



ST. LOUIS COUNTY WORKFORCE DISPARITY STUDY REPORT

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January 2024



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SUMMARY REPORT — Executive summary

St. Louis County seeks to ensure equitable opportunities for people of color and women working on County construction contracts. Keen Independent Research LLC (Keen Independent) conducted this workforce disparity study for the County, in collaboration with the City of St. Louis, to analyze whether there is a level playing field for people of color and women working in the St. Louis metro area construction industry, including on County projects.

Utilization, Availability and Disparity Analyses

Keen Independent examined the share of hours worked by women and people of color in County construction contracts for 2020 and 2021. About 22 percent of hours were worked by people of color and 2 percent were worked by women.

Contractors involved in St. Louis County construction contracts draw from a St. Louis metro area-wide pool of construction workers. Keen Independent analyzed the availability of women and minority construction workers by trade within the metro area. Overall, the 22 percent of work hours on County construction contracts going to people of color exceeded what might be expected based on the relative availability of people of color in the construction trades used on County projects (15%). The 2 percent share of work hours going to women was just below what might be expected from the availability analysis. There were no substantial disparities for work hours on County construction contracts for people of color or for women, overall, when compared to current availability in the labor pool.

However, study results indicate disparities in employment of women, African Americans and other groups in the overall St. Louis metro area construction industry. There is evidence that current availability of women and African Americans in the construction workforce has been affected by discrimination in the St. Louis area marketplace.

Conclusions and Recommendations

Keen Independent concludes that, alone, current work hours goals for individual County contracts may not be an impactful remedy for any such discrimination. Instead, those goals, if enforced, may simply shift workers to a County project from a non-County project with no positive effect on overall opportunities for African Americans and women.

Therefore, Keen Independent suggests that St. Louis County and the City of St. Louis consider (a) refining and expanding their current workforce programs in a consistent fashion, and (b) coordinate operation of those programs in a unified way.

Actions for County consideration include the following:

1. Unify a metro area-wide program;
2. Establish aspirational goals for representation of different groups in the metro area construction trades;
3. Focus immediate efforts on pipeline development for underrepresented workers;
4. Maintain, but modify, workforce goals program for women;
5. Apply race-conscious and local hire goals as aspirational while building a targeted worker program;
6. Require company-wide affirmative action efforts in the St. Louis metro area as a condition for working on County contracts;
7. Develop a targeted worker goals program; and
8. Expand County program administration.

SUMMARY REPORT — Executive summary

1. Unify a metro area-wide program. Keen Independent suggests that St. Louis County and the City of St. Louis consider (a) refining and expanding their current workforce programs in a consistent fashion, and (b) coordinate operation of those programs in a unified way.

2. Establish aspirational goals for representation of different groups in the metro area construction trades. There are large disparities between representation of women and people of color in construction trades compared with availability benchmarks for these groups for the St. Louis metro area. Keen Independent recommends that the County consider setting long-term aspirational goals for improving the representation of women, African Americans and Asian Americans in the St. Louis metro region construction workforce. This would focus attention on addressing the fact that the industry has not been fully open to women, African Americans and certain other workers.

3. Focus immediate efforts on pipeline development for underrepresented workers. The County might consider formally recruiting trade unions and as well as groups operating non-union training programs to partner with the County on efforts to meet forecasted labor needs and foster equitable employment opportunities.

The County, collaborating with the City and others, can also support effective outreach to students in underrepresented groups to consider careers in construction trades. The County could also promote effective pre-apprenticeship programs and provide support for those programs and their participants.

4. Maintain, but modify, workforce goals program for women. To further focus attention on employment of women in St. Louis metro area construction trades, Keen Independent recommends that the County consider maintaining a workforce goals program for women for certain County construction projects. The County should set project-specific goals tailored to each project.

5. Apply race-conscious and local hire goals as aspirational while building a targeted worker program. The County should consider replacing its race-conscious and local hire workforce goals programs with a new targeted worker workforce goals program (Recommendation #7). While the County is developing the new program, it might set project-specific workforce goals for workers of color and for County residents but designate them as aspirational.

6. Require company-wide affirmative action efforts in the St. Louis metro area as a condition for working on County construction projects. Keen Independent recommends that the County and the City jointly develop a new program component that requires companies to develop plans for reducing barriers to employment for women and underrepresented minority workers in construction trades, particularly African American workers, in their St. Louis metro-area operations. The program would apply to firms of a minimum size involved in prime contracts or subcontracts of a certain size.

7. Develop a targeted worker goals program. Keen Independent recommends that the County and City consider jointly replacing race-conscious requirements and goals for local residents with a new tool: a targeted worker program. Targeted workers might be individuals who live in economically disadvantaged neighborhoods within the St. Louis metro area or attended high schools serving those neighborhoods. The County would set project-specific goals for targeted workers on its projects and require contractors to meet those goals or make good faith efforts to do so.

8. Expand County program administration. If the County adopted the recommendations outlined in this report, it would need additional resources to operate the program elements.

The balance of this report explains study results and potential County actions.

SUMMARY REPORT — Introduction

St. Louis County commissioned a workforce disparity study to determine if there are disparities between the participation and availability of people of color, women and County-residents as workers on County construction projects. The study also examines any barriers for workers of color and women to enter and advance as employees in the St. Louis metro area construction industry.

Workforce Disparity Study

Keen Independent Research LLC (Keen Independent) performed this disparity study. Government programs that provide preferences or requirements regarding the hiring of minorities or women can be challenged in court. The disparity study is based on relevant case law.

The Workforce Disparity Study also helps the County identify the types of assistance minorities and women might need to fully participate in the St. Louis metro area construction industry.

Research methods. The study included:

- The share of work hours for County-funded construction projects going to different groups of workers.
- Availability benchmarks concerning the share of total hours each group would work if there were a level playing field.
- Disparity analyses compare the actual share of work hours with the share expected from the availability analysis.
- Comments and other qualitative information obtained from workers, labor unions, trade associations and contractors.
- Other research about the St. Louis metro area marketplace.

Study team. Keen Independent Research is a national economic consulting firm. Annette Humm Keen and David Keen, Principals, led this study. The study team also included St. Louis MSA-based consulting firms Added Dimension and Excel Business Concepts and the law firm Holland & Knight.

Public input. The study started in October 2022 with a draft report submitted in July 2023.

Keen Independent reached out to thousands of businesses, trade association representatives, workers, labor unions and others in St. Louis MSA through surveys, in-depth interviews and other research. More than 800 businesses, trade association representatives, workers and other interested individuals provided input through these methods.

SUMMARY REPORT — Legal framework

Many jurisdictions across the country use an assortment of tools to promote hiring of minority and women and promote labor on major construction projects. However, public agency programs that target workers on the base of race, gender or residence within a particular jurisdiction can be subject to legal challenge.

The specific types of constitutional challenge and legal standards for review differ for race- and gender-conscious programs and local hire programs.

- Race-conscious programs (strict scrutiny analysis under the Equal Protection Clause of the 14th Amendment);
- Gender-conscious programs (intermediate scrutiny); and
- Local hire programs (consider Privileges and Immunities Clause).

1. United States Supreme Court



SUMMARY REPORT — Legal framework

Strict Scrutiny Standard of Review for Race-Conscious Programs

In 1989, the U.S. Supreme Court in *City of Richmond v. J.A. Croson Company* established “strict scrutiny” as the standard of legal review for race-conscious programs adopted by state and local governments.¹ Applying this standard, the U.S. Supreme Court held that the City’s minority business enterprise program violated the Equal Protection Clause of the Fourteenth Amendment. Strict scrutiny requires that:

- A governmental entity has a “compelling governmental interest” in remedying past identified discrimination or its present effects; and
- The program adopted be “narrowly tailored” to achieve the goal of remedying the identified discrimination.²

The strict scrutiny standard has since been followed by lower courts reviewing race-conscious programs such as minority business programs. It is the most difficult legal standard to meet that the U.S. Supreme Court could establish short of prohibiting such programs altogether.³

Appendix K provides a detailed discussion of the strict scrutiny standard and other legal standards and court decisions pertaining to public sector race- and gender-conscious hiring programs and local hire programs.

¹ 488 U.S. 469 (1989).

² *Adarand I*, 515 U.S. 200, 227 (1995); *Midwest Fence v. Illinois DOT*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d 1187, 1195-1200 (9th Cir. 2013); *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Northern Contracting*, 473 F.3d at 721; *Western States Paving*, 407 F.3d at 991 (9th Cir. 2005); *Sherbrooke Turf*, 345 F.3d at 969; *Adarand VII*, 228 F.3d at 1176 (10th Cir. 2000); *Associated Gen. Contractors of Ohio, Inc. v. Drabik (“Drabik II”)*, 214 F.3d 730 (6th Cir. 2000); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (5th Cir. 1999);

2. U.S. Supreme Court in 1989 that ruled in *City of Richmond v. J.A. Croson Co.*



Eng’g Contractors Ass’n of South Florida, Inc. v. Metro. Dade County, 122 F.3d 895 (11th Cir. 1997); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*, 91 F.3d 586 (3^d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 990 (3^d Cir. 1993).

³ The U.S. Supreme Court applied strict scrutiny when reviewing race-conscious measures related to university admissions in its June 2023 decision in *Students for Fair Admissions v. Harvard* (600 U.S. ____ (2023)). This case was about racial diversity in university admissions and does not directly relate to employment programs.

SUMMARY REPORT — Legal framework

Compelling governmental interest. The first test of the strict scrutiny analysis requires a governmental entity to have a “compelling governmental interest” in remedying past identified discrimination in order to implement a race- and ethnicity-based program.⁴ State and local governments cannot rely on national statistics of discrimination in an industry to draw conclusions about the prevailing market conditions in their own regions.⁵ Rather, state and local governments must measure discrimination in their state or local market. However, that is not necessarily confined by the jurisdiction’s boundaries.⁶

Many of the court decisions that have applied strict scrutiny to these types of programs have focused on contracting programs. In the context of minority business enterprise contract equity programs, the U.S. Supreme Court held that “[w]here 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.”⁷

The same type of comparison of utilization and availability of workers can be conducted in a workforce disparity study.

The courts have noted that “there is no ‘precise mathematical formula to assess the quantum of evidence that rises to the *Croson* ‘strong basis in evidence’ benchmark.”⁸ It has been held that a local or state government need not conclusively prove the existence of past or present racial discrimination to establish a strong basis in evidence for concluding that remedial action is necessary.⁹ Instead, the Supreme Court held that a government may rely on “a significant statistical disparity” between the availability of qualified, willing, and able minority subcontractors and the utilization of such subcontractors by the governmental entity or its prime contractors.¹⁰

The Court further found “if the City could show that it had essentially become a ‘passive participant’ in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the City could take affirmative steps to dismantle such a system. It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.”¹¹

⁴ *Id.*

⁵ *Id.*; see, e.g., *Concrete Works, Inc. v. City and County of Denver (“Concrete Works I”)*, 36 F.3d 1513, 1520 (10th Cir. 1994).

⁶ See, e.g., *Concrete Works I*, 36 F.3d at 1520.

⁷ *Id.*

⁸ *H.B. Rowe*, 615 F.3d at 241, quoting *Rothe Dev. Corp. v. Dep’t of Def.*, 545 F.3d 1023, 1049 (Fed. Cir. 2008) (quoting *W.H. Scott Constr. Co. v. City of Jackson*, 199 F.3d 206, 218 n. 11 (5th Cir. 1999)); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); see, *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*,

91 F.3d 586, 596-598; 603; (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 996, 1002-1007 (3d. Cir. 1993).

⁹ *H.B. Rowe Co.*, 615 F.3d at 241; see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Concrete Works*, 321 F.3d at 958; see, *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*, 91 F.3d 586, 596-598; 603; (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 996, 1002-1007 (3d. Cir. 1993).

¹⁰ *Croson*, 488 U.S. 509, see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *H.B. Rowe*, 615 F.3d at 241; *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*, 91 F.3d 586, 596-598; 603; (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 996, 1002-1007 (3d. Cir. 1993).

¹¹ 488 U.S. at 492.

SUMMARY REPORT — Legal framework

Narrow tailoring. The second test of the strict scrutiny analysis requires that a race- or ethnicity-based program or legislation implemented to remedy past identified discrimination in the relevant market be “narrowly tailored” to reach that objective.

The narrow tailoring requirement has several components and the courts analyze several criteria or factors in determining whether a program or legislation satisfies this requirement including:

- The necessity for the relief and the efficacy of alternative race-, ethnicity- and gender-neutral remedies;
- The flexibility and duration of the relief, including the availability of waiver provisions;
- The relationship of numerical goals to the relevant labor market;
- The impact of a race-, ethnicity- or gender-conscious remedy on the rights of third parties;¹² and
- Application of any race- or ethnicity-conscious program to only those minority groups who have actually suffered discrimination.¹³

A government agency must satisfy both requirements of the strict scrutiny standard. A race-conscious program that fails to meet either one is unconstitutional.

¹² See, e.g., *Midwest Fence*, 840 F.3d 932, 942, 953-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1198-1199; *H. B. Rowe*, 615 F.3d 233, 252-255; *Rothe*, 545 F.3d at 1036; *Western States Paving*, 407 F.3d at 993-995; *Sherbrooke Turf*, 345 F.3d at 971; *Adarand VII*, 228 F.3d at 1181; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (5th Cir. 1999); *Eng’g Contractors Ass’n*, 122 F.3d at 927 (internal quotations and citations omitted); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586,

605-610 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 1008-1009 (3d Cir. 1993); see also, *Geyer Signal, Inc.*, 2014 WL 1309092.

¹³ See, e.g., *Midwest Fence*, 840 F.3d 932, 942, 953-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1198-1199; *H. B. Rowe*, 615 F.3d 233, 243-245, 252-255; *Western States Paving*, 407 F.3d at 998; *Sherbrooke Turf*, 345 F.3d at 971; *Adarand VII*, 228 F.3d at 1181; *Kornhass Construction, Inc. v. State of Oklahoma, Department of Central Services*, 140 F.Supp.2d at 1247-1248; see also *Geyer Signal, Inc.*, 2014 WL 1309092.

SUMMARY REPORT — Legal framework

Intermediate Scrutiny Standard of Review for Gender-Conscious Programs

Some courts apply a different standard of legal review — “intermediate scrutiny” — to gender-conscious programs.¹⁴ This standard of legal review is more easily met than strict scrutiny. However, this legal standard can vary among courts, as explained below.

The federal court system is composed of district courts, each within one of thirteen circuits that hear appeals of decisions from courts in their jurisdiction. Missouri is within the jurisdiction of the Eighth Circuit Court of Appeals. Intermediate scrutiny, as interpreted by the Eighth Circuit and other federal circuit courts of appeal, requires a direct, substantial relationship between the objective of the gender preference and the means chosen to accomplish the objective.¹⁵

The measure of evidence required to satisfy intermediate scrutiny is less than that necessary to satisfy strict scrutiny. Unlike strict scrutiny, it has been held that the intermediate scrutiny standard does not require a showing of government involvement, active or passive, in the discrimination it seeks to remedy.¹⁶

The courts have interpreted this intermediate scrutiny standard to require that gender-based classifications be:

1. Supported by both “sufficient probative” evidence or “exceedingly persuasive justification” in support of the stated rationale for the program; and
2. Substantially related to the achievement of that underlying objective.¹⁷

In sum, the types of analyses relevant to supporting a gender-conscious program are similar to those for a race-conscious program. Keen Independent’s utilization, availability, disparity and marketplace analyses for women workers in this disparity study parallel those for workers of color.

¹⁴ *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); *See generally, AGC, SDC v. Caltrans*, 713 F.3d at 1195; *Western States Paving*, 407 F.3d at 990 n. 6; *Concrete Works*, 321 F.3d 950, 960 (10th Cir. 2003); *Concrete Works*, 36 F.3d 1513, 1519 (10th Cir. 1994); *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Eng’g Contractors Ass’n*, 122 F.3d at 905, 908, 910; *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993); *see also U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996)(“exceedingly persuasive justification.”); *Geyer Signal*, 2014 WL 1309092.

¹⁵ *See e.g., AGC, SDC v. Caltrans*, 713 F.3d at 1195; *H. B. Rowe, Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th

Cir. 1997); Eng’g Contractors Ass’n, 122 F.3d at 905, 908, 910; *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); *see, also, U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996)(“exceedingly persuasive justification.”); *Nevada Wildlife Alliance v. Department of Wildlife*, 497 P.3d 622 (2021); *Rico v. Rodriguez*, 120 P. 3d 812 (2005); *Tarango v. State Indus. Ins. System*, 25 P.3d 175 (2001); *Geyer Signal, Inc. v. Minnesota DOT*, 2014 W.L. 1309092 (D. Minn. 2014).

¹⁶ *Coral Constr. Co.*, 941 F.2d at 931-932; *see Eng’g Contractors Ass’n*, 122 F.3d at 910.

¹⁷ *See e.g., AGC, SDC v. Caltrans*, 713 F.3d at 1195; *H. B. Rowe, Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th

SUMMARY REPORT — Legal framework

Local Hire Programs

The Privileges and Immunities Clause, Article IV, Section 2, of the United States Constitution prevents a state from discriminating against out-of-state citizens. State or local government restrictions on nonresidents who are employed by a private firm (such as a contractor) can constitute a violation of the Privileges and Immunities Clause.

To defend a local hiring program against a Privileges and Immunities Clause challenge, a state or local government must establish that nonresidents are a “peculiar source of the evil” that the local hire preference is aimed at remedying. Thus, there must be (1) a substantial reason for the difference in treatment and (2) the discriminatory remedy must bear a close relation to the state’s objective.

Some local hiring laws, including a State of Missouri Excessive Unemployment Law, have been successfully invalidated by challenges under the Privileges and Immunities Clause.

Note that state law prohibits cities in Missouri from entering project labor agreements with trade unions.

Cir. 1997); *Eng’g Contractors Ass’n*, 122 F.3d at 905, 908, 910; *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993); *see, also, U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996)(“exceedingly persuasive justification.”); *Nevada Wildlife Alliance v.*

Department of Wildlife, 497 P.3d 622 (2021); *Rico v. Rodriguez*, 120 P. 3d 812 (2005); *Tarango v. State Indus. Ins. System*, 25 P.3d 175 (2001).

SUMMARY REPORT — Workforce participation goals program

St. Louis County currently implements labor hour goals for minorities, women and County residents on public works and tax-incentive construction projects.¹⁸

Workforce goals are designated as interim until the completion of a workforce disparity study.¹⁹The County’s interim workforce participation goals at the time of this report are summarized below:²⁰

- **Minority participation goals:** 25 percent of all labor hours are to be performed by minorities.
- **Women participation goals:** 7 percent of all labor hours are to be performed by women.
- **County resident participation goals:** 23 percent of all labor hours are to be performed by persons who reside in the County.

The interim participation goals apply for public works contracts, tax increment financed (TIF) and bonded projects when the estimated value of the contract is \$1 million or more. The County tracks work hours by group. The Ordinance does not include labor hour participation goals for apprentices.

In practice, the County does not reject a bid if a bidder cannot meet the workforce participation goals. It does not penalize a contractor if it does not meet the workforce participation goals when performing the contract.

¹⁸ Ordinance 27043 (2018).

¹⁹ Ibid.

²⁰ Ibid

SUMMARY REPORT — Construction labor market overview

The study team gathered information about how the construction market functions. This research included understanding entry into and employment in construction careers.

Entering Construction Careers

Training in the construction industry is largely on-the-job and through trade schools and apprenticeship programs.²¹ Apprenticeship programs can be developed by employers, trade associations, trade unions or other groups. Workers can enter apprenticeship programs from high school or trade school. Apprenticeships have traditionally been three- to five-year programs that combine on-the-job training with classroom instruction.²² A person who has successfully completed an apprenticeship is called a “journey worker” (historically, “journeyman”).

Often people are trained and hired for jobs within a single construction trade. The training and any formal apprenticeships are specific to that trade, such as electrical work or plumbing.

As documented in Appendix D, access to apprenticeships, training and mentoring is highly reliant on family and other social networks in both the unionized and non-unionized sector of construction. This has historically benefited white workers. For a number of historical and

current reasons discussed in Appendix E, women make up a very small portion of workers in construction trades in the United States.

The availability of apprenticeship programs fluctuates with demand and may be ended or scaled back during economic downturns such as recessions.^{23 24} Many apprenticeship programs were adversely impacted by COVID-19, for example.²⁵

²¹ Bureau of Labor Statistics, U.S. Department of Labor. (2021, October 19). Construction laborers and helpers. *Occupational Outlook Handbook*. Retrieved from <https://www.bls.gov/ooh/construction-and-extraction/construction-laborers-and-helpers.htm#tab-4>

²² Apprenticeship.gov, U.S. Department of Labor. (2021, October 19). Construction. Retrieved from <https://www.apprenticeship.gov/apprenticeship-industries/construction>

²³ Kelly, M., Pisciotta, M., Wilkinson, L., & Williams, L. S. (2015). When working hard is not enough for female and racial/ethnic minority apprentices in the highway trades. *Sociological Forum*, 30(2), 415-438. doi:10.1111/socf.12169

²⁴ Graves, F. G., et al. *Women in construction: Still breaking ground* (Rep.). Retrieved from https://www.nwlc.org/sites/default/files/pdfs/final_nwlc_womeninconstruction_report.pdf

²⁵ Buckley, B., & Rubin, D.K. (2020). Construction apprentice programs face new COVID-19 learning curve. *Engineering News-Record*. Retrieved from <https://www.enr.com/articles/49417-construction-apprentice-programs-face-new-covid-19-learning-curve>

SUMMARY REPORT — Construction labor market overview

Advancing to Journey Worker

Requirements and processes to become fully licensed and advance to journey worker vary by trade but typically require meeting a requirement for hours and/or years of supervised experience, usually as an apprentice.

For example, in St. Louis County, plumbing apprentices must complete five years of training with one year equivalent to at 1,500 hours of practical experience before applying to complete testing for the journeyman license.²⁶ Licensing at an electrician in St. Louis County requires 8,000 hours of apprenticeship and an additional 4,000 hours of electrical trade experience, 8,000 hours of work and a two-year trade school degree, 1,000 hours of work and a four-year electrical engineering degree, or 12,000 hours or more of work with an electrical contractor.²⁷

Information about County licensing and certification standards by trade is difficult to locate. A prospective entrant to a trade curious about what it takes to become established in different occupations in St. Louis County would be unable to readily obtain this information. Information about licensing requirements is not directly available on the County's website. Trade specific pages about licensing prioritize information about permits and lists of licensed contractors. For some trades, such as electricians, information about journeyman requirements is embedded in documents linked from a license application section.²⁸ For other

trades, such as plumbing, there is no similar section and applications provided in links provide no information about requirements.²⁹

Some research indicates that apprentices are often hired and laid off several times during their apprenticeship program. Apprentices are more successful in advancing to journey worker status if they were able to maintain steady employment, either by remaining with one company and moving to various work sites, or by finding work quickly after being laid off.

Journey workers can be hired and laid off as well, depending on the workload of an individual contractor.

²⁶ Policies and Procedures. Policy 1201015. Board of Plumbing Examiners. (2020, January 9). Retrieved from: <https://stlouiscountymo.gov/st-louis-county-departments/transportation-and-public-works/plumbing-licensing/plumbing-board-rules/policies-procedures/>

²⁷ St. Louis County Department of Public Works. Electrical, Communication, Industrial and Elevator Contractor Licenses. Electrical Contractor License Requirements. (2021, August 19). Retrieved from: [https://stlouiscountymo.gov/st-louis-county-departments/transportation-and-public-works/electrical-licensing/](https://stlouiscountymo.gov/st-louis-county-departments/transportation-and-public-works/electrical-licensing/license-application-requirements/)

²⁸ See <https://stlouiscountymo.gov/st-louis-county-departments/transportation-and-public-works/electrical-licensing/>

²⁹ See <https://stlouiscountymo.gov/st-louis-county-departments/transportation-and-public-works/plumbing-licensing/>

SUMMARY REPORT — Construction labor market overview

Construction Hiring

Although the overall St. Louis area workforce, like Missouri as a whole, is not highly unionized,³⁰ the construction industry is more unionized, which impacts employment and wages for those who work for non-union contractors.

Employers that are signatories to union agreements request needed workers from labor unions. Unions are a path to employment for many workers and can be a reliable source of labor for employers.

Union halls maintain a list of members and typically prioritize the assignment of workers to jobs based on factors such as seniority and time out of work. Typically, contractors can refuse a referral and workers can decline jobs, though doing so may impact their positions on referral priority lists.

Non-union employers hire construction employees through a typical process of recruitment, application, vetting and hiring.

As explained in Appendix D, construction unions have not historically been an equally available path to employment for all workers. Discrimination in membership, apprentice programs and employee referrals that have favored seniority have presented barriers to underrepresented groups.

Admission to unions may involve family or social network connections that disadvantage workers from underrepresented groups.

Additional barriers to equity in the unionized sector of the industry have included opposition to affirmative action in the industry, permitting white workers to circumvent procedures designed to prevent bias and, at times, overt intimidation and acts of violence.

³⁰ Bls.gov, Bureau of Labor Statistics. Union affiliation of employed wage and salary workers by state. (2023, January 19). Retrieved from: <https://www.bls.gov/news.release/union2.t05.htm>

SUMMARY REPORT — Construction labor market overview

Compensation

Unions negotiate wages and benefits on behalf of their members as part of collective bargaining agreements between unions and employers. Wages for public works construction in Missouri for non-members and indirectly influenced by union wage scales.

Wages for non-union members in Missouri’s public works construction industry are determined under the state’s “prevailing wage” law, which requires contractors and subcontractors to pay covered workers a minimum hourly rate that the Division³¹ of Labor Standards sets annually for each county and each occupation. Exceptions include contracts that receive federal funds or assistance and are therefore subject to federal statutes and rules which supersede state and local regulations, contracts for projects less than \$75,000 and wages for registered apprentices.

In some states, wages negotiated by unions through collective bargaining agreements are the de facto rate under prevailing wage laws.

Missouri’s prevailing wage rates are influenced, but not entirely determined, by local collective bargaining agreements. Prevailing wage rates for Missouri public works projects are weighted averages of total wage and benefit packages paid to journey workers on non-residential construction projects submitted by contractors.³²

In counties with fewer than 1,000 hours reported in a job title, Missouri allows an alternative “public works contracting minimum wage” instead of a prevailing wage. The alternative “public works contracting minimum wage” is 120 percent of the average county wage.

Contractors found in violation of prevailing wage laws in Missouri are subject to enforcement fines. First-time violators may also be barred from public works construction projects for one year and subsequent violations may result in being barred for three years.³³ If employers violate prevailing wage rates in Missouri, workers may sue for double the amount owed plus attorney’s fees.³⁴

St. Louis County’s prevailing wage enforcement program requires payment of additional penalties over and above State penalties.³⁵

³¹ Mo.gov, Department of Labor and Industrial Relations. Prevailing Wage Changes. (August 2018) Retrieved from <https://labor.mo.gov/dls/prevailing-wage>

³² Mo.gov, Department of Labor and Industrial Relations. Prevailing Wage Calculations. Retrieved from <https://labor.mo.gov/dls/prevailing-wage/calculations>

³³ Missouri Revised Statutes, Chapter 290.330-340. Retrieved from <https://revisor.mo.gov/main/OneChapter.aspx?chapter=290>.

³⁴ Mo.gov, Department of Labor and Industrial Relations. Prevailing Wage for Workers. Retrieved from <https://labor.mo.gov/dls/prevailing-wage/workers>.

³⁵ Ordinance 28,017 (2021).

SUMMARY REPORT — Construction labor market overview

Affirmative Action

Construction contractors that work on state- and locally funded projects may also work on federal or federally assisted contracts. Above a threshold value, federal affirmative action policies will then apply to employee hiring for those contractors. These policies require employers to take proactive, “affirmative,” steps to recruit and advance workers of color, women, individuals with disabilities and protected veterans.

Requirements depend on whether contractors work on direct federal projects or federally assisted projects, the number of employees and the size of the contracts as described below.³⁶

- Executive Order 11246 and Section 503 of the Rehabilitation Act of 1973 requires construction contractors with 50 or more employees and at least one Federal contract of \$50,000 to develop a written Affirmative Action Program (AAP).
- The Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA) requires construction contractors with 50 or more employees and at least one contract of \$150,000 or more must have an AAP.

Construction contractors that do not meet the thresholds above but do have federal contracts *or federally assisted* contracts or subcontracts of \$10,000 or more are not required to have an AAP but must follow 16 affirmative action steps related to recruitment, hiring, training, advancement and record-keeping.

³⁶ Employer.gov, U.S. Department of Labor. Federal contractor affirmative action and related requirements. Retrieved from <https://www.employer.gov/EmploymentIssues/Federal-contractor-requirements/Reporting/>

Written Affirmative Action Programs must contain the following quantitative analyses:

- Organizational profile;
- Job group profile;
- Placement of incumbents in job groups;
- Determining availability;
- Comparing incumbency to availability; and
- Placement goals.³⁷

In addition, written AAPs must designate responsibility for implementation, identify problem areas and action steps and include periodic audits.³⁸

³⁷ 41 CFR 60-2.10(b). Retrieved from [https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-2#p-60-2.10\(b\)](https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-2#p-60-2.10(b))

³⁸ 41 CFR 60-2.10(b)(2). Retrieved from [https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-2#p-60-2.10\(b\)\(2\)](https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-2#p-60-2.10(b)(2))

SUMMARY REPORT — Construction labor market overview

Keen Independent examined data regarding the labor market for construction workers in the St. Louis Metropolitan Statistical Area (MSA), including entry and advancement of people of color and women in construction careers.

As summarized in the following pages, the combined information indicates that people of color and women face barriers entering and advancing in the construction industry.

Employment in the Construction Industry

The study team examined employment in the St. Louis metro area construction trades. Figure 3 compares the demographic composition of construction workers with all other industries.

Race and ethnicity. Based on 2017–2021 ACS data, people of color were about 15 percent of those working in construction trades. African Americans represent a much smaller share of construction workers than employment in other industries, as do Asian Americans.

The average educational attainment of African Americans is consistent with requirements for construction jobs, so education does not explain the low number of African Americans employed in the local construction industry relative to other industries.

Historically, racial discrimination by construction unions in the United States has contributed to the low employment of African Americans in construction trades.³⁹

³⁹ Watson, T. (2021). Union construction’s racial equity and inclusion charade. *Stanford Social Innovation Review*. Retrieved from

Gender. There is a large difference between the representation of women in the construction workforce (6% of employees) and representation in all other industries (51% of employees).

3. Demographics of workers in construction and all other industries in the St. Louis MSA, 2017–2021

	Construction	All other industries
Race/ethnicity		
African American	6.3 % **	16.9 %
Asian American	0.6 **	3.3
Hispanic American	5.8 **	3.0
Native American	2.0	1.5
Total minority	14.6 %	24.7 %
Non-Hispanic white	85.4 **	75.3
Total	100.0 %	100.0 %
Gender		
Female	5.5 % **	51.0 %
Male	94.5 **	49.0
Total	100.0 %	100.0 %

Note: **, ** Denotes that the difference in proportions between workforce in the construction industry and all other industries for the given race/ethnicity/gender group is statistically significant at the 90% and 95% confidence level, respectively.

“Construction” includes occupations identified in County construction projects and other relevant occupations.

“All other industries” includes all industries other than the construction industry.

Source: Keen Independent Research from 2017–2021 ACS Public Use Microdata samples. The 2017–2021 ACS raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>

https://ssir.org/articles/entry/union_constructions_racial_equity_and_inclusion_charade

SUMMARY REPORT — Construction labor market overview

Representation of Workers of Color and Women in Specific Trades

Keen Independent examined the representation of workers of color and women in specific trades in the St. Louis MSA construction industry.

Race and ethnicity. Representation of people of color in certain construction trades was low when compared to representation in the industry as a whole. Minority representation in the following occupations was lower than in construction overall:

- Brickmasons;
- HVAC mechanics;
- Electricians; and
- Equipment operators.

Rates of minority representation are lower in occupations with relatively higher requirements in education, training and apprenticeship. This suggests that people of color may face greater barriers in accessing the requisite training and apprenticeships for high-skill occupations in the local construction industry.

Gender. There was also low representation for women across construction trades. For example, four categories of construction trades had no women workers in the Census Bureau sample data for the St. Louis MSA (HVAC mechanics, roofers, brickmasons and drywall installers).

Proportion of Construction Workers Who Reported Being Managers

To further assess advancement opportunities in the local marketplace construction industry, Keen Independent examined the proportion of construction workers who reported being managers.

Race and ethnicity. African Americans, Hispanic Americans and Native Americans were less likely than non-Hispanic whites to report working as managers. The disparities were statistically significant.

Gender. Participation of women construction workers who were managers (6%) was somewhat lower than the 7 percent of male workers. This difference was not statistically significant.

SUMMARY REPORT — Construction labor market overview

Qualitative Information about Working in the Construction Industry

Keen Independent collected and analyzed qualitative information about working in the construction industry from more than 800 study participants from the St. Louis metro area. These individuals included women and men, people of color and non-Hispanic whites, and workers, business representatives and representatives of trade unions, trade organizations and other groups. Appendix J provides representative comments from these individuals and groups, which are summarized below. Common themes included:

- Difficulties recruiting people of color and women into construction trades;
- Efforts to recruit diverse employees into careers into the trades;
- Difficulty accessing training opportunities and skills building;
- Role of unions and any impacts on opportunities for workers of color and women;
- The effect of family and social network on entering and advancing in construction trades;
- Specific issues regarding childcare and transportation;
- Concerns about personal safety;
- Ability to sustain hours worked and any allegations of being “passed over” for work;
- Any differences in treatment by employers and fellow employees;
- Any other unfair hiring or other employment practices affecting workers of color and women (including pay); and
- Other evidence of discrimination, prejudice, racism and sexism in the marketplace.

Additionally, there were comments from workers, union representatives, trade association contacts and contractors about workforce programs.

The 68-page Appendix J provides a much richer analysis of the qualitative information received by the Keen Independent study team. Appendix J presents qualitative information that Keen Independent collected as part of the St. Louis County Contract Disparity Study and the St. Louis County Workforce Disparity Study. The study team gathered insights from African American, Asian American, Hispanic American, Native American and white interviewees. Respondents included women and men.

Note that the comments in Appendix J and the following pages identify individuals by number, not by name. The letter in front of the interview number indicates that it was a business representative interviewee (“I”) or trade association representative (“TO”) who made the comment. Some comments came from individuals participating in Business Advisory Groups held by Keen Independent (“BAGs”) and some were from webinar participants (“WP”). An “AS” in front of the number indicates that the comment was from a business representative when answering an open-ended question at the end of the availability survey.

The quotes presented are representative of the personal perceptions of those providing comments.

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Difficulties recruiting or retaining people of color and women into construction trades. Some indications show that there are difficulties recruiting people of color and women into trades in the St. Louis marketplace.

Examples of comments are shown to the top right.

Efforts to recruit diverse employees into careers into the trades. Efforts are made in the St. Louis area to encourage young people to pursue careers in the construction trades through summer shadowing opportunities for college and high school students.

Examples of comments are shown at the bottom right.

It's always been a hard industry for women to break into and there has always been a problem with how many people of color are actually hired on construction jobs.

WQ-8. African American female worker

Racism. Trade unions have historically excluded African Americans. There is the perception that only Caucasians are entitled to construction jobs and the good pay that goes with them.

WQ-33. African American female union representative

...The general awareness of a career in the trades and people seeing themselves in the trades is certainly a barrier.

U-4. White female representative of a trade union

One thing that all the trades need to do is encourage the high schoolers about ... the trades? What is engineering? The construction industry has not done a good job with that, and there are all types of jobs within the construction [industry].

BAG-5. African American male representative of a construction-related firm

We have summer shadowing opportunities and a college internship program.

I-34a. White female representative of a construction-related firm

I think there seems to be a real effort, especially getting into high schools and saying we're going to provide training for you

I-40. White male owner of a professional services firm

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Difficulty accessing training opportunities and skills building.

Some interviewees reported that they have faced barriers to accessing training opportunities and skill building in the marketplace. For example:

- There are minimum levels of formal education required to enter some trades, which can present a barrier to entry.
- Accessing training can be difficult for some. Some individuals reported that they have not found trainers who are willing to train workers while others added that training centers are too far away.

These types of barriers can affect women and men as well as people of color and non-minority workers. However, in the St. Louis area, those barriers could disproportionately affect people of color.

Other participants reported that training and skills building were not equally available to workers of color.

Examples of quotes are provided to the right.

These findings are consistent with national research. According to the May 2023 U.S. Equal Employment Opportunity Commission Building for the Future report, nearly half of the respondents reported experiencing discrimination in work tasks and within promotions.⁴⁰

Requiring [a] GED or high school diploma. I'm sure there are many quality employees that can't get in because they don't have either and frankly just are not book learners or good test takers.

WQ-21. White male worker

Transportation, testing, the 'good ol' boy' system [are barriers]. Training Centers are in faraway places.

WQ-16. African American male union worker

Licensing and finding a master license holder that is willing to train you.

WQ-23. White male worker

[I] went to train to be a painter, a Union painter. When I became a journeyman, I realized I was not taught everything, not by the school, but by the companies that hired me ... I would see [white] first-year apprentices, and I was a third-year apprentice They taught them how to use a sprayer, but they wouldn't ever teach me.

I-30. African American male of an others services firm

⁴⁰ U.S. Equal Employment Opportunity Commission. (2023, May). *Building for the Future: Advancing Equal Employment Opportunity in the Construction Industry*, 38. (Rep.)

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Role of unions and any impacts on opportunities for workers of color and women. Some individuals indicated that not all construction trade unions treat people of color and women fairly, or that they still suffer from perceptions of past racial or gender discrimination by unions.

Some indications show that union workers of color are discriminated against and even excluded from unions altogether. Due to historical discrimination of women and workers of color, many women and minority workers do not have the same privileges when entering unions as other white male tradespeople. For example:

In the union, you get treated unfairly because of your color..... They make you feel like they don't want you. They work you hard. You are discriminated against and put you on short term projects.

U-5. African American male union worker

These results are consistent with national research regarding construction trade unions. According to the EEOC Building for the Future report, women and workers of color are laid off more frequently than white male workers due to existing informal practices that perpetuate racial and gender discrimination within unions.⁴¹

Some union representatives acknowledged past barriers but indicated that they are attempting to ensure fairness today. Examples of their comments are at the bottom right.

Trade unions have historically excluded African Americans. There's a perception that only Caucasians are entitled to construction jobs and the pay that goes with them.

WQ-33. African American female worker

[Unions] have been late to the game in recruiting minorities and women, and it is really hurting them right now.

WP-1a. African American owner of a construction-related firm.

Union affiliation and the people in the union do not reflect women or minority [groups]. There are barely and few minorities there.

WQ-36. African American female union worker

We spend a lot of time exposing students to the trades, in a way that they can ... especially if they're women, see themselves doing a male dominated or a male oriented job. Because of the historical barriers that existed into getting into union construction jobs over time I think there was a lack of awareness that these were really good jobs.

U-4. White female representative of a trade union

As a union apprentice coordinator, I accept all applications.

WQ-32. White male union representative

⁴¹ U.S. Equal Employment Opportunity Commission. (2023, May). *Building for the Future: Advancing Equal Employment Opportunity in the Construction Industry*, 22. (Rep.).

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The effect of family and social network on entering and advancing in construction trades. Interviewees, including union representatives, provided insights regarding barriers workers face when entering or advancing in the construction trades. Many reported that workers who have family, friends or acquaintances in the trades are at an advantage over those who do not.

Other research has found that industries where jobs go to friends and family members tend to perpetuate any historic racial discrimination in that industry. According to the 2023 EEOC Building for the Future report, closed networks are often used to recruit job applicants.⁴² A report published by the Institute for Women’s Policy Research reported that 44 percent of women learned about job openings through family and friends.⁴³

There is also evidence that workers with seniority have advantages over workers who have not worked as long in a trade. Workers reported that it is difficult to advance within the construction trades because others have already worked in the trades for a considerable amount of time. This can also perpetuate past discrimination.

Comments are shown to the right.

Not knowing all the different trades. Not having a relative in the trades to get them access to employment in the trades. Fear of the unknown on both existing trade workers and those seeking to enter the trades [are barriers].

WQ-32. White male union representative

We've been trying to get the unions to reach out more and to hire more minority [employees]. ... Everything is the 'good old boys' system. I don't think anything has changed.

BAG-6. African American male representative of a construction-related firm

I haven't had the opportunity to build generations of being involved [in the industry]. Some trades don't want people except those who are connected ... Some trades don't want people except those who are connected.

WQ-15. African American female worker

Not being a part of the union workforce as a regular with a major company. You must be known by someone to keep working even when [working] with a company for a season....

U-3. African American male union representative

[There's] a lack of opportunity [to advance] because someone else has been doing it longer.

WQ-27. African American male worker

⁴² U.S. Equal Employment Opportunity Commission. (2023, May). Building for the Future: Advancing Equal Employment Opportunity in the Construction Industry, 27. (Rep).

⁴³ Hegewisch, A. and Mefferd, E. (2021). A Future Worth Building: What Tradeswomen Say about the Change They Need in the Construction Industry. *Institute for Women's Policy Research*, 29. Retrieved from https://iwpr.org/wp-content/uploads/2022/02/A-Future-Worth-Building_What-Tradeswomen-Say_FINAL.pdf

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Specific issues regarding childcare and transportation. Lack of access to childcare and reliable transportation create challenges for workers in the St. Louis marketplace that impact their ability to enter the workforce and sustain work.

Indications show that access to childcare can cause issues for workers because childcare facilities do not open early enough to be helpful for construction workers. Some added that this can be particularly challenging for single parents.

Unreliable transportation is a factor that can cause workers in the marketplace to lose out on work and overtime hours.

We know that childcare is a major challenge because work often starts very early in the morning before most childcare businesses or schools will be available in the morning.

I-34a. White female representative of a construction-related firm

Childcare is major, both not being able to find childcare that's reliable and safe, that's open early enough to get to work is one big problem. It's hard for single parents to have any kind of young child with any kind of issue [like] illness, problems at school. [You're] losing work or missing work for those issues.

TO-10b. African American female representative of a business-assistance organization

Lack of childcare, lack of maternity leave, gender and racial prejudice, lack of good public transportation.

WQ-12. Asian American female worker

[Barriers] - reliable transportation, childcare so [that I] can get to work and work overtime, I also think a lot of people don't know where to start - who/where to go to in order to start the process.

WQ-41. Female representative of a trade association

Reliable transportation is a barrier to employment. The three reasons apprentices don't last on the job are: not showing up, not showing up on time and transportation problems.

WQ- 32. White male worker

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Concerns about personal safety. Fear of crime and personal safety is rampant on construction jobsite locations. Some individuals mentioned instances of harassment, hazing, racism and unequal treatment on jobsites. Comments are shown to the top right of this page.

Study findings are consistent with national research. The May 2023 EEOC Building for the Future report indicated that nearly one quarter of women experience sexual harassment and more than one in five women of color experience racial harassment.⁴⁴

There were more general comments about crime in the St. Louis metro area that may deter workers from working in certain areas. These are shown to the bottom right.

Women, people of color and members of the LGBTQIA community don't feel safe or welcome on most job sites.

WQ-43. White female worker

These foremen condescend people. [They] threaten people about their jobs because [they] want to talk down to you. These bosses lay black men off all the time based off lies from the foremen.

WQ-54. African American male worker

Lots of violence. [We're] losing revenue and no one is taking care of society's needs.

AS-118. St. Louis business owner

Safety, vehicles and crime is a safety issue if they do not have police or secured parking for construction vehicles.

AS-122. White male owner of a construction-related business

St. Louis sucks and is crime ridden. No one wants to ... work there. I do as little as I can there.

I-22. Male representative of a professional services firm

⁴⁴ U.S. Equal Employment Opportunity Commission. (2023, May). Building for the Future: Advancing Equal Employment Opportunity in the Construction Industry, 20. (Rep.).

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Ability to sustain hours worked and any allegations of being “passed over” for work. Some workers reported that they feel they are “passed over” because they are required to move between job sites which affects their ability to maintain steady hours towards apprenticeships.

Any differences in treatment by employers and fellow employees. Several workers in construction trades reported that there is unequal treatment between employees.

Any other unfair hiring or other employment practices affecting workers of color and women (including pay). Some study participants reported that there are unfair hiring and other practices that primarily impact workers of color and women in the construction trades.

Some interviewees agree that workers of color and women are only hired on jobs to meet a workforce diversity goal.

People of color are challenged because they move around on job sites... this makes getting enough steady hours towards their apprenticeships difficult.

I-62. Minority business owner

[There is] undocumented hazing, racial tensions and unequal treatment [between workers].

WQ-51. African American male union representative

Contractors hire one minority woman and keep her in the lowest skill position, just over to the side, and say ‘we’re doing our part.’ Meanwhile, she’s the only person of color, she’s the only female. It reduces what’s intended, and it’s also bad for her.

TO-10a. White female representative of a business assistance organization

SUMMARY REPORT — Construction labor market overview

Any other evidence of discrimination, prejudice, racism and sexism in the marketplace. Some interviewees indicated that the homogenous, white male-dominated nature of job sites leads to discrimination against other groups. There were comments indicating that there is not sufficient organizational commitment to equity for people of color and women in the construction industry.

Examples of comments are shown below and to the right.

Culture is still a challenge overall. Our industry [is] historically white male dominated, that has been challenging for people to enter and retain. A lot of it does have to do with culture on site

I-34a. White female representative of a construction-related firm

I just don't see many women and people of color in the trade, I feel like they're getting held back because it took me 3 years on being on the list to finally to become an apprentice.

WQ-42. Hispanic American male worker

I think it's a big game of keep away. There are not enough women and people of color in the decision-making process to have entry into the apprenticeships.

WQ-22. African American female worker

Foreman and management are not people of color unless they own the business.

WQ-34. African American male worker

Leaders are not being trained to be inclusive leaders [to commit to] valuing diversity.

WQ-10. African American male worker

[There's] hostile work environments and a lack of exposure to different people, so workers on site default to the familiar. [There's] a lack of support for diverse workers on site.

WQ-67. St. Louis metropolitan area worker

Racism is systemically a factor. Caucasian employees will act like they don't want to work with you. That's enough [for you] to get fired. Caucasians that come into St. Louis to work have a different sentiment towards us because they are the majority on the job and have been getting away with antics for years and nothing is done about it because the riding boss of a company is a racist and bigot like them. These foremen try to condescend [you] on the job and if you say something to defend yourself, they will act [like] you're difficult to work with.

WQ-54. African American male union worker

The numbers are very low for women and people of color. I strongly believe racism is the major factor.

WQ-53. African American male union worker

[There's] a lack of diversity in positions of hiring within most companies. Until all companies start to fill middle and upper management with a diverse group the majority will always look more favorably upon their own group of people to hire.

WQ-25. African American male union worker

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Any programs that assisted workers of color, women or other groups in successfully entering and advancing as construction workers. Some study participants reported that there are programs that exist to assist workers of color, women and other groups in entering and advancing in the construction trades. Some examples of existing programs and partnerships include the following:

- Missouri Women in Trades;
- Building Union Diversity Program;
- MOKAN;
- SLDC;
- Ranken Technical College;
- Worker Innovation and Opportunity Act (WIOA) programs;
- Dislocated programs;
- Youth programs; and
- Local labor unions.

[We have a] partnership with Missouri Women in Trades, local labor unions, [the] Building Union Diversity Program, Ranken Technical [College], WIOA-programs, dislocated programs, and youth programs. We partner with MOKAN and the SLDC so we can all benefit and work with one another under the Mayor's efforts.

PE-1. Public entity representative

These [minority worker inclusion] goals are in place and [the] SLDC is more and more involved, which is great. It's so helpful that we're having monthly meetings and we're connecting about the projects.

I-34a. White female representative of a construction-related firm

MOKAN is another organization [that] offers the resources to help with different marketing tactics along with a lot of other things too.

I-15. African American female owner of a construction-related firm

SUMMARY REPORT — Construction labor market overview

Comments about workforce programs. A number of interviewees provided comments about workforce programs. Some indicated that there is a general lack of commitment to increasing and maintaining workforce diversity due to varying factors.

Some of the comments about difficulties meeting workforce goals are shown to the right.

Finding women is not always easy for this industry. The workforce out there is 60% minority, but it's no women. There are women, but you really have to work at it. You have to go out of your way, and you have to try and not let yourself fall back on the good faith effort thing.

I-6. White male owner of a construction-related firm

There are labor shortages in all kinds of different fields, and construction and engineering are no exception to that rule. It's going to be increasingly difficult to find people to do everything it looks like, but at the same time there's a tremendous opportunity for people who are interested.

