

**The Florida Bar: Real Property, Probate and Trust Law Section
Construction Law Committee**

Small Business Sub-Committee

Meeting on August 11, 2014

FLORIDA

The Department of Transportation Inspector General recently concluded an audit of the fiscal year 2012 that revealed 83 new DBEs and airport concession DBEs (ACDBE) were awarded contracts and leases at 64 of the nation's largest airports. Miami International Airport ("MIA") was one of the top five according to the audit. MIA's small business success comes mainly in concessions. The North Terminal Marketplace area scheduled to open this winter between gates D-24 and D-26 will add six new ACDBE firms. In the audit MIA was highlighted as one of the few airports that conducts regular outreach programs to inform contractors and vendors of DBE opportunities.

Miami Dade County Disparity Study.

On July 2, 2014, Miami Dade County Mayor released a draft of the County's Disparity Study prepared by Mason Tillman Associates, Ltd. The Internal Services Department's Small Business Development Division is reviewing the report and has 60 days to provide feedback to Mason Tillman. After incorporating the County's feedback, Mason Tillman has 30 days to prepare the Final Version of the Disparity Study.

AROUND THE COUNTRY

Washington

A recent disparity study performed by the Washington State Department of Transportation showed the agency's contractors hired enough women business enterprises to meet goals that were set to overcome past discrimination. WSDOT is seeking a waiver from the Federal Highway Administration to exclude women from its DBE program (the waiver would not apply to other racial minorities.) A group of DBE women plan to file an injunction if the waiver is approved. The group plans to challenge the study's statistical analysis. Opponents of the waiver claim that study was flawed and did not followed the FHWA's protocol.

Pennsylvania

On July 14, 2014, Earnest G. Fink, Jr the former chief operating officer and co-owner of Schuylkill Products was sentenced in what is described as the largest DBE fraud in the nation's history.

Schuylkill Products, Inc. manufactures and supplies prestressed/precast concrete bridge components for highway and bridge construction projects. Fink was sentenced to 51 months in prison and ordered to pay \$27,000 in fines.

According to the DOT Fink and his co-conspirators executed the scheme by using a small Connecticut highway construction firm known as Marikina Construction Corporation as a front company to obtain government contracts. Although Marikina received the DBE contracts on paper, all the work was performed and the profits received by subsidiaries of Schuylkill.

A. Disparity Findings

1. Prime Contracts

As indicated in Table 9 disparity was found for African Americans, Asian Americans, Hispanic Americans, Minority Business Enterprises, Women Business Enterprises, and Minority and Women Business Enterprises construction prime contractors for all contracts. Disparity was found for Asian Americans and Women Business Enterprises construction prime contractors at the formal contract level.

**Table 9: Prime Contract Disparity Summary
January 1, 2007 to December 31, 2011**

Ethnicity/Gender	All Prime Contracts	
	All Prime Contracts	Prime Contracts under \$250,000
African Americans	Statistically Significant Underutilization	Underutilization
Asian Americans	Statistically Significant Underutilization	Statistically Significant Underutilization
Hispanic Americans	Statistically Significant Underutilization	Overutilization
Native Americans		----
Minority Business Enterprises	Statistically Significant Underutilization	Underutilization
Women Business Enterprises	Statistically Significant Underutilization	Statistically Significant Underutilization
Minority and Women Business Enterprises	Statistically Significant Underutilization	Underutilization

2. Subcontracts

As indicated in Table 10 below, disparity was found for African American, Hispanic American, Minority Business Enterprise, and Minority and Women Business Enterprise construction subcontractors.

Disparity was also found for African American professional services subcontractors.

Table 10: Subcontract Disparity Summary
January 1, 2007 to December 31, 2011

Ethnicity / Gender	Construction	Professional Services
African Americans	Statistically Significant Underutilization	Statistically Significant Underutilization
Asian Americans	----	Overutilization
Hispanic Americans	Statistically Significant Underutilization	Underutilization
Native Americans	----	Overutilization
Minority Business Enterprises	Statistically Significant Underutilization	Underutilization
Women Business Enterprises	Underutilization	Underutilization
Minority and Women Business Enterprises	Statistically Significant Underutilization	Underutilization

V. ANECDOTAL FINDINGS

In addition to requiring a statistical analysis, the United States Supreme Court in *Croson* stated that anecdotal findings, “if supported by appropriate statistical proofs, lend support to a [local entity’s] determination that broader remedial relief [is] justified.” *Croson* authorizes anecdotal inquiries along two lines. The first approach examines barriers attributed to the local entity. Such action is defined as the active participation of the government entity. The second approach examines whether the local entity was essentially a passive participant of exclusion practiced by its prime contractors.

A. Summary of In-Depth Interviews

Two methods were used to elicit anecdotal information. Individuals were identified from outreach efforts to prime contractors, subcontractors, suppliers, and trade and business organizations. Attendees at the business community meetings were contacted to determine their willingness to participate in an anecdotal interview. All of the