 83 F. Supp. 2d 613 (D. Md. 2000); *Associated General Contractors v. Drabik*, 50 F. Supp. 2d 741 (S.D. Ohio 1999), affirmed 6th Cir. 2000.

14. *Croson*, 488 U.S. at 509.

15. In “Evaluation of Disparity Study Methodology,” pp. 3–4, the Urban Institute authors stated: “A study that uses a measure of availability that includes only firms that are ready, willing and able to perform government contract work is stronger than a study that includes all firms without trying to control for whether they are available or have the requisite ability. This is because including all M/WBEs may overstate the true availability of these firms, and bias results towards finding a disparity even when there is none.”

16. *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 943 F. Supp. 1546, 1579 (S.D. Fla. 1996).

17. A Disparity Study for Memphis–Shelby County Consortium, VII, p. 4.

18. Deposition of David J. Miller in *Associated General Contractors v. Shelby County*, May 27, 1988, p. 172.

19. Deposition of David Evans, July 30, 1998, in *Concrete Works v. Denver*, p. 66.

20. In *AGC v. Columbus*, the Court referred to the City’s study as “examples of results-driven research” in which the outcome is politically predetermined (936 F. Supp. at 1431).

21. *Engineering Contractors Association of South Florida v. Metropolitan Dade County*, 122 F.3d 922, 936 (11th Cir. 1997).

22. 936 F. Supp. 1363, 1426 (S.D. Ohio 1996).

23. 943 F. Supp. 1546, 1584 (S.D. Fla. 1996).

24. *Phillips and Jordan v. Watts*, 13 F. Supp. 1308, 1314 (N.D. Fla. 1998).

25. As one of the most sophisticated and prolific authors of disparity studies has finally conceded: “First, it is virtually impossible for the type of discrimination described above to exist in construction prime contracting for government entities that follow normal public contracting procedures. City construction projects are publicly advertised. They are awarded to the lowest bidder. Almost by definition, construction contracts are awarded to the most qualified of the willing and able firms so there can be no discrimination under this extremely narrow view.” Dr. David Evans, Rebuttal report, *Concrete Works v. City and County of Denver*, pp. 3–4.

26. The best description of local MBE politics and the few firms that benefit can be found in the chapters on Atlanta in Tamar Jacoby’s *Someone Else’s House* (New York: Free Press, 1998).

27. These data were produced for “City of Cincinnati Croson Study,” Institute of Policy Research, 1992, but were not published.

28. 1992 Summary volume, *Survey of Women and Minority-Owned Businesses*.

29. General Accounting Office, “Small Business Administration—8(a) Is Vulnerable to Program and Contractor Abuse.” Report to the Ranking Minority Member, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, September 1995, pp. 3–4. See also, GAO “Small Business; Problems Continue with SBA’s Minority Business Development Program” (GAO/RCED-93-145), September 17, 1993.

30. *Croson*, 488 U.S. at 505–6.