BAG-7. White male representative of a professional services firm

All I've heard is how there's not enough workers, and guess what people aren't focusing on? Women and recruiting women.

TO-10a. White female representative of a trade association

We constantly look at where we're at percentage-wise. If you know 12-13, 14%-mark minority participation achieving 25% on a certain job, it may be next to impossible because I have it local. I can't pull everybody off one site to satisfy a requirement on another

U-2. Union representative

SUMMARY REPORT — Construction labor market overview

There were also comments indicating that the workforce goals programs do not meet their intended objectives. For example, contractors treating individual workers of color and women as “just as a number” and not given real opportunities for construction careers.

Examples of comments are shown below and to the right.

Awareness of training and opportunities and access to training and opportunities Not seeing those enter the industry retained, underrepresented individuals only utilized on projects with goals and not in the private sector.

WQ-10. African American male representative of a construction-related firm

There are boots on the ground requirements and then [minorities] are just a number versus investing in that person’s training and retention and their career.

I-56. White female owner of a professional services firm

An African American female City resident apprentice who then can be counted as four other things because what these contractors do is they hire one of those women and they keep her in the lowest skill position.

TO-10b. African American female representative of a trade organization

It’s not that women and people of color can’t get certain jobs, it’s more that they are looked at as specific for that particular job. Once that job comes to an end then so does the employment of women and minorities.

WQ-25. African American male union worker

As far as workforce, they don't enforce the workforce. I have an issue with [how] they are hired Say they need a woman or minority on a job ... they hire one minority for just that particular job. Once the job is over, then they'll get rid of them. I find that that's a serious issue.

BAG-3. African American female owner of a construction-related firm

I’m seeing all these young [minority] men who could not get jobs at these other companies, so they had to come work for our company. With all these diversity initiatives [they] are now being recruited away. The diversity initiatives have probably had the opposite effect that they intended to have.

I-41. African American female owner of a construction-related firm

SUMMARY REPORT — Construction workforce data

Keen Independent compiled data about workforce participation in St. Louis County construction projects from a report generated by the St. Louis County Prevailing Wage Enforcement Program Office.⁴⁵

The Prevailing Wage Enforcement Program Office collects payroll information, including work hours, for County construction contracts. It began preparing reports on work hours in 2021 and was able to provide Keen Independent reports for 16 construction projects awarded between 2021 and 2022.⁴⁶ Appendix B provides additional information about how these data are collected.

County Workforce Data

County reports included work hours by:

- Race/ethnicity;
- Gender;
- Trade (as reported by the contractor); and
- Whether an employee worked on the project as an apprentice.

County reports also included the worker's place of residence.

Construction trades. Contractors reported multiple types of trades. The study team grouped those trades into 14 specific Census Standard Occupational Codes (occupations).

Prime contractors and subcontractors. Keen Independent identified the number of work hours for prime contractors and subcontractors using the name of the employer.

Based on these data, the study team analyzed work hours and type of work performed (trades) for people of color, women, county residents and apprentices on County construction projects.

⁴⁵ The County Prevailing Wage Enforcement Program Office monitors that contractors comply with the prevailing wage law on construction projects involving the use of public funds and County incentivized economic development projects.

⁴⁶ The County M/WBE Program Office just recently started compiling workforce information via BizTrack.

SUMMARY REPORT — Construction workforce participation

Total Work Hours on County Projects

Figure 4 shows the total number of hours by prime contractor and subcontractor for people of color, women and County residents for the 16 projects for which Keen Independent received data.

- Hours for all workers combined totaled about 90,000 hours with the majority (56,000) worked for subcontractors and about 34,000 hours worked for prime contractors.
- People of color performed about 19,000 work hours, about 22 percent of total work hours, somewhat below the County’s workforce participation goal of 25 percent.

People of color performed about 25 percent of subcontractors’ total work hours and about 17 percent of prime contractor total work hours.

- Women performed about 2,000 work hours, about 2 percent of total hours, below the County’s goal of 7 percent.

Women performed about 4 percent of subcontractor work hours and 0.1 percent of prime contractor work hours.

- County residents performed about 11,000 work hours, about 12 percent of total work hours, about one-half of the goal of 23 percent.

The percentage of work hours performed by County residents was about 15 percent for subcontractors and about 7 percent for prime contractors.

Note that race, ethnicity and gender were reported for 98 percent of the work hours included in the County reports.

4. Hours worked on County construction projects, 2021–2022

	Total	Minorities	Women	County residents
Hours				
Prime contractors	34,293	5,920	41	2,491
Subcontractors	55,560	13,714	1,973	8,317
Total	89,853	19,634	2,014	10,808
Percentage of hours				
Prime contractors		17.3 %	0.1 %	7.3 %
Subcontractors		24.7	3.6	15.0
Total		21.9 %	2.2 %	12.0 %
County workforce goals				
Current goals		25.0 %	7.0 %	23.0 %

Source: Keen Independent from County reports.

SUMMARY REPORT — Construction workforce participation

Figure 5 provides further detail on the race and ethnicity of workers on County projects.

- Among people of color, African Americans performed the largest share of total work hours (16.3%), followed by Hispanic Americans (5.4%).

Combined, work hours for Asian-Pacific Americans, Subcontinent Asian Americans, Native Americans and other minority workers accounted for just 0.2 percent of total work hours.

- Women of color performed only 106 work hours of the total (0.1% of the approximately 90,000 hours).

White women performed 95 percent of the total work hours performed by women. Of the work hours performed by women, women of color accounted for only 5 percent of those hours.

5. Hours worked on County construction projects by race and gender, 2021–2022

	Hours	Percent of hours
Race/ethnicity		
African American	14,643	16.3 %
Asian-Pacific American	96	0.1
Subcontinent Asian American	0	0.0
Hispanic American	4,847	5.4
Native American	32	0.0
Other minority	16	0.0
Total minorities	19,634	21.9 %
Non-Hispanic white	68,312	76.0
Unknown race/ethnicity	1,907	2.1
Total	89,853	100.0 %
Gender		
Women of color	106	0.1 %
White women	1,884	2.1
Total women	2,014	2.2 %
Male	87,839	97.8
Unknown gender	24	0.0
Total	89,853	100.0 %

Source: Keen Independent from County reports.

SUMMARY REPORT — Construction workforce participation

Apprentice Hours on County Construction Projects

Figure 6 examines the total number of hours worked by apprentices on County construction projects for the 16 projects examined.

- Hours for apprentices working on County projects totaled 9,798, with the majority (7,681) worked for subcontractors and about 2,117 hours worked for prime contractors. Compared to total hours worked, apprentice hours accounted for about 11 percent of total work hours. Apprentice hours were a higher share of total work hours for subcontractors (14%) than for prime contractors (6%).
- People of color performed about 4,310 apprentice work hours, or 44 percent of total apprentice hours.

Apprentices who are racial or ethnic minorities performed about 49 percent of subcontractor apprentice work hours and about 26 percent of prime contractor apprentice work hours.

- Women performed about 1,129 apprentice work hours, about 11 percent of total apprentice hours.

Women performed about 15 percent of subcontractor apprentice work hours and less than 1 percent of prime contractor apprentice work hours.

- County residents performed about 490 apprentice hours, about 5 percent of total apprentice hours.

6. Hours worked by apprentices on County construction projects, 2021–2022

	Total	Minorities	Women	County residents
Hours				
Prime contractors	2,117	559	19	60
Subcontractors	<u>7,681</u>	<u>3,751</u>	<u>1,110</u>	<u>436</u>
Total	9,798	4,310	1,129	496
Percentage of hours				
Prime contractors		26.4 %	0.9 %	2.8 %
Subcontractors		48.8	14.5	5.7
Total		44.0 %	11.5 %	5.1 %

Source: Keen Independent from County reports.

SUMMARY REPORT — Construction workforce participation

Hours by Trade

Contractors reported hours for multiple types of trades. Keen Independent translated those trades into specific occupations. The following occupations accounted for more than 80 percent of the work hours on eligible County construction contracts (in descending order):

- Construction laborers;
- Construction equipment operators;
- Cement masons, concrete finishers and terrazzo workers;
- Electricians;
- Carpenters;
- Plumbers, pipefitters, and steamfitters;
- Roofers;
- Sheet metal workers;
- Structural iron and steel workers; and
- Brickmasons, blockmasons, stonemasons, and reinforcing iron and rebar workers.

Keen Independent presents an analysis of work hours by trade for people of color, women, county residents and apprentices.

The importance of these trades to the analysis carries over into Keen Independent’s estimates of the relative availability of people of color, women and county residents for construction hours on County projects.

7. Hours worked by occupation for prime contractors and subcontractors, 2021–2022

Occupation	Prime contractors	Subcontractors	Total
Construction laborers	19,763	18,454	38,217
Construction equipment operators	3,777	6,058	9,835
Cement masons, concrete finishers, and terrazzo workers	6,412	1,029	7,441
Electricians	0	7,429	7,429
Carpenters	3,669	3,395	7,064
Plumbers, pipefitters, and steamfitters	0	4,796	4,796
Roofers	0	4,297	4,297
Sheet metal workers	0	3,703	3,703
Structural iron and steel workers	9	2,763	2,772
Brickmasons, blockmasons, stonemasons, and reinforcing iron and rebar workers	462	2,118	2,580
Radio and telecommunications equipment installers and repairers	0	809	809
Painters and paperhangers	0	610	610
Driver/sales workers and truck drivers	203	53	255
Hazardous materials removal workers	0	48	48
Total	34,293	55,560	89,853

Source: Keen Independent from County reports.

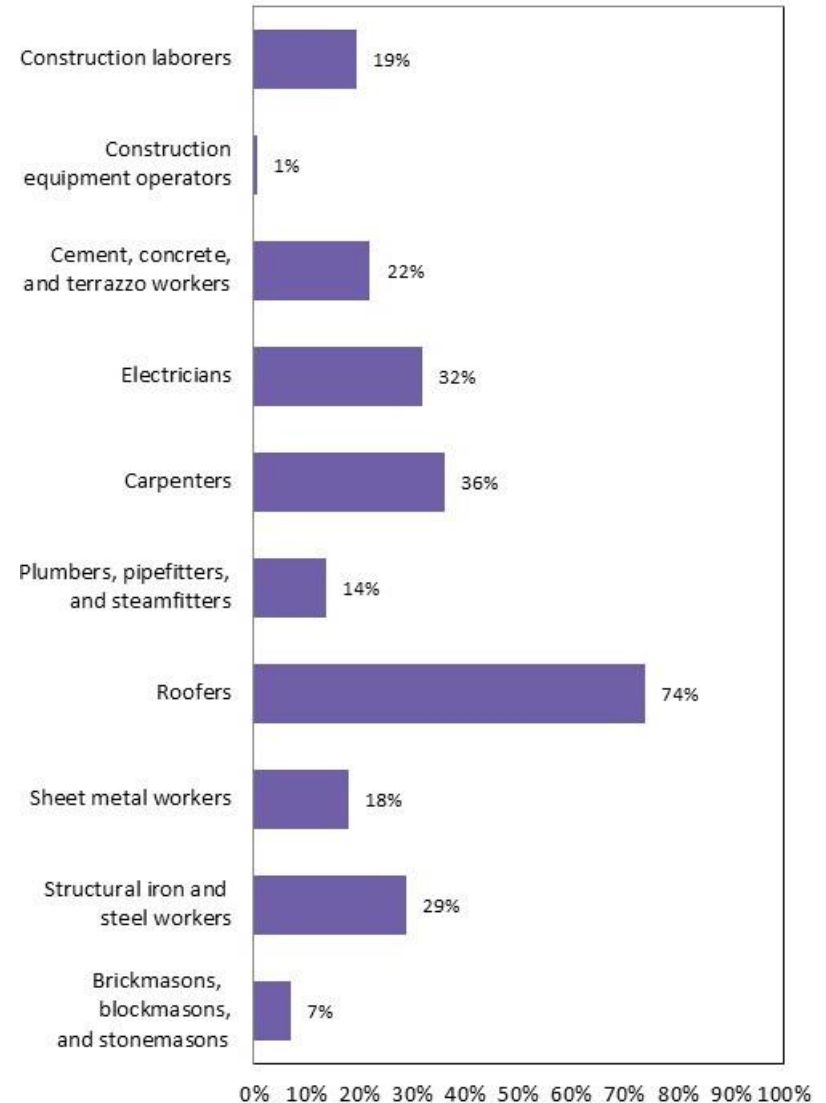
SUMMARY REPORT — Construction workforce participation

Work Hours by Construction Trade for People of Color

Figure 8 shows the percentage of hours worked by people of color for the ten trades that accounted for the most work hours.

- The three trades where people of color had the largest percentage of hours worked were roofers (74%), carpenters (36%) and electricians (32%).
- The share of work hours for people of color ranged from 7 to 29 percent of the hours for brickmasons, plumbers, construction laborers, cement masons and structural iron and steel workers.
- About 2 percent of the work hours for construction equipment operators were performed by people of color.

8. Percentage of hours on County construction projects worked by people of color, 2021–2022



Source: Keen Independent from County reports.

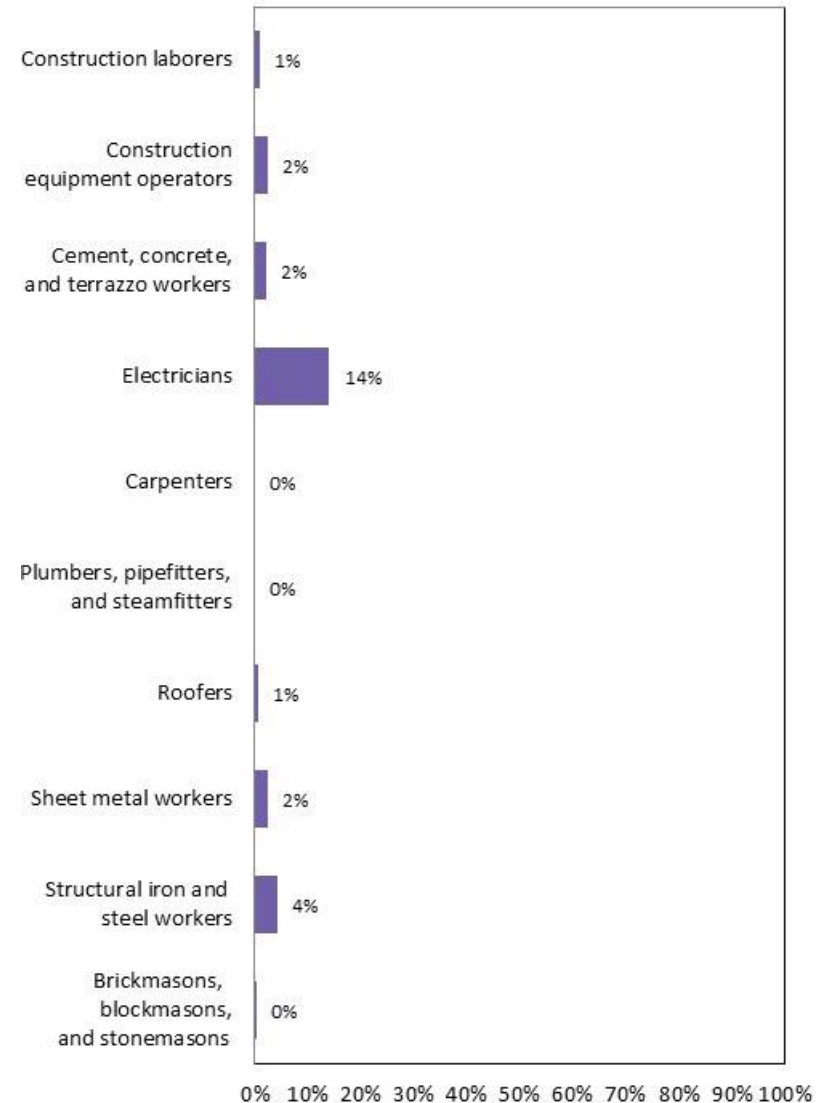
SUMMARY REPORT — Construction workforce participation

Work Hours by Construction Trade for Women

Figure 9 shows the percentage of hours worked by women.

- Women performed 1 to 4 percent of the construction hours worked for many of the trades that accounted for the most work hours on County projects.
- There was no representation of women among hours for carpenters and plumbers. Women worked less than 1 percent of hours for brickmasons.
- Hours for electricians showed the greatest relative representation of women workers (14% of electrician hours).

9. Percentage of hours on County construction projects worked by women, 2021–2022



Source: Keen Independent from County reports.

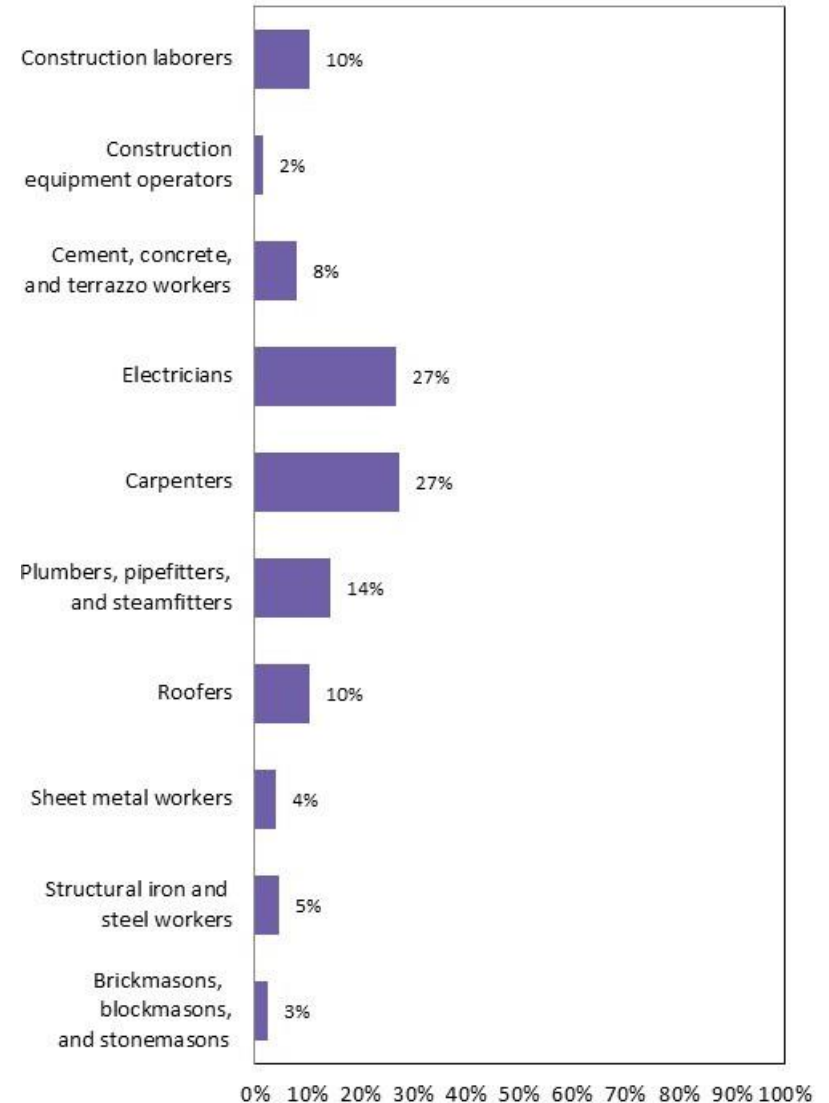
SUMMARY REPORT — Construction workforce participation

Work Hours by Construction Trade for County Residents

Figure 10 shows the percentage of hours worked by St. Louis County residents.

- County residents had the largest percentage of hours worked for carpenters (27%) and electricians (27%).
- County residents worked 2 to 8 percent of the hours of labor for construction equipment operators, brickmasons, sheet metal workers, structural iron and steel workers and cement masons.
- Share of work hours going to county residents was between 10 and 14 percent for other occupations.

10. Percentage of hours on County construction projects worked by county residents, 2021–2022



Source: Keen Independent from County reports.

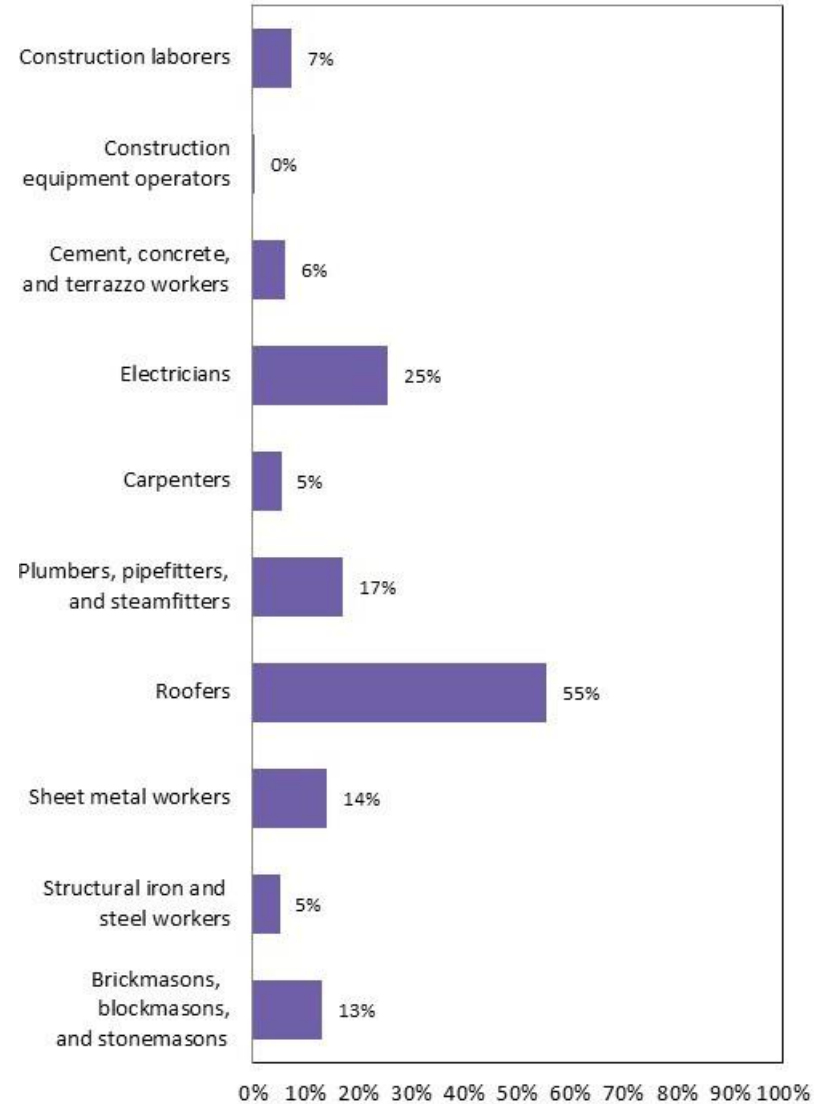
SUMMARY REPORT — Construction workforce participation

Work Hours by Construction Trade for Apprentices

Figure 11 shows the percentage of total hours for each trade that were worked by apprentices.

- Apprentices accounted for the largest percentage of hours worked for roofers (55%), electricians (25%) and plumbers (17%).
- Apprentices worked 5 to 14 percent of the total hours for structural iron and steel workers, carpenters, cement masons, construction laborers and brickmasons.
- Apprentices worked less than 1 percent of the total hours for construction equipment operators.

11. Percentage of hours on County construction projects worked by apprentices, 2021–2022



Source: Keen Independent from County reports.

SUMMARY REPORT — Availability analysis

Keen Independent analyzed the composition of the construction workforce in the St. Louis labor market area and developed availability benchmarks for workers of color, women and county residents that reflect the distribution of construction trades for workers involved in County construction projects.

Keen Independent started the availability analysis by defining the relevant labor market area for workers on County construction contracts.

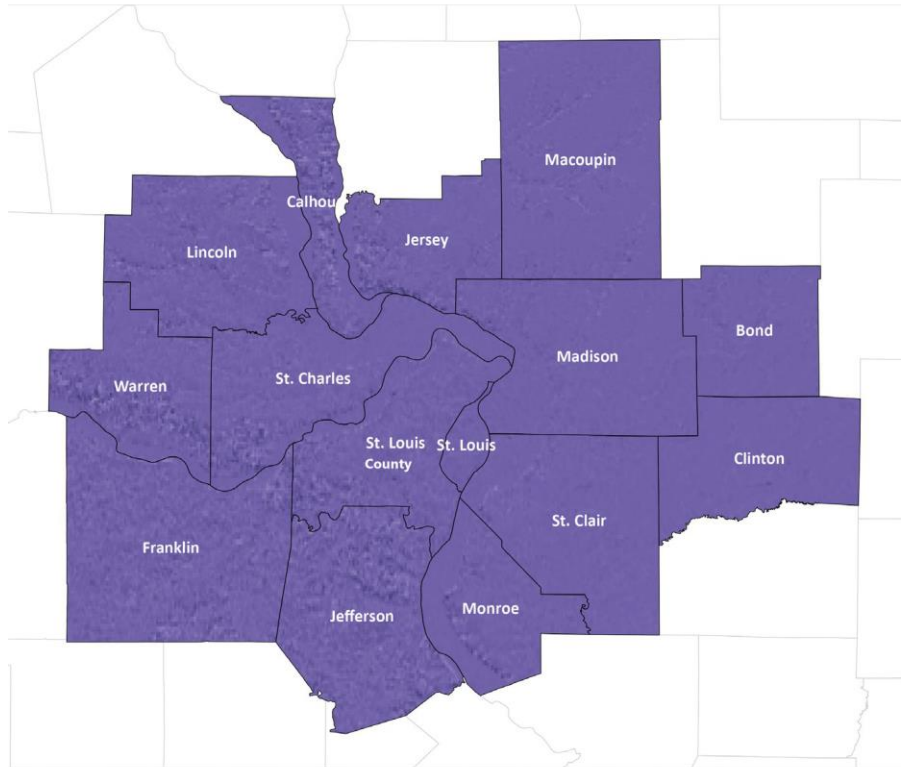
Labor Market Area for County Projects

The study team examined data in the County’s workforce reports about place of residence for workers on County construction projects.

The analysis of County workforce reports shows that about 85 percent of the total work hours on County construction projects were performed by workers who reside in the federally defined St. Louis Metropolitan Statistical Area (MSA).⁴⁷ Therefore, the St. Louis MSA is the labor market area for the availability analysis and other marketplace analyses in the Workforce Disparity Study.

The next pages present relative availability of people of color and women for construction jobs on County projects. Each of these analyses is based on data about workers living within the St. Louis MSA.

12. Counties in the St. Louis construction labor market area



⁴⁷ St. Louis Metropolitan Statistical Area (MSA) includes the City of St. Louis, MO, the Illinois counties Bond, Calhoun, Clinton, Jersey, Macoupin, Monroe and St. Clair and the Missouri counties Franklin, Jefferson, Lincoln, St. Charles, St. Louis and Warren.

SUMMARY REPORT — Availability analysis

Availability of Construction Workers for County Projects

Keen Independent examined data on construction workers in all construction occupations within the labor market area to prepare estimates of the relative availability of workers for County projects. The study team used data for 2017–2021 from the U.S. Census Bureau American Community Survey (ACS).

In Figure 13, “construction workers” refer to people working in the construction industry in construction occupations (synonymous with “construction trades”). Construction occupations include the trades reported for the 16 County projects plus other relevant construction occupations identified in U.S. Census Bureau data. Appendix C shows the distribution of workers per occupation for minority, woman and county residents. The left data column of Figure 13 presents these results.

- About 15 percent of workers are people of color when examining all construction occupations.
- About 6 percent of workers in all construction occupations are women.
- County residents comprise 21 percent of all workers in construction trades in the labor market area.

However, these unadjusted data do not reflect the specific mix of work hours by trade in County projects. Adjusting for that mix of trades provides the weighted availability results in the right data column in Figure 13. The largest difference to the availability calculations is for women (2.5% availability after weighting by trade). Keen Independent summarizes the process for developing these weighted availability results on the next page (and explains in greater detail in Appendix C).

13. Availability of construction workers in the labor market area, 2021–2022

	Construction workers in all construction occupations	Weighted availability
Race/ethnicity		
African American	6.27 %	6.53 %
Asian-Pacific American	0.54	0.66
Subcontinent Asian American	0.04	0.07
Hispanic American	5.79	5.85
Native American	1.94	1.63
Other minority	0.03	0.04
Total minority	14.61 %	14.78 %
Non-Hispanic white	85.39	85.22
Total	100.00 %	100.00 %
Gender		
Women of color	0.47 %	0.28 %
White women	5.04	2.25
Total women	5.51 %	2.53 %
Male	94.49	97.47
Total	100.00 %	100.00 %
County residents		
County residents	21.48 %	18.53 %

Note: Construction occupations include the trades reported for the 16 County projects plus other relevant construction occupations identified in the U.S. Census Bureau data.

Source: Keen Independent Research from 2017–2021 ACS Public Use Microdata samples. The 2017–2021 ACS raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

SUMMARY REPORT — Availability analysis

Calculation of Weighted Availability

The distribution of hours worked by construction trades in County construction projects for January 2016 through December 2021 differs from the distribution of workers across trades for the industry as a whole. For example, 43 percent of the work hours on County projects were performed by construction laborers. However, construction laborers are only 23 percent of the total construction workers in the labor market area.

On the other hand, relatively fewer work hours were performed by carpenters on County construction projects (7.9%) than one might expect based on carpenters' 19 percent share of total workers in construction trades in the region.

As described, Keen Independent developed availability benchmarks that reflect the distribution of occupations in County construction projects.

- From U.S. Census Bureau data, the study team determined the percentage of workers in each occupation within the labor market area who are people of color (e.g., 22% of construction laborers are racial or ethnic minorities).
- From County workforce reports, Keen Independent calculated the weight to be applied to each occupation based on the percentage of total hours worked on County construction projects in that occupation (e.g., construction laborers performed 43% of work hours).
- The study team multiplied the availability percentages for each occupation by the weight for each occupation (e.g., multiplying 22% minority availability for construction laborers by a weight of 43%) and then summed the results.

From this work hour-weighted availability analysis, the percentage of hours on County construction projects that might be expected to be performed by people of color is 14.78 percent.

The weighted availability results for workers of color are very similar to the unweighted results (left column of data in Figure 13).

Results differ for women workers, as they account for a smaller share of workers in trades heavily used in County projects compared to representation of women across all construction occupations. Based on the weighted availability analysis, one might expect 2.53 percent of the hours on County construction projects to be worked by women. (Women of color are counted in both the minority and the female benchmarks.)

About 19 percent of work hours might be expected to be worked by St. Louis County residents after weighting results by individual occupation involved in the County projects.

SUMMARY REPORT — Disparity analysis

Keen Independent compared the participation of people of color, women and county residents in County construction projects with the availability benchmarks for each group previously reported.

The study team also analyzed whether people of color, women, county residents and apprentices are underrepresented among all construction workers in the St. Louis metro area. Keen Independent then examined whether people of color, women and county residents were underrepresented among apprentices working on County construction projects.

This section explains the methodology and results of these disparity analyses.

Disparity Analysis for County Projects

Disparity indices. One of the ways to compare an outcome with an availability benchmark is to calculate a “disparity index.” Creating a common index eases comparison of utilization and availability results across racial, ethnic and gender groups and between different job classifications.

- A disparity index is calculated by dividing utilization by availability and multiplying by 100.
- A disparity index of “100” indicates an exact match between actual utilization and what might be expected based on the availability of minorities and women often referred to as “parity.”
- A disparity index of less than 100 may indicate a disparity between utilization and availability, and disparities of less than 80 in this report are described as “substantial.”⁴⁸

⁴⁸Some courts deem a disparity index below 80 as being “substantial,” and have accepted it as evidence of adverse impacts against minorities. For example, see *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F. 3d 1187, 2013 WL 1607239 (9th Cir. April 16,

2013); *Rothe Development Corp v. U.S. Dept of Defense*, 545 F.3d 1023, 1041; *Eng’g Contractors Ass’n of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d at 914, 923 (11th Circuit 1997); *Concrete Works of Colo., Inc. v. City and County of Denver*, 36 F.3d 1513, 1524 (10th Cir. 1994).

SUMMARY REPORT — Disparity analysis

Disparity results for County projects. Using the steps discussed on the previous page, Keen Independent calculated the disparity indices shown in the right-hand column of Figure 14.

- The share of work hours for people of color as a whole (22%) was higher than the availability benchmark (15%).

This was due to a higher share of hours for African American workers (16.65%) than expected from the availability analysis (6.53%) and a share of hours going to Hispanic American workers (5.51%) that close to availability (5.85%).

There were substantial disparities in work hours for Asian-Pacific Americans, Subcontinent Asian Americans, Native Americans and other minorities (disparity indices below 80 for each of these groups).

- Women worked 2.2 percent of the hours on County construction projects, slightly lower than what might be expected from the relative availability of female workers in the labor market area (2.5%).
- County residents accounted for 12 percent of hours on County construction projects, lower than what would be expected from the availability analysis.

The County’s workforce program may be a reason why utilization of certain groups exceeded the availability benchmarks. Also, the lack of disparity for a specific group does not mean that there is a level playing field in the St. Louis MSA construction industry, as there may be barriers to entry, training, advancement and retention within the industry for a group. The question of whether the current participation of people of color, women and county residents in the industry as a whole reflects an “equitable” outcome is addressed next.

14. Disparity analysis for total hours worked on County construction projects, 2021–2022

	Hours worked on County construction	Weighted availability	Disparity index
Race/ethnicity			
African American	16.65 %	6.53 %	200+
Asian-Pacific American	0.11	0.66	16
Subcontinent Asian American	0.00	0.07	0
Hispanic American	5.51	5.85	94
Native American	0.04	1.63	2
Other minority	0.02	0.04	46
Total minority	22.33 %	14.78 %	151
Non-Hispanic white	77.67	85.22	91
Total	100.00 %	100.00 %	
Gender			
Women of color	0.12 %	0.28 %	43
White women	2.10	2.25	93
Total women	2.24 %	2.53 %	89
Male	97.76	97.47	100
Total	100.00 %	100.00 %	
County residents			
County residents	12.03 %	18.53 %	65

Note: Percent of hours does not include observations with an unknown race or gender.

Source: Keen Independent from County reports.

Keen Independent Research from 2017–2021 ACS Public Use Microdata samples. The 2017–2021 ACS raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>

SUMMARY REPORT — Disparity analysis

Labor Market Area Construction Employment

Keen Independent analyzed whether people of color, women and county residents are underrepresented among all workers in the labor market’s construction trades.

People working in construction obtain training specific to each trade. Although some construction workers have attended college and some earned an associate degree, most do not have a four-year college degree.⁴⁹ Therefore, it is useful to compare the composition of the labor market area’s⁵⁰ construction workers in all construction occupations with the population of working-age adults who do not have a four-year college degree (after removing people who were serving in the military at the time).

Figure 15 shows that African American workers comprise a smaller share of workers in construction trades (6%) than one might expect given their share of the civilian labor force without a four-year college degree (20%). Asian-Pacific American and Subcontinent Asian American workers were also underrepresented in the construction trades. These disparities are substantial.

Women represent about 6 percent of the construction workers in the region, far less than the 47 percent of the workforce without four-year college degrees who are women (disparity index of 12).

County residents represented 21 percent of total construction workers in the region, below their 27 percent share of all workers in the region.

⁴⁹ Based on U.S. Census Bureau American Community Survey data for 2017-2021, construction workers in the labor market area, 93 percent did not have a four-year college degree.

15. Disparity analysis for St. Louis MSA construction employment, 2017–2021

	Construction workers in all construction occupations	Civilian labor force ages 16+ without a four-year college degree	Disparity index
Race/ethnicity			
African American	6.27 %	20.00 %	31
Asian-Pacific American	0.54	1.57	35
Subcontinent Asian American	0.04	0.20	19
Hispanic American	5.79	3.44	168
Native American	1.94	1.28	152
Other minority	0.03	0.19	17
Total minority	14.61 %	26.68 %	55
Non-Hispanic white	85.39	73.32	116
Total	100.00 %	100.00 %	
Gender			
Women of color	0.47 %	13.79 %	3
White women	5.04	33.15	15
Total women	5.51 %	46.94 %	12
Male	94.49	53.06	178
Total	100.00 %	100.00 %	
County residents			
County residents	21.48 %	27.17 %	79

Note: Construction occupations include the trades reported for the 16 County projects plus other relevant construction occupations identified in the U.S. Census Bureau data.

Source: Keen Independent Research from 2017–2021 ACS Public Use Microdata samples. The 2017–2021 ACS raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

⁵⁰ Labor market area was defined as the St. Louis Metropolitan Statistical Area.

SUMMARY REPORT — Disparity analysis

It is possible that discrimination against people of color and women in past years has lasting effects on the current composition of the overall construction workforce, but that analysis of apprentice hours (those recently entering the industry) would not show disparities.

Keen Independent compared representation of different groups in the apprentice hours worked on County construction projects with what might be expected based on characteristics of workers ages 18 to 24 who do not have a four-year college degree living in the St. Louis MSA.

County workforce reports included work hours for apprentice-level workers. Apprentices are new entrants into the industry and are typically young adults (who do not have a four-year college degree).

About 44 percent of the hours for apprentices on County construction projects were performed by people of color and about 11 percent were worked by women. Both these percentages are higher than found when examining all workers in County projects.

- However, Figure 16 shows that the share of apprentice hours worked by women (11%) was still substantially below what might be anticipated given the representation of women among young people without a four-year college degree in the labor market area (48%).
- African American workers had a somewhat lower share of apprentice hours than might be expected from the availability analysis (not a substantial disparity). Hispanic American workers had a relatively large share of apprentice hours.

The data in Figure 16 are for apprentices on County projects. Keen Independent also examined Census data for metro area construction workers age 35 and younger. Workers of color comprised 17 percent and women were 3.3 percent of workers in construction trades age 35 and younger.

16. Disparity analysis for apprentice hours worked on County construction projects, 2021–2022

	Apprentice hours worked on County projects	Civilian labor force ages 18-24 without a four-year college	Disparity index
Race/ethnicity			
African American	21.24 %	23.66 %	90
Hispanic American	23.15	4.86	200+
Other minorities	0.00	4.04	0
Total minority	44.39 %	32.56 %	136
Non-Hispanic white	55.61	67.44	82
Total	100.00 %	100.00 %	
Gender			
Women of color	0.19 %	16.66 %	1
White women	11.11	31.27	36
Total women	11.30 %	47.93 %	24
Male	88.70	52.07	170
Total	100.00 %	100.00 %	
County residents			
County residents	5.07 %	29.41 %	17

Note: Other minorities include Asian-Pacific Americans, Subcontinent Asian Americans, Native Americans and other minorities.

Source: Keen Independent from County reports.
Keen Independent Research from 2017–2021 ACS Public Use Microdata samples.
The 2017–2021 ACS raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

SUMMARY REPORT — Efforts to address construction workforce inequities

Program Models and Options

The study team reviewed efforts to address workforce inequities in ten communities nationally. Appendix H provides details about the models in use in these communities. Based on the review of these communities, Keen Independent synthesizes the major components and variations in programs designed to address workforce inequities below.

Mechanisms. Mechanisms for encouraging and maintaining diverse construction workforces included:

- Ordinances;
- Project labor agreements, collective bargaining agreements with labor organizations mandated by government agencies that are illegal in Missouri;
- Community benefits agreements, project specific agreements with a community and developer to foster inclusiveness and community economic development; and
- Community workforce agreements that establish workforce goals for projects similar to project labor agreements but apply to all contractors on projects, not just those who are signatories to collective bargaining agreements.

Program types. Program elements generally fell into one of two categories: workforce development and training or workforce goals. Variations of both types of efforts are summarized below.

Workforce development and training. In the ten communities reviewed, efforts to foster and develop a diverse construction labor pool focused on pre-apprenticeship training and apprenticeship programs. Efforts included:

- Pre-apprenticeship training programs that target low-income or other disadvantaged individuals;
- Pre-apprenticeship programs delivered in collaborations of different types of organizations;
- Training programs that provide help addressing specific barriers (e.g., obtaining drivers licenses);
- Apprenticeship preference programs for individuals in recognized pre-apprentice programs that target women, veterans, minorities and individuals from economically-distressed zip codes.; and
- Bid incentives for contractors who employ apprentices who graduated from certain high schools or are enrollees or graduates of certain colleges.

SUMMARY REPORT — Efforts to address construction workforce inequities

Workforce goals. Among the communities reviewed, workforce goal programs included:

- Race- and gender-conscious workforce goals;
- Apprenticeship goals;
- Local hire goals focused on all residents of a community;
- Local hire goals focused on residents of disadvantaged areas identified because the areas exhibit metrics of economic distress (e.g., high poverty rates or unemployment rates); and
- Local hire goals focused on disadvantaged individuals who are low-income, under- or unemployed, receive public assistance or face other barriers (e.g., ex-offenders, unhoused workers, disabled individuals and others).

Goal setting. The programs reviewed varied in their approaches to labor hour goals. Examples included goals that were:

- Required minimums, aspirational or both;
- Uniform across all contracts or contract-specific;
- Uniform across all trades or trade-specific;
- Company-wide or specific to workers from that company employed on each contract; and/or
- Based on the number or proportion of workers from targeted groups or work hours performed by workers from targeted groups

Implementation and enforcement. Models for goals program implementation and enforcement in the ten communities reviewed included:

- Certification or registries to identify workers qualified to meet certain goal programs (e.g., disadvantaged workers who meet specified criteria);
- Data collection, access, reporting and monitoring;
- Designation of compliance point of contact for each contractor;
- Allowing evidence of specific good faith efforts as an alternative form of compliance when goals are not met;
- Penalties for violations, such as fines or being barred from bidding on future projects after multiple violations;
- Incentives and rewards for compliance, such as bid preferences for future contracts; and
- Regular review and adjustment to goals (e.g., annually or every two years).

St. Louis County Efforts

Efforts within St. Louis County to address workforce inequities include race- and gender-conscious goals set by ordinance. The goals are uniform minimums across construction projects and trades based on percentages of work hours performed. The County's program includes work hour goals for apprentices and a local hire program focused on County residents. The County has data collection and reporting mechanisms in place. The ordinance specifies penalties for non-compliance, but it is not currently being enforced. There are currently no consequences if a bidder or an awardee does not comply.

Appendix F provides more information about current County workforce goals programs.

SUMMARY REPORT — Conclusions and actions for County consideration

Study results indicate disparities and other evidence of discrimination affecting employment of women and African Americans in the overall St. Louis metro area construction industry. Keen Independent concludes that, alone, work hours goals for those groups for individual County contracts may not be an impactful remedy for any such discrimination. Instead, those goals, if enforced, may simply shift workers to a County project from a non-County project with no positive effect on the total work hours for African Americans and women.

Further, the County should continue to recognize that burdensome requirements on contractors and subcontractors can negatively affect the willingness of firms to participate in bids for County construction projects.

It is opportune for the County, in partnership with the City of St. Louis, to consider additional approaches to remedying the long-term effects of race and gender discrimination that appear to affect the construction labor market in the St. Louis metro area.

Such efforts can only be successful by working with contractors, labor unions, training organizations, community groups, schools and others to enhance the pipeline of women and minority workers into construction trades.

Keen Independent recommends a multi-pronged, phased approach, with certain of the County's current workforce program components treated as aspirational until a new targeted worker program can be developed and implemented.

As described to the right, the proposed revisions to the program are based on collaboration of multiple groups in promoting equity and inclusion in the area's construction workforce.

The County might consider the following changes or additions to its current program:

1. Unify a metro area-wide program;
2. Establish aspirational goals for representation of different groups in the metro area construction trades;
3. Focus immediate efforts on pipeline development for underrepresented workers;
4. Maintain, but modify, workforce goals program for women;
5. Apply race-conscious and local hire goals as aspirational while building a targeted worker program;
6. Require company-wide affirmative action efforts in the St. Louis metro area as a condition for working on County projects;
7. Develop a targeted worker goals program; and
8. Expand County program administration.

Each of these actions for consideration is discussed in greater detail on the following pages.

SUMMARY REPORT — Conclusions and actions for County consideration

1. Unify a metro area-wide program

Contractors involved in St. Louis County and City of St. Louis construction projects draw from a St. Louis metro area-wide pool of construction workers. Workers in metro area construction trades cross city, county and state boundaries to get to one jobsite and, when their work is complete, travel to a different part of the metro area for their next assignment.

Keen Independent identified barriers that affected opportunities for workers of color and women regardless of where they lived or worked in the St. Louis metro area.

Finally, St. Louis County and the City of St. Louis (including St. Louis Development Corporation) play limited roles in the metro area construction industry. Alone, it is difficult for any of their efforts to reduce barriers for workers of color and women in the industry. Local public agencies need to work in partnership with others and have the best opportunity to do so if they operate a joint construction workforce program. A unified program would also ease the administrative burden and streamline the ways in which workers, contractors and other groups interact with the County and the City.

Therefore, Keen Independent suggests that St. Louis County and the City of St. Louis consider (a) refining and expanding their current workforce programs in a consistent fashion, and (b) coordinate operation of those programs in a unified way.

Key elements of a unified program would include:

- Adopting the same modifications to current construction workforce equity programs;
- Establishing and maintaining a consistent review process for contractors to be eligible to work on large County and City projects (recommendation 6);
- Establishing and maintaining a centralized targeted worker registry (see recommendation 7); and
- Combining workforce development board efforts or at a minimum, defining formally how the entities will collaborate.

The County and City might also further review licensing and certification requirements for construction trade occupations to promote consistency in requirements (if they have not already done so) as well as reciprocity.⁵¹ The County and the City might communicate licensing requirements in an easily accessible way.

⁵¹The study team could not locate County or City licensing or certification requirements for many construction trades.

SUMMARY REPORT — Conclusions and actions for County consideration

2. Establish aspirational goals for representation of different groups in the metro area construction trades

There are large disparities between representation of women and people of color in construction trades compared with availability benchmarks for these groups for the St. Louis metro area. Recent Census data show that only 5.5 percent of workers in the metro area construction trades are women and 14.6 percent are people of color. Underrepresented minority groups include:

- African Americans (just 6.3% compared to 20.0% availability); and
- Asian-Pacific Americans and Subcontinent Asian Americans (combined are 0.6% of workers in trades compared with 1.8% availability).

Keen Independent recommends that the County consider setting long-term aspirational goals for improving the representation of women, African Americans and Asian Americans in the St. Louis metro region construction workforce.

Aspirational goals can be deployed to help focus resources, initiatives and collaborations toward a unifying target that will promote progress to remove barriers for entry, advancement and retention of these groups of workers in St. Louis metro area construction trades. It provides a clear way to communicate the County's commitment.

For example, the County (ideally working with the City) might consider setting a goal of, within the next ten years, increasing the representation of women in metro area construction trades to 6.9 percent (which is the U.S. Department of Labor's Office of Federal Contract Compliance current goal for women workers on federally assisted contracts). This would require a 1.5 percentage point increase in the representation of women in construction trades.

To help achieve this aspirational goal, the County would then work with others to create subgoals for representation of women enrolling in and graduating from pre-apprenticeship programs and apprenticeship programs, plus promotion of women apprentices to journey-level status and retention of women already in the trades.

There could be similar goals and subgoals for members of minority groups that are currently underrepresented in St. Louis metro area construction trades (African Americans and Asian Americans).

SUMMARY REPORT — Conclusions and actions for County consideration

3. Focus immediate efforts on pipeline development for underrepresented workers

Women and certain workers of color, particularly African Americans, are underrepresented in St. Louis metro area construction trades. Keen Independent's analysis finds that current workforce disparities originate with the pipeline of diverse workers. Project hiring goals alone will have limited impact on equity if workers are not available to meet the goals.

The County and other groups have the opportunity to address long-term inequities in construction employment in an environment where additional workers are in demand. Current and forecast construction labor shortages create a powerful business need for industry to recruit new workers. Labor shortages will negatively affect public sector projects if not adequately addressed.

Nationally, Associated Builders and Contractors projected the need for attracting 546,000 workers to the construction labor market in 2023, in addition to normal hiring levels, and 342,000 new workers on top of normal hiring in 2024.⁵² A McKinsey and Company 2022 study forecasted that the U.S. Bipartisan Infrastructure Law could require 30 percent more nonresidential construction workers, adding demand for 300,000 to 600,000 new workers entering the sector per year over the coming decade.⁵³

Missouri Economic Research and Information Center (MERIC) forecasts the need for about 5,500 new construction workers in the St. Louis region by 2030, about 5,000 of these are to replace exiting or transferring workers and 500 to support industry growth.⁵⁴ MERIC's forecast may not yet incorporate expected impacts from the U.S. Bipartisan Infrastructure Law. According to an Associated General Contractors survey, 96 percent of construction employers reported difficulty filling vacancies for hourly craft positions.⁵⁵

Local groups are already engaged in workforce development (see Appendix G). The County can contribute to these efforts by working with trade unions, non-union groups, schools and others in:

- Establishing agreements for greater inclusion of underrepresented groups with trade unions, training programs and other partners;
- Expanding outreach to students, parents, school personnel and others to increase positive awareness of construction careers, especially among underrepresented groups;
- Encouraging effective pre-apprenticeship programs; and
- Providing supportive services for pre-apprenticeship, apprenticeship and other training program participants.

⁵² Associated Builders and Contractors. (2023, February 9). Construction workforce shortage tops half a million in 2023, says ABC. Retrieved from <https://www.abc.org/News-Media/News-Releases/entryid/19777/construction-workforce-shortage-tops-half-a-million-in-2023-says-abc>

⁵³ Hovnanian, G., Luby, R. & Peloquin, S. (2022, March 28). Bridging the labor mismatch in US construction. McKinsey and Company. Retrieved from <https://www.mckinsey.com/capabilities/operations/our-insights/bridging-the-labor-mismatch-in-us-construction>

⁵⁴ St. Louis Community College and STLWorkforce. (2022). *The State of the St. Louis Workforce*. Retrieved from <https://stlcc.edu/workforce/st-louis-workforce/>

⁵⁵ Kukuljan, S. Missouri construction firms say they're still struggling to find workers. *St. Louis Post Dispatch* (2022 August 31). Retrieved from https://www.stltoday.com/news/local/metro/missouri-construction-firms-say-theyre-still-struggling-to-find-workers/article_e4e764cc-9f1f-5120-83d6-58d8b52148e7.html

SUMMARY REPORT — Conclusions and actions for County consideration

Establish formal agreements with trade unions, training programs and other partners. The County might consider formally recruiting trade unions and as well as groups operating non-union training programs to reach agreements with the County on efforts to meet forecasted labor needs and foster equitable employment opportunities.

These agreements would entail certain commitments on the part of the trade union or non-union group, including:

- The trade union or non-union organization would regularly report statistics on entrance, early exit and graduation from apprenticeship and other training programs. Each organization would annually report these participation statistics by race/ethnicity and gender.
 - The trade union would also provide statistics for member journey workers.
 - The trade union and non-union participants would set goals and provide written plans for encouraging entrance, retention and employment of people of color, women and targeted workers in training programs and, as applicable, journey worker ranks.
 - Union and non-union apprenticeship and other training programs could include in their agreements that they will give and women who have graduated from approved pre-apprenticeship programs priority for entrance into apprentice-track training. This priority could be expanded to include residents of economically disadvantaged neighborhoods corresponding to the County targeted worker program, once established (recommendation 7).
- The pre-apprenticeship programs should be designed in cooperation with these organizations to ensure that graduates are qualified to enter apprenticeships.
 - The County might also encourage standards for wages, benefits, safety and skills training that ensure targeted workers and women hired under terms of the agreements get access to a real construction career. (Seattle’s program incorporates these provisions and has also obtained agreement from unions to change their dispatch protocols to promote placement of minority and female workers.)
 - Contractors that hire workers from organizations entering such agreements with the County would be able to provide this as evidence of good faith efforts on project goals and/or in affirmative action plans. (This could be one way, but not be the only way, to show good faith efforts.)

SUMMARY REPORT — Conclusions and actions for County consideration

Expand outreach programs for students, parents, school personnel and others about construction careers. According to interviewees, some of the disparities for women and African Americans among construction workers begin with lack of awareness among students about construction careers and career pathways. Some pointed to the efforts already in place in the region to help make students aware that construction offers good jobs that do not require college degrees. Some also noted the need for increased efforts to build awareness and demystify career paths into the trades.

Reluctance, and even stigma, around choosing vocational education and trade career pathways instead of traditional college education have also been widely acknowledged in the media and by professional organizations.^{56 57}

The County, collaborating with the City and others, can support effective outreach, which must:

- **Start early.** Reaching students in middle school, or even younger, can head off the presumption that four-year college is the default best choice for all students and help set more positive perceptions of construction careers.

⁵⁶ See for example: <https://deskfreenation.org/barriers-stigma/#:~:text=Overwhelmingly%20people%20see%20trade%20careers,t%20make%20it%20in%20college.>

⁵⁷ St. Esprit, M. (2019, March 6). The Stigma of Choosing Trade School Over College. *The Atlantic*. Retrieved from <https://www.theatlantic.com/education/archive/2019/03/choosing-trade-school-over-college/584275/>

⁵⁸ Ibid.

- **Reach students and the adults who influence perceptions and decisions.** Programs to persuade students that the trades offer good jobs and enticing career paths may be more effective if they also address reservations and misconceptions held by parents and other influential adults. Even if students warm to the idea of trade career paths or vocational education, parents and guardians can be barriers.^{58 59 60}
- **Involve schools and other groups.** Teachers and school personnel such as counselors and other influential adults are also critical in influencing career path exploration and decision making but may be uninformed or underinformed about career options in construction. Out-of-school groups and community groups offer additional ways to reach youth.
- **Focus on girls.** To address workforce disparity for women, programs to reach and recruit more girls must be an especially high priority.
- **Focus on economically disadvantaged neighborhoods.** These efforts will also help lay the groundwork for developing a targeted worker program (see recommendation 7).

⁵⁹ Gross, A. and Marcus J. (2018, April 25) High-Paying Trade Jobs Sit Empty, While High School Grads Line Up For University. *National Public Radio All Things Considered*. Retrieved from

<https://www.npr.org/sections/ed/2018/04/25/605092520/high-paying-trade-jobs-sit-empty-while-high-school-grads-line-up-for-university>

⁶⁰ Beranek, C. (2022, August 8). The solution to finding more trade workers is allowing students choices. *Fast Company*. Retrieved from <https://www.fastcompany.com/90775520/the-solution-to-finding-more-trade-workers-is-allowing-students-choices>

SUMMARY REPORT — Conclusions and actions for County consideration

Encourage effective pre-apprenticeship programs. The County (in collaboration with the City) could consider reviewing available pre-apprenticeship programs and encouraging alignment of those programs with the training needs of different construction trades. Researchers have found disconnects between pre-apprenticeship programs and apprenticeship opportunities in other parts of the country, which limited the value of pre-apprenticeship programs.

Because of the different skills requirements and apprenticeship entrance standards for different trades, there is no one-size-fits-all pre-apprenticeship program. The County and City could conduct an inventory of available pre-apprenticeship programs and serve as a clearinghouse for the programs that appear to prepare graduates for further training in specific trades. The County and City would need to engage representatives from union and non-union training organizations when performing this assessment.

Provide supportive services for pre-apprenticeship, apprenticeship and other training program participants. The County and City might consider funding supportive services to women and other underrepresented workers who are entering pre-apprenticeship and apprenticeship programs or otherwise entering the construction trades. Assistance might include:

- Career exploration and job-readiness assessment;
- Education, counseling and other preparation, including mentorship through the first years of their careers;
- Provision of basic equipment needs such as boots, helmets, clothing and certain tools;
- Assistance with childcare costs or access to such programs;
- GED preparation for those in need of such assistance; and
- Assistance with transportation to training program sites and worksites.

This program element aligns with possible requirements regarding company-wide affirmative action plans (recommendation 6).

SUMMARY REPORT — Conclusions and actions for County consideration

4. Maintain, but modify, workforce goals program for women.

Keen Independent finds substantial disparities for women in the St. Louis metro area construction trades. As indicated in Figure 15, women represent about 6 percent of the construction workers in the region, far less than the 47 percent of the workforce without four-year college degrees who are women (disparity index of 12). As shown in Figure 16, the gap narrows when evaluating the share of apprentice hours on County projects worked by women (11%) but is still substantially below what might be anticipated given the representation of women among young people without a four-year college degree in the labor market area (48%).

People of color and women work a larger share of apprentice hours on County contracts than is true for their share of all work hours. The County might also consider setting apprentice work hours goals on certain large projects to support diversifying the pipeline of workers.

Based on this evidence, Keen Independent recommends that the County consider maintaining a workforce goals program for women for County construction projects but modifying the program from uniform goals across all construction contracts to project-specific goals tailored to the composition of the trades and availability of workers for each project. The workforce program might include the following elements:

- **Project-specific goals for total hours (combined prime and sub) to be worked by apprentices.** For example, on a certain project, the goal might be 20 percent of total hours worked by apprentices. (Many entities throughout the country set goals of 10 to 20 percent for the share of total construction contract hours to be worked by apprentices.) Goals would be met in aggregate (not by trade) for prime contractors and subcontractors combined.
- **Project-specific goals for workers who are women.** These goals could be based on the current availability of women in the construction trades involved in that project (weighted by hours by trade). They would vary by contract (might average about 5 to 6 percent).
- **Good faith efforts.** Under this program, bidders would need to provide a plan for meeting the workforce goals for their bids to be considered. The County would define expectations for good faith efforts to meet those goals during contract performance and a process for evaluating evidence of good faith efforts in the event that a bidder does not meet a project-specific goal.
- **Penalties.** The County should consider applying penalties, consistent with its program, if a prime contractor that is awarded a contract does not meet the goals or show good faith efforts to do so as it performs the contract.
- **Reporting of work hours.** Existing systems for collecting and reporting work hour data should continue.
- **Administrative and oversight processes.** Currently, the workforce ordinance specifies quantitative goals. To enable the flexibility and timeliness project-specific goals will require, goal setting for each project would become an administrative process. There would still be County Council oversight (e.g., report and review annually).

SUMMARY REPORT — Conclusions and actions for County consideration

5. Apply race-conscious and local hire goals as aspirational while building a targeted worker program

Keen Independent recommends the County consider replacing race-conscious and local hire workforce goals programs with a targeted worker program (recommendation 7). This change will take time. While development and implementation of the new program is in process, the County might consider maintaining project-specific workforce goals for workers of color and County resident goals but designating them as aspirational.

The workforce goals program for minorities and residents while in transition might involve the following:

- Setting project-specific goals for minorities and residents similar to the approach outlined for women (see recommendation 4);
- Distinguishing goals for apprentices and journey workers; and
- Maintaining data collection tracking systems and reporting.

The purpose of this program, while in transition, would be to maintain monitoring of progress for workers of color and County residents.

SUMMARY REPORT — Conclusions and actions for County consideration

6. Require company-wide affirmative action efforts in the St. Louis metro area as a condition for working on County construction projects

Keen Independent recommends that the County and City consider jointly developing a new program component that requires companies to develop plans for reducing barriers to employment for women and underrepresented minority workers in construction trades, particularly African American workers, in their St. Louis metro-area operations.

The program would apply to firms of a minimum size involved in County prime contracts or subcontracts of a certain size. (These minimums could match the federal requirements for contracts: 50 or more employees and a contract of \$50,000 or more, or thresholds for application could be set higher.)

Plans would require tracking and reporting work hours for the company within the St. Louis metropolitan area. A company would need to establish and report on separate company-wide goals for apprentices and journey workers for female workers and workers of color. Work hours for women and minority workers would be expressed as a percentage of total work hours for that company for employees or company locations within the St. Louis Metropolitan Area. Note that some contractors have similar company-wide affirmative action programs if they perform a minimum level of federal contracts.

SUMMARY REPORT — Conclusions and actions for County consideration

Components of a company-wide affirmative action program requirements might include:

- Requiring submission of an assessment and plan for affirmative steps to be taken in the coming period to be submitted every year or every other year.
- Applying the requirement to prime contractors and at least first-tier subcontractors that are above a certain size and obtain a subcontract of a minimum size (The County and City might define the size thresholds for compliance consistent with federal affirmative action plan requirements for construction contracts: contractors with 50 or more employees and a contract value of \$50,000 or more).
- Defining required assessment and plan components and providing contractors with a sample template.
- Providing examples of good faith efforts companies can make toward meeting their goals that will be favorably considered (e.g., hiring workers from organizations that have established formal agreements with the County and City to foster an equitable construction workforce as described in recommendation 3). Components could include:
 - Company-wide goals for the employment of female and African American workers in the St. Louis region;
 - Monitoring and reporting the percentage of company-wide work hours worked by trade in the St. Louis region for women and minorities by race and ethnicity and by apprentice and journey worker status;
 - Specific positive actions the company will take to meet its goals;
 - Specific positive actions the company will take to remove barriers to sustained employment and advancement for underrepresented groups in the St. Louis region;
 - Safeguards the company will take to prevent inequitable treatment of women and African Americans (this might specifically include measures to prevent disproportionate impacts to underrepresented groups in terminations related to seasonal or economic fluctuations in demand); and
 - Specific positive actions the company will take to increase the presence of women and African Americans in the St. Louis construction labor pool including outreach, training and other efforts.
- Evaluating compliance and good standing on the quality of the plans and efforts made by companies on a pass-fail basis, rather than on the achievement of specific goals.
- Making compliance a condition of receiving County or City construction contracts, including tax incentivized projects above \$1 million (requests for bids would include such a requirement as a condition for bidding).

These requirements would not involve quotas or requirements to hire unqualified workers.

SUMMARY REPORT — Conclusions and actions for County consideration

7. Develop a targeted worker goals program

Keen Independent recommends that the County and City consider jointly replacing race-conscious requirements and goals for local residents with a new tool: a targeted worker program.

Targeted workers. Targeted workers might be individuals who live in economically disadvantaged neighborhoods within the St. Louis metro area or attended high schools serving those neighborhoods. Use of HUD-defined Qualified Census Tracts (QCTs) is one way to identify areas that are economically disadvantaged.⁶¹

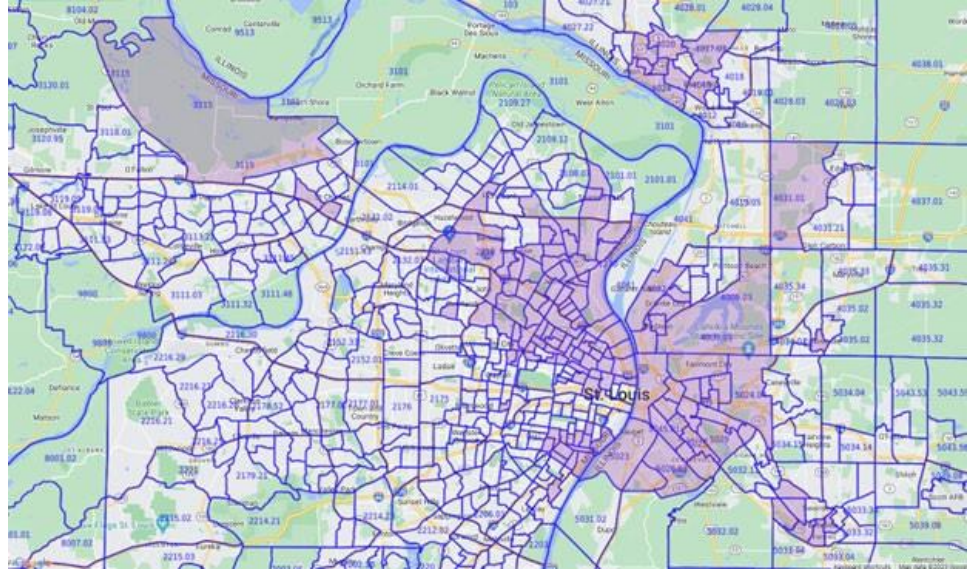
Figure 17 shows the QCTs in the St. Louis metropolitan area. About 62 percent of the residents of QCTs in the region are people of color based on census tract estimates for 2019.⁶²

The County could also consider an approach based on zip codes or other neighborhood designations that are applicable to disadvantaged neighborhoods across the metropolitan area, including areas within St. Louis County.

Keen Independent recommends that the County and City collaborate in program design and consistently apply the targeted worker program, if they choose to pursue this option.

⁶¹ The U.S. Department of Housing and Urban Development (HUD) identify census tracts that qualify for the Low-Income Housing Tax Credit. Designated tracts have 50 percent of households with incomes below 60 percent of the Area Median Gross Income or have a poverty rate of 25 percent or more. Qualified census tracts (QCTs) are designated yearly by HUD using American Community Survey data collected by the U.S. Census

17. Qualified Census Tracts, 2023 (inside and outside St. Louis County and the City of St. Louis)



Source: U.S. Department of Housing and Urban Development's Office of Policy Development and Research, 2022 and 2023 Small DDAs and QCTs, huduser.gov

San Francisco, Milwaukee, Atlanta and Los Angeles County are examples of local governments that have workforce goals programs focused in part on residents of economically disadvantaged neighborhoods. Appendix H examines programs operated by other cities and counties across the United States.

Bureau. In Keen Independent's geographic definition of the St. Louis labor force, for the year 2023, 122 census tracts have been identified as QCTs.

⁶² Steven Manson, Jonathan Schroeder, David Van Riper, Tracy Kugler, and Steven Ruggles. IPUMS National Historical Geographic Information System: Version 17.0 [dataset]. Minneapolis, MN: IPUMS. 2022. <http://doi.org/10.18128/D050.V17.0>

SUMMARY REPORT — Conclusions and actions for County consideration

The targeted worker program focuses on young adults who may seek a career in a construction trade. Therefore, eligibility for the program might also consider any person enrolled as a senior or a graduate from a high school in the St. Louis metro area that primarily serves economically disadvantaged students. This could be added as an eligibility criterion in addition to place of residence. The percentage of students qualifying for free or reduced-cost lunch is one way to identify such high schools.

The study team identified similar program elements for other cities: Chicago counts graduates from any City of Chicago high school as local residents in its local program and Milwaukee includes households that qualify for reduced price lunch in public schools in its definition of targeted workers.

If the County were to apply the program to federally funded contracts, one concern is a St. Louis metro area geographic limitation. The County might research expanding program eligibility to residents of any economically disadvantaged neighborhoods in the country for those projects.

Registry of candidates and participants in targeted worker program. Administration of targeted worker program would likely include the creation of a registry of workers whose work hours count toward the goal program.

Once an individual is in the registry as a targeted worker, a contractor could count the hours worked by that individual toward meeting its company-wide and/or project goal.

As previously indicated, the St. Louis metro area functions as the local labor market for workers and construction employers. To reduce duplication of efforts and make the registration process efficient for workers, Keen Independent recommends the County and City consider collaborating to create a centralized registry for the entire metro region. This would facilitate working with agencies and community organizations to recruit individuals to apply for targeted worker status and be responsible for reviewing their applications (including proof of residency or graduation/attendance at a high school serving targeted neighborhoods).

The registry would identify whether a targeted worker or woman is a candidate for employment or training, a current apprentice, a journey worker, or other employment status. It would also specify construction trade for each individual (or trades that are of interest for those not yet working). Contractors, training programs and other groups could use the registry to recruit new hires and new trainees.

SUMMARY REPORT — Conclusions and actions for County consideration

Portability of targeted worker status. A targeted worker might take five years to complete an apprenticeship, depending on the trade, with some devoting additional time in a pre-apprenticeship program. Individuals who enter construction trades after high school might become journey workers in their mid-20s. Targeted workers entering a trade are likely to have changed their place of residence multiple times before they become journey workers, so “portability” of the targeted worker status is important to the effectiveness of the program.

Keen Independent recommends that workers be able to maintain targeted worker status for 10 or more years from enrollment even if they move outside the economically disadvantaged neighborhood. Such a provision avoids penalizing targeted workers who increase their incomes through construction careers and can afford to move to neighborhoods outside program boundaries. It also accommodates changes in household living arrangements, including a young adult who moves out of a parents’ home.

Several of the communities Keen Independent contacted that operate neighborhood-based programs have incorporated similar portability or are considering doing so.

Goals. If the targeted worker program is established, a workforce goals component would need to be added. Workforce goals for targeted workers would be structured similarly to the project goals for work hours performed by women as outlined in recommendation 4.

Goals would be project-specific. A bidder would need to agree to meet the goal or make good faith efforts to do so. Penalties would need to be applied for non-compliance.

The goals program for targeted workers would replace the current race-conscious and resident goals. However, Keen Independent recommends maintaining workforce data collection and reporting for workers of color and local residents.

SUMMARY REPORT — Conclusions and actions for County consideration

8. Expand County program administration

To adopt the recommendations outlined in this report, resources including personnel, funding and leadership would be needed.

Recommendations that involve new work are summarized below.

Ordinance and support. To enact recommended program changes, certain elements of the existing workforce ordinance will need to be modified or replaced. These could include:

- Establishing a targeted worker program and designating responsibility for its implementation including the creation of a worker registry;
- Shifting race-conscious and local hire goals to be aspirational;
- Requiring affirmative action plans for certain size companies to be able to work on construction projects estimated at \$1 million or more;
- Requiring good faith efforts for companies that do not meet project-specific goals; and
- Designating administrative authority for goal setting (project-specific) and compliance as well as a process for oversight (e.g., reporting and review once per year).

Any ordinance would need to designate accountability to administer and enforce the program, including the option of collaboration with other public agencies such as the City.

Additional funding for supportive services for targeted workers and women entering the construction trades may also be needed.

Resource requirements may be impacted by potential collaborations between the County and City as well as with other groups.

Communication, outreach and partnerships. Tasks related to communication, outreach and partnerships that would increase program administration requirements could include:

- Creating an initial outreach and education program for current and potential workers, contractors, trade unions and others to explain changes in the program and steps for compliance;
- Sustaining and updating accessible communications about the programs over time;
- Providing centrally located, user-friendly information about licensing and certification requirements and processes for all construction occupations;
- Leading and negotiating formal agreements with trade unions, training programs and other partners to on efforts to meet forecasted labor needs and foster equitable employment opportunities including reporting, written plans, goals and apprenticeships for women and targeted workers;
- Reviewing pre-apprenticeship programs and creating a clearinghouse of programs that effectively prepare graduates for further training in specific trades;
- Collaborating with parties involved in workforce development to evaluate gaps and expand efforts where needed, with particular attention to girls, youth in targeted worker program areas, initiatives to reach youth by middle school both in schools or out-of-school groups, educator and counselor outreach and parent education; and
- Providing supportive services for pre-apprenticeship, apprenticeship and other training program participants such as childcare, equipment and transportation.

SUMMARY REPORT — Conclusions and actions for County consideration

Project-specific goals. Modifying the work hours goals program from uniform to project-specific goals for women and adding work hour goals for apprentices would require support for:

- Developing project-specific goal-setting processes (potentially a goal-setting group that meets every two weeks);
- Setting project-specific goals for every County-related project for which the ordinance pertains including separate goals for apprentice hours overall and hours for women overall;
- Developing reporting and processes for monitoring performance against goals by project;
- Developing and implementing compliance and enforcement processes including appeals processes;
- Defining specific good faith efforts that may legitimately exempt a contractor from penalties if goals are not met;
- Periodically reviewing the need for and effectiveness of individual program elements, especially the gender-based program (perhaps every five years).

Affirmative action program. Adding an affirmative action plan requirement for large contractors as a prerequisite to being eligible for contracts estimated at \$1 million or more would require:

- Communicating the program to contractors, public agency contacts and others;
- Developing plan requirements, assessment requirements and a sample template;

- Setting the process and designating responsibility to review compliance and approve plans/certify compliant contractors (pass/fail);
- Working with other departments to incorporate compliance with the workforce ordinance into pre-approval of construction contractors to bid on and participate in projects valued at \$1 million or more; and
- Periodically reviewing the effectiveness of the program.

Targeted worker program. Establishing the new targeted worker program would require program administration support for:

- Creating the registration system and processes for enrolling targeted workers;
- Recruiting individuals to apply for targeted worker status and communicating the program through collaborating departments, agencies and organizations;
- Reviewing applications including proof of residency or graduation/attendance at a high school serving targeted neighborhoods to make approve enrollment;
- Integrating target worker status indication in work hour tracking and reporting systems and developing reports for monitoring targeted worker hours by project;
- Periodically following up with registered individuals; and
- Periodically revising the geographic areas included in targeted worker status (perhaps every two to five years).

SUMMARY REPORT — Conclusions and actions for County consideration

Summary

Figure 18 below summarizes potential program components and groups they would assist.

18. Summary of potential St. Louis County workforce program components

	Aspirational goals	Pipeline development	Work hour goals	Affirmative action plans	Targeted worker program
Women	New	Expand	Maintain but modify	New	
Underrepresented workers of color	New	Expand	Maintain as aspirational until replaced	New	New, to replace work hour goals for workers of color
Local residents		Expand	Maintain as aspirational until replaced		New, to replace work hour goals for residents

A. Definition of Terms

Appendix A provides explanations and definitions useful to understand the St. Louis County Workforce Disparity Study. The following definitions are only relevant in the context of this report.

Anecdotal evidence. Anecdotal evidence includes personal accounts and perceptions of incidents, including any incidents of discrimination, told from each individual interviewee’s or participant’s perspective.

Apprentice. For this report, an apprentice is a worker who is enrolled in a training program to learn a trade in the construction industry.

Availability analysis. The availability analysis examines the composition of the St. Louis area construction workforce by race and ethnicity, gender and place of residence. One measure of “availability” is expressed as the percentage of work hours that might be expected to be performed by people of color, women or local residents given the representation of different groups for different jobs in the local area.

Availability benchmark. Based on the availability analysis, the percentage of jobs or work hours that might be expected to be performed by a particular group.

Bond projects. Projects supported for the development of local infrastructure with bonds issued by the local government.

Business. A business is a for-profit enterprise, including all of its establishments (synonymous with “firm” and “company”).

Business establishment. A business establishment (or simply, “establishment”) is a place of business with an address and working phone number. One business can have many business establishments in different locations.

Code of Federal Regulations or CFR. Code of Federal Regulations (“CFR”) is a codification of the federal agency regulations. An electronic version can be found at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

Consultant. A consultant is a business performing professional services contracts.

Contract. A contract is a legally binding agreement between the seller of goods or services and a buyer.

Contractor. A contractor is a business performing construction contracts.

County-assisted project. A project or contract that receives support from the County, for example in the form of tax abatement or bonded projects.

County-awarded contract. A contract awarded by the County using County funds (rather than federal funds, for example).

County-related project. A county-related project refers to the combination of County-awarded contracts and County-assisted projects.

County resident. A resident of St. Louis County.

Disadvantaged worker. A disadvantaged worker is an individual in the workforce who faces social, economic and/or physical disadvantages compared with other workers.

A. Definition of Terms

Disparity. A disparity is an inequality, difference, or gap between an actual outcome and a reference point or benchmark. For example, a difference in employment outcomes for one racial or ethnic group and outcomes for non-minorities may constitute a disparity.

Disparity analysis. A disparity analysis compares actual outcomes with what might be expected based on other data. Analysis of whether there is a “disparity” between the utilization and availability of minority and women in the workforce is one tool used to examine whether there is evidence consistent with discrimination against such groups.

Disparity index. A disparity index is a measure of the relative difference between an outcome, such as percentage of work hours performed by a group, and a corresponding benchmark, such as the percentage of work hours that might be expected given the relative availability of that group for that work. In this example, it is calculated by dividing percent utilization (numerator) by percent availability (denominator) and then multiplying the result by 100.

A disparity index of 100 indicates “parity” or utilization “on par” with availability. Disparity index figures closer to 0 indicate larger disparities between utilization and availability. For example, the disparity index would be “50” if the utilization of a particular group was 5 percent of contract dollars and its availability was 10 percent.

Department of Labor. The United States Department of Labor (DOL) is a cabinet-level agency responsible for enforcing federal labor standards and promoting workers’ well-being.

Establishment. See “business establishment.”

Federally funded contract. A federally funded contract is any County contract or project that is funded in part with U.S. Department of Transportation, U.S. Environmental Protection Agency, U.S. Department of Housing and Urban Development or other federal funds.

Firm. See “business.”

Industry. An industry is a broad classification for businesses providing related construction, professional services, goods or services.

Journey worker. A journey worker (journeyperson or journeyman) has completed the necessary training and hours of on-the-job experience to be considered a fully qualified worker in that trade.

Labor market area. A labor market area is an economically integrated area within which individuals can reside and find employment within a reasonable distance or can readily change jobs without changing their place of residence.¹

Median income. The amount of income that exactly describes the midpoint of an income distribution. For example, one half of households in a city would have income above the median household income and one-half of households would have income below the median household income.

¹ See Bureau of Labor Statistics <https://www.bls.gov/lau/laufa.htm#Q06>

A. Definition of Terms

Minorities. Minorities (people of color) are persons who are citizens or lawful permanent residents who belong to one or more of the racial or ethnic groups. To foster consistency between the St. Louis County and City of St. Louis disparity studies, the definitions below follow City of St. Louis statute²:

- African Americans are persons having “origins in any of the black racial groups of Africa.”
- Hispanic Americans include persons having “origins of the peoples of Mexico, Puerto Rico, Cuba, Central or South American, regardless of race.”
- Native Americans persons which “maintain cultural identification through tribal affiliation or community recognition with any of the original peoples of the North American continent; or those who demonstrate at least one-quarter decent from such groups.”
- Asian Americans include persons who have origins in “any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent or the Pacific Islands.”

People of color. People of color include individuals within a racial or ethnic group identified under the definition of minorities.

Prevailing wage. The basic hourly wage paid to workers who are similarly employed in a specific occupation in the location of intended employment (including certain benefits). See section 290.210–290.340 RSMo 2018 for the full definition under Missouri state law.

Prime consultant. A prime consultant is a professional services firm that performs a prime contract for an end user.

Prime contract. A prime contract is a contract between a prime contractor or a prime consultant and the project owner.

Prime contractor. A prime contractor is a firm that performs a prime contract for an end user.

Public works. RsMO 107.170 defines public works as the erection, construction, alteration, repair or improvement of any building, road, street, public utility or other public facility owned by the public entity, including work for nongovernmental purposes

Project. A project refers to a construction and/or an engineering endeavor. A project could include one or multiple prime contracts and corresponding subcontracts.

Race- and gender-conscious measures. Race- and gender-conscious measures are programs in which certain minority groups or women may participate but non-minorities and men do not.

Note that the term is a shortened version of “race-, ethnicity-, and gender-conscious measures.” For ease of communication, the study team has truncated the term to “race- and gender-conscious measures.”

² City of St. Louis Ordinance 71094.

A. Definition of Terms

Race- and gender-neutral measures. Race- and gender-neutral measures apply to groups regardless of the race/ethnicity or gender of the worker. Race- and gender-neutral measures may include assistance in obtaining training and employment in the construction industry open to any racial, ethnic or gender group.

Note that the term is more accurately “race, ethnicity, and gender-neutral” measures. However, for ease of communication, the study team has shortened the term to “race- and gender-neutral measures.”

Relevant geographic market area. The relevant geographic market area is the geographic area in which the businesses receiving most participating entity contracting dollars are located. The relevant geographic market area is also referred to as the “local marketplace.” Case law related to race- and gender-conscious programs requires disparity analyses to focus on the “relevant geographic market area.”

Remedial measure. A remedial measure, sometimes shortened to “remedy,” is a program designed to address barriers to full participation of a targeted group.

Small business. A small business is a business with low revenues or size (based on revenue or number of employees) relative to other businesses in the industry. “Small business” does not necessarily mean that the business is certified as such.

Statistically significant difference. A statistically significant difference refers to a quantitative difference for which there is a high probability that random chance can be rejected as an explanation for the difference. This has applications when analyzing differences based on sample data such as most U.S. Census datasets (could chance in the sampling process for the data explain the difference?), or when simulating an outcome to determine if it can be replicated through chance. Often a 95 percent confidence level is applied as a standard for when chance can reasonably be rejected as a cause for a difference.

Subconsultant. A subconsultant is a professional services firm that performs services for a prime consultant as part of the prime consultant’s contract for a customer.

Subcontract. A subcontract is a contract between a prime contractor or prime consultant and another business selling construction, goods or services to the prime contractor or prime consultant as part of the prime contractor’s contract for a customer.

Subcontractor. A subcontractor is a construction firm that performs services for a prime contractor as part of a larger project.

Substantial disparity. Substantial disparity refers to a disparity index of less than 80 in this report.

Tax abatement. Tax abatement refers to a government entity’s reduction of the taxes normally paid by a company or individual to that entity for a period of time (including a complete exemption from those taxes).

A. Definition of Terms

Tax increment financing. Tax increment financing uses expected increases in future property taxes to help fund projects that will create those increases in taxes.

Union signatory. Union signatory refers to a company that has entered agreements with one or more trade unions to supply labor.

Utilization. Utilization refers to the percentage of jobs or work hours going to a specific group of individuals.

APPENDIX B. St. Louis County Workforce Data — Workforce data sources

Study Period

Keen Independent compiled data about St. Louis County workforce information on St. Louis County construction projects from 2021 and 2022. The County was able to provide data for those two years, but not prior to 2021.

From these data, Keen Independent calculated the percentage of hours on County construction projects worked by people of color, women, county residents and apprentices.

Data Sources

Keen Independent obtained workforce data from the St. Louis County Prevailing Wage Enforcement Program Office.¹

The Prevailing Wage Enforcement Program Office collects payroll information, including work hours, for County construction contracts using LCPTracker.

Staff in this Office began preparing reports on work hours in 2021. They were able to provide Keen Independent reports for 16 construction projects awarded between 2021 and 2022.² Appendix B provides additional information about how these data are collected.

County reports. County reports included:

- Project information;
- Employer;
- Number of hours worked;
- Worker address (city, state and zip code);
- Worker race/ethnicity and gender;
- Worker trade (as reported by the contractor); and
- Whether an employee worked on the project as an apprentice.

¹ The County Prevailing Wage Enforcement Program Department oversees that contractors comply with the prevailing wage law on construction projects involving the use of public funds and County incentivized economic development projects.

² The County M/WBE Program Office just recently started compiling workforce information via BizTrack.

B. St. Louis County Workforce Data — St. Louis County review and data limitations

County Review

County staff reviewed Keen Independent workforce data during the study process.

The study team met with County staff to review the approach to data collection and information the study team gathered.

Data Limitations

The County began tracking workforce data in its projects in 2021, so no data were provided for prior years.

Based on Keen Independent's experience using these methods in other studies, it does not appear that these limitations would materially affect overall results for St. Louis County disparity analyses.

APPENDIX C. Workforce Availability

Appendix B reviews the process for calculating availability benchmarks for workers on St. Louis County construction projects.

This section is organized in four parts:

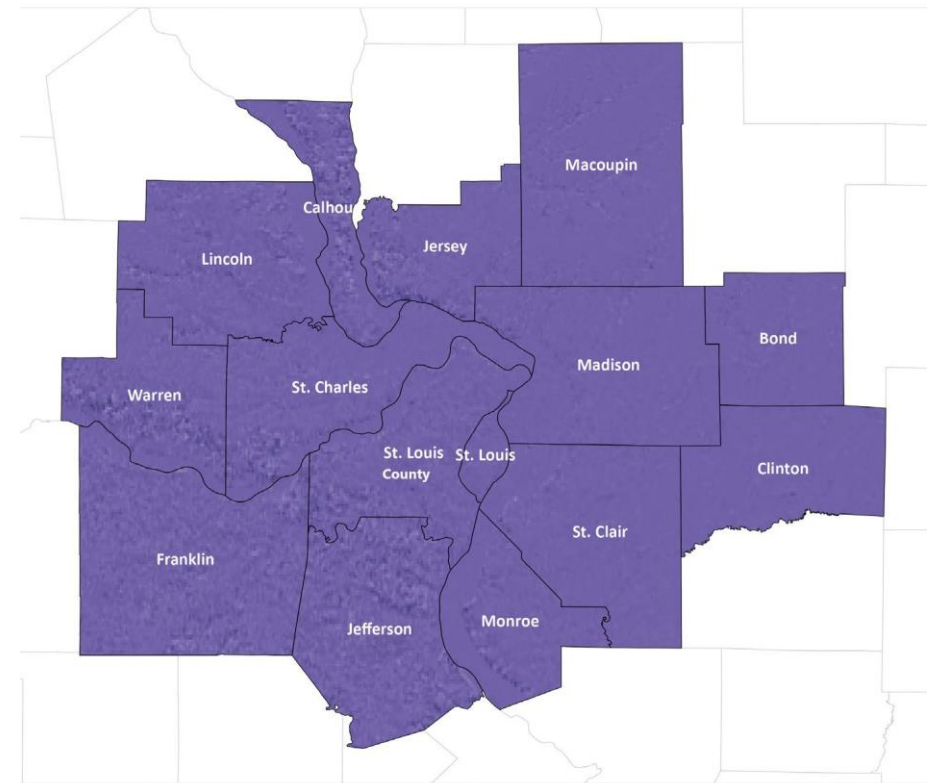
- Establishing the labor market area for County construction projects;
- Identifying construction workers in all construction occupations;
- Estimating the relative availability of construction workers for County construction projects; and
- Calculating hour-weighted availability of minority, women and county residents.

Labor Market Area for County Construction Projects

Keen Independent identified the labor market area for the workforce availability analysis based on where most of the workers on County construction projects live. The data come from workforce reports provided by the County Prevailing Wage Enforcement Program Office.

The analysis of County workforce reports shows that close to 86 percent of the total work hours on County construction projects were performed by workers who reside in the federally defined St. Louis Metropolitan Statistical Area (MSA).¹

C-1. Federally defined St. Louis Metropolitan Statistical Area (MSA)



Source: Keen Independent from County reports.

¹ St. Louis Metropolitan Statistical Area (MSA) includes the City of St. Louis, MO, the Illinois counties Bond, Calhoun, Clinton, Jersey, Macoupin, Monroe and St. Clair and the Missouri counties Franklin, Jefferson, Lincoln, St. Charles, St. Louis and Warren.

C. Workforce Availability — Construction workers in County construction occupations

Occupations Reported in County Construction Projects

The Prevailing Wage Enforcement Program Office provided work hours for 16 construction projects awarded between 2021 and 2022.² (It began preparing these reports in 2021.)

Contractors reported multiple types of trades. The study team translated those trades into 14 specific Census Standard Occupational Codes (occupations) using the information provided in the reports.

Figure C-2 shows the construction occupations identified in the County reports.

C-2. Hours worked by occupation for prime contractors and subcontractors, January 2016–December 2021

Occupation	Total hours	Percent of total
Construction laborers	38,217	42.53 %
Construction equipment operators	9,835	10.95
Cement masons, concrete finishers, and terrazzo workers	7,441	8.28
Electricians	7,429	8.27
Carpenters	7,064	7.86
Plumbers, pipefitters, and steamfitters	4,796	5.34
Roofers	4,297	4.78
Sheet metal workers	3,703	4.12
Structural iron and steel workers	2,772	3.08
Brickmasons, blockmasons, stonemasons, and reinforcing iron and rebar workers	2,580	2.87
Radio and telecommunications equipment installers and repairers	809	0.90
Painters and paperhangers	610	0.68
Driver/sales workers and truck drivers	255	0.28
Hazardous materials removal workers	48	0.05
Total	89,853	100.00 %

Note: Total does not include records of an unknown trade.

Source: Keen Independent from County reports.

² The County M/WBE Program Office just recently started compiling workforce information via BizTrack.

C. Workforce Availability — Construction workers in County construction occupations

Keen Independent examined data on construction workers in County construction occupations within the labor market area to prepare estimates of the relative availability of workers for County construction projects.

Keen Independent used U.S. Census Bureau American Community Survey (ACS) data for the labor market area for 2017 through 2021.

Construction workers refer to people working in the construction industry in County construction occupations. Construction occupations include the trades reported by prime and subcontractors on County construction projects (Figure C-2).

There were no ACS results for hazardous materials removal workers, therefore it was not included in the list of construction workers.

Figure C-3 shows the number of construction workers in County construction occupations in the labor market area, by occupation.

C-3. Construction workers in construction occupations in St. Louis MSA

Occupation	Construction workers in County construction occupations	Percent of total
Construction laborers	16,124	29.51 %
Carpenters	13,198	24.15
Painters and paperhangers	5,412	9.90
Electricians	5,019	9.19
Plumbers, pipefitters, and steamfitters	4,318	7.90
Construction equipment operators	2,719	4.98
Roofers	2,114	3.87
Driver/sales workers and truck drivers	1,694	3.10
Brickmasons, blockmasons, stonemasons, and reinforcing iron and	1,336	2.44
Sheet metal workers	975	1.78
Cement masons, concrete finishers, and terrazzo workers	861	1.58
Structural iron and steel workers	709	1.30
Radio and telecommunications equipment installers and repairers	164	0.30
Total	54,643	100.00 %

Source: Keen Independent Research from 2017–2021 ACS Public Use Microdata samples. The 2017–2021 ACS raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

C. Workforce Availability — Relative availability of construction workers

Keen Independent identified the relative availability of workers of color, women and county residents for County construction projects.

Figure C-4 shows the number of construction workers that are minorities (by race, ethnicity group), women and county residents (10 first columns of data) and the total number of construction workers (column 11).

After dividing the number of minority construction workers by the total of construction workers, Figure C-5 indicates the percentage of construction workers in each occupation that are people of color (per race, ethnicity group), women and county residents.

C. Workforce Availability — Relative availability of construction workers

C-4. Number of construction workers in the labor market area, by race, ethnicity and occupation who are minorities, women and St. Louis County residents

Occupation	African American	Asian-Pacific American	Subcontinent Asian American	Hispanic American	Native American	Other minority	Minority	Non-Hispanic white	Female	County residents	Construction workers in County construction occupations
Construction laborers	1,723	160	27	1,258	322	4	3,494	12,630	710	3,403	16,124
Carpenters	507	135	0	574	238	10	1,464	11,734	190	2,900	13,198
Painters and paperhangers	415	9	0	619	127	0	1,170	4,242	278	1,770	5,412
Electricians	130	0	0	104	63	0	297	4,722	67	1,317	5,019
Plumbers, pipefitters, and steamfitters	327	0	0	95	128	0	550	3,768	96	747	4,318
Construction equipment operators	92	6	0	16	8	0	122	2,597	22	277	2,719
Roofers	182	0	0	697	0	10	889	1,225	0	369	2,114
Driver/sales workers and truck drivers	323	0	0	0	21	0	344	1,350	60	334	1,694
Brickmasons, blockmasons, stonemasons, and reinforcing iron and rebar workers	79	15	0	85	0	0	179	1,157	0	248	1,336
Sheet metal workers	0	0	0	0	60	0	60	915	35	105	975
Cement masons, concrete finishers, and terrazzo workers	0	0	0	0	7	0	7	854	3	53	861
Structural iron and steel workers	0	24	0	0	0	0	24	685	0	123	709
Radio and telecommunications equipment installers and repairers	0	0	0	0	0	0	0	164	0	86	164
Total	3,778	349	27	3,448	974	24	8,600	46,043	1,461	11,732	54,643

Source: Keen Independent Research from 2017–2021 ACS Public Use Microdata samples.

The 2017–2021 ACS raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>

C. Workforce Availability — Relative availability of construction workers

C-5. Percentage of construction workers who are minorities (by race, ethnic group), women and St. Louis County residents

Occupation	African American	Asian-Pacific American	Subcontinent Asian American	Hispanic American	Native American	Other minority	Minority	Non-Hispanic white	Female	County residents
Construction laborers	10.69 %	0.99 %	0.17 %	7.80 %	2.00 %	0.02 %	21.67 %	78.33 %	4.40 %	21.11 %
Carpenters	3.84	1.02	0.00	4.35	1.80	0.08	11.09	88.91	1.44	21.97
Painters and paperhangers	7.67	0.17	0.00	11.44	2.35	0.00	21.62	78.38	5.14	32.71
Electricians	2.59	0.00	0.00	2.07	1.26	0.00	5.92	94.08	1.33	26.24
Plumbers, pipefitters, and steamfitters	7.57	0.00	0.00	2.20	2.96	0.00	12.74	87.26	2.22	17.30
Construction equipment operators	3.38	0.22	0.00	0.59	0.29	0.00	4.49	95.51	0.81	10.19
Roofers	8.61	0.00	0.00	32.97	0.00	0.47	42.05	57.95	0.00	17.46
Driver/sales workers and truck drivers	19.07	0.00	0.00	0.00	1.24	0.00	20.31	79.69	3.54	19.72
Brickmasons, blockmasons, stonemasons, and reinforcing iron and rebar workers	5.91	1.12	0.00	6.36	0.00	0.00	13.40	86.60	0.00	18.56
Sheet metal workers	0.00	0.00	0.00	0.00	6.15	0.00	6.15	93.85	3.59	10.77
Cement masons, concrete finishers, and terrazzo workers	0.00	0.00	0.00	0.00	0.81	0.00	0.81	99.19	0.35	6.16
Structural iron and steel workers	0.00	3.39	0.00	0.00	0.00	0.00	3.39	96.61	0.00	17.35
Radio and telecommunications equipment installers and repairers	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00	0.00	52.44

Source: Keen Independent Research from 2017–2021 ACS Public Use Microdata samples.

The 2017–2021 ACS raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>

C. Workforce Availability — Weighted availability of construction workers

Keen Independent developed availability benchmarks that reflect the distribution of trades on County construction projects.

To develop the benchmarks, the study team weighted the availability results for each occupation shown in Figure C-5 by the share of total work hours on County projects represented by that trade.

- The weight is calculated as the number of work hours on County construction projects in that occupation divided by total work hours (see Figure C-2).
- The share of each trade comprised of workers of color, women and county residents is shown in Figure C-5
- Figure C-6 shows results after multiplying the data in Figure C-5 by the weights in Figure C-2.

The sums at the bottom of Figure C-6 provide the weighted availability for each group. For example, after accounting for the mix of different trades on County projects, weighted availability of African American workers is 6.5 percent.

C. Workforce Availability — Weighted availability of construction workers

C-6. Hour-weighted availability estimates for all construction occupations on St. Louis County construction projects

Occupation	African American	Asian-Pacific American	Subcontinent Asian American	Hispanic American	Native American	Other minority	Minority	Non-Hispanic white	Female	County residents
Construction laborers	4.55 %	0.42 %	0.07 %	3.32 %	0.85 %	0.01 %	9.22 %	33.33 %	1.87 %	8.98 %
Carpenters	0.30	0.08	0.00	0.34	0.14	0.01	0.87	6.99	0.11	1.73
Painters and paperhangers	0.05	0.00	0.00	0.08	0.02	0.00	0.15	0.53	0.03	0.22
Electricians	0.21	0.00	0.00	0.17	0.10	0.00	0.49	7.78	0.11	2.17
Plumbers, pipefitters, and steamfitters	0.40	0.00	0.00	0.12	0.16	0.00	0.68	4.66	0.12	0.92
Construction equipment operators	0.37	0.02	0.00	0.06	0.03	0.00	0.49	10.46	0.09	1.12
Roofers	0.41	0.00	0.00	1.58	0.00	0.02	2.01	2.77	0.00	0.84
Driver/sales workers and truck drivers	0.05	0.00	0.00	0.00	0.00	0.00	0.06	0.23	0.01	0.06
Brickmasons, blockmasons, stonemasons, and reinforcing iron and rebar workers	0.17	0.03	0.00	0.18	0.00	0.00	0.38	2.49	0.00	0.53
Sheet metal workers	0.00	0.00	0.00	0.00	0.25	0.00	0.25	3.87	0.15	0.44
Cement masons, concrete finishers, and terrazzo workers	0.00	0.00	0.00	0.00	0.07	0.00	0.07	8.22	0.03	0.51
Structural iron and steel workers	0.00	0.10	0.00	0.00	0.00	0.00	0.10	2.98	0.00	0.54
Radio and telecommunications equipment installers and repairers	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.90	0.00	0.47
Total	6.53 %	0.66 %	0.07 %	5.85 %	1.63 %	0.04 %	14.78 %	85.22 %	2.53 %	18.53 %

Source: Keen Independent from SLDC reports; Keen Independent Research from 2017–2021 ACS Public Use Microdata samples. The 2017–2021 ACS raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>

APPENDIX D. Construction Labor Market — Introduction

Keen Independent examine data regarding the labor market for construction workers in the St. Louis Metropolitan Statistical Area (MSA), including entry and advancement of people of color and women in construction careers.

Appendix D uses data for 2017–2021 from the U.S. Census Bureau American Community Survey (ACS) to analyze worker education, employment and workplace advancement in the construction industry.

Keen Independent began the analysis by examining the trends in employment and unemployment and average wages for the construction industry in the St. Louis MSA.

Keen Independent also discusses the representation of people of color and women in the construction industry.

D. Construction Labor Market — Overview of employment and wages

Employment

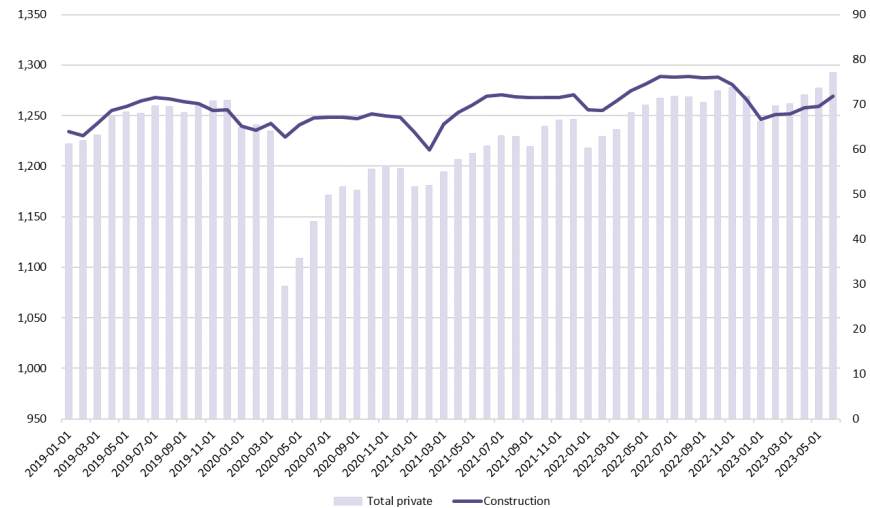
The St. Louis metro area construction industry has experienced a steady increase in the number of employees since 2019. Unless private sector jobs as a whole, which dramatically fell during the height of the COVID-19 Pandemic, the total number of construction jobs construction jobs reduced only slightly.

The solid line in Figure D-1 shows the number of employees in the construction sector, in thousands (Y-axis to the right of the graph shows construction jobs). The vertical bars in Figure D-1 show total private sector jobs on a different scale (see the Y axis to the left of the graph).

Trends in Average Weekly Wages

Average weekly wages have also increased for construction workers in the St. Louis metro area over the same period. Figure D-2 shows average hourly earnings in construction industry (darker line) and in the total private sector (lighter line). Wages in the construction industry increased at a faster pace than in the total private sector.

D-1. Employment in construction and in the private sector, thousands of persons, seasonally adjusted, St. Louis MSA



Source: Keen Independent Research with data from Federal Reserve Bank.

D-2. Annual change in average weekly wages in construction total private industry, St. Louis MSA.



Source: Keen Independent Research with data from Federal Reserve Bank.

D. Construction Labor Market — Construction industry employment

The following pages further explore employment conditions in the construction industry in the St. Louis metro area.

Education of People Working in the Industry

Formal education beyond high school is not a prerequisite for most construction jobs,¹ and construction often attracts individuals who have relatively less formal education than in other industries.² These workers often receive on-the-job training after they are hired by construction companies to compensate for their initial lack of knowledge.³ Based on 2017–2021 ACS data, just 15 percent of area construction workers had a four-year college degree or more compared to 38 percent in all other industries combined.

Race/ethnicity. Due to the educational requirements of entry-level jobs and the limited education beyond high school for many minority groups in the marketplace, one would expect a relatively high representation of people of color in the local construction industry, especially in entry-level positions. African Americans represented a large population of workers without a post-secondary education.

However, in 2017–2021, Asian American workers age 25 and older in the local marketplace were more likely to have at least a four-year college degree than non-Hispanic whites. One might expect representation of these groups in the construction industry to be lower than in other industries.

¹ Bureau of Labor Statistics, U.S. Department of Labor. (2021, October 19). Construction and extraction occupations. *Occupational Outlook Handbook*. Retrieved from <https://www.bls.gov/ooh/construction-and-extraction/home.htm>

² Bureau of Labor Statistics, U.S. Department of Labor. (2022, September 8). Construction and Extraction Occupations. Retrieved from <https://www.bls.gov/ooh/construction-and-extraction/home.htm>

CPWR - The Center for Construction Research and Training. (2007). Educational attainment and internet usage in construction and other industries. In *The construction*

chart book: The U.S. construction industry and its workers (3rd ed.). Retrieved from https://www.cpwr.com/sites/default/files/research/CB3_FINAL.pdf

³ Bureau of Labor Statistics, U.S. Department of Labor. (2021, October 19). Construction laborers and helpers. *Occupational Outlook Handbook*. Retrieved from <https://www.bls.gov/ooh/construction-and-extraction/construction-laborers-and-helpers.htm#tab-4>

D. Construction Labor Market — Construction industry employment

Gender. In 2022 women made up only 11 percent of the national construction workforce (roughly 1.3 million women). Women largely operate in administrative roles in this industry, holding a larger portion of the jobs in sales and office (72%), service (22%) and management and professional roles (16.5%). Only 4 percent of natural resources, construction and maintenance positions and 5 percent of production, transportation and materials moving positions were held by women.⁴ Low representation of women, and especially women of color, is also found in apprenticeships.⁵

According to 2017–2021 ACS data for the local construction industry, 33 percent of female workers and 14 percent of male workers age 25 and older had at least a four-year college degree. This might contribute to lower representation of women among construction workers.

Among people with a college degree, women have been less likely to enroll in construction-related degree programs. Nationally, women have low levels of enrollment in Construction Management programs, and this may be due to (a) the prevailing notion that construction is an industry dominated by males and is unkind to females and families, and (b) secondary school career counselors' lack of discussion of women's

career opportunities in the construction fields, and female students' consequent lack of knowledge of these professions.⁶

According to a 2021 report by the Institute for Women's Policy Research that surveyed 2,635 tradeswomen in the construction industry, 18 percent identified as Latina, 16 percent identified as African American, 5 percent identified as Asian American and Pacific Islander, 4 percent identified as Native American, and 54 percent identified as white.⁷ Of those surveyed, one-half have children younger than 18, and more than one in five have children younger than six. Single mothers make up one in four of those with kids under 18. As already discussed, childcare duties rose dramatically for mothers during the pandemic, often causing women to miss out on promotion opportunities due to caregiving obligations.⁸

⁴ Bureau of Labor Statistics. (2022). 2021 Current Population Survey: Employed persons by industry, sex, race, and occupation. [Data file]. Retrieved from <https://www.bls.gov/cps/tables.htm>

⁵ Jackson, Sarah. (2019, November 29). 'Not the boys' club anymore': Eight women take a swing at the construction industry. NBC News. Retrieved from <https://www.nbcnews.com/news/us-news/not-boys-club-anymore-eight-women-take-swing-construction-industry-n1091376>; Graves, F. G., et al. *Women in construction: Still breaking ground* (Rep.). Retrieved from National Women's Law Center website: https://www.nwlc.org/sites/default/files/pdfs/final_nwlc_womeninconstruction_report.pdf

⁶ Regis, M.F., Alberte, E.P.V., Lima, D.S., & Freitas, R. (2019). Women in construction: shortcomings, difficulties, and good practices. *Engineering, Construction and*

Architectural Management 26(11) 2535-2549; Sewalk, S., & Nietfeld, K. (2013). Barriers preventing women from enrolling in construction management programs. *International Journal of Construction Education and Research*, 9(4), 239-255. doi:10.1080/15578771.2013.764362

⁷ Hegewisch, H. & Mefferd, E. (2021) A Future Worth Building: What Tradeswomen Say about the Change They Need in the Construction Industry. *Institute for Women's Policy Research*. Retrieved from https://iwpr.org/wp-content/uploads/2022/02/A-Future-Worth-Building_What-Tradeswomen-Say_FINAL.pdf

⁸ Golding, C. (April 2022). Understanding the Economic Impact of COVID-19 on Women. *National Bureau of Economic Research*. Retrieved from <https://www.nber.org/papers/w29974>

D. Construction Labor Market — Construction industry employment

Trade schools and apprenticeship programs. Training in the construction industry is largely on-the-job and through trade schools and apprenticeship programs.⁹ Entry-level jobs for workers out of high school are often for laborers, helpers or apprentices. More skilled positions may require additional training through a technical or trade school, or through an apprenticeship or other training program. Apprenticeship programs can be developed by employers, trade associations, trade unions or other groups.

Workers can enter apprenticeship programs from high school or trade school. Apprenticeships have traditionally been three- to five-year programs that combine on-the-job training with classroom instruction.¹⁰

However, the availability of these programs fluctuates with demand. For example, due to public health concerns, halted construction projects and the need for social distancing, many apprenticeships throughout the nation were ended or scaled back during the COVID-19 pandemic.¹¹

This also occurred during the Great Recession. In response to limited construction employment opportunities during the recession, apprenticeship programs limited the number of new apprenticeships¹² as well as access to knowing when and where apprenticeships occur.¹³ Apprenticeship programs often refer to an “out-of-work list” when contacting apprentices; those who have been on the list the longest are given preference.

Furthermore, some research indicates that apprentices are often hired and laid off several times during their apprenticeship program. Apprentices were more successful if they were able to maintain steady employment, either by remaining with one company and moving to various work sites, or by finding work quickly after being laid off. Apprentices identified mentoring from senior coworkers, such as journey workers, foremen or supervisors, and being assigned tasks that furthered their training as important to their success.¹⁴

⁹ Bureau of Labor Statistics, U.S. Department of Labor. (2021, October 19). Construction laborers and helpers. *Occupational Outlook Handbook*. Retrieved from <https://www.bls.gov/ooh/construction-and-extraction/construction-laborers-and-helpers.htm#tab-4>

¹⁰ Apprenticeship.gov, U.S. Department of Labor. (2021, October 19). Construction. Retrieved from <https://www.apprenticeship.gov/apprenticeship-industries/construction>

¹¹ Buckley, B., & Rubin, D.K. (2020). Construction apprentice programs face new COVID-19 learning curve. *Engineering News-Record*. Retrieved from

<https://www.enr.com/articles/49417-construction-apprentice-programs-face-new-covid-19-learning-curve>

¹² Kelly, M., Pisciotto, M., Wilkinson, L., & Williams, L. S. (2015). When working hard is not enough for female and racial/ethnic minority apprentices in the highway trades. *Sociological Forum*, 30(2), 415-438. doi:10.1111/socf.12169

¹³ Graves, F. G., et al. *Women in construction: Still breaking ground* (Rep.). Retrieved from https://www.nwlc.org/sites/default/files/pdfs/final_nwlc_womeninconstruction_report.pdf

¹⁴ Ibid.

D. Construction Labor Market — Construction industry employment

The study team examined employment in the St. Louis metro area construction industry. Figure D-3 compares the demographic composition of construction industry workers with the total workforce.

Race/ethnicity

Based on 2017–2021 ACS data, people of color were about 15 percent of those working in construction trades. African Americans represent a much smaller share of construction workers than employment in other industries, as do Asian Americans.

The average educational attainment of African Americans is consistent with requirements for construction jobs, so education does not explain the low number of African Americans employed in the local construction industry relative to other industries.

Historically, racial discrimination by construction unions in the United States has contributed to the low employment of African Americans in construction trades.¹⁵

Gender

There is a large difference between the representation of women in the construction workforce (11% of employees) and representation in all other industries (51% of employees).

D-3. Demographics of workers in construction and all other industries in the St. Louis MSA, 2017–2021

	Construction	All other industries
Race/ethnicity		
African American	6.3 % **	16.9 %
Asian American	0.6 **	3.3
Hispanic American	5.8 **	3.0
Native American	2.0	1.5
Total minority	14.6 %	24.7 %
Non-Hispanic white	85.4 **	75.3
Total	100.0 %	100.0 %
Gender		
Female	5.5 % **	51.0 %
Male	94.5 **	49.0
Total	100.0 %	100.0 %

Note: **, ** Denotes that the difference in proportions between workforce in the construction industry and all other industries for the given race/ethnicity/gender group is statistically significant at the 90% and 95% confidence level, respectively.

“All other industries” includes all industries other than the construction industry.

Source: Keen Independent Research from 2017–2021 ACS Public Use Microdata samples. The 2017–2021 ACS raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

¹⁵ Watson, T. (2021). Union construction’s racial equity and inclusion charade. *Stanford Social Innovation Review*. Retrieved from

https://ssir.org/articles/entry/union_constructions_racial_equity_and_inclusion_charade

D. Construction Labor Market — Academic research on construction employment

There is substantial academic literature indicating that race- and gender-based discrimination affects opportunities for minorities and women in the construction industry.

For example, literature concerning women in construction trades has identified substantial barriers to entry and advancement due to gender discrimination and sexual harassment.¹⁶ One study found that when African American women in construction advance into leadership roles, they often find that others unduly challenge their authority. Participants of this study also reported incidents of harassment, bullying and the assumption that they are inferior to their male peers; these instances are believed to hinder African American females' career development and overall success in the construction industry.¹⁷ Such treatment has been found to lead to stress, decreased psychological health and early exit from the industry.¹⁸

In a separate study, white men were least likely to report challenges related to being assigned low-skill or repetitive tasks that did not enable them to learn new skills. Women and people of color felt that they were disproportionately performing low-skill tasks that negatively impacted the quality of their training experience.¹⁹

Additionally, women encounter practical issues such as difficulty in accessing personal protective equipment that fits them properly (they frequently find such employer-provided equipment to be too large). This sometimes poses a safety hazard, and even more often hinders female workers' productivity, which can impact their relationships with supervisors as well as their opportunities for growth in the industry.²⁰ Lack of flexible work options, childcare programs, paid pregnancy and maternity leave, and breastfeeding support create additional — often invisible — challenges that narrow women's professional opportunities in the construction industry.²¹

¹⁶ Bridges, Donna, Elizabeth Wulff, Larissa Bamberry, Branka Krivokapic-Skoko and Stacey Jenkins (2020). Negotiating gender in the male-dominated skilled trades: a systemic literature review. *Construction Management and Economics*, 38 (10), 38:10, 894-916, DOI: [10.1080/01446193.2020.1762906](https://doi.org/10.1080/01446193.2020.1762906)

¹⁷ Hunte, R. (2016). Black women and race and gender tensions in the trades. *Peace Review*, 28(4), 436-443. doi:10.1080/10402659.2016.1237087

¹⁸ Sunindijo, R.Y., & Kamardeen, I. (2017). Work stress is a threat to gender diversity in the construction industry. *Journal of Construction Engineering and Management*, 143(10).

¹⁹ Kelly, M., et al. (2015). When working hard is not enough for female and racial/ethnic minority apprentices in the highway trades. *Sociological Forum*, 30(2), 415-438. doi:10.1111/socf.12169

²⁰ Onyebeke, L. C., et al. (2016). Access to properly fitting personal protective equipment for female construction workers. *American Journal of Industrial Medicine*, 59(11), 1032-1040. doi:10.1002/ajim.22624

²¹ Pamidimukkala, A, et. al. (2022). Occupational Health and Safety Challenges in Construction Industry: A Gender-Based Analysis. Retrieved from https://www.researchgate.net/profile/Sharareh-Kermanshachi/publication/354820545_Occupational_Health_and_Safety_Challenges_in_Construction_Industry_A_Gender-Based_Analysis/links/614e1067f8c9c51a8aeed740/Occupational-Health-and-Safety-Challenges-in-Construction-Industry-A-Gender-Based-Analysis.pdf; Hegewisch, A. & Mefferd, E. (2021). A Future Worth Building: What Tradeswomen Say about the Change They Need in the Construction Industry. Institute for Women's Policy Research. Retrieved from https://iwpr.org/wp-content/uploads/2022/02/A-Future-Worth-Building_What-Tradeswomen-Say_FINAL.pdf

D. Construction Labor Market — Academic research on construction employment

Research suggests that race and gender inequalities in a workplace are often evidenced through the acceptance of the “good old boys’ club” culture.²² There may also be an attachment to the idea that “working hard” will bring success. However, the quantitative and qualitative evidence indicates that “hard work” alone does not ensure success for women and people of color.²³

The temporary nature of construction work results in uncertain job prospects, and the relatively high turnover of laborers presents a disincentive for construction firms to invest in training. Some researchers have concluded that constant turnover has lent itself to informal recruitment practices and nepotism, compelling laborers to tap social networks for training and work. They credit the importance of social networks with the high degree of ethnic segmentation in the construction industry.²⁴ Unable to integrate themselves into traditionally white social networks, African Americans and other minorities faced long-standing historical barriers to entering the construction industry.²⁵

²² Jackson, Sarah. (2019, Nov. 29). ‘Not the boys’ club anymore’: Eight women take a swing at the construction industry. NBC News. Retrieved from <https://www.nbcnews.com/news/us-news/not-boys-club-anymore-eight-women-take-swing-construction-industry-n1091376>

²³ Kelly, M., et al. (2015). When working hard is not enough for female and racial/ethnic minority apprentices in the highway trades. *Sociological Forum*, 30(2), 415-438. doi:10.1111/socf.12169.

²⁴ Watson, T. (2021). Union construction’s racial equity and inclusion charade. *Stanford Social Innovation Review*. Retrieved from https://ssir.org/articles/entry/union_constructions_racial_equity_and_inclusion_charade; Waldinger, R., & Bailey, T. (1991). The continuing significance of race: Racial conflict and racial discrimination in construction. *Politics & Society*, 19(3), 291-323. doi:10.1177/003232929101900302

²⁵ Caplan, A., Aujla, A., Prosser, S., & Jackson, J. (2009). Race discrimination in the construction industry: a thematic review. *Equality and Human Rights Commission*, Research Report 23.

D. Construction Labor Market — Unions in the construction industry

Labor researchers characterize construction as a historically volatile industry that is sensitive to business cycles, making the presence of labor unions important for stability and job security within the industry.²⁶ According to the Bureau of Labor Statistics, in 2021 union membership among people employed in construction occupations was about 13 percent.²⁷ Union members comprise a greater share of the construction workforce than found in other industries, as national union membership within all occupations during 2021 was about 10 percent.²⁸ The difference in union membership rates demonstrates the importance of unions within the construction industry. In Missouri, union representation for all occupations in 2022 was about 10 percent.²⁹ (There were no BLS data published for the construction industry.)

Construction unions aim to provide a reliable source of labor for employers and preserve job opportunities for workers by formalizing the recruitment process, coordinating training and apprenticeships, enforcing standards of work and mitigating wage competition. The unionized sector of construction would seemingly be a path for African Americans and other underrepresented groups into the industry.

However, some researchers have identified racial discrimination by trade unions that has historically prevented minorities from obtaining employment in skilled trades.³⁰ Some researchers have argued that union discrimination has taken place in a variety of forms, including the following examples:

- Unions have used admissions criteria that adversely affect minorities. In the 1970s, federal courts ruled that standardized testing requirements for unions unfairly disadvantaged minority applicants who had less exposure to testing. In addition, the policies that required new union members to have relatives who were already in the union perpetuated the effects of past discrimination.³¹
- Of those minority individuals who are admitted to unions, a disproportionately low number are admitted into union-coordinated apprenticeship programs. Apprenticeship programs are an important means of producing skilled construction laborers, and the reported exclusion of African Americans from those programs has severely limited their access to skilled occupations in the construction industry.³²

²⁶ Applebaum, H. A. (1999). *Construction workers, U.S.A.* Westport, CT: Greenwood Press.

²⁷ Bureau of Labor Statistics, U.S. Department of Labor. (2023, January 19). *Union Member Summary* [Press release]. Retrieved from <https://www.bls.gov/news.release/union2.nr0.htm>

²⁸ Ibid.

²⁹ Bureau of Labor Statistics, U.S. Department of Labor. (2022, January 20). *Table 5. Union affiliation of employed wage and salary workers by state.* [Press release]. Retrieved from <https://www.bls.gov/news.release/union2.t05.htm>

³⁰ Watson, T. (2021). Union construction's racial equity and inclusion charade. *Stanford Social Innovation Review*. Retrieved from https://ssir.org/articles/entry/union_constructions_racial_equity_and_inclusion_charade

³¹ Ibid.; U.S. v. Iron Workers Local 86, 443 F.2d 544 (9th Cir. 1971); Sims v. Sheet Metal Workers International Association, 489 F. 2d 1023 (6th Cir. 1973); U.S. v. International Association of Bridge, Structural and Ornamental Iron Workers, 438 F.2d 679 (7th Cir. 1971).

³² Goldberg, D.A. & Griffey, T. (2010). *Black power at work: Community control, affirmative action, and the construction industry.* Ithaca, NY: Cornell University Press.

D. Construction Labor Market — Unions in the construction industry

- Although formal training and apprenticeship programs exist within unions, most training of union members takes place informally through social networking. Nepotism characterizes the unionized sector of construction as it does the non-unionized sector, and that practice favors a white-dominated status quo.³³
- Traditionally, unions have been successful in resisting policies designed to increase African American participation in training programs. The political strength of unions in resisting affirmative action in construction has hindered the advancement of African Americans in the industry.³⁴
- Discriminatory practices in employee referral procedures, including apportioning work based on seniority, have precluded minority union members from having the same access to construction work as their white counterparts.³⁵
- According to testimony from African American union members, even when unions implement meritocratic mechanisms of apportioning employment to laborers, white workers are often allowed to circumvent procedures and receive preference for construction jobs.³⁶
- Some minority workers face overt, aggressive violence that is racialized with the goal of pushing them out of the workplace. Tactics include racial slurs, physical intimidation, placement in dangerous work situations and intentional “accidents.”³⁷

³³ Amoah, C. & Steyn, D. (2022). “Barriers to unethical and corrupt practices avoidance in the construction industry”. *International Journal of Building Pathology and Adaptation*. 2398-4708. Retrieved from <https://www.emerald.com/insight/content/doi/10.1108/IJBPA-01-2022-0021/full/html>

³⁴ Goldberg, D.A. & Griffey, T. (2010). *Black power at work: community control, affirmative action, and the construction industry*. Ithaca, NY: Cornell University Press.

³⁵ Watson, T. (2021). Union construction’s racial equity and inclusion charade. *Stanford Social Innovation Review*. Retrieved from

https://ssir.org/articles/entry/union_constructions_racial_equity_and_inclusion_charade

³⁶ Goldberg, D.A. & Griffey, T. (2010). *Black power at work: community control, affirmative action, and the construction industry*. Ithaca, NY: Cornell University Press.

³⁷ Watson, T. (2021). Union construction’s racial equity and inclusion charade. *Stanford Social Innovation Review*. Retrieved from https://ssir.org/articles/entry/union_constructions_racial_equity_and_inclusion_charade

D. Construction Labor Market — Unions in the construction industry

Research suggests that the relationship between people of color and unions has been changing. As a result, historical observations may not be indicative of current dynamics in construction unions. Recent studies focusing on the role of unions in apprenticeship programs have compared minority and female participation and graduation rates for apprenticeships in joint programs (that unions and employers organize together) with rates in employer-only programs.

Many of those studies conclude that the impact of union involvement is generally positive or neutral for minorities and women, compared to non-Hispanic white males, as summarized below.

- Researchers analyzing apprenticeship programs in the U.S. construction industry found that joint programs had “much higher enrollments and participation of women and ethnic/racial minorities” and exhibited “markedly better performance for all groups on rates of attrition and completion” compared to employer-run programs.³⁸

- In a similar analysis focusing on female apprentices, Bilginsoy and Berik found that women were most likely to work in highly skilled construction professions as a result of enrollment in joint programs as opposed to employer-run programs. Moreover, the effect of union involvement in apprenticeship training was higher for African American women than for white women.³⁹
- Additional research on the presence of African Americans and Hispanic Americans in apprenticeship programs found that African Americans were 8 percent more likely to be enrolled in a joint program than in an employer-run program. However, Hispanic Americans were less likely to be in a joint program than in an employer-run program.⁴⁰ Those data suggest that Hispanic Americans may be more likely than African Americans to enter the construction industry without the support of a union.
- More recent analysis shows that shorter apprenticeship programs that are operated by single employers working jointly with a union are consistent with higher completion rates for all participants.⁴¹

³⁸ Glover, R. W., & Bilginsoy, C. (2005). Registered apprenticeship training in the U.S. construction industry. *Education + Training*, 47(4/5), 337-349. doi:10.1108/00400910510601913

³⁹ Berik, G., & Bilginsoy, C. (2006). Still a wedge in the door: Women training for the construction trades in the USA. *International Journal of Manpower*, 27(4), 321-341. doi:10.1108/01437720610679197

⁴⁰ Bilginsoy, C. (2005). How unions affect minority representation in building trades apprenticeship programs. *Journal of Labor Research*, 26(3), 451-463. doi:10.1007/s12122-005-1014-4

⁴¹ Kuehn, D. Registered Apprenticeship and Career Advancement for Low-Wage Service Workers. (2019) *Economic Development Quarterly*, 33(2), 134–150. <https://doi.org/10.1177/0891242419838605>

D. Construction Labor Market — Unions in the construction industry

Union membership data support those findings as well. For example, BLS data for 2022 showed that union membership was highest among African Americans, with African American men participating at about 13 percent and African American women at about 10 percent.⁴²

In 2022, 10 percent of white workers participated in unions, while about 9 percent of Hispanic American workers and 8 percent of Asian American workers were unionized.⁴³ African American participation in unions was even higher when focusing on specific industries: Recent research utilizing ACS data puts African American union membership in the construction industry at about 17 percent.⁴⁴

According to recent research, union apprenticeships appear to have drawn more African Americans into the construction trades in some markets,⁴⁵ and studies have found a high percentage of minority construction apprentices.

In 2010 in New York City, for example, approximately 69 percent of first-year local construction apprentices were African American, Hispanic American, Asian American, or members of other minority groups. In addition, 11 percent of local New York City construction apprentices were women.

However, this increase in apprenticeships may not necessarily be indicative of improved future prospects for minority workers. A study in Oregon found that, though minority men’s participation in construction apprenticeships was roughly proportional to their representation in the state’s workforce, their representation in skilled trades apprenticeships was lower than what might be expected.

⁴² Bureau of Labor Statistics, U.S. Department of Labor. (2023, January 24). Union membership rate fell by 0.2 percentage point to 10.1 percent in 2022. Retrieved from <https://www.bls.gov/opub/ted/2023/union-membership-rate-fell-by-0-2-percentage-point-to-10-1-percent-in-2022.htm>

⁴³ Bureau of Labor Statistics, U.S. Department of Labor. (2023, January 19). *Union Members — 2022* [Press release]. Retrieved from <https://www.bls.gov/news.release/pdf/union2.pdf>

⁴⁴ Bucknor, C. (2016). *Black workers, unions, and inequality*. Washington D.C.: Center for Economic and Policy Research.

⁴⁵ Mishel, L. (2017). *Diversity in the New York City union and nonunion construction sectors* (Rep.). Retrieved from Economic Policy Institute website: <http://www.epi.org/publication/diversity-in-the-nyc-construction-union-and-nonunion-sectors/>

D. Construction Labor Market — Unions in the construction industry

Although union membership and union program participation vary based on race and ethnicity, there is no clear picture from the research about the causes of those differences and their effects on construction industry employment. Research is especially limited concerning the impact of unions on African American employment. It is unclear from past studies whether unions presently help or hinder equal opportunity in construction and whether effects in the local marketplace are different from other parts of the country. In addition, current research indicates that the effects of unions on entry into the construction industry may be different for different minority groups. Some unions are actively trying to provide a more inclusive environment for racial minorities and women through “insourcing” and active recruitment into apprenticeship programs.^{46, 47}

To research opportunities for advancement in the local marketplace construction industry, Keen Independent examined the representation of people of color and women in construction occupations (defined by the U.S. Bureau of Labor Statistics⁴⁸). Appendix E describes trades with large enough sample sizes in the 2017–2021 ACS for analysis.

⁴⁶ Judd, R. (2016, November 30). Seattle’s building boom is good news for a new generation of workers. *The Seattle Times, Pacific NW Magazine*. Retrieved from <https://www.seattletimes.com/pacific-nw-magazine/seattles-building-boom-is-good-news-for-a-new-generation-of-workers/>

⁴⁷ For example, Boston’s “Building Pathways” apprenticeship program is designed to recruit workers from low-income underserved communities. <https://buildingpathwaysboston.org/>

⁴⁸ Bureau of Labor Statistics, U.S. Department of Labor. (2001). Standard occupational classification major groups. Retrieved from http://www.bls.gov/soc/major_groups.htm

D. Construction Labor Market — Advancement in the construction industry

Keen Independent examined the representation of workers of color and women in specific trades in the St. Louis MSA construction industry.

Race/ethnicity

Figure D-4 present shows workers of color as a share of all workers in select construction occupations in the local marketplace for 2017–2021, including lower-skill occupations (e.g., construction laborers), higher-skill construction trades (e.g., electricians) and supervisory roles.

Based on 2017–2021 ACS data, there are large differences in the racial and ethnic makeup of workers in various construction trades in the local marketplace. The representation of workers of color was greater among certain trades such as:

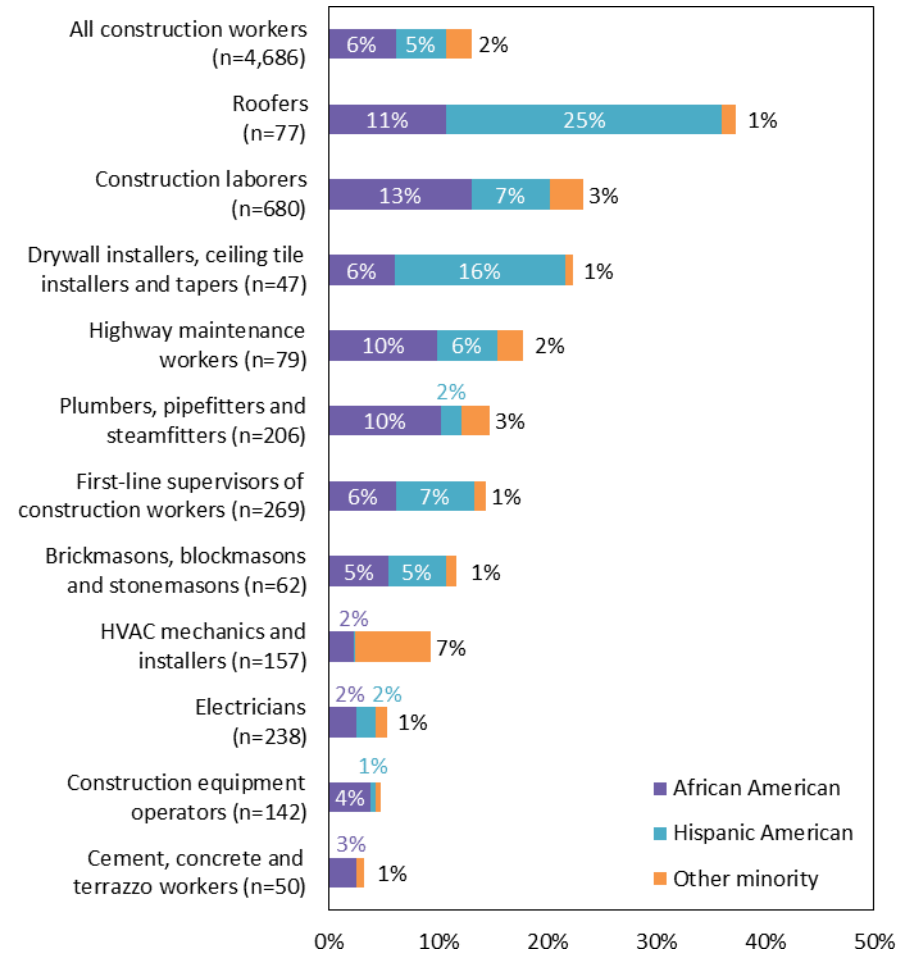
- Roofers;
- Construction laborers;
- Drywall installers; and
- Highway maintenance workers.

However, minority representation in the following occupations was lower than in construction overall:

- Brickmasons;
- HVAC mechanics;
- Electricians; and
- Equipment operators.

Rates of minority representation are lower in occupations with relatively higher requirements in education, training and apprenticeship. This suggests that people of color may face greater barriers in accessing the requisite training and apprenticeships for high-skill occupations in the local construction industry.

D-4. People of color as a percentage of selected construction occupations in the St. Louis MSA, 2017–2021



Note: Asian Americans, Native Americans and other minority groups were combined into a single category due to small sample size for individual occupations.

Source: Keen Independent Research from 2017–2021 ACS Public Use Microdata samples. The 2017–2021 ACS raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

D. Construction Labor Market — Advancement in the construction industry

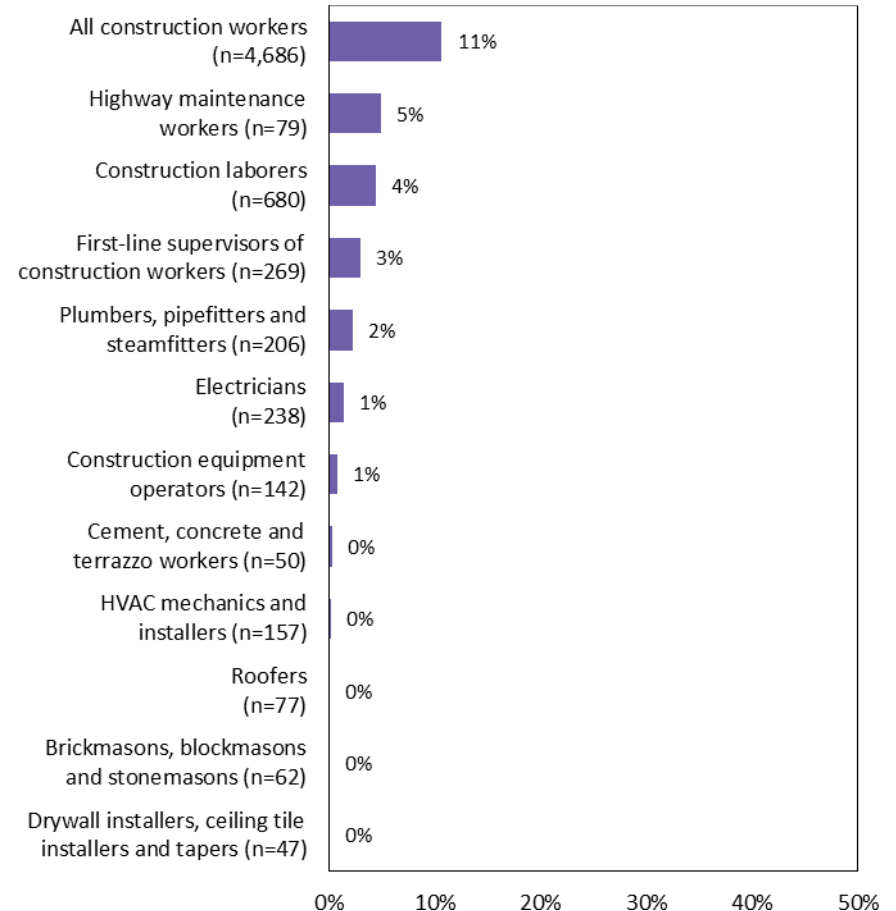
Gender

Keen Independent also analyzed the proportion of workers who are women in construction-related occupations. Figure D-5 summarizes the representation of women in select construction-related occupations in the local marketplace for 2017–2021. (Overall, women made up only 11 percent of workers in the industry in 2017–2021.)

In the local marketplace from 2017–2021, women accounted for 5 percent or fewer of those working in most of the large construction trades. There were no women in the ACS sample data for:

- HVAC mechanics;
- Roofers;
- Brickmasons; and
- Drywall installers.

D-5. Women as a percentage of construction workers in selected occupations in the St. Louis MSA, 2017–2021



Source: Keen Independent Research from 2017–2021 ACS Public Use Microdata samples. The 2017–2021 ACS raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

D. Construction Labor Market — Advancement in the construction industry

Percentage of Managers Who Are People of Color

To further assess advancement opportunities in the local marketplace construction industry, Keen Independent examined the proportion of construction workers who reported being managers. Figure D-6 presents the percentage of construction employees who reported working as managers in 2017–2021 within the local marketplace by racial/ethnic and gender group.

In 2017–2021, there was underrepresentation of people of color among construction workers who worked as managers. The likelihood of working as a manager was lower for:

- African Americans;
- Hispanic Americans; and
- Native Americans.

These differences were statistically significant (see Figure D-6).

Percentage of Managers Who Are Women

In the local construction industry, about 6 percent of women construction workers were managers, somewhat lower than the 7 percent of male workers who were managers in 2017-2021. This difference was not statistically significant.

D-6. Percentage of construction workers who worked as a manager, in the St. Louis MSA, 2017–2021

	2017-2021
Race/ethnicity	
African American	1.6 % **
Asian American	4.6
Hispanic American	3.7 **
Native American	3.3 **
Non-Hispanic white	7.7
Gender	
Female	5.9 %
Male	7.2
All individuals	7.0 %

Note: ** Denotes that the difference in proportions between the minority and non-Hispanic white groups (or between females and males) for the given Census/ACS year is statistically significant at the 95% confidence level.

Source: Keen Independent Research from 2017–2021 ACS Public Use Microdata samples. The 2017–2021 ACS raw data extracts were obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

D. Construction Labor Market — Summary of results

People of color were about 13 percent of the St. Louis MSA construction workforce between 2017 and 2021. Women accounted for about 10 percent of construction workers. Analysis of the local construction workforce in the study industries indicates that there could be barriers to employment for some minority groups and for women.

- Among construction workers, African Americans, Asian Americans and women were underrepresented compared to representation among workers in all other industries. These differences were statistically significant.

In the marketplace, representation of people of color in construction trades such as brickmasons, HVAC mechanics, electricians and equipment operators and among construction supervisors and managers was low when compared to representation in the construction industry as a whole.

- There was also low representation for construction trades for women. There were three construction trades examined in which there were no women in the Census Bureau sample data for the local area.

Any barriers to entry or advancement in the study industries might affect the participation of people of color and women in City and County construction projects.

APPENDIX E. Description of Data Sources for Marketplace Analyses

Overview

To perform the marketplace analyses presented in Appendices E, the study team used data from the 2017–2021 five-year American Community Survey (ACS), conducted by the U.S. Census Bureau.

Keen Independent used PUMS data to analyze demographic characteristics of workers in the St. Louis Metropolitan Statistical Area.

PUMS data offer several features ideal for the analyses reported in this study, including historical cross-sectional data, stratified national and local samples, and large sample sizes that enable many estimates to be made with a high level of statistical confidence, even for subsets of the population (e.g., racial/ethnic and occupational groups).

The study team obtained selected Census and ACS data from the Minnesota Population Center’s Integrated Public Use Microdata Series (IPUMS). The IPUMS program provides online access to customized, accurate datasets.¹ For the analyses contained in this report, the study team used the 2017–2021 five-year ACS sample.

¹ Steven Ruggles, Sarah Flood, Ronald Goeken, Megan Schouweiler, and Matthew Sobek. IPUMS USA: Version 12.0 [dataset]. Minneapolis, MN: IPUMS, 2022. <https://doi.org/10.18128/D010.V12.0>

2017–2021 American Community Survey

The study team examined ACS data obtained through IPUMS. The U.S. Census Bureau conducts the ACS which uses monthly samples to produce annually updated data for the same small areas as the 2000 Census long form.² Since 2005, the Census has conducted monthly surveys based on a random sample of housing units in every county in the U.S. Currently, these surveys cover roughly 1 percent of the population per year. The 2017–2021 ACS five-year estimates represent average characteristics over the five-year period and correspond to roughly 5 percent of the population.

² U.S. Census Bureau. *Design and Methodology: American Community Survey*. Washington D.C.: U.S. Government Printing, 2009. Available at https://www.census.gov/content/dam/Census/library/publications/2010/acs/acs_design_methodology.pdf

E. Description of Data Sources for Marketplace Analyses

Categorizing individual race/ethnicity. To define race/ethnicity, the study team used the IPUMS race/ethnicity variables — RACED and HISPAN — to categorize individuals into seven groups:

- African American;
- Asian American and Pacific Islander;
- Hispanic American;
- Native American;
- Other minority (unspecified); and
- Non-Hispanic white.

The study team created the race definitions using a rank ordering methodology similar to that used in the 2000 Census data dictionary. An individual was considered “non-Hispanic white” if they did not report Hispanic ethnicity and indicated being white only — not in combination with any other race group. Using the rank ordering methodology, an individual who identified multiple races or ethnicities was placed in the reported category with the highest ranking in the study team’s ordering. African American is first, followed by Native American, and then Asian American. For example, if an individual identified herself as “Korean,” she was placed in the Asian American category. If the individual identified herself as “Korean” in combination with “Black,” the individual was considered African American in these analyses.

- The Asian American and Pacific Islander category included persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong; or persons whose origins are from subcontinent Asia, including persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.
- American Indian, Alaska Native, Native Hawaiian and Latin American Indian groups were considered Native American.
- If an individual was identified with any of the above groups and an “other race” group, the individual was categorized into the known category. Individuals identified as “other race,” “Hispanic and other race” or “white and other race” were categorized as “other minority.”

For some analyses — those in which sample sizes were small — the study team combined minority groups.

Education variables. The study team used the variable indicating respondents’ highest level of educational attainment (EDUCD) to classify individuals into four categories: less than high school, high school diploma (or equivalent), some college or associate degree, and bachelor’s degree or higher.³

³ In the 1940–1980 samples, respondents were classified according to the highest year of school completed (HIGRADE). In the years after 1980, that method was used only for individuals who did not complete high school, and all high school graduates were

categorized based on the highest degree earned (EDUC99). The EDUCD variable merges two different schemes for measuring educational attainment by assigning to each degree the typical number of years it takes to earn it.

E. Description of Data Sources for Marketplace Analyses

Definition of workers. Analyses involving worker class, industry and occupation include workers 16 years of age or older who are employed within the industry or occupation in question. Analyses involving all workers regardless of industry, occupation or class include both employed persons and those who are unemployed but seeking work.

E-1. Class of worker variable code in the 2017–2027 ACS

Description	2017–2021 ACS CLASSWKRD codes
N/A	0
Self-employed, not incorporated	13
Self-employed, incorporated	14
Wage/salary, private	22
Wage/salary at nonprofit	23
Federal government employee	25
State government employee	27
Local government employee	28
Unpaid family worker	29

Source: Keen Independent Research from the IPUMS program: <http://usa.ipums.org/usa/>.

E. Description of Data Sources for Marketplace Analyses

Study industries. The study team used the IND variable to identify individuals as working in a specific industry. In the ACS data, there are several hundred industry and sub-industry categories. The construction industry is ACS IND code 0770.

Industry occupations. The study team also examined workers by occupation within the construction industry using the PUMS variable OCC. Figure E-2 on the following two pages summarizes the 2017–2021 ACS OCC codes used in the study team’s analyses

E. Description of Data Sources for Marketplace Analyses

E-2. 2017–2021 ACS occupation codes used to examine workers in construction

2017–2021 ACS occupational title and code	Job description
First-line supervisors of construction workers 2017-21 Code: 6200	Directly supervise and coordinate activities of construction or extraction workers.
Brickmasons, blockmasons and stonemasons 2017-21 Code: 6220	Lay and bind building materials, such as brick, structural tile, concrete block, cinder block, glass block, and terracotta block, with mortar and other substances, to construct or repair walls, partitions, arches, sewers, and other structures. Installers of mortarless segmental concrete masonry wall units are classified in “Landscaping and Groundskeeping Workers” (37-3011).
Cement masons, concrete finishers and terrazzo workers 2017-21 Code: 6250	Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, roads, or curbs using a variety of hand and power tools. Align forms for sidewalks, curbs, or gutters; patch voids; and use saws to cut expansion joints. Installers of mortarless segmental concrete masonry wall units are classified in “Landscaping and Groundskeeping Workers” (37-3011).
Construction laborers 2017-21 Code: 6260	Perform tasks involving physical labor at construction sites. May operate hand and power tools of all types: air hammers, earth tampers, cement mixers, small mechanical hoists, surveying and measuring equipment, and a variety of other equipment and instruments. May clean and prepare sites, dig trenches, set braces to support the sides of excavations, erect scaffolding, and clean up rubble, debris, and other waste materials. May assist other craft workers. Construction laborers who primarily assist a particular craft worker are classified under “Helpers, Construction Trades” (47-3010).
Construction equipment operators 2017-21 Code: 6305	<p>Operate equipment used for applying concrete, asphalt, or other materials to road beds, parking lots, or airport runways and taxiways or for tamping gravel, dirt, or other materials. Includes concrete and asphalt paving machine operators, form tampers, tamping machine operators, and stone spreader operators.</p> <p>Operate pile drivers mounted on skids, barges, crawler treads, or locomotive cranes to drive pilings for retaining walls, bulkheads, and foundations of structures such as buildings, bridges, and piers.</p> <p>Operate one or several types of power construction equipment, such as motor graders, bulldozers, scrapers, compressors, pumps, derricks, shovels, tractors, or front-end loaders to excavate, move, and grade earth, erect structures, or pour concrete or other hard surface pavement. May repair and maintain equipment in addition to other duties.</p>
Drywall installers, ceiling tile installers and tapers 2017-21 Code: 6330	<p>Apply plasterboard or other wallboard to ceilings or interior walls of buildings. Apply or mount acoustical tiles or blocks, strips, or sheets of shock-absorbing materials to ceilings and walls of buildings to reduce or reflect sound. Materials may be of decorative quality. Includes lathers who fasten wooden, metal, or rockboard lath to walls, ceilings, or partitions of buildings to provide support base for plaster, fireproofing, or acoustical material.</p> <p>Seal joints between plasterboard or other wallboard to prepare wall surface for painting or papering.</p>

E. Description of Data Sources for Marketplace Analyses

E-3. 2017–2021 ACS occupation codes used to examine workers in construction (continued)

2017–2021 ACS occupational title and code	Job description
Electricians 2017-21 Code: 6355	Install, maintain, and repair electrical wiring, equipment, and fixtures. Ensure that work is in accordance with relevant codes. May install or service street lights, intercom systems, or electrical control systems.
Plumbers, pipefitters and steamfitters 2017-21 Code: 6442	Assemble, install, alter, and repair pipelines or pipe systems that carry water, steam, air, or other liquids or gases. May install heating and cooling equipment and mechanical control systems. Includes sprinkler fitters.
Roofers 2017-21 Code: 6515	Cover roofs of structures with shingles, slate, asphalt, aluminum, wood, or related materials. May spray roofs, sidings, and walls with material to bind, seal, insulate, or soundproof sections of structures.
Highway maintenance workers 2017-21 Code: 6730	Maintain highways, municipal and rural roads, airport runways, and rights-of-way. Duties include patching broken or eroded pavement and repairing guard rails, highway markers, and snow fences. May also mow or clear brush from along road, or plow snow from roadway. Excludes “Tree Trimmers and Pruners” (37-3013).
Heating, air conditioning and refrigeration mechanics and installers 2017-21 Code: 7315	Install or repair heating, central air conditioning, HVAC, or refrigeration systems, including oil burners, hot-air furnaces, and heating stoves.

APPENDIX F. County Workforce Program

Program Establishment

St. Louis County currently implements labor hour goals for minorities, women and County residents on public works and tax-incentive construction projects.¹

The County established the workforce program in 2014. The labor hour goals and projects included in the program changed during the years analyzed during the study period (January 2017 through December 2021).

Goals in 2014. In 2014, Ordinance 25,816 established labor hour participation goals on construction contracts over \$2 million dollars for minorities (15%), women (5%), County residents (10%) and apprentices (15%).

Changes in 2018. In 2018, the workforce program was expanded to include tax increment financed (TIF) and bonded projects in addition to regular construction contracts. Workforce goals changed for some groups.

Workforce goals were designated as interim until the completion of a workforce disparity study.²The County's interim workforce participation goals at the time of this report are summarized below:³

- **Minority participation goals:** 25 percent of all labor hours are to be performed by minorities.
- **Women participation goals:** 7 percent of all labor hours are to be performed by women.
- **County resident participation goals:** 23 percent of all labor hours are to be performed by persons who reside in the County.

The interim participation goals apply for public works contracts, tax increment financed (TIF) and bonded projects when the estimated value of the contract is \$1 million or more. The Ordinance does not include labor hour participation goals for apprentices.

¹ Ordinance 27,043 (2018).

² Ibid.

³ Ibid

F. County Workforce Program

Program Implementation

The County program has the following requirements at time of award and during the project. Note that the County just recently started monitoring workforce program implementation.

Meeting workforce goals. The County requests that the contractor attempts to meet the workforce goals.

Reporting requirements and monitoring. Contractors, regardless of tier, are required to report their workforce monthly on each project that has a workforce requirement.

Penalties for non-compliance. The Ordinance states that contracts with workforce goals should include a provision that provides for liquidated damages if the prime contractor fails to meet the workforce goals.

The County has not imposed any penalties for non-compliance to date.

APPENDIX G. Construction Worker Training and Assistance

Keen Independent reviewed the avenues for training and job placement for people interested in construction jobs in the St. Louis metro area. Appendix G summarizes the results of this research.

There are many organizations that train and help to place workers in construction jobs throughout the St. Louis metro area. Examples range from trade unions, educational institutions and other training organizations to non-profit groups that support employment for people of color and women.

The specific organizations discussed in Appendix G are provided as examples as there are many groups that are not mentioned that are also important to construction worker training and placement.

APPENDIX G. Construction Worker Training and Assistance — Construction trade unions

Labor unions are important pathways to construction careers in the St. Louis area. The following list provides examples of trade unions involved in the St. Louis metro area construction industry.

- Associated Electrical Contractors of Greater St. Louis Local 57;
- Boilermakers, Local 27;
- Bricklayers, Local 1;
- Cement Masons, Local 527;
- Elevator Constructors, Local 3;
- Glaziers, Local 513;
- International Brotherhood of Electrical Workers (IBEW) Local 1;
- IBEW Local 2;
- IBEW Local 1439;
- Insulators and Allied Workers, Local 1;
- International Union of Operating Engineers, Local 513;
- Iron Workers, Local 396;
- Laborers' Local 42 (LiUNA!);
- Plasterers' Local 3;
- Plumbers and Pipefitters, Local 562;
- Roofers, Local 2;
- SMART Sheet Metal Workers, Local 36;
- Sprinkler Fitters, Local 268;
- Teamsters, Local 682;
- Teamsters, Local 688; and
- United Union of Roofers Local 2.

APPENDIX G. Construction Worker Training and Assistance — Training and other organizations

Educational Institutions

The region has a wide range of vocational trainers, community and technical colleges and high schools that offer a variety of instruction in construction trades and related skills.

- Examples of local high schools with such programs include Clyde C. Miller Career Academy High School, Construction Career Development Initiative (CCDI) Saturday Construction Academy, Riverview Gardens High School and Hazelwood East High School.
- Examples of post-high school training include St. Louis Community College and Ranken Technical College, which offer construction and civil engineering degrees and certifications.

Other Organizations

Within the St. Louis metro area, there are other nonprofit and community-based organizations that promote workforce preparedness and apprenticeship programs. These organizations provide training and employment opportunities to St. Louis area residents.

Examples include the following:

- Missouri Women in Trades;
- MOKAN, St. Louis Construction Contractors Assistance Center;
- St. Louis Agency on Training and Employment (SLATE);
- St. Louis Construction Cooperative; and
- Women in Charge.

APPENDIX G. Construction Worker Training and Assistance — Case studies

The following pages provide additional information about individual agencies and programs that provide training and assistance for those potentially entering construction trades in the St. Louis area.

Building Union Diversity

Building Union Diversity (BUD) is a free six-week pre-apprenticeship construction training program offered by the Missouri Works Initiative. It is available to residents of the St. Louis Metropolitan area who are 18 years of age or older and eligible to work in the United States.

The program seeks to prepare participants for construction apprenticeship programs and follows the Multi-Craft Core Curriculum (MC3) from North America's Building Trades Unions (NABTU) that provides skills certification training with a focus on job safety.

The training team includes representatives of local apprenticeship programs across construction specialties, including bricklaying, carpentry, electrical, iron work and plumbers. The program offers support services to participants including transportation, bus passes, a weekly stipend, work clothing and safety equipment.

BUD has a 92 percent graduation rate, and 82 percent of graduates are employed through a Registered Apprenticeship Program within six months of graduation. BUD also works to improve diversity within the construction industry. About 27 percent of program graduates are women, 79 percent are minorities and 6 percent are veterans.¹ The program's 2022 cohort has 27 members, up from 15 members in the first cohort in 2015.²

BUD has recently expanded to include services for students at boys-only St. Mary's High School in South St. Louis. This program will be available to students starting with the 2023-24 school year. It will be available across two terms for two elective credits and will offer over 120 hours in pre-apprenticeship training in the trades.³

¹ See <https://moworksinitiative.org/building-union-diversity-bud-program/>

² Ferenc, E. (Executive producer). (2022, August 20). St. Louis BUD Program increases diversity in the building trades (season 3, episode 150) [Audio podcast episode]. In *America's Work Force Union Podcast*. BMA Media Group. <https://awf.labortools.com/listen/st.-louis-bud-program-increases-diversity-in-the-building-trades>

³ Gassaway, S. (2023, May 15). St. Mary's High School first in state to offer Missouri Works Initiative pre-apprenticeship program. *St. Louis/Southern Illinois Labor Tribune*. Retrieved from <https://labortribune.com/st-marys-high-school-first-in-state-to-offer-missouri-works-initiative-pre-apprenticeship-program/>

APPENDIX G. Construction Worker Training and Assistance — Case studies

Construction Career Development Initiative

Construction Career Development Initiative (CCDI) seeks to expose high school students to the construction industry through development programs such as the Construction Academy, which offers Saturday classes in career development, hands-on projects, community service, field trips and guest speakers from the construction trades.

CCDI specifically focuses on increasing diversity in the construction industry through training and mentorship of minorities and seeks to increase the presence and retention of young workers in the trades.

During the 2022-23 school year, CCDI introduced about 1,000 high school students to careers in construction and enrolled 85 students in the program. That same year, CCDI helped 150 people gain full-time employment in the trades and awarded over \$0.5 million in scholarships to participants seeking education in the trades.⁴

Construction Supervision Fundamentals Program

American General Contractors of America, Missouri Chapter (AGCMO). AGCMO is a trade association that represents over 500 people working in construction and construction-related jobs in Missouri. AGCMO offers a 25-hour, nine-session course on construction management for aspiring construction supervisors. Topics included in sessions include team management, communication skills, time management, problem resolution and skills development.

⁴ CCDI Community Builder. (2022-23). *Construction Career Development Initiative*. Retrieved from

Harambee Youth Training Program

The Harambee Youth Training Program grew out of Restore Saint Louis, a local faith-based nonprofit, and became its own nonprofit that offers job training and mentorship in the construction trades to St. Louis youth.

As part of the program, participants receive hands-on training in tuckpointing in the West End and Hamilton Heights neighborhoods of St. Louis.

Harambee Youth Training provides a summer program that accepts about 90 participants, as well as an after-school program which provides continued training and skill building for about 30 summer participants. The program also offers employment opportunities for graduates of the summer and after-school programs with Harambee Tuckpointing.⁵

https://issuu.com/clayco/docs/ccdi_eblast_10_digital_copy?fr=xKAE9_zU1NQ&fbclid=IwAR1TLXCo4e0-E-QMx-P2CdfCp3_eBRZliWl2c9sBpprcWOdG0dEFyrSXcwU

⁵ See <https://restorestlouis.org/harambee-youth-training/>

APPENDIX G. Construction Worker Training and Assistance — Case studies

MOKAN

MOKAN focuses on expanding opportunities for women and minorities in the construction industry. MOKAN offers five-, eight- and ten-week pre-apprenticeship training programs to residents of the City of St. Louis and St. Louis County.

Participants complete the OSHA 10-hour certification, Hazardous Waste Operations and Emergency Response Standard certification, and are given opportunities to meet and interview with local construction companies. The courses also teach the history of women and minorities in the construction industry and offer further guidance and training for graduates.⁶

Saint Louis Construction Cooperative

Saint Louis Construction Cooperative (SLCC) is a cooperative of construction trade unions in St. Louis that was formed to promote effective training and diversity across construction trades.

SLCC offers an entry point for those interested in entering the construction trades through entry apprenticeship programs for qualified candidates across 19 construction specialties. Required qualifications vary across specialties, though most programs require applicants to be at least 18 years old and have a high school diploma or GED. Apprenticeship programs through SLCC vary in length from three to five years and include a mixture of classroom and on-the-job training.⁷

⁶ See <https://mokanccac.org/>

⁷ See <https://stlouisconstructioncooperative.org/>

STL.works

STL.works provides guidance to participants on well-paying careers that do not require a bachelor's degree, including construction trades. For example, STL.works provides training and mentorship information to prepare participants for careers as electricians, plumbers and pipefitters, welders, HVAC technicians, carpentry, and heavy machinery or automotive mechanics.

The program provides information on entering the industry, education or training required, mentorship programs and other career preparation events and services.⁸

⁸ See <https://stl.works/>; STL.works (n.d.). *Home* [Facebook page]. Facebook. Retrieved July 13, 2023 from <https://www.facebook.com/profile.php?id=100063636986621>

APPENDIX H. Other Municipal Workforce Programs — Introduction

Keen Independent examined construction workforce programs operated by other cities and counties throughout the country. The study team reviewed cities similar to St. Louis City and County as well as larger cities.

Keen Independent examined hiring programs operated by cities including Atlanta, Boston, Chicago, Detroit, Milwaukee, New Orleans, Portland, Seattle and Washington, D.C., as well as Los Angeles County. Some examples of municipalities' hiring programs are in states that have placed prohibitions against race- and gender-conscious programs in their state constitutions through state referenda (including California, Washington and Michigan).

The balance of Appendix H discusses typical workforce programs, including details on mechanisms used, goals and reporting requirements, non-compliance and other program features. Appendix H also addresses programs that target disadvantaged workers, residents of disadvantaged areas and apprenticeship programs.

H-1. Cities and counties included in study team research on municipal programs related to hiring for city- or county-related contracts



Source: Keen Independent Research.

H. Other Municipal Workforce Programs — Typical public agency project goals programs

Many of the local governments that Keen Independent analyzed had overall goals for city residents, apprentices and people of color and women for contracts awarded by that local government or for projects receiving financial assistance from the city or county.

Mechanisms Used

Municipal ordinances and agreements constitute mechanisms by which municipalities attempt to encourage recruitment and retention of diverse construction workers and local workers.

Municipal ordinances. Many of the workforce programs examined by the study team were created through municipal ordinances.

Agreements. Beyond ordinances, project labor agreements and community benefits agreements constitute the most frequent means by which municipalities attempt to recruit and retain diverse workers and local residents. Community workforce agreements are a less common tool used by municipalities to affect workforce participation.

Project labor agreements (PLAs). PLAs consist of specific collective bargaining agreements with labor for labor harmony and efficiency.¹ PLAs can be mandated by government agencies or private entities. PLAs typically target labor organizations such as trade unions or labor unions. Provisions of a PLA establish important contract terms such as hourly wage rates and employee benefits for all employees prior to project commencement. The National Labor Relations Act authorizes PLAs and violations may be processed through the National Labor Relations Board.

In May 2017, Missouri Senate Bill No. 182 was signed into law. This law restricts government-mandated PLAs in Missouri and specifies that PLAs cannot be mandated by the government on state, state-assisted and local construction projects.²

¹ U.S. Department of Labor, Project Labor Resource Guide. Retrieved on July 10, 2023, from <https://www.dol.gov/general/good-jobs/project-labor-agreement-resource-guide>

² State of Missouri Senate Bill NO.182. Retrieved on July 10, 2023, from <https://www.senate.mo.gov/17info/pdf-bill/tat/SB182.pdf>

H. Other Municipal Workforce Programs — Typical public agency project goals programs

Community benefits agreements (CBAs). CBAs consist of project specific agreements with the community and a developer to ensure the developer at issue provides socially responsible benefits to the community.³ CBAs typically target broad segments of a local community to foster inclusiveness and provide measurable economic development in the community.

Community workforce agreements (CWAs). CWAs identify goals to include workers from the community, women, people of color and apprentices on certain projects.⁴ All contractors performing construction on these projects must comply with the CWA. Similar to a PLA, a CWA includes working condition standards and targeted hiring requirements.

³ U.S. Department of Labor, Project Labor Resource Guide. Retrieved on July 10, 2023, from <https://www.dol.gov/general/good-jobs/project-labor-agreement-resource-guide>

⁴ Ibid.

H. Other Municipal Workforce Programs — Typical public agency project goals programs

Meeting a Goal or Showing Good Faith Efforts

Most of the researched programs require that contractors meet contract goals and/or show good faith efforts for compliance when unable to meet contract goals:

Most programs require that both prime contractors and subcontractors comply with the workforce program.

Labor hours. Goals for the workforce programs are calculated based on total project labor hours. Some programs, including the program in Washington DC, evaluate workforce participation by hours worked for each trade individually.⁵ One program in Atlanta establishes goals based on the number of workers (the First Source Program requires that half of all entry-level jobs be filled with target individuals).⁶ Atlanta also has a program that establishes goals as a percentage of construction work hours.⁷

For workforce programs that target city residents or residents of target neighborhoods, most base goal calculations on the total number of labor hours worked by state residents. Labor hours worked by non-state residents are not considered in these workforce participation goals.

Collaborations to aid in achieving goals. Some cities have established relationships with trade unions and other local organizations to facilitate the utilization of target workers and meet project goals. Seattle’s Community Workforce Agreement (CWA), for example, is an agreement between the City and multiple local trade unions.⁸ The CWA facilitates cooperation between the City, trade unions, contractors and workers, among others, allowing the City and participating agencies to more easily work together to meet workforce participation goals.

As part of Atlanta’s First Source Hiring program, WorkSource Atlanta (previously titled the Atlanta Workforce Development Agency) maintains a First Source Register for disadvantaged workers that meet certain criteria.⁹ To do this, WorkSource Atlanta collaborates with Georgia Department of Labor, community-based organizations, welfare agencies and other local agencies that work with economically disadvantaged individuals to identify workers and maintain the accuracy of the list. The First Source Register is a resource contractors use to find qualified disadvantaged workers in order to meet their workforce goals.

⁵ Code of the District of Columbia, Chapter 2. Retrieved July 10, 2023, from <https://code.dccouncil.us/dc/council/code/titles/2/chapters/2/>

⁶ First Source Jobs Program, Chapter 2 § 1651 - 1672. Retrieved July 10, 2023, from http://atlanta.elaws.us/code/coor_ptii_ch2_artxi

⁷ Atlanta CityBuild Program, Chapter 2 §1660 - 1667. Retrieved July 10, 2023, from http://atlanta.elaws.us/code/coor_ptii_ch2_artxi_div3

⁸ Department of Finance & Administrative Services City Purchasing & Contracting Services (2021). *Community Workforce Agreement*. Retrieved from <https://www.seattle.gov/documents/Departments/FAS/PurchasingAndContracting/Labor/fully-executed-2021-city-of-seattle-CWA.pdf>

⁹ First Source Jobs Program, Chapter 2 §1657. Retrieved July 10, 2023, from http://atlanta.elaws.us/code/coor_ptii_ch2_artxi

H. Other Municipal Workforce Programs — Typical public agency project goals programs

Types of Goal Programs

The researched programs generally adhere to one of two program types:

- The jurisdiction has standard uniform goals for all contracts; or
- The contract goals are contract-specific and differ from contract to contract.

In some instances, contracts have required goals, aspirational goals, or both. None of the researched programs had company-wide goals that were not aspirational.

The types of goals varied by jurisdiction. In jurisdictions with uniform goals, in some instances, these goals were reviewed and adjusted annually or every two years. In addition to goals, some programs also offered incentives.

Target populations for the researched municipalities include city residents, project area residents, women, minorities, low-income residents and apprentices enrolled in approved training programs.

Examples of goals and incentives from the researched programs include:

- Goal includes a 40 percent resident participation program requirement (25% of which must be worked by residents of Special Impact Area zip codes) and a requirement that mandates that 40 percent of apprentice hours must be performed by resident participation program certified apprentices, 25 percent of which must be worked by residents of Special Impact Area zip codes.¹⁰
- Goals are determined by finding the average of past utilization on similar projects in the previous three calendar years and increasing that percentage by no less than two full percentage points beyond past performance.¹¹
- Aspirational goal of 40 percent utilization of residents of target neighborhoods by 2025.¹²
- A goal of 20 percent of project labor hours being performed by state-registered apprentices.¹³
- A goal of 50 percent of the project labor hours being performed by city residents, which must include a minimum of 7.5 percent utilization of project area residents.¹⁴

¹⁰ City of Milwaukee Office of Small Business Development. Residents Preference Program (RPP). Retrieved July 10, 2023, from <https://city.milwaukee.gov/OSBD/RPP#.XBvVhs1IBPa>

¹¹ Seattle, Washington Municipal Code, Chapter 20.37. Retrieved July 10, 2023, from https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT20PUWOI_MPU_SUBTITLE_IIPUWO_CH20.37PRHI

¹² Ibid.

¹³ Portland, Oregon, Workforce Training & Hiring Program Administrative Rules, ARB-ADM-1.20. Retrieved July 10, 2023, from <https://www.portlandoregon.gov/citycode/article/408189>

¹⁴ Percentages of city and project area residents work hours, Chapter II §2-92-330. Retrieved July 10, 2023, from https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2600921

H. Other Municipal Workforce Programs — Typical public agency project goals programs

Reporting Requirements

Most of the cities and counties surveyed require that both prime contractors and subcontractors maintain detailed data about each employee from the commencement of each contract until a period of at least three years after final acceptance of work.

Typically, reporting requirements mandate that full access to the contractors' and subcontractors' employment data be granted to city and/or county staff, officers or any duly appointed representative for inspection and examination.

To facilitate reporting, several cities and counties require that the contractor appoint a designee who performs a project compliance officer role. The project compliance officer meets regularly, or as may be required with the pertinent city or county staff, to ensure program compliance.

Examples of personnel data that must be open for inspection and examination as part of reporting requirements include:

- Employee residency records to ensure that eligible residents are employed on the project.
- Copies of personnel documents supportive of every eligible resident employee's actual record of residence.
- Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) clearly identifying the actual residence of every employee.
- Name, address and social security number of each worker for the construction contract or subcontract.
- Employee classification.
- A general description of the work each person performed each day, as well as if the worker is an apprentice or skilled construction worker.
- Daily and weekly number of hours worked by each employee.
- The self-identified race, gender and ethnicity of each worker.
- Whether or not the worker is a low-income resident.
- A current file of the name, address and telephone number of individuals who were referred to the general contractor/construction manager but was not hired and the reason(s) why any such person was not hired.
- The certified apprentice program through which the worker was hired.

H. Other Municipal Workforce Programs — Typical public agency project goals programs

Frequency of reporting. Most of the cities and counties reviewed have periodic reporting requirements. For example, the City of Boston requires that one week after the commencement of the construction of the project, and each week thereafter until the completion of the project, general contractors and/or construction managers and subcontractors must electronically submit to the compliance office for the week just ended a report.¹⁵ The report must contain the following information for each employee who performed any work on the project in the week just ended:

- Name;
- Place of residence;
- Race and gender;
- Craft, job category and apprenticeship participation status;
- Number of hours worked; and
- Employer.

The report must also include the total number of hours worked by the total workforce in each craft during the week just ended.

For the City of Detroit, at the beginning of a contract, a determination is made as to whether a contract should be measured either monthly or quarterly.¹⁶ This period is referred to as the “measurement period.” At the end of each measurement period, the contractor must submit a report that includes total project work hours, total project work hours performed by city residents, and if applicable, the amount by which the contractor fell short of meeting the contract performance goals.

Contractor requirements. Some cities have contractor requirements that must be met prior to starting a project. For example, the City of Milwaukee requires that prior to commencing work, contractors must submit an affidavit for proof of residency for all employees utilized by the contractor and subcontractors to meet its Residents Preference Program requirements.¹⁷ The city ordinance mandates that final contract payments are not made until the summary of hours worked specified on the prime contractor’s Affidavit of Compliance is completed and on file with the City.

Some cities require contractors to inform them if personnel changes affect contract goals. For example, in New Orleans, if a local worker hired pursuant to achieving local hire goals quits, is transferred or terminated, or otherwise ceases their involvement with the project for any reason, then the contractor has five working days to notify the City.¹⁸

¹⁵ Establishing the Boston Residents Job Policy, Chapter VIII §8-9. Retrieved July 10, 2023, from [http://library.amlegal.com/nxt/gateway.dll/Massachusetts/boston/chapterivcontracts?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:boston_ma\\$anc=JD_4-7](http://library.amlegal.com/nxt/gateway.dll/Massachusetts/boston/chapterivcontracts?f=templates$fn=default.htm$3.0$vid=amlegal:boston_ma$anc=JD_4-7)

¹⁶ City of Detroit Executive Order 2016-1. Retrieved July 10, 2023, from <https://detroitmi.gov/Portals/0/docs/humanrights/Executive%20Orders/EO%202016-1.pdf>

¹⁷ City of Milwaukee Office of Small Business Development. Residents Preference Program (RPP). Retrieved July 10, 2023, from <https://city.milwaukee.gov/OSBD/RPP#.XBvVhs1IBPa>

¹⁸ Local Worker Participation, Chapter 70 § 496-503. Retrieved July 10, 2023, from https://library.municode.com/la/new_orleans/codes/code_of_ordinances?nodeId=PTII_CO_CH70FI_ARTIVPUCO_DIV3LOWOPA_S70-496PRCR

H. Other Municipal Workforce Programs — Typical public agency project goals programs

Compliance

Definitions of compliance varied between cities and counties that exclusively have project goals versus cities and counties that have both project goals and good faith efforts.

Project goals only. For those cities that exclusively have project goals, failure to meet those project goals results in non-compliance. However, several cities allow modifications to the project goal or exemption of a contractor from the project goals. For example, in the City of Portland in rare, unique, unusual or emergency circumstances, the Workforce Coordinator may exempt a contractor for part or all of the workforce ordinance and impose conditions under which the exemptions may be granted.¹⁹

Goals and good faith efforts. Cities and counties that have both project goals and good faith efforts include the Cities of Boston, Atlanta, Portland and New Orleans, as well as Washington D.C. These municipalities have protocols similar in nature that allow compliance via good faith efforts if overall program goals cannot be met. In one city (Detroit), contractors can be in compliance by making a financial payment to the Workforce Training Fund if project goals cannot be met.²⁰

The City of Atlanta ordinance, summarized here, is an example of a program that includes both project goals and good faith efforts.

In Atlanta, if a construction contractor has not met specific program requirements or attained the workforce related goals specified in the contract, that construction contractor may be deemed as compliant by a showing that it attempted, in good faith, to comply.²¹ To do this, the contractor must demonstrate that it did all the following:

- Contacted all certified apprentice programs in the registry to identify and request apprentices and skilled construction workers, on a form provided by the City;
- Convened pre-bid and pre-construction meetings to educate its managers and subcontractors on the requirements of the ordinance;
- Developed and submitted a detailed hiring plan for meeting the targeted utilization requirements;
- Contacted the appropriate City department to seek its assistance with identifying apprentices and skilled construction workers;
- Provided regular reports to the appropriate City department on its compliance prior to and during its work on the construction contract; and
- Documented why, despite these efforts, it was unable to meet the requirements of the ordinance.

¹⁹ Portland, Oregon, Workforce Training & Hiring Program Administrative Rules, ARB-ADM-1.20. Retrieved July 10, 2023, from <https://www.portlandoregon.gov/citycode/article/408189>

²⁰ City of Detroit Executive Order 2016-1. Retrieved July 10, 2023, from <https://detroitmi.gov/Portals/0/docs/humanrights/Executive%20Orders/EO%202016-1.pdf>

²¹ First Source Jobs Program, Chapter 2 § 1651 - 1672. Retrieved July 10, 2023, from http://atlanta.elaws.us/code/coor_ptii_ch2_artxi

H. Other Municipal Workforce Programs — Typical public agency project goals programs

Bid incentive program. In addition to resident worker goals, the City of Chicago utilizes a comprehensive bid incentive program.²² This system applies an artificial price reduction (bid incentive) on competitively bid contracts at a set percentage. Bid incentives can be earned through performance commitments made in a bid or through performance commitments in previous contracts that can be applied to future bids.²³

Consequences of non-compliance. Most jurisdictions include a monetary penalty for non-compliance. Fines can be imposed at the end of a project or when the agency becomes aware of the non-compliance.

Many compliance regulations allow the agency to consider past acts of non-compliance on future bids and some may prohibit contractors from bidding on contracts for a period after multiple compliance violations.

- The City of Chicago can take multiple actions which may include a fine of 0.05 percent of the contract amount for each percentage of shortfall of the required resident/project area work goal, liquidated damages and a requirement of a 10 percent surety bond for future contracts that will be forfeited in full if goals for the future project are not met.²⁴

- The City of Milwaukee can withhold payments or penalties for non-compliance and can levy a \$2,000 dollar fine for knowingly providing fraudulent data.²⁵
- The City of Atlanta may withhold 10 percent of future construction contract payments, refuse future bids on city projects and cancellation of the project or contract where the non-compliance occurred. The City of Boston has similar remedies.²⁶
- In Washington, D.C., failure to meet the contract goals may result in a 5 percent fine of the total amount of direct and indirect labor costs of the contract. If a second violation occurs within a ten year period, the firm may face debarment for up to five years.²⁷
- Detroit may withhold all payments until compliance is achieved, debar the contractor from doing business with the City for up to one year, hire its own workforce to complete the work and require a monetary contribution to the City's Workforce Training Fund.²⁸

²² City of Chicago Department of Procurement Services, Guide to Bid Incentives and Programs. Retrieved July 10, 2023 from https://www.chicago.gov/content/dam/city/depts/dps/Outreach/GuidetoBidIncentivesPrograms_110117.pdf

²³ Percentages of city and project area residents work hours, Chapter II §2-92-330. Retrieved July 10, 2023, from https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2600921

²⁴ Ibid.

²⁵ Milwaukee Code of Ordinances, Chapter 309. Retrieved July 10, 2023, from <https://city.milwaukee.gov/ImageLibrary/Groups/ccClerk/Ordinances/Volume-3/CH309.pdf>

²⁶ Sanctions, Chapter VIII §8-9.8. Retrieved July 10, 2023, from https://codelibrary.amlegal.com/codes/boston/latest/boston_ma/0-0-0-17420

²⁷ Employment agreements required, § 2-219.03. Retrieved July 10, 2023, from [https://code.dccouncil.gov/us/dc/council/code/sections/2-219.03#\(e\)\(4\)](https://code.dccouncil.gov/us/dc/council/code/sections/2-219.03#(e)(4))

²⁸ City of Detroit Executive Order 2016-1. Retrieved July 10, 2023, from <https://detroitmi.gov/Portals/0/docs/humanrights/Executive%20Orders/EO%202016-1.pdf>

H. Other Municipal Workforce Programs — Other goals programs

Programs that Focus on Disadvantaged Workers

Some cities have expanded their workforce programs to benefit target individuals, such as residents who are low-income, under- or unemployed, receive public assistance or face other barriers to employment. New Orleans, Atlanta, Los Angeles County, Milwaukee, Washington D.C. and San Francisco all feature programs that include disadvantaged workers, although not exclusively.

Programs in some municipalities include preferences to target disadvantaged areas as well as disadvantaged workers, such as San Francisco, Los Angeles County, Milwaukee and Atlanta, for example.

Programs that include target individuals often include a certifying agency, and certification may last longer than a worker would otherwise be eligible. Eligibility in Milwaukee's program, for example, must be proved to a certifying agency.²⁹ Once certified, a worker may maintain their certification regardless of whether they meet the unemployment or poverty eligibility requirements. In order to maintain status, however, they must continue to live in the City.

Household income. Many cities created programs to increase the participation of low-income individuals in the construction workforce. These programs give a preference to workers who have a household income below a certain threshold. Some cities qualify residents by comparing their household income to the area median income.

- For example, the City of New Orleans preferences households below 50 percent of the area median income.³⁰
- Other programs include individuals from households that meet certain income guidelines. Atlanta, for example, includes households at or below the federal poverty level.³¹

Public assistance. Some municipalities, including San Francisco, Los Angeles County and New Orleans, target populations that receive public assistance. The program in Washington D.C. provides a preference to individuals who participate in Temporary Assistance for Needy Families (TANF) or Supplemental Nutrition Assistance Program (SNAP), qualify for the Work Opportunity Tax Credit, or participate in, or have graduated from the Transitional Employment Program.³²

²⁹ Milwaukee Code of Ordinances, Chapter 309. Retrieved July 10, 2023, from <https://city.milwaukee.gov/ImageLibrary/Groups/ccClerk/Ordinances/Volume-3/CH309.pdf>

³⁰ New Orleans City Code, §70-498. Retrieved July 10, 2023, from https://library.municode.com/la/new_orleans/codes/code_of_ordinances?nodeId=PTII_CO_CH70FI_ARTIVPUCO_DIV3LOWOPA_S70-498DE

³¹ First Source Jobs Program, Chapter 2 § 1651 - 1672. Retrieved July 10, 2023, from http://atlanta.elaws.us/code/coor_ptii_ch2_artxi

³² Code of the District of Columbia, Chapter 2. Retrieved July 10, 2023, from <https://code.dccouncil.us/dc/council/code/titles/2/chapters/2/>

H. Other Municipal Workforce Programs — Other goals programs

Unemployment. Many of these programs also target individuals that meet certain unemployment standards. For example:

- Washington D.C. includes city residents who have been unemployed for six months or more.³³
- Atlanta’s program preferences individuals who are older workers, along with those who have been dislocated or laid-off.³⁴
- Milwaukee’s program provides a preference to city residents who have not worked in the preceding 15 days or have worked less than 1,200 hours in the preceding 12 months.³⁵
- New Orleans includes in its preference individuals who have experienced chronic unemployment.³⁶

Other barriers to employment. Many programs also include individuals who face significant barriers to employment. Target groups include:

- Homeless individuals (San Francisco, Washington D.C., New Orleans, Atlanta, Los Angeles County);
- Custodial single parents (San Francisco, New Orleans, Los Angeles County) and teenage parents (Atlanta);
- Ex-offenders or individuals with prior involvement with the justice system (San Francisco, Washington D.C., New Orleans, Los Angeles County);
- Veterans (Atlanta, New Orleans, Los Angeles County) and their spouses (Los Angeles County);
- Individuals lacking a high school diploma or GED (San Francisco, Los Angeles County, Atlanta);
- Disabled individuals (Atlanta) and individuals with permanent disabilities (Washington D.C.);
- Participants of Vocational English as a Second Language programs (San Francisco); and
- Individuals emancipated from the foster care system (New Orleans) and former foster youth (Los Angeles County).

Each of these groups receive preference in their respective city or county workforce programs.

³³ Ibid.

³⁴ First Source Jobs Program, Chapter 2 § 1651 - 1672. Retrieved July 10, 2023, from http://atlanta.elaws.us/code/coor_ptii_ch2_artxi

³⁵ Milwaukee Code of Ordinances, Chapter 309. Retrieved July 10, 2023, from <https://city.milwaukee.gov/ImageLibrary/Groups/ccClerk/Ordinances/Volume-3/CH309.pdf>

³⁶ First Source Jobs Program, Chapter 2 § 1651 - 1672. Retrieved July 10, 2023, from http://atlanta.elaws.us/code/coor_ptii_ch2_artxi

H. Other Municipal Workforce Programs — Other goals programs

Programs that Focus on Disadvantaged Neighborhoods

Some programs for disadvantaged workers use indices of neighborhood economic distress rather than individual financial metrics. These programs all preference residents of specific disadvantaged areas, although each government defines these areas differently.

Municipalities may also apply hiring goals for neighborhoods near a project site.

Los Angeles County. Los Angeles County’s Local Worker program targets neighborhoods with high poverty rates.³⁷ The program prioritizes workers in zip codes where the average percentage of households below 200 percent of the federal poverty line is greater than the county average. Residents of affordable housing projects and privately financed developments located on County property also qualify as Local Workers.

This program awards the highest priority to qualified workers that are also within five miles of the project site (Tier 1). In order to qualify as a Local Worker, individuals must prove that their primary place of residence is within an identified disadvantaged region and must register with the County of Los Angeles. In meeting the Local Worker goal (30% for approved projects), contractors must first utilize as many workers from Tier 1 as possible. After exhausting workers residing in Tier 1, contractors may then employ workers from other qualified areas that are more than five miles away from the job site (Tier 2).

³⁷ Los Angeles County (2018). *Local and Targeted Worker Hire Programs Website*. Retrieved from <http://economicdevelopment.lacounty.gov/local-worker-program/>

City of Milwaukee. Milwaukee’s Residential Preference Program (RPP) establishes a uniform goal for under- and unemployed city residents (40%) as well as a uniform goal for workers living in Special Impact Areas (SIA) (25%).³⁸ The City’s program also requires that for certain contracts, 25 percent of apprentice hours be completed by RPP certified apprentices, and 40 percent of RPP apprentice hours be completed by apprentices living in SIA zip codes. These requirements can be adjusted or eliminated under certain circumstances (if a project requires highly specialized work, for example). For each work hour completed by residents of SIA zip codes beyond the requirement, the contractor is credited 1.5 hours toward completing the total RPP requirement.

Milwaukee’s City Clerk’s office identifies zip codes containing at least three census tracts that have 40 percent of residents at or below the federal poverty level.³⁹ This methodology is based on eligibility for Community Development Block Grant funding by HUD. These zip codes are determined every three years.

Qualified workers must register with the City of Milwaukee Department of Public Works or a qualified agency to be considered an RPP or SIA worker. RPP certification lasts as long as the resident continues to live in the City of Milwaukee.

³⁸ Milwaukee Code of Ordinances, Chapter 309. Retrieved July 10, 2023, from <https://city.milwaukee.gov/ImageLibrary/Groups/ccClerk/Ordinances/Volume-3/CH309.pdf>

³⁹ Ibid.

H. Other Municipal Workforce Programs — Other goals programs

Atlanta. Atlanta’s First Source Hiring Program preferences city residents living in census tracts with an unemployment rate over 100 percent of the City’s unemployment rate.⁴⁰ Residents are eligible if they live in a qualified area. The City’s program establishes a uniform goal of 50 percent of entry-level jobs for qualified workers.

As part of this program, WorkSource Atlanta (WSA) also maintains a First Source Register for target disadvantaged workers. After a contract is awarded but before work begins, the prime contractor works with WSA to employ sufficient disadvantaged workers. The contractor must review applicants exclusively from the First Source Register for at least 30 days before reviewing applicants from any other source.

San Francisco. San Francisco has a program that includes workers who live in a City census tract that has an unemployment rate over 150 percent of the City unemployment rate.⁴¹ The City has established a goal of 30 percent of work hours for each trade to be completed by city residents and 10 percent of work hours for each trade to be completed by disadvantaged workers. These goals apply to each trade individually.

Before beginning work, contractors must submit a form outlining their anticipated use of qualified workers for each trade included in the project. For city resident worker goals, a fine (via a deduction in payment) is calculated based on the prevailing wage and the number of hours that the contractor fell short of the goal. No penalty is assessed for not meeting the disadvantaged worker goal.

⁴⁰ First Source Jobs Program, Chapter 2 § 1651 - 1672. Retrieved July 10, 2023, from http://atlanta.elaws.us/code/coord_ptii_ch2_artxi

⁴¹ City and County of San Francisco Ordinance 0085-14. Retrieved July 10, 2023, from <https://sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0085-14.pdf>

H. Other Municipal Workforce Programs — Apprenticeship and pre-apprenticeship programs

Pre-Apprenticeship Programs

Various cities have developed programs and other support for pre-apprenticeship programs.

San Francisco. San Francisco has helped to establish CityBuild Academy, a pre-apprenticeship program.⁴² CityBuild Academy is administered by the City’s Office of Economic and Workforce Development, as a partnership with City College of San Francisco, non-profit organizations in the community, labor unions and construction employers. The program includes an 18-week training program offering college credit, supportive services, certification opportunities, job referrals and placement assistance, among other services.

Atlanta. Atlanta’s CityBuild Program was founded to increase the number of low-income city residents who enroll in, participate in and complete pre-apprenticeship and apprenticeship programs.⁴³ The City compiles and maintains a registry of pre-apprenticeship programs. Each of these programs must meet certain criteria as established by the WSA. Additionally, if WSA deems necessary, it may establish a new pre-apprenticeship program but may not develop a program that requires union membership of participants.

Portland. The City of Portland’s Workforce Training and Hiring Program establishes goals for apprenticeship utilization (20% of labor hours per trade).⁴⁴

If there are no state-approved apprenticeship programs for a specific trade, there are two alternate options: contractors may provide an outline of an in-house training program for new hires, or contractors may provide a comparable level of training to a pre-apprentice in a different trade. That pre-apprentice must be participating in a state-approved pre-apprenticeship program. Also, because they are not state-registered apprentices, pre-apprentices must be paid journeyman wages.

⁴² The San Francisco Local Hiring Policy for Construction 2023 Annual Report. Retrieved July 10, 2023, from <https://sf.gov/sites/default/files/2023-03/2023%20Local%20Hiring%20Policy%20Annual%20Report.pdf>

⁴³ Atlanta CityBuild Program, Chapter 2 §1660 - 1667. Retrieved July 10, 2023, from http://atlanta.elaws.us/code/coor_ptii_ch2_artxi_div3

⁴⁴ Portland, Oregon, Workforce Training & Hiring Program Administrative Rules, ARB-ADM-1.20. Retrieved July 10, 2023, from <https://www.portlandoregon.gov/citycode/article/408189>

H. Other Municipal Workforce Programs — Apprenticeship and pre-apprenticeship programs

Seattle. Seattle’s program requires that 20 percent of apprentices be from pre-apprentice programs. Although Seattle has not created a separate pre-apprenticeship program, the City supports existing pre-apprenticeship programs.⁴⁵ Seattle established preferred entry into apprenticeship programs for graduates of pre-apprenticeship training programs recognized by the Washington State Apprenticeship and Training Council.

Seattle’s CWA also gives the Director of Finance and Administrative Services the ability to influence pre-apprenticeship and apprenticeship programs in order to increase graduation, retention and employment rates of women, minorities and other program participants. In Seattle, several pre-apprenticeship programs recruit from prison environments, and up to 50 percent of program participants are formerly incarcerated. These training investments in Seattle have led to a greater, more diverse pool of local entrants into the industry.

Assisting pre-apprenticeship program participants with obtaining a driver’s license and/or re-licensing constitutes another innovation associated with pre-apprenticeship programs in Seattle. Through its City Purchasing and Contracting Services (CPCS) division, City of Seattle was able to assist residents of economically distressed zip codes, women and people of color with obtaining a driver’s license or receive re-licensing services with the assistance of City funding and reduced court fees of up to \$5,000 from defendants who owed fees related to securing a driver’s license.⁴⁶

⁴⁵ Department of Finance & Administrative Services City Purchasing & Contracting Services (2017). *2017 Priority Hire Annual Report*. Retrieved July 10, 2023, from

<https://www.seattle.gov/Documents/Departments/FAS/PurchasingAndContracting/Labor/Priority-Hire-Report-2017.pdf>

⁴⁶ Ibid.

H. Other Municipal Workforce Programs — Apprenticeship and pre-apprenticeship programs

Apprenticeship Programs

Some of the workforce programs studied include provisions to support entry into the construction industry through apprenticeship. For example, the City of Atlanta establishes uniform goals for apprenticeship utilization (10%).

City of Seattle. Seattle’s City Purchasing and Contracting Services (CPCS) administers apprenticeship requirements for public works contracts that are estimated to cost \$1 million or more, with no less than 15 percent of the contract labor hours given to apprentices.⁴⁷ The Director of Finance and Administrative Services determines these goals based on project size and duration, hours required to complete the project, required skills, historic utilization rates and apprentice availability. These factors are also used to establish aspirational goals for apprentices that are women and minorities. Per the CWA, unions must dispatch workers in order to best meet the aspirational apprenticeship goals for women and minorities.

Apprentices must be enrolled in an apprenticeship program that is approved or recognized by the Washington State Apprenticeship and Training Council. Any apprentice that is not registered in a state-approved program does not count toward the apprenticeship goal. Contractors must submit an apprentice utilization plan at the pre-construction meeting, and all changes must be submitted to CPCS throughout the project. CPCS may also provide resources to contractors in order to meet apprenticeship goals.

Seattle’s apprenticeship utilization program also establishes preferred entry into recognized apprenticeship programs. Preferred entry is extended to graduates of pre-apprenticeship training programs recognized by the Washington State Apprenticeship and Training Council. Recognized pre-apprenticeship programs include programs targeted toward women, veterans, minorities and individuals from economically distressed zip codes.

City of Chicago. One of the many bid incentives offered by the City of Chicago is for utilizing Chicago Public Schools high school graduates as apprentices.⁴⁸ The contractor must be authorized to sponsor apprentices by a union, the apprentice must be either a Chicago Public Schools high school graduate or an individual enrolled at or graduated from a construction training program administered by the City Colleges of Chicago. The apprenticeship training program must also be registered with the U.S. Department of Labor or approved and recognized by the State of Illinois. There is an additional bid incentive for utilizing apprentices who have been convicted of an imprisonable offense.

To qualify for the bid incentive, the contractor must commit to a specific percentage of total labor hours to be performed by eligible apprentices on the construction project. The commitment ranges from 5 to 15 percent of total labor hours. Contractors must then meet the goal that it has committed to in order to receive the bid incentive.

⁴⁷ City of Seattle Charter, §20.38.005. Retrieved on July 10, 2023, from https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT20PUWOI MPU_SUBTITLE_IIPUWO_CH20.38APPR_20.38.005APUT

⁴⁸ Municipal Code of Chicago, Contracts – Apprentice utilization §2-92-335. Retrieved July 10, 2023, from https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2601081

H. Other Municipal Workforce Programs — Apprenticeship and pre-apprenticeship programs

City of Milwaukee. Milwaukee’s Residential Preference Program (RPP) targets under- and unemployed city residents, as well as residents of Special Impact Area (SIA) zip codes.⁴⁹ The RPP program includes requirements that apply to the utilization of apprentices. For awarded contracts between \$100,000 and \$499,999, the RPP program requires that 25 percent of apprentice hours be completed by RPP certified apprentices, and 40 percent of RPP apprentice hours be completed by apprentices living in SIA zip codes. Contracts awarded at \$500,000 or more must utilize apprentices at the maximum ratio of apprentices to journeymen, as established by the Wisconsin Department of Workforce Development.⁵⁰

City of Portland. The City of Portland’s Workforce Training and Hiring Program (WTHP) requires, among other things, that 20 percent of the labor hours per trade are worked by state-registered apprentices.⁵¹ Exceptions may be allowed if fulfilling the 20 percent requirement would exceed the apprentice-to-journey ratio allowed by the apprenticeship program standards. Any exceptions to the apprenticeship requirement for this reason must be discussed with Portland Contract Compliance staff.

Additionally, contractors must register as a Training Agent with the State of Oregon’s Bureau of Labor and Industries (BOLI), which allow them to hire and train apprentices with state-approved training standards. If, subject to Oregon’s BOLI regulations, apprentices cannot be hired to perform work on a project, the contractor is not required to register as a Training Agent.

⁴⁹ Milwaukee Code of Ordinances, Chapter 309. Retrieved July 10, 2023 from, <https://city.milwaukee.gov/ImageLibrary/Groups/ccClerk/Ordinances/Volume-3/CH309.pdf>

⁵⁰ Ibid.

⁵¹ Portland, Oregon, Workforce Training & Hiring Program Administrative Rules, ARB-ADM-1.20. Retrieved July 10, 2023, from <https://www.portlandoregon.gov/citycode/article/408189>

APPENDIX I. Qualitative Information — Introduction

Appendix I presents qualitative information that Keen Independent collected as part of the City of St. Louis and of St. Louis County (the City and the County) Disparity Study. Appendix I is based on input from more than 800 businesses, trade association representatives and other interested individuals.

Appendix I includes 22 parts. The first 18 are regarding marketplace conditions for construction, professional services, goods and other services, and procurement practices:

- Introduction;
- Starting a business;
- Dynamic firm size, types of work and markets served;
- Current conditions in the local marketplace;
- Keys to business success;
- Working with the City and/or the County;
- General comments about whether there is a level playing field for minority- and woman-owned firms;
- Contractor-subcontractor relationships
- Access to capital;
- Bonding and insurance;
- Issues with prompt payment;
- Unfair treatment in bidding;
- Stereotyping and double standards;
- “Good ol’ boy” and other closed networks;
- Business assistance programs and certifications;
- Contract goals or other preference programs; and
- Other insights and recommendations regarding procurement practices.

The following eight parts include information about the construction workforce:

- Worker training and apprenticeship programs;
- Recruitment and retention;
- Barriers to working in the construction trades;
- Workforce goals and participation;
- Prevailing culture in the trades;
- Discrimination and unfair treatment of people of color and women;
- Barriers specific to workers who are people of color and women; and
- Other insights regarding the local construction workforce.

APPENDIX I. Qualitative Information — Introduction

Study Methodology

From January through July 2023, the Keen Independent study team collected qualitative information from:

- In-depth interviews;
- Business advisory groups (BAGs) and webinars;
- Public meetings;
- Open-ended availability survey questions; and
- Other means.

Through multi-pronged outreach, the study team gathered input from business owners and trade organization representatives as well as workers in the construction trades. Keen Independent also provided opportunity for public comments via mail and the designated study telephone hotline, website and email address.¹ Appendix I synthesizes these results.

Business owners and representatives reported on experiences working in construction, professional services, goods and other services; experiences working with the City and/or the County; perceptions of certification programs and other supportive services; and other input.

The study team also invited workers to share their experiences entering the workforce. Over 300 workers from construction-related fields provided responses to an online questionnaire disseminated via multiple channels.

For anonymity, Keen Independent analyzed and coded comments without identifying any of the participants.² In many cases, comments were general to the St. Louis marketplace and not specific to the City of St. Louis or St. Louis County.

Business owners and representatives interviewed were often quite specific in their comments. On occasion, certain statements are reported in more general form for purposes of anonymity. Interviewed were often quite specific in their comments. On occasion, certain statements are reported in more general form for purposes of anonymity.

Throughout, Appendix I summarizes examples of comments gathered through these study methods. Other qualitative input is described on Page 3 of this appendix.

¹ The study phone hotline number was (314) 375-6677; email address was 2023stlouisjointdisparitystudies@keenindependent.com; and the website was <http://keenindependent.com/2023jointstlouisdisparitystudies/>.

² In-depth interviewees are identified in Appendix I by I-1, I-2 and so on; organizations including chambers and trade and industry associations are coded as TOs; public meeting participants are coded as PM-1, PM-2; and availability survey respondents are identified as AS-1, AS-2 and so on. Interviewees represented construction, professional

services, goods and other services industries. Business owners and representatives interviewed represented a cross-section of certified and non-certified minority- and woman-owned firms and firms owned by white males. Business advisory groups are coded as BAG-1, BAG-2 and so on. Webinar participants are coded as WP1-a, WP1-b, WP2-a, WP2-b and so on. Worker questionnaire respondents are coded as WQ-1, WQ-2 and so on; public entity representatives are coded as PE-1, PE-2 and so on; union representatives are coded as U-1, U-2 and so on.

APPENDIX I. Qualitative Information — Introduction

Review of Other Qualitative Information Sources

Keen Independent reviewed qualitative results of disparity studies since 2018. There was one for the State of Missouri.³ Comments from this study are coded in this appendix by an identifier representing the study.⁴

³ UMKC Institute for Human Development. (2022). *State of Missouri Office of Administration Small Business Impact Study*. (Rep.)

⁴ Interviewees from the State of Missouri Office of Administration Small Business Impact Study are coded as SM-1, SM-2 and so on.

I. Qualitative Information — Starting a business

Working in the Industry Before Starting a Business

The Keen Independent study team asked interviewees about starting their businesses, beginning with their previous experience.

Most business owners worked in the industry, or a related industry, before starting their firms. [e.g., AS-142, 252, I-1, 4, 7, 8a, 8b, 10, 11, 14, 24, 28, 31, 33, 34b, 41, 45, 48, 55-59, 61; U-2] Examples of comments are provided on the upper right side of this page.

Some business owners reported that their family members worked in the industry before they started. Examples of comments are shown on the lower right side of this page.

We see folks that are coming out of undergrad or grad school with the idea for a startup And then we have folks that have been in industry for decades, have experience in a particular industry and recognize an opportunity and need.

TO-4. White male representative of a business assistance organization

It seems like new companies that start are somehow already involved in the industry, so for instance they have been accepted into the apprenticeship program

TO-5. White male representative of a trade association

I started from scratch I had a bad [business] partnership [and decided to start my own business].

I-1. Native American male owner of a professional services firm

I've been a [professional service consultant] for [many] years now. After years in the industry, for a lot of reasons, I saw ... a great niche for a small firm. I started my own firm in [the mid-teens].

I-2. White female owner of a professional services firm

Some of my chamber members, that's what their parents did, so they just inherit the business and for some, once they got their college degree, they knew where they wanted to go.

TO-2. White female representative of a business assistance organization

I. Qualitative Information — Starting a business

Negative Treatment Working in Field Prior to Starting a Business

Some business owners said that they had negative experiences in their working careers due to race, ethnicity or gender or had observed such disadvantages. [e.g., I-14, 28, 30, 41, 56, TO-10a] Others described negative experiences in their fields in general.

Examples of related comments are provided on the right side of this page.

I have a background in construction and project management. I've always wanted to own my own business. There are a lot of issues in construction and the architectural field that are what I consider barriers, so I wanted to go into business for myself to combat some of those issues and some of those barriers that I found in my professional career.

I-10. African American male owner of construction firm

I wouldn't think that it is a level playing field and that is just because ... you look at the demographics of St. Louis ... so, their income levels ... because that plays a part when someone in this part of St. Louis is going to start a business and try to access things. They're not starting out on the same level.

TO-9. African American female representative of a trade association

I. Qualitative Information — Dynamic firm size, types of work and markets served

Business Size, Expansion and Contraction

Some business owners reported that they carefully control the size of their firms. [e.g., AS-114, 142, I-1, 2, 8a, 13, 21, 33, TO-9]

Some of these businesses said that they tried to grow slowly to ensure financial stability.

Some interviewees described how their firm size is based on workload or fluctuates seasonally. [e.g., I-7, 8a, 8b, 14, 30, 32, 35, 37, 46, 48, 49]

Some companies [that we work with] will struggle to scale for some years that maybe wind down or pivot to another line of revenue and see where it goes, but we have companies that go back to 2012 that have scaled to 100 plus employees.

TO-4. White male representative of a business assistance organization

I almost feel like the larger contractors are getting bigger, and it doesn't seem like we have as many of the mom-and-pop shops as we did at one time.

U-2. White male representative of a trade union

We have so many projects that I'm just trying to survive the summer.

I-46. Business owner

We started out originally, we [were] just 2 people, the people that started it Then last year I think I profited was over \$348,000. I thought that was pretty decent, I mean, of course, [were] steady, looking at trajectory of growth.

I-57. African American female owner of a professional services firm

We're a smaller husband-wife company that is willing to expand but [hasn't] gotten the contracts [we] would like.

AS-141. White female owner of an other services firm

I. Qualitative Information — Dynamic firm size, types of work and markets served

Sizes of Contracts

Some interviewees said that their firms bid on a range of small and large contracts. [e.g., AS-253, I-6, 8a, 11, 15, 21, 28, 31, 34b, 36, 40, 42, 55]

Examples of comments are shown on the top right.

Some business owners pointed out where they were constrained by the size of contracts they bid on. [e.g., AS-144, 304, I-1, 2, 12, 35, 49, U-2]

Examples are provided to the bottom right.

We have companies that are ... looking to do a \$10,000, \$25,000, \$50,000 pilot contract. Then we have companies that are securing multimillion-dollar contracts with national firms.

TO-4. White male representative of a business assistance organization

We contract from a few hundred to several million dollars.

I-60. Native American male owner of a professional services firm

It's less about the dollar amount and more about where we can be competitive and make a difference

I-7. White male owner of a professional services firm

... the [size of contracts] can be pretty varied.

TO-5. White male representative of a trade association

It varies, we can do as small as \$150,000 and up to \$500,000.

I-29. White female owner of a construction-related firm

With St. Louis County, they just passed a cap for \$75,000 [in contracts] ... as a subcontractor, you have to have apprentices. Most MBEs and WBEs are non-union, and in order to have an apprentice you have to belong to a union organization.

BAG-3. African American female owner of a construction-related firm

The largest budgetary constraint we've had so far is [several million dollars]. I haven't really been able to do [contracts] because a lot of [them] want bond[ing]. You have to do bond insurance and we're just not on that playing field yet.

I-57. African American female owner of a professional services firm

I. Qualitative Information — Dynamic firm size, types of work and markets served

Changes in Types of Work

The study team asked interviewees to report type of work and any changes in work performed.

Some of the interviewees indicated changes in types of work over time, largely based on market opportunities. This includes businesses that sought to diversify to provide more financial stability for their company. [e.g., I-9, 11, 30, 40, 41] Examples of comments are shown to the right.

There's just a lot going on [in St. Louis], just like with the workers, some of our people are trying to see about people going into more trades.

TO-3. White female representative of a trade organization

I think you're seeing a kind of renaissance right now You've seen a proliferation of alternative energy as we're trying to move towards a carbon neutral future as a society and all of that requires power, whether its wind, solar, whether we're trying to get away from fossil fuels and move to an EV future. There have been new market segments that have popped up for the contracting community, especially [in] our industry.

TO-5. White male representative of a trade association

I think, in general, we have a lot of people that take on more than one thing, and don't just solely focus on one industry We do have a lot of business owners who are like, 'I want to start a bakery, but I also have this company or this company.' We do have a lot of 'serial-preneurs,' as they call it.

TO-9. African American female representative of a business assistance organization

As MoDOT's work dwindled, we had to get in [other industries]. So, we have been moving into the railroad industry, traveling for airport work, and a new office. That's all been in the last five years.

I-6. White male owner of a construction-related firm

I had to get another job because construction is tough. Construction costs are high.

I-49. Business owner

I. Qualitative Information — Dynamic firm size, types of work and markets served

Work in Public or Private Sectors, or Both

Business owners and representatives discussed whether their firms conduct work in the public, private or both sectors.

Mostly private sector. A few of the businesses indicated that they mostly do private sector work. [e.g., AS-243, I-5, 7, 14, 24, 33, 36, 37, 42, 58, 59, 61] Examples of comments are to the top right of this page.

Mostly public sector. Some companies primarily compete for public sector work. [e.g., I-1, 35, 55] Examples of comments are to the right in the middle of the page.

Both private and public sector work. Many more firm owners or managers said that they do both public and private sector work. [e.g., I-2, 4, 6, 8a, 8b, 10, 12, 28, 29, 31, 34b, 36, 40, 41, 48, 57, TO-3, 5, 10a, 10b] Examples of comments are located at the bottom right side of this page.

We have other companies that are looking to [do] mostly private industry. They are developing enterprise sales or enterprise solutions looking to increase their revenues to make their investors whole. Probably a minority of companies are in the strictly public sector [that we assist].

TO-4. White male representative of a business assistance organization

Most of the work is in ... the public sector when we think in terms of federal and governmental work, [which] was a lot of our work, we're working with the DOTs.

I-11. African American female representative of a construction-related firm

I've worked in St. Louis City, and I'm branching into St. Louis County. I've done some private work in St. Louis County, St. Charles County, but primarily [public] work in St. Louis City.

I-15. African American female owner of a construction-related firm

I work [on] both public and private [sector contracts]. The public are the ones ... when I said certified companies come to me and ask me to ... do a smaller portion of the contract.

I-13. African American female owner of a professional services firm

We're kind of a mix. All our eggs aren't in one basket. If one [sector] is slow, usually the homeowners are remodeling.

I-21. White female owner of a professional services firm

I. Qualitative Information — Dynamic firm size, types of work and markets served

Work as a Prime Contractor, Subcontractor or Both

The study team asked business owners and representatives whether they worked as a prime or subcontractor/subconsultant.

Comments varied.

Some firms only serve as prime contractors or as subcontractors, but many might be a prime contractor on one project and a subcontractor on another.

Mostly prime contractor. A few of the businesses indicated that they mostly work as prime contractors. [e.g., I-1, 7, 11, 14, 21, 24, 28, 33, 36, 34b, 35, 41, 42, 59, 61]

The top right of this page provides examples of comments.

Mostly subcontractor. Some companies primarily compete for public sector work. [e.g., I-37, 55, 60]

Sometimes this is because of the nature of the work. Some types of work on projects are typically performed as a subcontractor. Examples of comments are to the right in the middle of the page.

Both prime contractor and subcontractor. Some firm owners or managers said that work as both the prime and as a sub. [e.g., AS-307, I-8a, 8b, 29, 31, 40]

The bottom right of this page provides some insights.

We worked for the City at the Airport We've almost always been a prime. The contracts have ranged in size from half a million bucks to the one we have now [that is very large].

I-6. White male owner of a construction-related firm

These projects are not so far-fetched for me to serve as the prime, just because the projects are smaller.

I-15. African American female owner of a construction-related firm

So generally speaking, [our] trade is a specialty subcontractor, but if you're looking at solar work that is becoming large, there are opportunities for contractors [of our trade] to become primes I think there's going to be a few more opportunities [in the future] in a market if we really seize it to become a prime or direct to customer type of relationships with certain market segments.

TO-5. White male representative of a trade association

I've done a few projects where I'm the prime because they were very small. But I don't try to step out of my area of expertise for sure.

I-2. White female owner of a professional services firm

I would say it's 50/50 [as a prime and sub] It's not as fun to be in a small business subcontractor role, but that's what I was forced to do in order to do work with the Army [and] in order to work with the Air Force as a subcontractor.

I-12. White female owner of professional service firm

I. Qualitative Information — Dynamic firm size, types of work and markets served

Geographic Markets Served

Business owners and representatives reported where they conducted business and if over time, they had expanded the geographic locations where they perform work.

Some businesses had not geographically expanded [e.g., I-58, TO-3]. See comments on top right.

Some companies had geographically expanded [e.g., I-2, 8a, 11, 24, 29, 31, 33, 34b, 35, 40, 55]. Examples of related comments are on the bottom right.

I provide [services] for the whole St. Louis metropolitan area. I've done things pretty much about a 90-mile radius around St. Louis.

I-21. White female owner of a professional services firm

We really are [in] St. Louis metropolitan area. For different clients, we will [expand], but what we find is there are a lot of non-union-contractors that we really won't be able to compete with on price.

I-41. African American female owner of a construction related firm

We have been moving into [other] industries, traveling for ... work, we opened a new office in Denver. We also got into the military Federal DOD market.

I-6. White male owner of a construction-related firm

Most of the work that I've done, if it's been outside of St. Louis City, it's been private jobs.

I-15. African American female owner of a construction-related firm

The other thing is that in our industry Atlanta, Chicago, California, and New York is the hub, now it's true St. Louis used to be a hub for [our industry], it really was happening back [then], especially up until the eighties.

I-13. African American female owner of a professional services firm

We do work in Chicago. We have taken clients who worked in a lot of different markets throughout the U.S.; Most of the clients in our sweet spot are in St. Louis.

I-28. White female owner of a professional services firm

I. Qualitative Information — Current conditions in the local marketplace

Impact of COVID-19

Interviewees reported on the economic conditions in the local marketplace. COVID-19 has had a significant impact on conditions in Missouri, as well as throughout the nation.

Many business owners and trade association representatives reported unfavorable economic conditions due to the COVID-19 pandemic. [e.g., AS-27, 226, I-1, 2, 6, 8a, 8b, 14, 24, 28, 29, 31, 34a, 34b, 40, 55, 56, 58, 61, BAG-4, TO-2, 6, 10a, U-2] Examples of comments are shown to the top right.

Some interviewees reported that many small businesses were forced to downsize, close entirely or experience long-term hardship. [e.g., I-12, 48]

I think it was a good opportunity for some companies that were probably not going to succeed, or they were not going to meet their original objectives to wind down and move on to the next thing. We probably saw higher attrition, certainly drop revenue broadly across the portfolio of companies that we work with.

TO-4. White male representative of a business assistance organization

AGC worked with the government to get construction recognized as an essential worker, so there was no outward migration (from Missouri) as a part of COVID ... AGC tracked hours and benefits locally and could not distinguish COVID years from other years. There was an upward climb.

TO-8. White male representative of trade organization

During the pandemic I think contractors were so worried about the future that any project that was out there to bid, they may have bid it at cost just to have work [and] may have taken some projects pretty low which ... you're not going to feel that effect until much later because if you're not putting much into the bid, you better hope that that project is executed perfectly so you're not losing money on it.

TO-5. White male representative of a trade association

A lot of [small businesses] could not sustain keeping their door shut for that amount of time ... because they weren't these big, huge companies We did see a lot of businesses having to close unfortunately. Or the ones that did stay open, they are still trying to dig themselves out of this kind of hole that was placed in due to the pandemic.

TO-9. African American female representative of a business assistance organization

I. Qualitative Information — Current conditions in the local marketplace

Positive Outcomes Related to the Pandemic

Conversely, some reported doing well despite (or perhaps due to) the effects of the COVID-19 pandemic on the marketplace. [e.g., I-2, 5, 7, 15, 21, 41, 42, 55, 57, TO-8, 14] Examples of comments are shown to the right.

Contracts that were acquired prior to the COVID-19 pandemic were beneficial for some businesses. Some benefitted from a reported “boom” in construction during the COVID-19 pandemic.

I think there were some companies that were able to really leapfrog their growth because they had solutions that were not getting picked up prior to COVID because there wasn't a clear need. But after we went remote, everybody was remote, there is a need for some of the tech-based solutions.

TO-4. White male representative of a business assistance organization

A lot of the work was already on the books before the pandemic, and we just carried on from where it came from. I think a lot of our work is also coming from a lot of grants and opportunities that came from the pandemic since then.

TO-10b. African American female representative of a trade organization

When COVID hit, I don't think it had a big impact on us per se. Working in the environment that we're in, it was easier to take advantage of all the precautions that need to be taken.

I-11. African American female representative of a construction-related firm

We did not really see that dramatic of a decrease in revenue if you look over the first quarter [of 2020]. We still had work coming in and we were still officially open the whole time.

I-40. White male owner of a professional services firm

We've got a huge construction boom going on, so there is a real demand. I think ... demand creates a tremendous amount of opportunity for us to not only highlight the importance of construction and getting people excited about it, but also with respect to diverse owned firms. [To] use that purchasing power to help close the race, gender and opportunity gap overall.

TO-1. White male representative of business assistance organization

I. Qualitative Information — Current conditions in the local marketplace

Government Assistance to Businesses During COVID

Several interviewees commented that they were able to sustain themselves through loans but in many cases, the process was challenging. [e.g., I-48, 55]

Examples of comments are shown to the right.

During Covid, many of our chamber members took advantage of the PPP loans.

TO-2 White female representative of a business assistance firm

I think it was incredibly difficult for [businesses] to navigate things like PPP, for access to understand what they were eligible to apply for and receive in terms of stopgap support.

TO-4. White male representative of a business assistance organization

The only reason I'm able to be afloat right now is because of the SBA loan that I received. I got the SBA loan during Covid, but not the PPP.

I-15. African American female owner of a construction-related firm

We weren't open, so I didn't have anything else to do. It was [laborious], but I didn't have anything else to do [but get the loan].

I-58. White female owner of a professional services firm

I noticed that the field flooded because of the PPP loan. People would file for PPP loans, and they were getting it and they were buying equipment. They were buying trucks and now it's to the point that the [marketplace] is oversaturated. Now I applied for the PPP, and I didn't get it. They wanted you to have all these employees and I am just a one man in a truck.

I-61. African American male of an other services firm

I. Qualitative Information — Current conditions in the local marketplace

Other Comments on Current Marketplace Conditions

Inflation and increasing prices of labor, materials and equipment were frequently mentioned as challenges in the local marketplace.

Access to materials is of particular concern. For example:

What we're all experiencing right now is materials [and] specialty equipment you just can't get. Some of it is the time constraints that are in the contracts because, let's say, the completion date is 180 days, and we can't even get the equipment for maybe 230 days.

BAG-1. White representative owner of a construction-related firm

It seems like there's a lot of work out there, but the problem is whether projects are going to start because of material availability.

TO-5. White male representative of a trade association

Everything's going up, and everything's inflated. That's another factor ... just pure cost of materials, cost of doing business. You're a small contractor or a minority contractor, you bid on a contract with a certain price point, if the cost of materials [is] up and your bid is too high, then you're not going to get [chosen] for that project.

TO-14. African American female representative of a trade association

Others mentioned inflation and higher interest rates, including:

There are certain things that are consistent with the country as a whole. Everyone's a little nervous we may be entering a softer economic period. There's high inflation and rates are going up.

TO-1. White male representative of business assistance organization

Some indicated that labor shortages have been a challenge to businesses. For example:

All I've heard is how there's not enough workers, and guess what people aren't focusing on? Women and recruiting women.

TO-10a. White female representative of a trade association

Well, everybody's struggling now with manpower. We're signatory with [several local unions], and [in] all unions the halls are empty.

BAG-6. African American male representative of a construction-related firm

I think in the modern climate clearly the labor shortages in the country that have been well documented really do hit smaller businesses. [It's] even harder for them to pay wage increases and pay prices. That is just very challenging, and we heard that part pretty loud and clear.

TO-1. White male representative of business assistance organization

I. Qualitative Information — Keys to business success

Having to Learn the “Business” Side of Running a Business

Many people who start businesses are experienced in their fields but need to learn the administrative aspects of operating a business. [e.g., BAG-6, 10, I-7, 14, 21, 28, 29, 33, 40-42, 58, TO-05]

Lack of experience causes challenges for some new business owners. Many indicated that they do not know where to go for business assistance. [e.g., I-8a, 8b, 14, 15, 30, 40-42, 44, 56, 57, 59, WQ-51]

Other interviewees indicated that certified firms face unique challenges at business start-up and beyond.

Traditional challenges such as funding, opportunity, and training. You might be a good carpenter but not a good businessman. This goes for the minority people. There are a lot of people who are good craftsmen but lack business training.

TO-6. Hispanic male representative of a trade association

Really, it's the experience with bidding, that's a huge issue. Someone coming off the street that decides they're going to be a contractor. It's a very unique market, and the bids can either make or break a contractor.

U-2. White male representative of a trade union

People do need some handholding in certain situations, because they 'just don't know,' and a lot of people won't reach out for help. You have to be very mindful.

TO-14. African American female representative of a trade association

A lot of the things that we do here at [our organization] is to be able to get [our members] access, so that knowledge ... financial literacy to how you even start those conversations about getting lending, getting a business plan ... a lot of business owners don't know that those [are] foundational business skills.

TO-9. African American female representative of a business assistance organization

I think DBEs and WBEs also have challenges in estimating and bidding on any project, knowing how to bid, how to estimate and bid so that you have what you need to get the job done and deliver.

I-11. African American female representative of a construction-related firm

Understanding contracts and cash flow are problems we see from MBEs almost daily.

WP1-b. White male representative of a construction-related firm

I. Qualitative Information — Keys to business success

Marketing a New Business and Learning About Opportunities

Some interviewees discussed the difficulty business owners have in marketing their companies. [e.g., AS-261, I-21, 42, TO-2]

For example, one business owner indicated that working with well-positioned firms for marketing purposes has helped their company succeed:

Partnering with firms that have a position in the market. Teaming agreements and per contract joint ventures can help access the market and inclusion into the lowest acceptable bid market.

WP1-e. Hispanic American owner of a construction-related firm

Examples of additional comments are shown on the top right.

Other business owners expressed difficulties finding opportunities for work. [e.g., AS-105, 106, 152, I-7, 9, 48, 55, 58, WQ-3, 9]
See center right for more comments.

Some business owners and representatives reported that they have found the most success marketing their companies through word of mouth and networking. Examples of comments are shown in the bottom right side of the page.

I would love to get into the position to do the bidding. I have done everything myself by walking the streets and putting up flyers, posters, talking to potential customers.

AS-155. African American male owner of a construction-related firm

I must say the biggest change [in my industry] will probably be emphasis on social media marketing.

I-13. African American female owner of a professional services firm

I don't find it difficult to market [my business], but I do find it difficult [to learn about] opportunities.

BAG-10. African American female owner of a professional services firm

I did not know many people in the construction industry. I did not know others that are working as entrepreneurs. Meetings, greetings and mixers are my lifeline to get partnerships and to meet people that have the same goals and desires as I [do].

I-10. African American male owner of a construction-related firm

We've done everything by word of mouth ... we haven't put a lot of money into advertising.

I-59. White male owner of a construction-related firm

A lot of times I do get a lot of my work that happens in Missouri by word of mouth.

I-57. African American female owner of a professional services firm

I. Qualitative Information — Keys to business success

Competition with Larger or Established Businesses

Some interviewees reported that competition with large companies or more established businesses is a challenge for new businesses.

[e.g., AS-125, 265, I-2, 3, 7, 10-12, 21, 25, 28, 29, 30, 33, 35, 41, 47, 55, 56, 59- 61, PM-1b, TO-5, WP2-f, WQ-52]

Examples of these comments are shown on the right side of the page.

I'm not large enough because I don't have the revenue they're looking for. I don't have the opportunity they're looking for because I'm too small. That is wrong.

AS-144. Native American female owner of a professional services firm

From my experience with the African American community, none [of] this is really going to get any better until the educational phase improves. Many businesses come out of the trades, [and] it becomes awfully hard to go jump with [more established firms].

BAG-5. African American male representative of a construction-related firm

... when the RFPs come out, you can tell that they're written for larger companies and as a small business we have to piecemeal together a team to go in on a bid

SM-1. Business representative

I'm [going to] be honest with you, this is a very crowded field. I have people that will reach out to me and say, 'I [want to] do business with you,' and I don't hear from them. There are certain firms that have an already established niche in the market, and so people like me know I can't compete against them.

I-13. African American female owner of a professional services-related firm

I feel that there are opportunities. However, smaller, emerging firms ... seem to be put on the back burner. It's harder for a smaller firm ... to stay open and to keep my business growing without being awarded those projects that are normally being sent to other firms that are more established.

I-10. African American male owner of construction-related firm

I. Qualitative Information — Keys to business success

Capital and Cashflow Necessary to Start a Business

Sources of capital. Personal assets and personally backed loans are a common source of capital used to start a business. [e.g., I-4, 7, 9-11, 13-15, 21, 28-30, 33, 35, 37, 40-42, 48, 55-57, 61]

Comments at the top right of this page provide examples.

Difficulty obtaining start-up capital and generating cash flow.

Obtaining start-up capital and then generating immediate cash flow to be able to launch new companies is a challenge for many new business owners. [e.g., AS-238, 256, I-2, 7, 11, 15, 30, 47, 49, 56, TO-1, 5]

Comments to the bottom right provide some insights.

More information about access to capital is provided later in this report.

I started with just \$50,000 of savings that I had saved on my own. I reached out to the business bank for a line of credit. I borrowed \$250,000. I got a line of credit based on a lien against my house.

I-1. Native American male owner of a professional services firm

It required us to take our current assets or existing assets and combine them together and make a financially stable company out of it.

I-6. White male owner of a construction-related company

Cash flow is definitely a number one Achilles heel to small companies. No cash flow just stops everything, you can't pay your people, you can't grow, you can't get equipment. You need it, which is vital, be it these loans, or be it getting prompt payment from the prime or the entity itself, be it St. Louis County

BAG-4. African American male representative of a construction-related firm.

Getting money is way more complicated than building a brand.

I-13. African American female owner of a professional services firm

There's on a couple of fronts not only the lack of generational wealth to be able to have collateral for loans, but also the relationships and negative connotations banks take against some of these [business owners].

I-56. White female owner of a professional services firm

I. Qualitative Information — Keys to business success

Importance of Relationships to Business Success

Relationships with customers and others as a key factor for success. [e.g., I-2, 5-7, 8a, 8b, 12-14, 29, 34a, 34b, 35, 37, 42, 55, 59, 60, TO-2, 4, 14] Examples of comments are shown on the top right.

Reputation is reported to be a key ingredient to business success. [e.g., AS-247, I-13, 21, 29, 36, 41, 56] See right bottom for related comments.

You can't just start [a business] on your own ... you need to at least be in the field to grow some relationships If you have no connections, it's going to be hard ... relationships are key.

TO-5. White male representative of a trade association

We get a lot of referrals from our previous clients. We have a lot of repeat business.

I-1. Native American male owner of a construction-related firm

I think our reputation is built on results over the last 16 years [business partner]. We are just kind of connected and know a lot of people.

I-28. White female owner of a professional services firm

I think it has to do with our track record, which gives us visibility in the industry, name recognition that's also associated with the quality of the services that are delivered.

I-11. African American female representative of a construction-related firm

The key factors are our ability to deliver on our promises. Having a robust customer base, which continues to build.

I-8a. White female owner of a construction-related firm

I. Qualitative Information — Keys to business success

Importance of Employees to Business Success

Building and retaining a skilled team of employees is a key factor for success. [e.g., AS-114, 118, 136, 162, 268, 277, I-4, 6, 7, 8a, 8b, 11, 12, 14, 16, 17, 20, 28, 29, 31, 34b, 40-42, 48, 55-59, 61, TO-3, 5, 6, 8, 14, 10a, WQ-6]

Examples of comments are provided to the right.

Smart employees [are important]. If it was just me, I would have closed it up 15 years ago. I am old.

I-24. White male owner of a professional services firm

[My employee] is willing to do anything that needs to be done. In a small business, that's crucial.

I-21. White female owner of a professional services firm

[One of the biggest challenges faced by firms is] they have to have someone that is this sharp with their pencil for bidding the work, they have to have the workers to perform it that are quality employees.

U-2. White male representative of a trade union

We probably started with four or five [employees] and have consistently grown.

I-58. White female owner of a professional services firm

I. Qualitative Information — Keys to business success

Expert Assistance

Participants were asked if they utilized any expert assistance when starting their firm, such as accountants or attorneys, as well as if they encountered any barriers to obtaining outside assistance.

Many business owners and representatives reported that they seek or are seeking outside assistance. [e.g., I-1-4, 6, 8a, 8b, 9-12, 14, 21, 24, 28, 29, 37, 47, 55, 57, 59, TO-2, 14, BAG-10] Comments are shown at the top right of the page.

Some firms described barriers they face when seeking outside assistance. [e.g., I-30, 37] Comments are shown at the bottom right of the page.

We've gone through a series of accountants I have three sets of attorneys.

I-41. African American female owner of a construction-related firm

[Our organization] actually has a legal clinic for our business owners where they're able to sit and get a 30-minute one-on-one session with attorneys. We do have people that we can help with bookkeeping, accounting, things like that.

TO-9. African American female representative of a business assistance organization

We've got a great accounting firm that we work with. Our primary transactional attorneys I've been working with since 2005.

I-7. White male owner of professional services firm

I've been a part of different programs that provided me with a board that was free of charge: a tax person, a lawyer, an insurance person, and a construction person to help you in making decisions and things like that.

I-4. African American male owner of a construction-related firm

I'd see the biggest barrier sometimes for people is just paying for someone else's expertise.

TO-3. White female representative of a trade association

It's fine that I had to go to [my accountant], but if I go to her once, I should know how to do it the next time and I don't have to go to her [a second time].

I-15. African American female owner of a construction-related firm

I. Qualitative Information — Working with the City and/or the County

Business owners and representatives discussed their experience working with or attempting to get work with the City and/or County.

Positive and Negative Experiences

Positive experiences. Some business owners and representatives indicated having positive experiences while working with the City or the County. [e.g., AS-124, 143, I-11, 15, 28, 29, 41, TO-14]

See examples on the right.

I do know that the website for the County is easy to maneuver and works well.

AS-39. White male owner of a construction-related firm

The building department is good to work with. They are accessible whenever I have questions or concerns.

AS-231. White female president of a professional services firm

Great partner and we enjoy their business.

AS-305. White male representative of a goods firm

We've never had any problems working with the City, since 1974, '75. The City can be challenging, but that's okay. They have a certain level of expectation, and you met it.

I-6. White male owner of a construction-related firm

I think we found the staff [in the City] have been great to work with.

I-8b. African American female representative of a construction-related firm

I. Qualitative Information — Working with the City and/or the County

Negative experiences. Many more interviewees reported negative experiences. [e.g., AS-130, 135, 240, 280, 281, 292, 311, BAG-3, 4, I-15, 31, 41, 43, 48, 57, SM-1]

Examples of comments follow below and to the right.

For the City, I feel that there are many barriers. The streamlining process of procurement is not there. The key communication is not there. There's not the advertisement of potential projects coming up or potential bids that are going to be solicited in the next month I think the County does a little bit better job with their website and with their procurement, and with their invitations to bid. But once again those opportunities seem few and far between, and when those opportunities do come up, they tend to be awarded to the larger scale subcontractors and the larger scale firms.

I-10. African American male owner of a construction-related firm

With the City, we haven't had problems at all. But with the County, we have so many stipulations to do work that we don't have in the City at all.

AS-119. White male owner of a professional services firm

They [City of St. Louis] make it difficult for business owners to get anything done because of regulations and rules, jumping through hoops, and red tape. This is one of the reasons why I try to stay away from the City of St. Louis as much as possible.

AS-130. White male owner of a professional services firm

[The City and the County] need to be more open with contractors when they are trying to do a project as they require lots of rules and regulations [that] half the time they can't even answer themselves.

AS-254. White male representative of a professional services firm

It's very cumbersome and time consuming for a small company. There's only [a few] of us. Dedicating somebody ten to fifteen hours a month just to attend meetings is a huge hit to us. And they're required.

I-7. White male LGBTQ+ owner of a professional services firm

Working with the City can be difficult. The City has a lot of expectations [for] the DBE community. There's only a certain group of DBEs who even want to work for the City. You have to be ready to do a lot more administrative and clerical stuff than you do for anybody else.

I-6. White male owner of a construction-related firm

[Working with the City], there is no regulation, [no] laws, restrictions. There is 'bait and switch' [needs] a better vetting system.

I-36. White male owner of an other services firm

I. Qualitative Information — Working with the City and/or the County

Pursuit of City and/or County Bid Opportunities

Interest in bidding. Many business owners and representatives reported interest in bidding City of St. Louis and St. Louis County jobs. [e.g., AS-12, 14, 15, 39, 52, 57, 62, 66, 74, 75, 101, 104, 105, 109, 115, 120-121, 126, 127, 138, 140, 143, 149, 176, 185, 241, 244, 250, 257, 258, 273, 275-276, 294-295, 297, 299, 302, 305-307, I-2, 8a, 8b, 11, 12, 15, 21, 29, 33, 34b, 35, 39, 40, 41, 48, 50, 58, 60, 61, TO-2, 3, 9]

Bidding procedures. Many said that the City and the County need to improve bidding procedures, such as increasing their transparency in bidding. [e.g., AS-24, 29, 30, 104, 105, 109, 121, 135, 141, 146, 166, 178, 182, 192, 223, 225, 233, 236, 250, 255, 259, 263, 290-292, 294, 307, I-5, 7, 8b, 21, 31, 35, 39, 43, 48, 57, PM-1c]

Comments follow below and to the right.

I would say the certifications and too many of them with conflicting requirements [are barriers to working with the City and the County], and then secondly the kind of grab-bag of bonding, cashflow so that you can get bigger opportunities, I have heard that from particularly diverse owned firms who may be undercapitalized generally.

TO-1. White male representative of business assistance organization

For the City and for the County, what I have found is it is almost extremely difficult to bid and get awarded projects from the bigger general contractors in the St. Louis metro area It is hard for a subcontractor that is a MBE and DBE firm, whether it's in the City or County. I found that to be the biggest barrier. For example, I know that the County has its own procurement process. I bid on several jobs through the County, and I have not received a single award. So that's probably my biggest frustration of the procurement process.

I-10. African American male owner of a construction-related firm

... the award process for bidding in the City ... should be audited ... certain contractors ... receive more of the bids than other contractors.

AS-107. African American female owner of a construction-related firm

The City and [the] County ... look for 'the cut on the dollar,' and accept the cheaper bid, leading to unsatisfactory work.

AS-123. African American male owner of a professional services firm

The County is a little harder... there's less projects coming out than ... the [RFPs] that come out seem less defined than ... from other entities.

I-2. White female owner of a professional services firm

[Need] easier to navigate ... [industry] categories easier to find.

AS-279. African American female owner of an other services firm

The City and County always send out an RFQ and we do a bunch of work for them, but we never get contracts with them.

I-39. Female representative of a minority owned construction-related firm

I've never had a successful bid in 42 years.

I-31. White male owner of a professional services firm

I've never heard of any bids, and I've been here 20 years.

I-58. White female owner of a professional services firm

[For] the County, I don't think I've figured out how to get on their notification list.

I-2. White female owner of a professional services firm

The [City] reached out to us. Bidding was cumbersome.

I-29. White female owner of a construction-related firm

I. Qualitative Information — Working with the City and/or the County

Barriers to bidding. Many business owners and representatives reported that barriers to bidding on City of St. Louis and St. Louis County procurements persisted in the marketplace. [e.g., AS-17, 112, 119, 146, 237, 239, I-2, 8a, 8b, 13, 28, 29, 31, 35, 36, 40, 48, 56, 60], a few reported no barriers. For example:

I would like to see more cooperation between the City and the County on bidding projects.

AS-177. White female owner of a professional services firm

Statements indicating limited or no barriers (top right) tended to be from majority-owned businesses. Those comments are followed by several examples of comments detailing barriers businesses face when bidding work with the City and/or the County (bottom right).

I don't think there should be barriers to finding out about the work. All of it's published. I don't know what the barrier there would be.

I-6. White male owner of a construction-related firm

As far as I know, the City, the County and other public agencies prioritize working with minority and women-owned businesses.

I-7. White male owner of a professional services firm

I think accessibility is the number one [barrier], and then, time constraints ... I understand [the City] stood up things like the PTAC solely for minority owned companies, yet they don't respond to minority-owned companies I don't understand if they're just doing it because they're ... saying [they have] checked it off. Who's actually being held accountable for making sure that the people get the data they need?

I-57. African American female co-owner of a professional services firm

I'd say we're a small business So [from] my experience, a lot of bigger companies purposely put in [low] bids [to win] because they anticipate putting in change orders.

I-5. White male representative of a construction-related firm

The opportunity for [the City and the County] to structure those agreements to demonstrate ability, for them, to build confidence in our services. We'll never have a chance to get in if this is the structure that we're having to contend with as a small business.

I-35. African American female owner of a professional services firm

I. Qualitative Information — Working with the City and/or the County

Removing Barriers to Bidding on City and County Contracts

Several business owners commented that they would like the City and County bidding process to be simplified or made other recommendations for improvements. [e.g., AS -79, 103, 191, 196, 198, BAG-2, I-1, 5-7, 8a, 8b, 10, 11, 14, 29, 31, 33, 34a, 35, 40, 41, 48, 50, 56, 58, TO-2, 6, 9, PM-1b]

Examples of related comments begin below and continue to the right.

Maybe [the City and County can] take away some of the identifiers when companies are putting in bids. For instance, I'm bidding on a project, maybe they don't need to know the name of my company. Maybe it's an ethnic name that [can result in bias] [Also], there are some criteria and stipulations that would upfront eliminate some business owners just off the bat, because they are requiring them to have this much capital or no merit to the work....

I-3. African American female owner of an other services firm

If you have [a limiting] requirement, you're just getting the same people over, and over again. That's all you're getting when you set out an expectation like that, because nobody new could ever do [it].

I-35. African American female owner of a professional services firm

It used to be free to bid. Now it's \$50 a month to have access to the bid room. [They say] it's only \$50. Well ... if it's only \$50 then why we got to pay it?

I-41. African American female owner of a construction-related firm

The more the City and County can like agree and have common goals and common regulatory environments The more [businesses] don't have to learn this jurisdiction, that jurisdiction in order to comply or get access to opportunity I think it's more business friendly for them.

TO-1. White male representative of business assistance organization

The feedback we've heard from our entrepreneurs as we've sought to make connections into the City or County ... for early-stage startups, there is a high level of bureaucracy they need to navigate to get inroads, even if the solution seems like it would be a no brainer. The gears turn very slowly, and for a young company that has a limited amount of runway that can be very frustrating.

TO-4. White male representative of a business assistance organization

Develop[ing] and creating a platform that is searchable to find contract opportunities whether prime or sub [as well as] the ability to create your company profile to become a verified and validated business for potential opportunities or engagements [would be helpful].

AS-25. African American male owner of a professional services firm

I would like for them to make the process easier to let [us] know what opportunities exist and remove barriers for new suppliers.

AS-59. African American male owner of a professional services firm

I believe they should do an open order board or something online that makes it easier to bid. Not open to everyone, so you have to know about it or know someone who knows so smaller carriers would be able to bid on the work. A lot of smaller carriers have disadvantages as opposed to bigger carriers.

AS-294. African American female owner of an other services firm

I. Qualitative Information — Working with the City and/or the County

Strengthening Outreach and Other Encouragement

Many interviewees recommended strengthened outreach to certified firms and other diverse businesses, as well as other small businesses. [e.g., AS-32, 82, 109, 110, 129, 131, 161, 180, 193, 216, 242, 300, 307; I-1-3, 6, 7, 8a, 8b, 11, 14, 30, 33, 34a, 35-37, 40, 41, 47, 48, 50, 55, 56, 59, 61; BAG-10; WQ-7]

Keen Independent provides examples of comments starting below.

... speak with business owners [about] services [offered]. Give business owners a chance to build this generation.

AS-148. African American female founder of a services firm

If we had more women resources, more resources that us women can reach out to do that will be helpful and beneficial for us as business owners.

I-9. African American male owner of an other services firm

For the City and for the County ... I strongly feel that there needs to be a diversity and inclusion component in place, policies in place, and also an outreach to underserved and underserved communities and communities that are not often invited to the conversation. I think the City [of St. Louis] needs to do a better job of diversity and inclusion, and I also think St. Louis County needs to do a better job of diversity and inclusion.

I-10. African American male owner of a construction-related firm

I do get some emails on an email list. I don't really get for the City of St. Louis. It's rare that I get those honestly and I don't know because I'm listed in there. And that's another thing where small business advocates could help.

I-12. White female owner of a professional service firm

I think it is important that they advertise more often for smaller contracts.

AS-54. African American female owner of a construction-related firm

I think that small business[es] need more opportunities, more readily available where we can know about opportunities, big business[es] have all the money can get all the good jobs, the small business is struggling.

AS-55. African American male owner of a construction-related firm

I think [there] should be more networking done as far as more jobs are available, certain companies are getting all the jobs.

AS-172. African American male representative of a construction-related business

I would like to see them spend more money on advertising their bids to make it more visible it seems like [its] the inside guys ... who always get them.

AS-178. White male owner of a construction-related firm

I think more outreach from the City and the County like the County is doing would be very helpful because then I'm likely as the association that represents [many] contractors so I'm able to make all contractors aware of those opportunities.

TO-5. White male representative of a trade association

If the cities and the counties are trying to reach people, and they know that, for example, St. Louis, if you're trying to reach people, I would say, look to the organizations like myself, and there are so many in the City of St. Louis, that are dedicated to helping provide access and resources to small business owners, to be reaching out to us with those resources as well.

TO-9. African American female representative of a business assistance organization

I. Qualitative Information — Working with the City and/or the County

Disseminating Information About How to Do Business with the City and/or the County

Many business owners said that they would like the City and the County to provide more public information on available bidding opportunities and increase overall transparency in the procurement process.

[e.g., AS-30, 37, 52, 60, 64, 80, 104, 105, 117, 119, 120, 126, 127, 133, 137, 141, 147, 153, 195, 200, 201, 218, 223, 235, 237, 249, 253, 259, 260, 269, 293, 299, 300, 302, 307; I-1, 2, 6, 7, 8a, 8b, 11, 15, 21, 29-31, 33, 34a, 35, 40, 41, 48, 56, 57, 58, 61; TO-2, 9; WQ-7]

Examples of comments are on the right.

I can suggest ... an advocate office An hour-long lunch or afternoon afterwork where people outline things to search for in contracts [and] this is what to expect in a contract.

I-37. African American male owner of a professional service firm

They should make it more transparent for people to bid on County and City services.

AS-120. Hispanic American male owner of an other services firm

I think a lot of the companies aren't aware of all the work that's going on or how to access the pipelines to inform them of the work.

I-11. African American female representative of a construction-related firm

I think there's probably a gap in just the ease of which information on those bids can reach our founders How are those opportunities being shared electronically, digitally? Is there an easier way for them to access the information?

TO-4. White male representative of a business assistance organization

Posting information would be fundamental to minority business(es). Making postings more accessible and making them public.

AS-110. African American female owner of a professional services firm

[It'd be] helpful if more small businesses knew about the City [and the] County contracts and how to bid on them.

AS- 36. African American male owner of an other services firm

The County should make bidding opportunity more widely known and I think the County, in my field, tends to use the same firm over and over again, leaving me no opportunity to serve the County.

AS-235. African American male representative of a professional services firm

I. Qualitative Information — Whether there is a level playing field for MBE/WBEs

Business owners and representatives offered some general comments on whether a level playing field exists for minority- and woman-owned firms in the marketplace.

General Comments

One participant commented that there was a “level playing field.” However, many more participants discussed experiencing or witnessing inequity in the marketplace based on race, ethnicity or gender that persists today. [e.g., I-3, 7, 8a, 8b, 29, 30, 34a, 35, 40, 41, 58]

See examples of comments on the right.

I don't think St. Louis has the most level playing fields ... at [our organization we] recognize that there are many barriers that exist, particularly for underrepresented entrepreneurs, [those] coming from underrepresented communities in the entrepreneurship space, and we try to augment our efforts in that vein. 'St. Louis has a long way to go in leveling the playing ... for all of us communities.'

TO-4. White male representative of a business assistance organization

As a Black man, I wasn't welcome. For people who look like me, it's hard to crack. I have zero interest in conducting business in St. Louis.

I-23. African American male owner of an other services firm

I know it [procurement practices] have not changed and it is not a level playing field when you're dealing with MBEs, especially WBEs. The percentages are still dismal at best. I couldn't see why we couldn't all agree to that at this point.

PM-1b. African American female representative of an organization

A minority company may get what's leftover if the other [prime] company can only handle up to this much. The companies that are in the minority [businesses] essentially fight over the scraps.

I-11. African American female representative of a construction-related firm

I don't think there's a level playing field, but I do believe also that if someone is qualified to do a job, they should be considered ...

I-21. White female owner of a professional services firm

Women-owned businesses have an advantage. They get all kinds of work just because they're a woman-owned business.

I-55. White male owner of a construction-related firm

I. Qualitative Information — Whether there is a level playing field for MBE/WBEs

Many interviewees discussed challenges experienced by minority- and woman-owned firms or other small or diverse businesses that are not typically faced by other businesses.

Business owners and representatives reported on barriers that result in a playing field that favors some businesses over others.

General barriers. Business owners and representatives reported several recurring barriers to operating a business as a diverse firm.

Examples of these comments are on the right.

Some interviewees, usually white men, indicated that there were no barriers. One white male business owner said that women-owned businesses have the advantage when seeking work, for instance:

Women-owned businesses have an advantage. They get all kinds of work just because they're a woman-owned business.

I-55. White male owner of a construction-related firm

First ... we have trouble getting the contract as a women-owned company, professional contracts favor large companies' contracts. When I get bids, they favor larger contracts because they say I don't have depth.

AS-163. African American female owner of a professional services firm

The attitude of the male-dominated construction world and the lack of trust from the industry [for women].

I-53. White female business owner

A minority company may get what's leftover if the other [prime] company can only handle up to this much. The companies that are in the minority [businesses] essentially fight over the scraps.

I-11. African American female representative of a construction-related firm

Because [minority- and woman-owned firms] are smaller, they may not get the discounts that another firm may be able to get. It affects their pricing if they're not able to be on the same scale for materials.

I-8b. African American female representative of a construction-related firm

... damaging ... requirements for workers compensation. Oftentimes insurance carriers won't ... offer workers compensation for small companies or if they do ... offer them at rates that supersede what you can pay and ... be profitable in these MBE and DBE contracts.

PM-1c. African American male of a construction-related firm

I. Qualitative Information — Whether there is a level playing field for MBE/WBEs

General Comments about Racism and Bias

Racism and bias. Some interviewees reported racism and bias in the local marketplace that disadvantages diverse firms. For example:

We have to deal with the additional long-term effects of racism ... and deal with being later to the game than some of our majority counterparts MBEs have not had historical advantage to networks, capital, or expertise.

WP1-a. African American owner of construction-related firm

Additional examples of these comments are on the right.

Language barriers. One association representative commented on how language barriers impact some minority business owners. For instance:

For Hispanics ... there is a language barrier [as well as at times a] citizenship barrier as far as getting minority certified.

TO-6. Hispanic American male representative of a trade association

The next 14 pages pertain to related topics, including:

- Contractor-subcontractor relationships;
- Access to capital;
- Bonding and insurance;
- Issues with prompt payment;
- Unfair treatment in bidding;
- Stereotyping and double standards; and
- “Good ol’ boy” network and other closed networks.

... mostly if not all, women, and then women of color so we kind of all understand that women and women of color in general face certain barriers in entering certain industries.

TO-9. African American female representative of a business assistance organization

Success and failure rates are going to vary, especially if they're a young firm so you could have everything from execution of the product or service wasn't good quality, didn't have access to workers, or technology, or supplies that you needed to deliver ... could certainly contribute to [failure]. Particularly for diverse-owned firms, lack of access to opportunity because of broader social constructs, you know 'no customers no business,' right?

TO-1. White male representative of business assistance organization

We're still dealing with historical systemic racism, lack of investment and you see that play out daily, that too often the approach in this City is to throw up a wall or block off a street, rather than really digging in and trying to address the core issues, not constantly treating the symptoms. The core issues are, income disparity, racism, lack of access to opportunity.

TO-4. White male representative of a business assistance organization

Sometimes it's not fair that as a minority we have to do extra things to reach out, but that's what we're called upon to

TO-14. African American female representative of a trade association

There's the goal of helping disadvantaged businesses, and then there's the goal of addressing inherent bias. Regardless of economic advantage, there are still people that don't want to work with a firm owned by an African American or a woman.

I-7. White male owner of a professional services firm

I. Qualitative Information — Contractor-subcontractor relationships

Business owners and representatives were asked to comment on their experiences with prime contractor-subcontractor relationships.

Barriers to Building Relationships

Some interviewees described the need for firms to proactively connect with potential prime contractors and/or subcontractors.

Many reported difficulties establishing contractor-subcontractor connections to expand work opportunities. [e.g., I-6, 7, 8a, 8b, 11, 21, 28-30, 33, 34a, 34b, 35, 40-42, 55, 56, 59, 60, TO-6, PM-1c, WP2-e]

Examples of related comments follow to the right.

I feel like the cards are already stacking [up] against you to go into business. Because you're not an established firm you're a risk to the prime and there's already so much risk in this business.

TO-5. White male representative of a trade association

When you're dealing with the main GCs out there ... it is very difficult to get them to see at the end of the day that diversity is important.

PM-1b. African American female representative of an organization

It would be extremely helpful if there was a bit of urgency for larger businesses to do business with smaller ones, especially when a W/MBE also carries an SDVOSB certification. It seems that it's viewed as a 'nice thing to do but don't have to' work with WMBE and/or SDVOSB.

AS-187. African American female owner of a professional services firm

[Due to] increased specialization [in the construction industry and the amount of work], subs can be more selective [regarding] who they work for. As more generals do not self-perform, it puts subs in a better position, the 'risk' shifts to subs putting them in the position to be more selective. They select on payment terms ... safety programs contracts, progress payments, bonding and benefits payments. [The] increasing sophistication [among first-tier subs] is putting smaller, emerging second- and third-tier subs at a disadvantage as they may not understand [the risks and complexities].

TO-8. White male representative of a trade organization

I've encountered some of the most prejudice. I don't care what you are. I don't care where you come from. I care if you care about the work you're doing. And I don't want to work with anybody that feels otherwise.

I-7. White male owner of a professional services firm

I. Qualitative Information — Contractor-subcontractor relationships

Barriers to Subcontracting

Some interviewees reported that certain prime contractors are reluctant to work with newer or smaller businesses, or those they do not already know. A number of subcontractors indicated challenges when working with prime contractors. [e.g., I-6, 7, 11, 21, 28, 35, 40, 41, 56, 59, 60, PM-1b, TO-10b] For example:

St. Louis has been known for having a rich architectural history for generations with a thriving design build market, however St. Louis is smaller than some major cities, therefore it is a competitive traditionally male-dominated market, with many construction companies. In the past there has been little opportunity for smaller MWBE/DBE businesses. Hopefully, it will get better with all the new initiatives.

I-54. Female owner of a professional services firm

Capacity. Some interviewees reported primes consider subs as ill equipped, incapable or not able to handle the workload to perform their jobs well. For example:

I do think there is a mindset that smaller firms just can't handle it, don't have the experience, can't handle projects purely due to their size without looking at the quality of their staff.

I-2. White female owner of a professional services firm

Other examples of comments are shown below and to the right.

We're just not getting the scale building that we should be. We're not getting the equal opportunity that may bring women in.

TO-10a. White female representative of a business assistance organization

Some of the calls that I've been on with the subcontractors, and how people are so fed up and how we are tired as an industry of how horrible the subcontract community is being treated. It's very volatile right now.

I-4. African American male owner of a construction-related firm

You can have all the qualifications, but unless you're allowed in to get the experience, it's very difficult for you to excel in that area. And what might help is to put an incentive in place for general contractors to work with MBEs. Because oftentimes, they show interest, but they also know that it's going to take a little bit more organization and it's going to take a little bit more time for them to do that. And sometimes they're unwilling to do that. As a result, I think with an incentive for the GCs to work with and train some of these MBEs and WBEs that are qualified that might help.

PM-1c. African American male of a construction-related firm

If it wasn't for these [certification] requirements, I wouldn't get work. Even from the people who I know value my work and what I do, they just wouldn't go through the effort to break out a small piece of work for another firm.

I-2. White female owner of a professional services firm

I. Qualitative Information — Contractor-subcontractor relationships

Bait and switch. Some subcontractors reported providing a quote for a job and never hearing back or being engaged by a prime on a job only to be left behind when the job is underway.

Examples of these comments are to the right.

One reported scope creep, and the threat of not getting paid.

For example:

We won the project together as a team, and we were responsible for doing the heavy lifting. No problem. Well, the customer gets a little scope creep, and of course the prime is like sure no problem. We'll do it and so when they came back to us and said, "You better do XYZ." We're like, "Well that's not in our contract. We're not supposed to do that" and they held payment over our head unless we did it, and that's the unfortunate part of being at the bottom.

I-12. White female owner of a professional service firm

Most of the prime contractors are not reaching out to us [so] we can actually know when we are being used on projects.

AS-308. African American male owner of a professional services firm

I heard situations where somebody in my industry get[s] a contract, and that prime is awarded good-faith-effort credit. When it comes down to the contract, they [the subcontractors] only actually get a smaller percentage of the work

I-13. African American female owner of a professional services-related firm

You come to sites and they're waiting to catch you doing something wrong. Or the second that you're not jumping through hoops, then 'we're going to kick you off, we're going to back charge you.'

I-41. African American female owner of a construction-related firm

I. Qualitative Information — Access to capital

Challenges Securing Capital

Business owners and others reported that access to capital was critical to success and challenging for their companies. [e.g., AS-105, 168, 190, 260, 261, 264, I-2, 6, 7, 9, 8a, 8b, 10, 11, 33, 40, 41, 42, 49, 56, 58, TO-2, 3, U-2]

... capital and cash flow. Because we have a lot of subcontractors, capital is so important in the construction industry. \$20,000 to start a construction company is equivalent to \$200 to start [other firms].

TO-14. African American female representative of a trade association

I think visibility, capital and clientele [are critical to success]. You need capital to become more visible, so that you can gain more clientele. And I think I have to figure it out.

I-57. African American female owner of a professional services firm

If you're a new organization, a bank is not likely going to take a risk on you with an extreme line of credit because you have no track record so there's so many financial barriers to entry.

TO-5. White male representative of a trade association

See additional comments are on the right top.

Subcontractor-to-prime loan-indebtedness was another challenge mentioned (see bottom right).

Capital requirements [for construction] are so frigging high, more so than in other industries.

TO-8. White male representative of a trade association

Make it a little easier to get small business loans because all paperwork that you have to go through, by that time you give up and want to do it on your [own].

AS-278. African American male owner of a construction-related firm

I kept getting 'no's' and kept getting the, 'you don't qualify, you can't [get] this credit card, you can't get this line of credit.'

I-15. African American female owner of a construction-related firm

Just [as] other forms of traditional capital, it can be hard as a small business to access that, take those risks and grow.

TO-1. White male representative of business assistance organization

When I have a new member that becomes a contractor themselves, ... we always warn them, 'this is what you're going to see every month, this is what you can expect to have to pay on the benefits, but you should have capital set aside because that first year in business is either going to make them or break them.'

U-2. White male representative of a trade union

Loan companies are just as rigorous as bond companies. Once people learn the ropes, there is not a lot of distinction Some contractors were making private loans to MBEs to help them make payroll, they [subs] were working [so the primes could] meet goals. The indebtedness of the sub to the prime became [a] 'new subtle form of bondage.'

TO-5. White male representative of a trade association

I. Qualitative Information — Access to capital

How Access to Capital is Related to Business Size of Contracts a Firm Can Bid and Potential for Growth

Bonding is one way that access to capital affects the size of contracts a firm can bid on. [e.g., AS-302, I-7, 8a, 11, 15, 41, 49, 56, TO-6, 14]

The number one thing that I'm experiencing, oftentimes as MBE or WBE, difficulty with the bonding portion of it. That's always been a barrier as a new or small business [because] the requirements can be a major deterrent to getting contracts.

PM-1c. African American male owner of a construction-related firm

Bonding capacity, that's the problem [for] these middle-sized contractors not having the bonding capacity that they need in order to go after certain large projects. It's a very dynamic industry.

TO-5. White male representative of a trade association

The other aspect of the bonding is a lot of these big jobs, the minority contractors might typically be a second-tier subcontractor. It's a financial hurdle that really doesn't add value to the project. It almost just acts as a prescreening to disqualify firms from participating.

I-56. White female owner of a professional services firm

If you want bigger and bigger contracts or to become a general ... the ability to not only get cashflow but get the right bonding is ... important ... that can be real barrier if opportunity doesn't exist.

TO-01. White male representative of business assistance organization

I think the current restrictions by St. Louis County for credit given to MBE and WBE limited to \$300,000 or less prevents growth opportunities.

AS-175. African American male owner of a construction-related firm

Other financial hardships are discussed below.

I have to find a supplier that is willing to give me a line of credit substantial enough for me to get awarded sizable contract.

I-30. African American male owner of an other services firm

I could say that the fairly dicey ... economic conditions across the country are affecting access to capital right now. It's more difficult for companies to raise growth capital that they need to scale their solutions and ultimately work with larger clients, secure contracts.

TO-4. White male representative of a business assistance organization

One obstacle for MWBE firms is 'buying power.' In a low bid environment, MWBE firms don't have the history, connections, or access to credit and capital [as] the non-minority firms have access to.

WP1-c. African American owner of a construction-related company

As far as access to capital, I think the big discussion for firms that get into this business is, you have to have your like I call it 'your backyard kind of straight,' you got to have your documents in a row and my biggest complaint about access to capital is it's always more expensive ... money's getting more expensive every day.

BAG-2. Minority representative of a construction-related firm

I think we probably had a harder time with the growth when the business really took off. I did end up getting an SBA loan just to help us get through the growth spurt because we had kind of a big jump. I took on a couple of new builders and builders don't like to pay until they close [the project]. There was some upfront capital that I needed to be able to purchase the products and take care of that.

I-21. White female owner of a professional services firm

I. Qualitative Information — Access to capital

How Access to Capital for Business is Related to Personal Finances

Some interviewees explained the connection between business lending and one's personal finances. [e.g., I-2, 7, 8a, 8b, 15, 21, 42, 43, 55] One businessowner explained:

Upfront funding is sometimes needed [even when financing is not available].

WQ-4. Native American female worker

Examples of related comments follow on the right.

I've got folks mortgaging things. I've got folks selling ... a classic car in order to be able to continue to hold their business above water until they get paid.

I-11. African American female representative of a construction-related firm

When you don't have capital and you're breaking your back every day, it's hard to save and invest in your business. My wife's support helped us pay the bills and allowed me to save money.

I-47. African American male owner of a construction-related firm

You have to make a certain amount of money throughout the year in order for you to get money. So, I think that with the stipulations of the economy of the grants, and financial programs, you have to have make some type of money. And they don't consider the people who are actually spending their own money to operate this business.

I-9. African American male owner of an other services firm

At the end of the day banks are looking for individuals that have assets so something doesn't go well, well they've got something they can take and sell it and get some of their money back.

BAG-5. African American male representative of a construction-related firm

I. Qualitative Information — Access to capital

Barriers to Access to Business Capital for People of Color and Women

Some interviewees reported that there are barriers related to access to business capital for people of color, women and small businesses in the St. Louis marketplace. [e.g., AS-184, I-8a, 14, 49, 56, TO-3, 6] One said:

When you have somebody holding the money, or you can't get your hands on the money or they're piecemealing it out to you it's crazy. You don't have the resources that a larger company has to go shake the hand of a bank and get a \$50,000 loan for operating expenses

BAG-4. African American male representative of a construction-related firm

See right column for related examples of interviewee comments.

Obviously, you don't get the same favors with banks and rates. Even though, I had excellent credit. I've always been proud of my excellent credit history, but as I say, 'As a Black or African American it doesn't necessarily translate to the banking.' It means absolutely nothing, and I have almost a perfect score.

I-4. African American male owner of a construction-related firm

I almost never see any suggestions or any programs that are out there to help us with working capital.

I-10. African American male owner of a construction-related firm

The main thing is funding, being able to access capital is huge. I'll say most of the companies and people we're working with are startups and in that startup phase a lot of the time their biggest thing is accessing capital.

TO-9. African American female representative of a business assistance organization

Access to capital [is a challenge] because of lack of credit score. Even though the VA could back me, no one will give me an opportunity.

I-30. African American male union worker

It's all about the capital and that excludes small businesses. If you're not going to be honest and try to help the MBEs and WBEs, what are you even doing? Helping small businesses helps everybody.

I-47. African American male owner of a construction-related firm

Access to cash that we can get costs more.

I-41. African American female owner of a construction-related firm

I. Qualitative Information — Bonding and insurance

Some minority and female business owners and representatives reported on difficulty securing bonding and/or meeting insurance requirements. [e.g., AS-105, 230, I-7, 10, 57, 61, TO-6, 9, 14]

Unfair Bonding and Insurance Practices

One business owner indicated that minority- and woman-owned businesses pay more for insurance and bonding.

How are bonding requirements affecting bid pricing? MWBE companies typically pay more for GL, work comp and bonds.

WP1-c. African American owner of a construction-related firm

Barriers to Securing Bonds

Some reported on the prohibitive cost of and difficulty getting bonds. Related comments follow to the right.

The only thing that's been difficult has been insurance and bonding Everything costs more for us. Insurance costs more.

I-41. African American female owner of a construction-related firm

I look at bonding as a joke for our industry. General contractors should be responsible for bonding ... [as] subcontractors we ... already ... fund the project, now they want you to bond the project ...

I-4. African American male owner of a construction-related firm

Bonding has reached an all-time high. I have not been given opportunities to pay monthly, needing downpayments, it's not fair. grant[s] are given to some and not to others, it's sad, that's all.

AS-172. African American male representative of a construction-related firm

There needs to be a special program for bonding New companies [seeking sizable contracts] should sit down with a bonding agent for three hours, learn all the elements of bonding capacity ... 'it's Construction 101.' [The bonding process] is not punitive, it's the business world, loans, assets, business outlook, training [all factor] in making determination on bonding for folks.

TO-8. White male representative of a trade organization

I. Qualitative Information — Issues with prompt payment

Many business owners and representatives reported experiencing issues with prompt payment. [e.g., AS-113, 222, 234, I-6, 11, 12, 14, 21, 29, 30, 41, 56, 58, TO-6, 10a, 10b, 14, U-2, PM-1b]

Difficulty Getting Paid

Slow payment can be especially damaging for groups of firms that do not have the same access to capital as other companies.

The challenge is collecting money. It's one of these industries ... you don't get paid for 30, 60 or 90 We're not looking for big projects ... takes too long to get paid ... couple of times we didn't get paid.

I-1. Native American male owner of a construction-related firm

Biggest problem ... would be dealing with getting paid, and so when it comes to African American contractors it is extremely ... important, because they get paid the least ... the longest before getting paid.

I-4. African American male owner of a construction-related firm

With the City, I would say I've gotten conditioned to knowing how long to wait before I start getting weary. Sometimes ... 60 days.

I-15. African American female owner of a construction-related firm

The only problem I had was with the payments being on time. That's why I stopped doing work for the City. [They're usually] months late.

AS-311. African American male owner of a construction-related firm

When one of our clients [are] slow to pay, we don't have the money. We're not a huge firm, we don't have the money to pay all our subs and wait to get paid. There's nothing we can do about it.

I-7. White male LGBTQ+ owner of a professional services firm

Payments from Primes to Subcontractors

Some interviewees noted delayed payment of subcontractors by prime contractors, which sometimes could be due to slow payments from clients. For example:

I think the whole cash flow issue and payment terms is often a barrier. As the GC or the prime, sometimes we must make exceptions in paying firms before we even get paid because 60 to 90 days sometimes [for] smaller firms ... [they] don't have the funds available.

I-8b. African American female representative of a construction-related firm

... my biggest complaint ... is payment. When working with a company, [we had to] pull off the project because they only paid one week ... that's problematic for small firms.

BAG-2. Minority representative of a construction-related firm

I. Qualitative Information — Unfair treatment in bidding

Denial of Opportunity to Bid

Some business owners described instances where they were not given an equal opportunity to bid on a contract. On interviewee said:

Sometimes [buyers] are holding a ‘closed session’ because they already really know who they want.

I-57. African American female co-owner of a professional services firm

Examples of additional comments follow to the right.

Unfair Rejection of Bid

A few business owners and representatives reported that they have experienced unfair rejection of a bid on a contract. [e.g., I-1, TO-6] Others indicated that their bids had been unjustly rejected because larger, more established firms often find out about contracts earlier than smaller firms.

Examples of comments follow below.

Professional contracts favor large companies. When I bid, they favor larger contracts because they say I don’t have depth.

AS-163. African American female owner of a professional services firm

Jobs that we [bid and] think we’re perfect for ... but we were not even recognized as a player.

I-7. White male LGBTQIA+ owner of a professional services firm

When it comes to bidding it comes to priority and it has been difficult and very limited.

AS-146. African American female owner of an other services firm

[An opportunity] was supposed to go out to competitive bid, but it was never going on to competitive bid; [instead, a large firm] just swallowed it up.

I-28. White female owner of a professional services firm

By the time a minority company is aware that the work is out there, it’s pretty much been bid on and nearly decided, so they’re always coming in on the tail end of being able to compete.

I-11. African American female representative of a construction-related firm

... what happens is that contractors will send you a notice requesting to bid like two days before it ends, or it ends tomorrow ... when they don’t want to use you, they do it like that.

I-29. White female owner of a construction-related firm

You spend a lot of time that’s wasted ... you know you really, never, ever had an opportunity [to win the bid] ... when I start breaking my win ratio percentages off, and how much time was spent on each one. You know of some of those individuals ... [when] the email comes ... they’re not giving [you a] real option ... [they’re using you] to put a good faith effort out.

I-4. African American male owner of a construction-related firm

... your bids get turned in and then you get an email back after the bids are supposed to be closed [inquiring whether] you’re going to bid on this particular project.

I-4. African American male owner of a construction-related firm

I. Qualitative Information — Unfair treatment in bidding

Bid Shopping and Bid Manipulation

Some business owners and representatives reported that bid shopping and bid manipulation persists in the local marketplace. [e.g., AS-112, I-11, 35, 40, 41, TO-6]

Comments on bid shopping and manipulation are on the right.

That's the cost of doing business. You get a client that's asking you to bid on jobs, you think you're in contention, but they're just doing it because they need a second or third bid. They've already decided.

I-7. White male owner of a professional services firm

You have some people that do 'mask numbers' and they're not forthcoming with the subcontractors at all, so that they can under bid them ... that's a whole other trust factor.

I-57. African American female owner of a professional services firm

I would say [bid shopping] happens more in the City [than] in the County. We have put together several bids in the past and we have found that our proposal has been bid shopped around and other companies have been awarded.

I-10. African American male owner of a construction-related firm

I. Qualitative Information — Stereotyping and double standards

Some participants discussed whether there are stereotypes or double standards that impact a firm’s ability to perform or secure work and noted clear instances of discriminatory and biased behavior.

Gender-Based Stereotyping

Some business owners and representatives reported negative stereotyping of women as “less fit” than men, as well as gender-based intimidation or harassment. [e.g., WQ-23, 37]

One of the biggest reasons why people may get disgruntled with a job site is the way they are treated.

TO-10a. White female representative of a business assistance organization

Examples of comments follow on the top right.

Racial Stereotyping and Discrimination

Some business owners of color and others described incidents of stereotyping people of color as less capable. [e.g., AS-111, BAG-10, I-4, PM-1b, TO-14, WP2-a, WQ-2, 36, 37, 46, 50] For example:

Coming to St. Louis and being involved in the construction and project ... those larger scale general contractors seem to have their foot in the door, and they seem to have their entire attention of both the City and [the] County on those projects, and I think that smaller firms, like myself, are overlooked. That is, when the bias comes in that we do not have the resume to work on these projects or they feel that we can't perform these projects, but yet we're never given the opportunity to prove ourselves.

I-10. African American male owner of a construction-related firm

Comments shown below and to the right provide other evidence of racial stereotyping.

Most people don't feel like women belong in the construction field. They do put barriers to try to keep women from being there sometimes. Women can't prosper in the career that they have, which makes them fall behind from where they should be.

TO-10b. African American female representative of a business assistance organization

I do feel like women in construction ... like we're in a man's world.

I-21. White female owner of a professional services firm

After that [meeting about sexual harassment], suddenly I was never invited to any work committee meetings for them. I was never asked to bid on anything [again].

I-28. White female owner of a professional services firm

Here in this market, it could be a little bit slower to advance. Many times, [buyers] would rather not deal with a Black-owned business because we think we're getting a superior product with white or another cultural background.

I-3. African American female owner of an other services firm

There is a preconceived notion that [a] Black firm is going to be harder to work with ... that they're Black therefore they don't have generations [of] experience [and] that [the prime is] going to have to handhold.

I-13. African American female owner of a professional services firm

I don't have this problem in Kansas City, Missouri. I had this problem in St. Louis, Missouri. I had to go to a white female. Sell her the product, which lessened my commission, to sell it to the City of St. Louis [particular department] The color of my skin is the barrier.

I-30. African American male owner of a construction-related firm

I. Qualitative Information — “Good ol’ boy” network and other closed networks

Many business representatives reported that the “good ol’ boy” network or other closed networks persist in the marketplace.

Evidence of Closed Networks in the Marketplace

Some mentioned that primes hire subs they already know, making it difficult to break in to get work.

We largely just [hire subs] who we already know

I-5. White male representative of a construction-related firm

Many reported that closed networks persist in the City and County marketplace. [e.g., AS-56, I-2, 4, 9, 8a, 8b, 10, 12, 14, 15, 21, 28, 29, 30, 33, 35, 40, 41, 42, 43, 47, 55, 56, 60, 61, TO-4, 6, WP1-e-f, WQ-14, 16, 20, 22, 25 27, 29, 33, 34, 36] For instance:

I am not a minority nor am I a woman, even for me it is challenging to get into the network of people here in terms of ingrained systems that exist. The relationships that exclude newcomers to coming in.

I-40. White male owner of a professional services firm

I don't live there [St. Louis] anymore for a reason. Not conducive to being progressive. It's a very 'good ol' boy' situation. As a Black man, I wasn't welcome.

I-23. African American male owner of an other services firm

Other examples of comments are shown below and to the right.

You must get in with them. Smoke cigars at the Ritz Carlton, go to the Missouri Athletic Club, golf up at Bellerive If you don't fit that mold, you don't participate unless they're forced to [let you].

I-7. White male owner of a professional services firm

I think St. Louis is very much a 'who you know' thing. A lot of the big stuff they just go to people they know.

I-58. White female owner of a professional services firm

Closed networks can be a challenge as many primes use historical partners, [but] attending events that are available through the AGCMO, MODOT, and the City can help.

WP1-e. Hispanic American male owner of a construction-related business

[The marketplace is] not conducive to being progressive. It's a very 'good old boy' situation. As a Black man, I wasn't welcome. For people who look like me, it's hard to crack.

I-43. African American male owner of an other services firm

All the general contractors are majority owned, so it means that everybody who bids on a contract is a 'good ol' boy' network. But we don't talk to each other about it, we don't have a secret handshake, we don't have a clubhouse.

I-6. White male owner a construction-related firm

I. Qualitative Information — “Good ol’ boy” network and other closed networks

Closed Networks that Impact Hiring

Some interviewees indicated that closed networks also persist in hiring among unions and others in the local marketplace.

See comments on the right top. (More on how closed networks affect hiring appears later in this appendix.)

Weakening of Closed Networks

Some business owners are hopeful that the “good ol’ boy” network is growing weaker in the local marketplace.

See comments on the bottom right.

We've been trying to get the unions to reach ... and to hire more minority [employees]. It's still a political process with the union, I'm from the unions, too. I got in through family and everything is the 'good old boys' system. I don't think anything's changed.

BAG-6. African American male representative of a construction-related firm

... have assumptions that you are going to cause a problem for them, that you are going to get them in legal trouble, [the]reason they avoid contact with you. Then you're not included in all the learning ... skill building. You're not included in the equal overtime.

TO-10a. White female representative of a business assistance organization

The 'good ol' boy' network does exist. I don't know if it's going to dissipate anytime soon simply because the leadership happens to be the 'good ol' boy.' There's a movement for the 'good ol' boys' becoming reeducated as to what it takes to be in this century and work with the folks that are here. Young people don't take things the way that the old school folks used to.

I-11. African American female representative of a construction-related firm

The 'old boy' network absolutely exists; a lot of them are retiring.

I-41. African American female owner of a construction-related firm

I've heard about the horror stories from other parts of the country but ... I don't think we have ['good ol' boy' networks] here.

U-2. White male representative of a trade union

I. Qualitative Information — Business assistance programs and certifications

The study team asked business owners and representatives about their knowledge of and experience with business assistance programs and certification.

Awareness of Available Business Assistance

Some business owners and representatives were aware of business assistance programs. For some, such programs were useful and provided value to their firm. [e.g., I-1, 6, 7, 15, 28, 33, 35, 40, 41, 56, TO-3, BAG-10, WP2-c, d]

Examples of comments are on the right.

Many other interviewees noted that they were unaware of or did not take advantage of St. Louis metropolitan area business assistance programs or other available programs. [e.g., AS-171, 65, I-8a, 8b, 9, 21, 37, 50, 57, 58, 61, TO-10a, 10b, PM-1a] For instance:

For woman-owned businesses, I don't think they are always made aware of services that may be available All of St. Louis could work better on getting that word out that there are services for women

TO-2. White female representative of a business assistance organization

There's an industry called Regional Union Construction Center (RUCC), and what they are is kind of an incubator for smaller, new firms in order to provide that sort of assistance. You have to be willing to open up your books because they will give financial advice, they will have lawyers there ... it's for union construction firms to have guidance.

TO-5. White male representative of a trade association

It's great to be connected to an association like [us], someone who can advocate for our contractors [when] they are in these situations, someone who can provide ... them with resources. If it's a legal resource, if it's penalties, if it's fees, if it's something that's going to, bankrupt your business, ... or fine, or things like that having people to help you navigate [them].

TO-14. African American female representative of a trade association

St. Louis [marketplace] does have a lot of good community resources around to kind of help with those issues that we're seeing to try to help level out the playing field, because that's why [our organization is] here We've identified that, hey, it's not necessarily equal and these are the things and the reasons why.

TO-9. African American female representative of a business assistance organization

SBA has bonding programs that can be accessed and help can be found through the APEX Accelerator

WP1-e. Hispanic American male owner of a construction-related business

I. Qualitative Information — Business assistance programs and certifications

Mentorships

The study team specifically asked interviewees to comment on mentor-protégé programs, and any related experiences.

Examples of comments follow on the right.

Both my [business] partner and I are members of the Entrepreneurs' Organization, and I participated in mentorships ... go to talks ... participate in roundtable discussions. If you're not learning, you're stagnating and you're not going to grow so much.

I-7. White male owner of a professional services firm

One of the things, I think that [entities] could do is to try to get, established firms to kind of be a mentor to those new firms that are trying to break in and kind of help guide them through some of the process, because those entities have a specific ways that they like to conduct their business and kind of help them navigate some of the paperwork and the process, and to understand what some of that is.

BAG-7. White male representative of a professional services firm

I think building that kind of cross-sectoral partnerships and mentorship networks that allow people to get connected outside of their existing networks I think is just a critical opportunity for us to build as a region, because it'll help us accelerate faster the process of creating and scaling up small businesses in the region.

TO-1. White male representative of business assistance organization

There are organizations out there, and there are a lot of good mentorship programs out there now that will help, especially with a newer minority-owned business to help them get their feet on the ground, and to help them plan for those 120-day pay.

U-2. White male representative of a trade association

I. Qualitative Information — Business assistance programs and certifications

Some firms commented on certification as an MWBE or other types of certifications. [e.g., I-6, 28]

Positive and Negative Experiences with Certification

Firm owners had varied comments regarding the certification experience.

Positive experiences. A few reported on the ease and positive outcomes of the certification process. [e.g., I-36, 57]

Examples of these comments are on the top right.

Negative experiences. Far more participants noted negative experiences and outcomes from the certification process. [e.g., AS-197, I-3, 6, 15, 21, 28-31, 33, 41, 48, 56, 58, WP2-b]

Too cumbersome. Many of these firms indicated that the certification process was time consuming, confusing, challenging or “terrifying.” [e.g., I-1, 7, 60, TO-4, 10a, 14, WP2-a] For example:

... certification with the City of St. Louis can be cumbersome.

WP2-a. African American representative of a construction-related firm

As a GC, we have heard that it is a very long process for the St. Louis Airport Authority to certify MBE and WBE firms.

WP1-d. White male owner of a professional service firm

I didn't understand everything that was supposed to happen. I had to get the Dunn [&] Bradstreet thing ... It's ... intimidating.

I-28. White female owner of a professional services firm

See additional comments on the bottom right.

I got certified MBE because of the bids. I took a two-day course on bids; the City still offers the classes. You had to be certified to take classes. The MBE certification helped me gain exposure.

I-47. African American male owner of a construction-related firm

If it wasn't for these [certification] requirements, I wouldn't get work. Even ... the people who I know value my work ... they just wouldn't go through the effort to break out a small piece of work for another firm.

I-2. White female owner of a professional services firm

The process was confusing ... multiple ... certifications, MoDOT, the City and the Airport. You don't know which one you're supposed to go to, whose rules you're supposed to follow ... sometimes you didn't know where to start and didn't know how to reach those people.

I-2. White female owner of a professional services firm

[Certification] has been a constant challenge. Hispanics are not easily approved ... 2% is a joke ... The certification process is not easy. The airport certification process is not to help MBEs into the program, it is to keep people out of the program

TO-6. Hispanic male representative of a trade association

Applying for a minority license at the City of St. Louis is terrifying ... I just wanted to give up ... I never was able to meet the minority goal [until recently]. I was intimidated ... the application process was not opening welcoming arms It was [a] very painful event.

I-1. Native American male owner of a construction-related firm

I would like training to get the WBE certification. It should not be this hard for me to be the sole owner, 100% in my name, to have this.

I-58. White female owner of a professional services firm

I. Qualitative Information — Business assistance programs and certifications

Not worth the effort. Some individuals indicated that the certification process is not worth the effort.

See examples of related comments on the top right.

Need for reciprocity. Some reported on the need for reciprocity in certifications among public sector entities.

Comments regarding reciprocity are on the bottom right.

Confusion surrounding being denied certification. Some reported being denied certification and not understanding why. (See below.)

I have not received those certifications and partially because when I try and go up to apply for those programs, [I work in] like a shared office environment, so apparently that was not a capability for having an office. Even though I utilize that office, I utilize that space. I go there and work. I go there and meet clients, that's like my central spot. My mail goes there. It's the landing place for my company, for whatever reason they were like, 'That's not going to work. Sorry, you can't use that.'

I-33. White female owner of a professional services firm

We have a melting pot here [at the firm], but we don't qualify to do work because we don't have a minority owner. No one owns 51%. We have plenty of diversity here, and [are] trying to do the right thing and can't get work for it. We have four owners, one is a woman, but it's not 51% ownership.

I-31. White male owner of a professional services firm

... where I have an issue [with] legally being certified ... that I do not get notifications or emails from any government entities. Even though I have a registered company ... it seems as though if you are certified that's the only way you get access to a contract, that should not be the case ... intent of the certification is to level the playing field.

I-13. African American female owner of a professional services firm

I would like training to get the WBE certification. I feel like that should be easier. It should not be this hard for me to be the sole owner, 100% in my name, to have this.

I-58. White female owner of a professional services firm

In hindsight, certification hurt me. It seemed like immediately when I became certified, the 'games' started happening.

I-41. African American female owner of a construction-related firm

Reciprocity between the State of Missouri, MODOT, Metro would be beneficial.

WP2-a. African American representative of a construction-related firm

... I have heard particularly from diverse-owned firms, the certification process just needs to be streamlined, for public sector construction work. There are different certifications for ... the City ... the County ... the airport and I think we just need to be cognizant that many of these are going to be smaller to mid-sized firms....

TO-1. White male representative of business assistance organization

... why does the City of St. Louis only count St. Louis Airport Authority MBE and WBE certifications toward their participation goals and not state certifications as well?

WP1-d. White male owner of a professional service firm

I. Qualitative Information — Contract goals or other preference programs

Some interviewed commented on contract goals and other preference programs.

Support for Contract Goals

Many business owners and representatives supported the need for contract goals programs to level the playing field. Well-monitored compliance, contract goals and other preference programs were perceived as being helpful. [e.g., AS-66, 78, 97, 102, 188, 194; I-3, 7, 14, 21, 35, 41; TO-6, 8, 10a, 10b; BAG-10; WP1-f; WQ-56]

See top right.

Some certified businesses indicated that without goals, primes would not engage them as subs.

See bottom right comments, for example.

If we recognize that there are historical barriers ... that's why we have programs and mandates in the federal legislation that require a certain percentage of contracts go to firms, owned by women and minority groups that, when we leave folks like that out of the conversation then, we're not going to address them.

TO-4. White male representative of a business assistance organization

We will not get that same call or go-to because the fact is that we're not buddied up [with the primes] All of the projects that we have, the MBE requirement certification ... the TIF dollars that we received, or all these projects that are City financing that we received or they're [primes] required to have the MBE participation on those projects If it wasn't because of that [certification], they [primes] would not have even been reaching back out to me, even though they know we're capable of doing the job.

I-4. African American male owner of a construction-related firm

[Without a goal], the chances of me being added as a subcontractor on those projects are slim to none.

I-2. White female owner of a professional services firm

The [general contractors] see goals as something to be met, they see it as the maximum. They see the goals as a burden as opposed to an opportunity.

I-6. White male owner of a construction-related firm

I. Qualitative Information — Contract goals or other preference programs

Dissatisfaction with Current Contract Goals

Several interviewees commented on goals specific to firms owned by Hispanic Americans.

Comments are on the top right.

Some Minority-owned firms working as primes reported not understanding why self-performance does not apply to contract goals.

See comments on the bottom right column.

What I've also heard, and this is specific to the City from Hispanic-owned firms, that some of the regulations in place which tie targets to the percentage of racial groups in the underlying population very much limit their ability to get general contracts because we have such small Latino and Asian populations relatively so that was a legal barrier.

TO-1. White male representative of business assistance organization

The disparity goals are not incentives, but they are mandates. Very rarely do you see a prime contractor exceeding a mandate. If it is 25 and 5, they are going to do 25 and 5 They are not going to give up another penny. Basically, we were legislated out of doing business with the City.

TO-6. Hispanic male representative of a trade association

MBE goals for Hispanics [have changed] ... it is really upsetting.

BAG-2. Minority representative of a construction-related firm

I think the County for a time because we self-perform work didn't want to count that as part of the WBE expenditure on contracts. So that was very unfair for us because part of the reason why we choose certain projects is because we can still perform part of the work which helps us control the schedule and a lot of the dollar.

I-8b. African American female representative of a construction-related firm

[The County] wants diversity, but at the same time, if we're the prime, they want us to go out and find minorities so if we're the prime, our diversity doesn't qualify as MBE participation, we still have to go and find a minority and make that person a sub.

BAG-6. African American male representative of a construction-related firm

I. Qualitative Information — Other insights and recommendations regarding procurement practices

The study team gave business owners and representatives the opportunity to provide insights on other procurement-related topics important to them or suggest additional recommendations for improvements.

Suggestions Improving Procurement Practices

Some made general suggestions for improving procurement practices, for example:

I think the [County] needs to look at those contracts. I think that they [are] onerous and very one-sided.

I-41. African American female owner of a construction-related firm

St. Louis County needs to be more open-minded when it comes to minorities location-wise. They're hesitant to give new business opportunities to [certain] locations because of previous minority owners in those locations.

AS-116. Male owner of a professional services firm

Suggestions for New Programs

Some made suggestions for significant changes.

Examples of these comments are on the right.

For the City and for the County. I feel like the entire [procurement] process needs to be overhauled. I think there should be a 'tier system' for small, medium and large projects.

I-10. African American male owner of a construction-related firm

I think there needs to be more programs that support small business owners to empower them, to reward them for doing the right thing, to empower them to hire local people to do those jobs for them.

I-33. White female owner of a professional services firm

Here's the thing with the City and the County, I wish they had more perks like the City. The City was offering a grant for up-and-coming businesses, which would help me a lot, but because my business was a County address, I didn't get the grant. The County does not offer a lot of things like the City.

BAG-10. African American female owner of a professional service firm

I. Qualitative Information — Input on the construction workforce

In addition to gathering input on procurement practices, Keen Independent collected and analyzed qualitative information about workers' experiences in the construction trades in the City and the County.

Summary of Information Collection

As noted earlier in the introduction to this appendix, the study team gathered input via in-depth interviews and an electronic worker questionnaire distributed via multiple channels. Interviewees and respondents included workers who were women and people of color, as well as white male workers, employers, union representatives and other groups.

Topics Addressed

The next 14 pages synthesize input related to the local labor market for construction workers and apprentices. Topics are organized into the following four parts:

- Worker training and apprenticeship programs;
- Recruitment and retention;
- Barriers to working in the construction trades;
- Workforce goals and participation;
- Prevailing culture in the trades;
- Discrimination and unfair treatment of people of color and women;
- Barriers specific to workers who are people of color and women; and
- Other insights regarding the local construction workforce.

I. Qualitative Information — Worker training and apprenticeship programs

What Makes a Great Training Program

The study team asked interviewees and respondents about the components of a successful training program.

Many contractors, trade unions, trade associations and training organizations discussed what makes a great construction workforce training program, including for pre-apprentices, apprentices and others.

Examples of comments are shown on the right.

Not everyone is eager to teach new employees, making it even more difficult for them to integrate into the industry. Set people up for success by identifying [an] early pathway for them.

I-16. African American male worker in the construction-related firm

Perhaps more importantly [students] get to meet the apprenticeship teams and some current apprentices They are able to put a face with their application and maybe be identified by training coordinators for having a particular aptitude for trade and having a leg up in their apprenticeship applications.

U-4. White female representative of a trade union

Working collaboratively is [important], bringing an educational component to the table ... trying to focus goals and development on realistic goals rather than [using] politically expedient measures “[A realistic goal is] achievable [with a] plan for how to reach it so people can participate. We would participate, contractors would too.

TO-8. White male representative of a trade organization

One thing that all the trades need to do is encourage the high schoolers about ... the trades? What is engineering? The construction industry has not done a good job with that, and there are all types of jobs within the construction [industry].

BAG-5. African American male representative of a construction-related firm

In addition to our training and hands-on learning and career placement advising we offer support services. So, we are directly providing all of the work where and PPE needed to safely have a job. And go to the construction sites and go to the training centers.

U-4. White female representative of a trade union

I. Qualitative Information — Worker training and apprenticeship programs

Limitations in Training and Training Programs

Some interviewees and respondents reported limitations in available training for workers in the construction trades.

Some individuals reported that workers in the marketplace often do not receive adequate training through the local training programs. The location of the training facilities was also a limiting factor for some workers. For example:

We try to tap into the apprenticeship program, which has been a disaster since Covid. [Although], it wasn't great before Covid. It's a gender issue with a cultural issue the way they approach the apprentice program and the training school. ... [This is recognized as] a problem and [needs fixing]. ... And then all of those challenges alone create barriers for them, females and minorities.

I-60. Native American male owner of a professional services firm

I think there's a lot of training resources ... the issue is getting people connected to them and getting people into the training programs.

I-56. White female owner of a professional services firm

Additional examples of related comments are on the right.

I was once an apprentice in the painter's union, and I didn't receive the same opportunities on the job to learn how to advance my skills. For instance, I was never taught to use the sprayer [while] others that didn't look like me were trained. When I became an apprentice then I noticed, I was not called to work due to my pay ability.

U-3. African American male union representative

In addition to racism and sexism, the location of some of the training facilities creates barriers for people of color. The majority of the Black population in the St. Louis region is in the City of St. Louis and North St. Louis County. Often young folks wanting to get into the industry are reliant on public transportation.

WQ-11. White male worker

There is not enough [training] in the trades or the employees we get from our local union are not properly trained and/or always showing up late, or no show or don't like to work.

U-6. Native American male union representative

I. Qualitative Information — Worker training and apprenticeship programs

Ways Workers Learn About Available Training

Some reported to be unaware of training opportunities. [e.g., TO-13, WQ-9, 10, 27, 28, 36, 43, 51, 67] For example:

Access to the union apprenticeship process? How does it work?

WQ-14. White male union representative

Others reported that workers in the marketplace can find out about training opportunities through various means. Examples start below.

I think there seems to be a real effort, especially getting into high schools and saying, 'we're going to provide training for you.'

I-40. White male owner of a professional services firm

We spend a lot of time exposing students to the trades, in a way that they can ... especially if they're women, see themselves doing a male-dominated or a male-oriented job. Because of the historical barriers that existed into getting into union construction jobs over time I think there was a lack of awareness that these were really good jobs.

U-4. White female representative of a trade union

We have a lot of partnerships with community agencies.

U-4. White female representative of a trade union

[MODOT, for example is] ... at career fairs, job centers, having those partnerships and it's measured every year in the Affirmative Action Plan ... there's the online application ... through MO Careers.

TO-7. African American male representative of a trade association.

We have pre-apprenticeships and apprenticeship programs ... partnership with Missouri Women in Trades, local labor unions, [the]

Building Union Diversity Program, Ranken Technical [College], WIOA programs, dislocated programs and youth programs. We offer assessments to make sure [workers] will be successful ... remediation for preparing to go into training programs.

PE-1. Public entity representative

The community colleges ... had an initiative last year that was kind of like a workforce development. It was less 'take this degree that's going to cost you two to four years to complete' and more 'take this skills class.'

I-33. White female owner of a professional services firm

Have summer shadowing ... a college internship program.

I-34a. White female representative of a construction-related firm

We're trying to do a pretty holistic program for them ... building ... as time goes on. There's also a company ... [offering an] incredible [online] program; four training centers throughout the country that you go on site. But again, it's not really local.

I-40. White male owner of a professional services firm

In the construction field, we've got a greying workforce overall and so helping young people to understand that these are great paying exciting jobs is incumbent upon all of us.

TO-1. White male representative of business assistance organization

Unions have their own program[s], like carpenters, but you can be co-enrolled. Non-union partnerships with labor unions offer pre-apprenticeship programs.

PE-1. Public entity representative

I. Qualitative Information — Worker training and apprenticeship programs

Barriers to Entering and Completing Training Programs Including Pre-Apprenticeships and Apprenticeships

Interviewees and respondents reported barriers to entering and completing training programs, pre-apprenticeships and apprenticeships.

Examples of comments follow below and to the right.

Awareness of training and opportunities and access to training and opportunities Not seeing those enter the industry retained, underrepresented individuals only utilized on projects with goals and not in the private sector.

WQ-10. African American male representative of a construction-related firm

The general awareness of a career in the trades and people seeing themselves in the trades is certainly a barrier.

U-4. White female representative of a trade union

The social stigma of the trades [is a barrier] ... which is improving more recently.

WQ-19. White male union worker

Transportation ... Training Centers are in faraway places.

WQ-16. African American male union worker

Lack of family income to support a family member to go to school for training Construction companies require school or experience to get a job.

WQ-29. White male union worker

... providing the long-term support that's needed to just get through an apprenticeship. Once you overcome the barriers to get in, then there's the barrier to stay in ... whether there's something that happened on the job site that wasn't handled correctly [or] whether there is the inability to adapt with the change in job sites.

U-4. White female representative of a trade union

Requiring [a] GED or high school diploma. I'm sure there are many quality employees that can't get in because they don't have either and frankly just are not book learners or good test takers.

WQ-21. White male worker

You have to be able to pass basic testing to get an apprenticeship [in] specialized trades. Math/Reading/Spatial Relations/Mechanical.

WQ-62. White male union worker

For an apprentice to enter the trade [they] must have very good math skills and good attendance in previous schooling.

U-6. Native American male union representative

Licensing and finding a master license holder that is willing to train you.

WQ-23. White male worker

[I] went to train to be a painter, a Union painter. When I became a journeyman, I realized I was not taught everything, not by the school, but by the companies that hired me ... I would see [white] first-year apprentices, and I was a third-year apprentice They taught them how to use a sprayer, but they wouldn't ever teach me.

I-30. African American male union worker

I. Qualitative Information — Recruitment and retention of workers

Factors Contributing to Worker Recruitment and Retention

Contractors and representatives of trade unions, associations and training organizations discussed topics involving worker retention and what incentivizes workers to stay in the construction industry.

Although some study participants indicated that worker retention has been improving, others described negative factors impacting worker retention.

See comments on the right.

There is misinformation, misunderstanding [about] what construction industries are, how to enter ... it's outside work, not salaried, requires financial management.

TO-8. White male representative of trade association

I had an experience at a woman-owned prime and everybody knew that the owner really cared about helping women. I was promoted at that [firm] and that worked out very well for my career. So that's the power of female owned business. It made a real impact.

TO-10a. White female representative of a business assistance organization

[Regarding retention] all of these really qualified women and people of color were being looked over and weren't being promoted. That was definitely a moment where I felt like [there] was implicit bias in [contractor] actions.

I-28. White female owner of a professional services firm

Working your way up to journey status is based on time and experience. We know a lot of union jobs are seasonal and you are laid off for periods of time.... If you are not a person who makes new relationships easily, you may not have built up relationship[s] with people in charge making decisions [who] are laid off or called back.

PE-1. Public entity representative

I. Qualitative Information — Barriers to working in the construction trades

Limited Access to Childcare and Transportation

Some participants reported that lack of access to childcare and reliable transportation create challenges for construction workers in the local marketplace.

Access to childcare. Some participants reported that access to childcare is a barrier for workers with children, and limits, particularly women’s and single parents’ ability to work in the trades. Some study participants, for example, reported that local childcare facilities do not accommodate the early start hours common to the trades and that local childcare is not affordable.

Inadequate access to transportation. Unreliable transportation is a factor that can cause workers with limited access to transportation to miss out on work opportunities and lucrative overtime hours. [e.g., TO-3, 12, WQ-9, 12, 14, 16, 31, 40]

Addressing both barriers mentioned above, one participant said:

We don’t have daycare, it’s not like a factory that can provide daycare; transportation continues to be a problem, [work is] usually not near public transportation.

TO-8. White male representative of trade association

Other examples of comments related to access to childcare and transportation are shown to the right.

We know that childcare is a major challenge because work often starts very early in the morning before most childcare businesses or schools will be available in the morning.

I-34a. White female representative of a construction-related firm

Childcare is major, both not being able to find childcare that’s reliable and safe, that’s open early enough to get to work is one big problem. It’s hard for single parents to have any kind of young child with any kind of issue [like] illness, problems at school. [You’re] losing work or missing work for those issues.

TO-10b. African American female representative of a business-assistance organization

Lack of childcare, lack of maternity leave, gender and racial prejudice, lack of good public transportation [are barriers for women and people of color in the construction industry].

WQ-12. Asian American female worker

[Barriers include] reliable transportation, childcare so [that I] can get to work and work overtime, I also think a lot of people don’t know where to start, who/where to go to in order to start the process.

WQ-41. Female representative of a trade association

Reliable transportation is a barrier to employment. The three reasons apprentices don’t last on the job are: not showing up, not showing up on time and transportation problems.

WQ- 32. White male worker

[We need] commitment of labor. Locals [need to] value diversity. We need more journeymen in lieu of apprentice[s]. [We need] access to reliable transportation and means to obtain reliable transportation. Leaders [are] not being trained to be inclusive leaders.

WQ-10. African American male union representative

I. Qualitative Information — Barriers to working in the construction trades

Concerns about Crime and Personal Safety

Fear of crime and personal safety on jobsites was reported as a concern by some workers and can pose a challenge for worker recruitment and retention. Some individuals mentioned instances of harassment, hazing, racism and unequal treatment on jobsites.

Examples of comments are shown to the right.

Safety, vehicles and crime is a safety issue if they do not have police or secured parking for construction vehicles.

AS-122. White male owner of a construction-related business

St. Louis sucks and is crime ridden. No one wants to ... work there. I do as little as I can there.

I-22. Male representative of a professional services firm

Women, people of color and members of the LGBTQIA community don't feel safe or welcome on most job sites.

WQ-43. White female worker

Being a Muslim These foremen condescend [to] people. [They] threaten people about their jobs These bosses lay Black men off all the time based off lies from the foremen.

WQ-54. African American male worker

I. Qualitative Information — Barriers to working in the construction trades

“Good ol’ boy” and Other Closed Networks

Several interviewees indicated that workers who have family, friends or acquaintances in the trades are at an advantage over those who do not. [e.g., WQ-3, 14-16, 20, 36] For example:

I haven't had the opportunity to build generations of being involved [in the industry]. Some trades don't want people except those who are connected.

WQ-15. African American female worker

There is also evidence that workers with seniority have advantages over workers who have not worked as long in a trade. For example, some workers reported that it is difficult to advance within the construction trades because others have already worked in the trades for a considerable amount of time. This can perpetuate past discrimination.

Examples of comments are shown on the right side of this page.

Not knowing all the different trades. Not having a relative in the trades to get them access to employment in the trades. Fear of the unknown on both existing trade workers and those seeking to enter the trades [are barriers].

WQ-32. White male union worker

We've been trying to get the unions to reach out more and to hire more minority [employees] Everything is the 'good old boys' system. I don't think anything has changed.

BAG-6. African American male representative of a construction-related firm

Not being a part of the union workforce as a regular with a major company. You must be known by someone to keep working even when [working] with a company for a season.

U-3. African American male union representative

Some trades don't want people except those who are connected.

WQ-15. African American female worker

[There's] a lack of opportunity [to advance] because someone else has been doing it longer.

WQ-27. African American male worker

We have to realize the construction industry — which is why it is so closed — many of these businesses, are pretty much mom and pop type of operations, sole proprietorships, where the back office is small, the construction crews might be small, so the people who will be working for them will probably be word of mouth hires. So that tends to be a challenge to branch out.

BAG-5. African American male representative of a construction-related firm

I. Qualitative Information — Barriers to working in the construction trades

Barriers to Entry Faced by Workers with Criminal Records

Prior convictions can bar some workers from entering the construction trades for some interviewees. [e.g., WQ-46, 59]

Comments are shown on the right side of the page.

Legal [issues] such as having a bad background check, and not being able to perform the task at hand [are barriers to entry for women and people of color].

WQ-58. Construction trade worker

Made mistakes in the past affecting your future.

WQ-46. African American male union worker

The use of recreational drugs is not accepted in the industry even as policies and laws change here and around the country. It is a major challenge and barrier for recruiting workers into the field.

I-16. African American male worker in the construction-related firm

I. Qualitative Information — Workforce goals and participation

Workforce Goals

A few study participants commented on workforce goals.

See top right.

Effects of Workforce Goals

Some reported workers securing work based on race and gender, but when the job they are assigned to is completed, they are not retained, for example:

It's not as though women and people of color can't get into certain jobs, it's more than not that they are looked at as specific for that particular job. Once that job comes to an end, then so does the employment of women and/or minorities.

WQ-25. African American male worker

As far as workforce [goals], they don't enforce the workforce I have an issue with [how] they are hire Say they need a woman or minority on a job ... they hire one minority for just that particular job. Once the job is over, then they'll get rid of them. I find that that's a serious issue.

BAG-3. African American female owner of a construction-related firm

Some workers of color reported that they feel they are “passed over” because they are required to move between job sites to meet workforce goals, affecting their ability to maintain steady hours towards apprenticeships.

See examples of these comments on the right.

These goals are in place and SLDC is more and more involved, which is great. It's so helpful that we're having these monthly meetings that we're connecting about the projects. But how realistic are the goals actually with the current workforce? If we're asking for 23% City residents, what's the number of City residents that are in a union or that are skilled in a trade?

I-34a. White female representative of a construction-related firm

People of color are challenged because they move around on job sites ... this makes getting enough steady hours towards their apprenticeships difficult.

I-62. Minority business owner

Women, people of color apprentices, get bounced ... job to job ... don't get sustained experience [with] a crew, hard for them to advance.

PE-1. Public entity representative

The majority part of the system only does business with me because [they] have to. [Their] staff doesn't make it easy for me to do business They ridicule my work.

I-30. African American male union worker

Firms typically have their minority employee and move them around to whichever jobs they have as their proof of DEI commitment.

WP1-c. African American owner of a construction-related company

I. Qualitative Information — Prevailing culture in the trades

Some interviewees indicated that the homogenous, white male-dominated nature of job sites leads to discrimination against other groups. There were comments indicating that there is not sufficient organizational commitment to equity for people of color and women in the construction industry. [e.g., WQ-22, 33, 34, 67] For example:

Culture is still a challenge overall. Our industry [is] historically white male dominated, that has been challenging for people to enter and retain. A lot of it does have to do with culture on site.

I-34a. White female representative of a construction-related firm

Male-dominated Culture

Some reported that women workers face a male-dominated culture in the trades.

Examples of comments are shown on the top right.

Limited Commitment to Diversity in the Trades

Some interviewees and respondents reported a lack of commitment to establishing and sustaining a diverse workforce.

Examples of related comments are on the bottom right.

Many women do not consider construction as a viable career due to its history of being a male-dominated career with an environment that has not traditionally been welcoming for women.

WQ-24. White male worker

The industry is primarily men. There is a need for more women and minorities in the construction field.

WQ-5. African American male union worker

It's always been a hard industry for women to break into and there has always been a problem with how many people of color are actually hired on construction jobs.

WQ-8. African American female worker

Lack of diversity in positions of hiring within most companies It's not as though women and people of color can't get into certain jobs it's more than not that they are looked at as specific for that particular job. Once that job comes to an end, then so does the employment of women and/or minorities.

WQ-25. African American male worker

I just don't see many women and people of color in the trade, I feel like they're getting held back because it took me 3 years on being on the list to finally to become an apprentice.

WQ-42. Hispanic American male union worker

Union affiliation and the people in the union do not reflect women or minority. There are barely and few minorities there.

WQ-36. African American female union worker

I. Qualitative Information — Discrimination and unfair treatment of people of color and women

Many study participants reported that discrimination, prejudice, racism and sexism are rampant in the marketplace and impact workers of color and women in securing jobs as a worker or apprentice in the marketplace. [e.g., AS-12, 14, 114, 149, I-51, WQ-1, 37, 38, 46, 48, 53, 63, 64, 66] For example:

Undocumented hazing, racial tension and unequal treatment [are barriers for people of color and women].

WQ-51. African American male worker

Racism and Unfair Treatment for People of Color

Many interviewees and respondents reported racism for people of color working in the construction trades.

Examples of related comments are on the right top.

Sexism and Unfair Treatment of Women

Some study participants reported sexism and misogyny affecting women workers in the construction trades.

Comments follow on the right bottom.

Racism is systematically a factor. Caucasian employees will act like they don't want to work with you ... racism is alive and well in the work force especially the Union.

WQ-54. African American male worker

Racism is still prevalent in the St. Louis construction industry, especially among specific trades and labor unions. Sexism is also an issue but is not as big of an issue as racism. The entire industry needs to do a better job of recruitment among women and people of color.

WQ-11. White male worker

Being a Muslim These foremen condescend [to] people. [They] threaten people about their jobs because [they] want to talk down to you. These bosses lay Black men off all the time based off lies from the foremen.

WQ-54. African American male worker

It's a man's world and that's what everyone thinks.

WQ-2. African American male union worker

Being Black and female [are barriers to securing a job in the marketplace].

WQ-20. African American female worker

I think [sexism] is industry wide. It's a climate. It's not just a problem that one company or one union can solve. It's a culture within the industry and certainly in our area.

TO-10a. White female representative of a business assistance organization

I. Qualitative Information — Barriers specific to workers who are people of color and women

Challenges for Union Workers Who are People of Color and Women

Study participants provided examples of challenges and barriers that are specific to women and people of color working in trade unions.

Examples include:

I think it's a big game of keep away, and there are not enough women and people of color in the decision-making process to have entry into apprenticeships.

WQ-22. African American female worker

We work closely with our union, and the union recognizes they need to get more diversity within their ranks.

I-60. Native American male owner of a professional service firm

Other related comments are on the top right.

Any Other Unfair Hiring or Other Employment Practices Affecting Workers of Color and Women (including pay)

Some study participants reported that there are unfair hiring and other practices that primarily impact workers of color and women in the construction trades.

Some interviewees agree that workers of color and women are only hired on jobs to meet a workforce diversity goal.

See comment on the bottom right.

[Unions] have been late to the game in recruiting minorities and women, and it is really hurting them right now.

WP-1a. African American owner of a construction-related firm

Racism. Trade unions have historically excluded African Americans. There is the perception that only Caucasians are entitled to construction jobs and the good pay that goes with them.

WQ-33. African American female worker

The union thing here in St. Louis is a barrier for a lot of Hispanic firms because they are a lot more family-orientated business. They're not union. They don't want to be union. And, therefore, that eliminates them from participating on a lot of projects also. They do not understand it and they are not welcome in the unions, and they do not want to be ... Some unions make token efforts.

TO-6. Hispanic male representative of a trade association

People of color are laid off more and longer.

WQ-34. African American male union worker

In the union, you get treated unfairly because of your color..... They make you feel like they don't want you. They work you hard. You are discriminated against and put you on short term projects.

U-5. African American male union representative

Contractors hire one minority woman and keep her in the lowest skill position, just over to the side, and say 'we're doing our part.' Meanwhile, she's the only person of color, she's the only female. It reduces what's intended, and it's also bad for her.

TO-10a. White female representative of a business assistance organization

I. Qualitative Information — Other insights regarding the local construction workforce

Suggestions for Partnering with the City and/or County on Workforce and other Training Programs

Some interviewees provided suggestions for the City and the County regarding supporting workforce training programs and building potential partnerships.

These comments are on the top right.

Other Insights

Some business owners and representatives provided additional examples that perpetuate race and gender-based stereotypes. Comments are provided to the right.

See bottom right.

There is the possibility for SLATE to partner with primes and pay for training [for apprentices]. We want to strengthen construction primes participation with SLATE's programs. [We are currently] exploring more partnerships. We are already partners with the SLDC and MOKAN. Each entity [is] coming together so we can all benefit and work with one another under the Mayor's efforts.

PE-1. Public entity representative

They [the City and the County] need to phone the unions directly. They [unions] need ... to pour money into the agencies, and they need to put money into a consolidated workforce improvement program that focuses on those goals, specifically in the trades [The unions need to fund] fund it and the projects that encourage that.

I-60. Native American male owner of a professional services firm

I would love to see goals for not just women, but women in leadership positions as a specific goal. As a part of some of these bigger contracts [...] maybe over \$10,000,000 or something, have women foremen. And not just women apprentices either. St. Louis should be helping push those barriers as well.

TO-10a. White female representative of a business assistance organization

... there are not many Blacks or other people of color in leadership roles.

I-16. African American male worker in the construction-related field

APPENDIX J. Workforce Participation/Local Hiring Programs

Prepared By

HOLLAND & KNIGHT LLP

APPENDIX J

JANUARY 2024

ST. LOUIS COUNTY WORKFORCE DISPARITY STUDY

SUMMARY OF GENERAL LEGAL CONSIDERATIONS REGARDING CERTAIN WORKFORCE PARTICIPATION/LOCAL HIRING TYPE PROGRAMS

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J. Legal — Introduction

A. Introduction

Appendix K summarizes general legal considerations in relation to certain workforce participation/local hiring type programs for the City of St. Louis and St. Louis County. For brevity, Appendix K incorporates and does not repeat the legal framework and analysis in Appendix L of the City's and the County's Contract Equity Disparity Study Reports.

The Appendix reviews representative cases involving certain workforce participation/local hiring type programs that appear instructive to the study, including courts in Missouri and in other jurisdictions.

The *City of Richmond v. Croson* decision regarding minority-owned business enterprise programs (discussed in detail in Appendix L) provides a landmark Supreme Court decision that specifically ruled upon the constitutional validity of that type of program. There has been no such Supreme Court decision regarding programs adopted by a local or state government (not involving federal funds or a federal procurement) that required certain workforce participation goals be met by

contractors based on the race, ethnicity or gender of *employees of a contractor* performing services for a local or state government.

Thus, Appendix K incorporates and refers to, but will not restate here, the substantial case law and analysis discussed in detail in Appendix L of the Contract Equity Disparity Study Reports regarding the legal standards for strict scrutiny and intermediate scrutiny in connection with local or state government contracting programs, including implementing the Federal DBE Program, that involve, include or utilize race, ethnicity or gender business enterprise participation goals in determining the award of a local or state government contract. A race- and ethnicity-based business contracting program regarding firms owned by MBEs and implemented by a state or local government is subject to the strict scrutiny standard constitutional analysis.¹ Certain Federal Courts of Appeal, including the state of Missouri, apply intermediate scrutiny to gender-conscious programs.²

The Eighth Circuit Court of Appeals (which includes Missouri) has held: “We apply strict scrutiny to all governmental distinctions on the basis of race.”³ In applying strict scrutiny, the Eighth Circuit holds that a racial

1 *City of Richmond v. Croson*, 448 U.S. at 492-493; *Adarand Constructors, Inc. v. Peña* (Adarand I), 515 U.S. 200, 227 (1995); See *Fisher v. University of Texas*, 133 S.Ct. 2411 (2013); *AGC, SDC v. Caltrans*, 713 F.3d 1187, 1195-1200 (9th Cir. 2013); *Northern Contracting, Inc. v. Illinois DOT*, 473 F.3d 715, at 721(7th Cir. 2007); *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006); *Sherbrooke Turf, Inc. v. Minnesota DOT and Gross Seed v. Nebraska Department of Roads*, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004); *Adarand Constructors, Inc. v. Slater, Colorado DOT*, 228 F.3d 1147, 1176 (10th Cir. 2000) (“Adarand VII”); see, e.g. *H. B. Rowe v. NCDOT*, 615.3d 233, 241-242 (4th Cir. 2010); *Associated Gen. Contractors of Ohio, Inc. v. Drabik (“Drabik II”)*, 214 F.3d 730 (6th Cir. 2000); *Eng’g Contractors Ass’n of South Florida, Inc. v. Metro. Dade County*, 122 F.3d 895 (11th Cir. 1997); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 990 (3d Cir. 1993); *Geyer Signal, Inc. v. Minnesota DOT*, 2014 W.L. 1309092 (D. Minn. 2014).

2 See e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1195 (9th Cir. 2013); *H. B. Rowe*, 615 F.3d 233, 242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Eng’g Contractors Ass’n*, 122 F.3d at 905, 908, 910; *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993); see also *U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996)(“exceedingly persuasive justification.”); *Geyer Signal, Inc.*, 2014 WL 1309092., *Glossip v. Missouri Dept. of Transp. and Highway Patrol*, 411 S.W.3d 796 (Mo. banc 2013).

3 *Kohlbeck v. City of Omaha, Neb.*, 447 F.3d 552 (8th Cir. 2006), *citing Grutter v. Bollinger*, 539 U.S. 306, 326, 304 (2003) (“We have held that all racial classifications imposed by government ‘must be analyzed’ by a reviewing court under strict scrutiny.”);

J. Legal — Introduction

classification is constitutional, under the Equal Protection Clause of the Fourteenth Amendment, only if it is a narrowly tailored measure that furthers a compelling governmental interest.⁴

Appendix L also discusses the rational basis standard applicable to local and state government programs that provide preferences and classifications, but do not involve race, ethnicity or gender. Where a challenge to the constitutionality of a statute or a regulation does not involve a fundamental right or a suspect class, the appropriate level of scrutiny to apply is the rational basis standard.⁵ Thus, this Appendix discusses cases that apply the rational basis standard in challenges to local hiring or workforce participation type programs that involve the Equal Protection Clause.

⁴ Kohlbeek v. City of Omaha, Neb., 447 F.3d 552 (8th Cir. 2006), *citing*, Grutter, 539 U.S. at 326.

⁵ *See, e.g.*, Heller v. Doe, 509 U.S. 312, 320 (1993); Doe, I v. Peterson, 43 F.4th 838 (8th Cir. 2022); Crawford v. Antonio B. Won Pat International Airport Authority, 917 F.3d 1081, 1096 (9th Cir. 2019); Hettinga v. United States, 677 F.3d 471, 478 (D.C. Cir 2012); Price-Cornelison v. Brooks, 524 F.3d 1103, 1110 (10th Cir. 1996); White v. Colorado, 157 F.3d 1226, (10th Cir. 1998); Cunningham v. Beavers 858 F.2d 269, 273 (5th Cir. 1988); *see*

also Lundeen v. Canadian Pac. R. Co., 532 F.3d 682, 689 (8th Cir. 2008) (stating that federal courts review legislation regulating economic and business affairs under a ‘highly deferential rational basis’ standard of review.”); H. B. Rowe, Inc. v. NCDOT, 615 F.3d 233 at 254; *see*, Redlich v. City of St. Louis, 550 F.Supp.3d 734 (E.D. Mo. 2021); Missouri National Education Association v. Missouri, 623 S.W.3d 585 (Mo. banc 2021); Glossip v. Missouri Dept. of Transp. and Highway Patrol, 411 S.W.3d 796 (Mo. banc 2013).

J. Legal — General legal considerations workforce participation/local hiring type programs

B. Summary of General Legal Considerations Regarding Certain Workforce Participation/Local Hiring Type Programs

There are constitutional legal issues that may arise for local hiring or workforce participation type programs by local and state governments, including those listed below.

- Equal Protection Clause, such as considered in *Dunn v. Blumstein*,⁶ *McCarthy v. Philadelphia Civil Comm’n*,⁷ and *Lakeside Roofing Co. v. Nixon*⁸; see also *Kohlbek v. City of Omaha*.^{9,10}
- Privileges and Immunities Clause, such as considered in *United Bldg. & Constr. Trades Council v. Mayor of Camden*,¹¹ *Utility Contractors Ass’n of New England, Inc.*,¹² *Metro. Washington Chapter, Assoc. Builders and Contractors, Inc. v. District of Columbia*,¹³ *Lakeside Roofing Co. v. Nixon*,¹⁴ *Toomer v. Witsell*,¹⁵ ¹⁶~~16~~.

- Commerce Clause, such as considered in *Metro. Washington Chapter, Assoc. Builders and Contractors, Inc. v. District of Columbia*,¹⁷ *Lakeside Roofing Co. v. Nixon*,¹⁸ *Chance Management, Inc. v. State of S.D.*,¹⁹ *J.F. Shea Co., Inc. v. City of Chicago*.²⁰
- Federal or federally assisted construction contracts: Executive Order No. 11246, such as considered in *Contractors Ass’n of Eastern Pennsylvania v. Secretary of Labor*,²¹ *Associated General Contractors of Massachusetts, Inc. v. Altshuler*,²² *Southern Illinois Builders Association v. Ogilvie*,²³ *U.S. v. New Orleans Public Service, Inc.*,²⁴ *M. C. West, Inc. v. Lewis*,²⁵ *Chamber of Commerce of U.S. v. Reich*.²⁶

Some examples regarding these constitutional issues are discussed below, which are instructive to the study.

Equal Protection Clause

Challenges to local hire programs based upon the Equal Protection Clause have been generally not successful when they involve neither a suspect class nor a fundamental right. If a law distinguishes among

6 405 U.S. 330, 342-43 (1972)

7 424 U.S. 645, 646-47 (1976)

8 2012 WL 709276 (E.D. Mo. 2012)

10 447 F.3d 552 (8th Cir. 2006)

11 465 U.S. 208, 208 (1984)

12 236 F. Supp. 2d 113 (D. Mass 2002)

13 No. 12-853 (EGS), 2014 WL 3400569, (D.D.C. July 14, 2014).

14 2012 WL 709276 (E.D. Mo. 2012)

15 334 U.S. 385 (1948)

16 437 U.S. 518 (1978)

17 No. 12-853 (EGS), 2014 WL 3400569 (D.D.C. July 14, 2014).

18 2012 WL 709276 (E.D. Mo. 2012).

19 97 F.3d 1107 (8th Cir. 1996).

20 992 F.2d 745 (7th Cir. 1993).

21 442 F.2d 159 (3d Cir. 1971), cert denied, 404 U.S. 854 (1971);

22 361 F.Supp. 1293 (D. Mass. 1973)

23 327 F.Supp. 1154 (S.D.Ill.1971)

24 553 F.2d 459 (1977)

25 522 F.Supp. 338 (1981)

26 83 F.3d 439 (D.C. Cir. 1996)

J. Legal — General legal considerations workforce participation/local hiring type programs

groups on the basis of a suspect classification or burdens the exercise of a fundamental right, the government must demonstrate that the regulation is necessary to further a compelling state or governmental interest and is the least drastic means available to further that interest under the strict scrutiny test.^{27 28}

If there is no suspect class or fundamental right involved, the government generally would be required to show that the challenged law is rationally related to a legitimate government interest under the rational basis test. See Section C of this appendix for a detailed discussion of the rational basis standard.

Durational residency requirements have been challenged on the basis that they directly impinge upon the right to travel, a fundamental right, and have been held to violate equal protection under a strict scrutiny analysis.²⁹

Although it appears that published equal protection challenges to durational residency programs in the context of local hiring programs have been limited, in other cases courts have held that durational residency requirements are constitutionally invalid under an equal protection analysis because they impinge on the fundamental right to travel.³⁰

But, conditional residency requirements that require residency within or near a specified government unit as a condition of obtaining or continuing employment have been held not to implicate the fundamental right to travel and evaluated under the rational basis standard.³¹ Under Equal Protection doctrine, state residency in general is not a “suspect classification” such that it would trigger strict scrutiny review. It appears local governments in certain circumstances may enact resident preferences, which do not involve or trigger a fundamental right or suspect classification and are not race, ethnic or gender based, without violating the Fourteenth Amendment as long as the preferences are rationally related to a legitimate state interest. In *Camden*,³² the Supreme Court found the city of Camden had rendered moot the equal protection challenge against it by removing a one-year residency requirement from its local hiring ordinance, and instead granted preference to all residents.

In the Eighth Circuit, the court in *Chance Management, Inc. v. State of S.D.*³³ held the residency requirement that operators of video lottery machines be South Dakota residents did not violate the Equal Protection Clause.

The court applied the rational basis standard of review as controlling the equal protection challenge. Under the rational basis standard, the court said it presumes legislation is valid and will sustain it if the classification drawn by the statute is rationally related to a legitimate state interest.³⁴ The court stated that plaintiffs have the burden of proving that the

27 424 U.S. 645, 646-47 (1976).

28 *Dunn v. Blumstein*, 405 U.S. 330, 342-43 (1972).

29 *Dunn v. Blumstein*, 405 U.S. at 334-35, 338, 342.

30 See, e.g., *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 269 (1974) (A statute imposing a durational residency requirement as a condition to receiving nonemergency medical care at a county hospital violated the Equal Protection Clause and directly impeded the right of interstate travel); *Dunn*, 405 U.S. at 360 (a state law requiring would-be voters to have been a resident for a year in the state and three months in a county did not further any compelling state interest and violated the Equal Protection

Clause of the Fourteenth Amendment; such a durational residency requirement implicated the fundamental right to travel and the right to vote, and did not further any compelling state interest.).

31 *McCarthy v. Philadelphia Civil Comm’n*, 424 U.S. 645, 646-47 (1976)

32 465 U.S. at 213

33 97 F.3d 1107 (8th Cir. 1996)

34 *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440 (1985)

J. Legal — General legal considerations workforce participation/local hiring type programs

classification is so attenuated to its asserted purpose that the distinction it draws is wholly arbitrary and irrational.³⁵ Moreover, the court noted a party challenging the legislation must negate “every conceivable basis which might support it.”³⁶

The court agreed with the district court that the state has a legitimate interest in ensuring that the state’s substantial investment in its video lottery business ultimately benefits the South Dakota taxpayers. The legislature could have rationally concluded that a residency requirement would further this interest. The court cited with approval a decision holding a statute was rationally related to a state’s legitimate interest in directing benefits generated by state purchases to the citizens of the state.³⁷

The court found the residence requirement was rationally related to legitimate interests averred by the state.

A decision of the United States Court of Federal Claims is instructive and illustrates the importance of gathering evidence to ensure that a local government program, which provides for participation goals not based specifically on race, ethnicity or gender in awarding contracts, is rationally related to a legitimate government interest. *Firstline Transp. Security, Inc. v. U.S.*³⁸ involved a solicitation that established a small business subcontracting goal requirement (not a local hiring or workforce participation goal for employees of contractors). In *Firstline*, the Transportation Security Administration (“TSA”) issued a solicitation for security stated that the: “Government anticipates an overall Small

Business goal of 40 percent,” and that “[w]ithin that goal, the government anticipates further small business goals of: Small, Disadvantaged business[:] 14.5 percent; Woman Owned[:] 5 percent; HUBZone[:] 3 percent; Service Disabled, Veteran Owned[:] 3 percent.”³⁹

The court applied the rational basis test in construing the challenge to the establishment by the TSA of a 40 percent small business participation goal as unlawful and irrational.⁴⁰ The court stated it “cannot say that the agency’s approach is clearly unlawful, or that the approach lacks a rational basis.”⁴¹ The court found that “an agency may rationally establish aspirational small business subcontracting goals for prospective offerors....” The court found based on the evidence presented in the case that the “40 percent goal is a rational expression of the Government’s policy of affording small business concerns ... the maximum practicable opportunity to participate as subcontractors”⁴²

35 City of Cleburne, 473 U.S. at 446

36 FCC v. Beach Communications, Inc., 508 U.S. 307, 315 (1993).

37 Chance Management, Inc. v. State of S.D., *citing*, Smith Setzer & Sons, Inc. v. S.C. Procurement Review Panel, 20 F.3d 1311 (4th Cir.1994)

38 2012 WL 5939228 (Fed. Cl. 2012).

39 Id.

40 Id.

41 Id.

42 Id.

J. Legal — General legal considerations workforce participation/local hiring type programs

Privileges and Immunities Clause

Local preference type programs have been successfully challenged under the Privileges and Immunities Clause, which prevents discrimination against out-of-state or out-of-city residents unless there is a substantial reason for treating such citizens differently.⁴³ Discrimination against nonresidents must be shown to “constitute a peculiar source of the evil at which the statute is aimed.”⁴⁴

In *United Bldg. & Constr. Trades Council v. Mayor of Camden*⁴⁵ the Supreme Court found a potential Privileges and Immunities violation in a city ordinance which required that at least 40 percent of the employees of contractors and subcontractors working on city construction projects be city residents.

The Court in *Camden* stated that as part of any justification offered for a local purchasing preference, “nonresidents must somehow be shown to ‘constitute a peculiar source of the evil at which the statute is aimed.’”⁴⁶ The Court pointed out that “[e]very inquiry under the Privileges and Immunities Clause ‘must... be conducted with due regard for the principle that the states should have considerable leeway in analyzing local evils and in prescribing appropriate cures.’ ... This caution is

particularly appropriate when a government body is merely setting conditions on the expenditure of funds it controls.”⁴⁷

In *Camden*, an association of labor organizations representing private employees in building and construction trades filed an appeal challenging the New Jersey Treasury Department’s approval of a municipal ordinance requiring that at least 40 percent of employees of contractors and subcontractors working on city construction projects be city residents.

43 *Utility Contractors Ass’n of New England, Inc.*, 236 F. Supp. 2d 113 (D. Mass 2002) (City of Worcester’s Residency Requirement Ordinance which required that all private contractors or subcontractors on city public works projects allocate 50% of their total employee work hours to Worcester residents violated Privileges and Immunities Clause because it discriminated against out-of-state residents, and City’s reason of high unemployment did not demonstrate substantial reason for discrimination). See also *Big D. Constr. Corp. v. Court of Appeals*, 789 P.2d 1061 (Ariz. 1990) (bid preference statute that granted preference to resident businesses for public works projects violated Privileges and Immunities Clause when privileges it conferred were no longer rationally related to any legitimate state purpose); *Metro. Washington Chapter, Assoc. Builders and Contractors, Inc. v. District of Columbia*, No. 12-853 (EGS), 2014 WL 3400569 (D.D.C.

July 14, 2014) (stating court must consider (1) whether the activity purportedly threatened by classification is a fundamental right protected by the Privileges and Immunities Clause, and (2) if the challenged restriction deprives nonresidents of a protected privilege, whether the restriction is “closely related to the advancement of a substantial state interest.”).

44 *Id.*

45 465 U.S. 208, 208 (1984)

46 *Id.* (quoting *Toomer v. Witsell*, 334 U.S. 385, 396) (1948)

47 *Id.*, 465 U.S. at 222-223

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The Supreme Court held that:

- (1) the city ordinance requiring that at least 40 percent of employees of contractors and subcontractors working on city construction projects be city residents was properly subject to the Privileges and Immunities Clause;
- (2) the ordinance discriminated against a protected privilege; and
- (3) since it was impossible based on the record to evaluate city's justification, a remand was appropriate.

A municipal ordinance of the city of Camden, New Jersey required that at least 40 percent of the employees of contractors and subcontractors working on city construction projects be Camden residents. Appellant, the United Building and Construction Trades Council of Camden and Vicinity (the Council), challenged that ordinance as a violation of the Privileges and Immunities Clause of the United States Constitution. The Supreme Court of New Jersey “decline[d] to apply the Privileges and Immunities Clause in the context of a municipal ordinance that has identical effects upon out-of-state citizens and New Jersey citizens not residing in the locality.”

In sum, the Court concluded that the challenged ordinance was properly subject to the strictures of the Clause, reversed the judgment of the Supreme Court of New Jersey, and remanded the case for a determination of the validity of the ordinance under the appropriate constitutional standard under the Clause.

The Court stated that the Camden City Council, acting pursuant to a “state-wide affirmative action program,” adopted an ordinance setting minority hiring “goals” on all public works contracts. The New Jersey Law Against Discrimination established a “comprehensive affirmative action program in the awarding of public works contracts.” The Court

noted that any contractor, subcontractor or firm seeking contracts must guarantee compliance with an affirmative action program approved by the State Treasurer. The Treasurer is empowered to promulgate specific affirmative action requirements based on “the percentage of population of minority groups in the State or areas thereof.” Alternatively, the law permitted municipal and state agencies to adopt and administer their own affirmative action plans, which must be submitted to the State Treasurer to ensure that each plan conforms to the statutory and administrative requirements, and “establishes an employment goal which is not lower than the applicable goal established by” the Treasurer.

The ordinance also created a hiring preference for Camden residents, with a separate one-year residency requirement triggering eligibility for that preference.

The Court held that application of the Privileges and Immunities Clause to a particular instance of discrimination against out-of-state residents entails a two-step inquiry. As an initial matter, the Court stated it first must decide whether the ordinance burdens one of those privileges and immunities protected by the Clause.

As a threshold matter, the Court said it must determine whether an out-of-state resident's interest in employment on public works contracts in another State is sufficiently “fundamental” to the promotion of interstate harmony so as to “fall within the purview of the Privileges and Immunities Clause.” The Court found that the “pursuit of a common calling is one of the most fundamental of those privileges protected by the Clause.”

The Court noted that public employment is qualitatively different from employment in the private sector; “it is a subspecies of the broader opportunity to pursue a common calling. We have held that there is

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no fundamental right to government employment for purposes of the Equal Protection Clause.”

In sum, the Court held, Camden may, without fear of violating the Commerce Clause, pressure private employers engaged in public works projects funded in whole or in part by the city to hire city residents. But that same exercise of power to bias the employment decisions of private contractors and subcontractors against out-of-state residents may be called to account under the Privileges and Immunities Clause.”

The Court stated that a determination of whether a privilege is “fundamental” for purposes of that Clause does not depend on whether the employees of private contractors and subcontractors engaged in public works projects can or cannot be said to be “working for the city.” The Court said the “opportunity to seek employment with such private employers is ‘sufficiently basic to the livelihood of the Nation’... ‘as to fall within the purview of the Privileges and Immunities Clause even though the contractors and subcontractors are themselves engaged in projects funded in whole or part by the city.’”

The conclusion that Camden’s ordinance discriminates against a protected privilege does not, the Court found, end the inquiry. The Court pointed out it has stressed in prior cases that “[l]ike many other constitutional provisions, the privileges and immunities clause is not an absolute.” The Court said it does not preclude discrimination against citizens of other states where there is a “substantial reason” for the difference in treatment. “[T]he inquiry in each case must be concerned with whether such reasons do exist and whether the

degree of discrimination bears a close relation to them.” The Court noted that as part of any justification offered for the discriminatory law, nonresidents must somehow be shown to “constitute a peculiar source of the evil at which the statute is aimed.”⁴⁸

The Court held that every inquiry under the Privileges and Immunities Clause “must ... be conducted with due regard for the principle that the states should have considerable leeway in analyzing local evils and in prescribing appropriate cures.” This caution, the Court pointed out, is particularly appropriate when a government body is merely setting conditions on the expenditure of funds it controls.

The Court distinguished the Alaska Hire statute at issue in *Hicklin v. Orbeck*⁴⁹ as sweeping “within its strictures not only contractors and subcontractors dealing directly with the State’s oil and gas; it also covered suppliers who provided goods and services to those contractors and subcontractors.” The Court said that it invalidated the Act as “an attempt to force virtually all businesses that benefit in some way from the economic ripple effect of Alaska’s decision to develop its oil and gas resources to bias their employment practices in favor of the State’s residents.”⁵⁰ The Court in *Camden* found that no similar “ripple effect” appears to infect the Camden ordinance. It is limited in scope to employees working directly on city public works projects.”

The Court ultimately concluded that it found it impossible to evaluate Camden’s justification on the record as it stood since there had been no trial or findings of fact. The Court reversed the judgment of the Supreme Court of New Jersey, and the case was remanded.

48 Id., at 398

49 437 U.S. 518 (1978)

50 Id., at 531

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It is noteworthy that in footnote 5 of the opinion, the Court said the Council also challenged approval of the minority hiring goals as *ultra vires* the State Treasurer's authority and as a violation of equal protection. The New Jersey court rejected both arguments, finding approval of the goal within the clear scope of the State Treasurer's delegated authority and the goal itself constitutional under *Fullilove v. Klutznick*.⁵¹ But, the Council did not appeal from that ruling, and thus these rulings were not addressed by the Court. The legal standard in *Fullilove* was subsequently overruled by the Court in the 1989 *Croson* decision that established strict scrutiny for race-based programs.

In *Lakeside Roofing Co. v. Nixon*,⁵² the Missouri federal district court upheld Plaintiffs challenge of the constitutionality of Missouri's Excessive Unemployment Law, Mo. Rev. Stat. § 290.550 et seq., which provided that during times when Missouri's unemployment rate had exceeded 5 percent for the preceding two months, only Missouri laborers or laborers from "nonrestrictive states" may be employed in the construction of public works projects. The court held nonresidents were granted summary judgment on their claim that Missouri's Law violated the Privileges and Immunities Clause, U.S. Const. art. IV, § 2, where the state officials did not articulate a substantial reason for treating residents of restrictive states differently than Missouri residents or residents of nonrestrictive states. See detailed discussion below in Section C.

In *Hicklin v. Orbeck*,⁵³ the U.S. Supreme Court addressed a challenge to the constitutionality of the "Alaska Hire" law. The Supreme Court of Alaska⁵⁴ held that the Act's general preference for Alaska residents was constitutionally permissible, but that the durational residency requirement was constitutionally invalid. The U.S. Supreme Court held

the Alaska hire law, which required all oil and gas leases, easements or right-of-way permits for oil or gas pipeline purposes and unitization agreements must contain a requirement that qualified Alaska residents be hired in preference to nonresidents is unconstitutional as violative of the Privileges and Immunities Clause of the Constitution. The Court reversed the decision of the Supreme Court of Alaska.

The Court stated that Appellants' appeal to the protection of the Clause is strongly supported by the Court's decisions holding violative of the Clause state discrimination against nonresidents seeking to ply their trade, practice their occupation or pursue a common calling within the State. The Court noted it has recognized that a resident of one state is constitutionally entitled to travel to another state for purposes of employment free from discriminatory restrictions in favor of state residents imposed by the other state.

The Court said *Toomer v. Witsell*⁵⁵ was the "leading modern exposition of the limitations the Clause places on a State's power to bias employment opportunities in favor of its own residents." It invalidated a South Carolina statute that required nonresidents to pay a fee 100 times greater than that paid by residents for a license to shrimp commercially in the three-mile maritime belt off the coast of that state. The Court reasoned that although the Privileges and Immunities Clause "does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it," "[i]t does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States."⁵⁶ The Court explained a "substantial reason for the discrimination" would not exist "unless

51 448 U.S. 448 (1980)

52 2012 WL 709276 (E.D. Mo. 2012)

53 437 U.S. 518 (1978)

54 565 P.2d 159 (1970) ,

55 334 U.S. 385 (1948)

56 Id.

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there is something to indicate that noncitizens constitute a peculiar source of the evil at which the [discriminatory] statute is aimed.”⁵⁷

Moreover, the Court stated, even where the presence or activity of nonresidents causes or exacerbates the problem the State seeks to remedy, there must be a “reasonable relationship between the danger represented by non-citizens, as a class, and the . . . discrimination practiced upon them.”⁵⁸

The Court concluded that even if a State may validly attempt to alleviate its unemployment problem by requiring private employers within the State to discriminate against nonresidents, the Court stated that it is clear that the Alaska Hire Act’s discrimination against nonresidents cannot withstand scrutiny under the Privileges and Immunities Clause. The Court found that although the statute may not violate the Clause if the State showed “something to indicate that noncitizens constitute a peculiar source of the evil at which the statute is aimed,” there was no showing on the record that nonresidents were “a peculiar source of the evil” the Alaska Hire Act was enacted to remedy, namely, Alaska’s “uniquely high unemployment.”

Even if the State’s showing is accepted as sufficient to indicate that nonresidents were “a peculiar source of evil,” the Court held the Alaska Hire Act failed to pass constitutional muster. The discrimination the Act works against nonresidents, the Court found, does not bear a substantial relationship to the particular “evil” they are said to present. The Court concluded that the Alaska Hire Act simply granted all Alaskans, regardless of their employment status, education, or training, a flat employment preference for all jobs covered by the Act.

57 Id., at 398

58 Id., at 399

Commerce Clause

Local hiring preference programs sometimes are challenged as a violation of the Commerce Clause, which prohibits discrimination against out-of-state or out-of-city residents and economic protectionism — regulatory measures designed to benefit local economic interests by burdening out-of-area competitors.

These challenges have usually not been successful because programs are upheld if the “market participant exception” applies, meaning the program does not regulate work distribution in the market to local firms, but instead involves the local government being a “market participant” or party to all contracts awarded to local firms. Under the Dormant Commerce Clause, courts have held a city can impose local hiring requirements when it acts as a “market participant” or as a proprietor spending its own funds⁵⁹.

In *White v. Massachusetts Council of Constr. Employers*,⁶⁰ the Supreme Court found there was not a Dormant Commerce Clause violation in a city ordinance that required that all construction projects funded with city funds be performed by a workforce consisting of at least 50 percent city residents.

The Supreme Court held as unconstitutional an executive order of the Mayor of Boston requiring all construction projects funded in whole or in part by city funds or funds that the city had authority to administer to be performed by a work force at least half of which were bona fide city residents. The Supreme Court held that the order did not violate the Commerce Clause. The Court concluded that insofar as city expended only its own funds in entering into construction contracts for public projects, it was a market participant. To the extent the executive order was applied to

59 See, e.g., *Camden*, 465 U.S. at 213; *White*, 460 U.S. at 214-15

60 460 U.S. 204 (1983)

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projects funded in part with funds obtained from federal programs, the order was affirmatively sanctioned by the pertinent regulations of those programs.

The Court stated that where the restrictions imposed by the city on construction projects financed in part by federal funds are directed by Congress, then no Dormant Commerce Clause issue is presented. The Court held when a state or local government enters the market as a participant it is not subject to the restraints of the Commerce Clause. The Court said that in this kind of case “there is a single inquiry: whether the challenged ‘program constituted direct state participation in the market.’”

Insofar as the city expended only its own funds in entering into construction contracts for public projects, the Court found it was a market participant. And, to the extent the Mayor’s executive order was applied to projects funded in part with funds obtained from the federal programs described above, the order was affirmatively sanctioned by the pertinent regulations of those programs.

Examples of when programs have been upheld with respect to the Commerce Clause include:

- *Big Country Foods, Inc. v. Bd. of Ed. of Anchorage School Dist.*,⁶¹ the court upheld Alaska statute that gave 7 percent bidding preference to Alaska milk harvesters in contracting. Because of market participant exception; the State was acting as purchaser of product rather than market regulator.

61 952 F.2d 1173 (9th Cir. 1992)

62 992 F.2d 745 (7th Cir. 1993)

63 No. 12-853 (EGS), 2014 WL 3400569, at *16 (D.D.C. July 14, 2014)

- *J.F. Shea Co., Inc. v. City of Chicago*,⁶² the court held the City of Chicago’s local business preference rule for award of City’s construction contracts did not violate the Commerce Clause; and held the “market participant exception” applied since the city was using its own funds to hire contractors for City projects.
- *Metro. Washington Chapter, Assoc. Builders and Contractors, Inc. v. District of Columbia*, the court held that a⁶³ residential preference statute mandating that certain percentages of construction jobs on projects funded in whole or in part, or administered by the city, be filled by District residents did not violate the Commerce Clause because market participant exception applied with respect to city-funded construction projects.
- *Lakeside Roofing Co. v. Nixon*,⁶⁴ the federal district court in Missouri held a local hiring preference statute as not invalid based on a Commerce Clause challenge. See discussion in Section C below.
- *Chance Management, Inc. v. State of S.D.*,⁶⁵ The Eighth Circuit held the residency requirement did not violate the Commerce Clause.

Federal or federally assisted construction contracts: Executive Order No. 11246. In *Contractors Ass’n of Eastern Pennsylvania v. Secretary of Labor*,⁶⁶ Plaintiffs challenged the validity of the President’s Executive Order No. 11246, which was known as the Philadelphia Plan, and included orders issued by the U.S. Department of Labor in 1969. The orders required bidders on federal or federally assisted construction contracts for projects in a five-county area around Philadelphia to

64 2012 WL 709276 (E.D. Mo. 2012)

65 97 F.3d 1107 (8th Cir. 1996).

66 442 F.2d 159 (3d Cir. 1971), cert denied, 404 U.S. 854 (1971)

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submit an affirmative action program that included specific goals for the utilization of minority workers in six skilled crafts.

Among the claims by Plaintiffs were that the orders violated due process because: (a) it requires contradictory conduct impossible of consistent attainment; (b) it unreasonably requires contractors to undertake to remedy an evil for which the craft unions, not contractors, are responsible; (c) it arbitrarily and without basis in fact singles out the five-county Philadelphia area for discriminatory treatment without adequate basis in fact or law; and (d) it requires quota hiring in violation of the Fifth Amendment.

The court held the Philadelphia Plan was valid and rejected these challenges for several reasons, including:

1. The findings in the 1969 order disclose that the specific goals may be met, considering normal employee attrition and anticipated growth in the industry, without adverse effects on the existing labor force;
2. Plaintiffs are not being discriminated against, but are merely being invited to bid on a contract with terms imposed by the source of the funds, and the affirmative action covenant is no different in kind than other covenants specified in the invitation to bid.;

3. The court rejects the Plaintiff's claims that the specific goals are racial quotas prohibited by the equal protection aspect of the Fifth Amendment; and
4. The Philadelphia Plan is a valid executive action "designed to remedy the perceived evil that minority tradesmen have not been included in the labor pool available for the performance of construction projects in which the federal government has a cost and performance interest," and that the Fifth Amendment does not prohibit such action.

Examples of similar cases addressing or following this case include: *Associated General Contractors of Massachusetts, Inc. v. Altshuler*,⁶⁷ *Southern Illinois Builders Association v. Ogilvie*,⁶⁸ *U.S. v. New Orleans Public Service, Inc.*,⁶⁹ *M. C. West, Inc. v. Lew*.^{70,71}

67 361 F.Supp. 1293 (D. Mass. 1973)

68 327 F.Supp. 1154 (S.D.Ill.1971)

69 553 F.2d 459 (5th Cir. 1977)

71 522 F.Supp. 338 (D. Tenn. 1981)

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C. SUMMARIES OF EXAMPLES OF INSTRUCTIVE FEDERAL COURT DECISIONS IN THE EIGHTH CIRCUIT COURT OF APPEALS AND OTHER CIRCUITS RELATING TO WORKFORCE PARTICIPATION/LOCAL AND MINORITY HIRING TYPE PROGRAMS

1. *Lakeside Roofing Co. v. Nixon*, 2012 WL 709276 (E.D. Mo. 2012).

In *Lakeside*, the court held nonresidents were granted summary judgment on their claim that Missouri’s Excessive Unemployment Law, Mo. Rev. Stat. § 290.550 et seq., violated the Privileges and Immunities Clause, U.S. Const. art. IV, § 2, where the state officials did not articulate a substantial reason for treating residents of restrictive states differently than Missouri residents or residents of nonrestrictive states. The law also violated the Equal Protection Clause, U.S. Const. amend. XIV, § 1. However, the court found it did not violate the Dormant Commerce Clause, U.S. Const. art. I, § 8.

Plaintiffs were nine individual residents of Illinois who sought work as journeymen roofers and three corporations who sought to employ the individual defendants and bid on public works projects in Missouri. Plaintiffs challenged the constitutionality of Missouri’s Excessive Unemployment Law. Missouri’s Excessive Unemployment Law provided that, during times when Missouri’s unemployment rate had exceeded 5 percent for the preceding two months, only Missouri laborers or laborers from “nonrestrictive states” may be employed in the construction of public works projects. Nonrestrictive states are states that have not enacted laws that restrict Missouri laborers from working on public works projects in those states.

Privileges and Immunities Clause. Plaintiffs argued the Missouri Excessive Unemployment Law violates the Privileges and Immunities Clause of Article IV of the United States Constitution. As an initial matter, the court stated it must decide whether the ordinance burdens one of those privileges and immunities protected by the Clause citing the Supreme

Court decisions in *United Bldg. and Constr. Trades Council of Camden County and Vicinity v. City of Camden*. (See above discussion). Not all forms of discrimination against citizens of other States, the court said are constitutionally suspect. Thus, a court must determine whether an out-of-state resident’s interest is sufficiently “fundamental” to the promotion of interstate harmony so as to fall within the purview of the Privileges and Immunities Clause.

The court, citing the Supreme Court decisions, stated that pursuit of a common calling is “one of the most fundamental of those privileges protected by the Clause.” *Id.* 465 U.S., at 219. Although public employment is “qualitatively different” from private employment, the United States Supreme Court has recognized that employment on public works projects is a fundamental right under the Privileges and Immunities Clause. *See Camden*, at 219, 221-22 (*stating* “the opportunity to seek employment with such private employers is sufficiently basic to the livelihood of the Nation as to fall within the purview of the Privileges and Immunities Clause even though the contractors and subcontractors are themselves engaged in projects funded in whole or part by the city.”) (internal citations omitted). Therefore, the court held the Excessive Unemployment Law burdens a privilege protected by the Privileges and Immunities Clause.

If a challenged restriction deprives nonresidents of a privilege or immunity protected by the Privileges and Immunities Clause, a court will hold it invalid unless (1) there is a substantial reason for the difference in treatment, and (2) the discrimination practiced against nonresidents bears a close relationship to the state’s objective. *Lakeside Roofing Co. v. Nixon*, *citing Toomer*, 334 U.S., at 396. Thus, the inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them. As part of any justification offered for the discriminatory law, nonresidents must somehow be shown to constitute a peculiar source of the evil at which the statute is aimed. *Lakeside Roofing Co. v. Nixon*, *citing Camden*, 465 U.S. at 222 (internal citations omitted).

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The court in *Lakeside Roofing Co.*, discussed the decision in *Hicklin*, 437 U.S. at 533-34, in which the Supreme Court used the Privileges and Immunities Clause to strike down legislation in Alaska that required that all state oil and gas leases and permits contain a provision requiring the employment of Alaska residents in preference to nonresidents. The *Hicklin* Court noted that the legislation was passed “professedly for the purpose of reducing unemployment in the State.” *Id.* at 520. The Court found the position of the challengers to the law was “strongly supported by this Court’s decisions holding violative of the Clause state discrimination against nonresidents seeking to ply their trade, practice their occupation, or pursue a common calling within the State.” *Id.* at 524.

The court in *Lakeside Roofing Co.* noted the Supreme Court found that even assuming a state could enact legislation discriminating against nonresidents as a way to combat in-state unemployment—an assumption the Court found in that case “at least dubious”—there was no showing that nonresidents were “a peculiar source of the evil” (i.e., a cause of high unemployment) that the legislation in *Hicklin* was enacted to remedy. *Id.* at 526. Instead, the Court found the record contained evidence that the major cause of Alaska’s high unemployment was the lack of education and job training and the geographical remoteness from job opportunities of a substantial number of Alaska’s unemployed residents. *Id.* at 526-27.

Furthermore, the Court found that even if nonresidents could be considered “a peculiar source of evil,” the legislation in *Hicklin* did not bear a substantial relationship to the “evil” the nonresidents presented because the legislation granted all Alaskans a flat employment preference regardless of their employment status, education, or training. *Id.* at 527. The legislation’s “across-the-board grant of a job preference to all Alaskan residents” was, therefore, not closely tailored to aid the unemployed. *Id.* at 528.

The Supreme Court later confirmed, the *Lakeside* court said, that the reasoning delineated in *Hicklin* applied to cases involving laws giving employment preference on public works projects to state residents. *See*

Camden, 465 U.S. at 221 (stating “Much of the same analysis [in *Hicklin*], we think, is appropriate to a city’s efforts to bias private employment decisions in favor of its residents on construction projects funded with public monies.”).

The *Lakeside* court stated that courts applying *Hicklin* to determine the validity of laws requiring or giving preference to the employment of residents by contractors engaged in the construction of public works projects have nearly uniformly ruled that such laws violate the Privileges and Immunities Clause. (Citations of cases omitted).

The court found that Defendants failed to articulate a substantial reason for treating residents of restrictive states differently than Missouri residents or residents of nonrestrictive states under the first prong of the Privileges and Immunities Clause analysis. The court held the failure of Defendants to identify a substantial reason for the Excessive Unemployment Law ends the court’s Privileges and Immunities Clause inquiry.

Without a substantial reason for the difference in treatment, the court need not evaluate whether the Law’s discrimination bears a close relationship to its objective. The court held the Supreme Court’s Privileges and Immunities Clause jurisprudence, and the application of this jurisprudence by lower courts, suggest few laws preferring in-state workers will pass constitutional analysis.

Commerce Clause. The court addressed the Commerce Clause challenge by stating that this limitation on state power, which is called the “dormant” Commerce Clause, “prohibits economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.” (quoting *New Energy Co. v. Limbach*, 486 U.S. 269, 273 (1988)). When a state or local government acts as a market participant rather than a market regulator, the court pointed out, its conduct is outside the reach of the Commerce Clause. If a state or local government is a market participant in a business, it may pursue its own

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economic interests free from the constraints imposed by the Commerce Clause within the market in which it is a participant. (*citing South-Central Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 97, (1984)). This freedom includes the right to choose its own trading partners without regard to whether its choices discriminate against out-of-state businesses or favor its own citizens. (citations omitted).

The *Lakeside* court thus stated if the state activity constitutes only market participation, then the Commerce Clause does not apply, and its inquiry ends. *Lakeside*, *citing National Solid Waste Mgmt. Ass'n v. Williams*, 146 F.3d 595, 599 (8th Cir. 1998) (*citing Reeves*, 447 U.S. at 436-39).

The court in *Lakeside* stated that the Supreme Court has dismissed the argument that there is a distinction between municipal action and state action under the Privileges and Immunities Clause as well as the Equal Protection Clause. *See Camden*, 465 U.S. at 215 (*stating* “it is as true of the Privileges and Immunities Clause as of the Equal Protection Clause that what would be unconstitutional if done directly by the State can no more readily be accomplished by a city deriving its authority from the State.”).

The *Lakeside* court found the Eighth Circuit has already determined that local government action constitutes state action for purposes of Commerce Clause analysis. Therefore, applying the market participant exception to the Excessive Unemployment Law is appropriate.

The *Lakeside* court stated that the Supreme Court has addressed the application of the market participant exception to regulations governing employment on public works projects. The court discusses the decision in *White v. Massachusetts Council of Constr. Employers, Inc.*, 460 U.S. 204, 205-06 (1983), stating that the Supreme Court examined an executive order issued by the mayor of Boston that required the performance of all construction projects “funded in whole or in part by city funds, or funds which the city had the authority to administer,” by a work force consisting of at least half bona fide residents of Boston.

The Court in *White* held that the application of the mayor’s executive order did not violate the Commerce Clause of the United States Constitution. The Supreme Court found that “the only issues before [it]” were the propriety of applying the mayor’s order to projects funded wholly with city funds and projects funded in part with federal funds. *Id.*, at 209. Thus, “[i]nsofar as the city expended only its own funds in entering into construction contracts for public projects, it was a market participant.” *Id.* at 214. According to the Court, “in this kind of case there is ‘a single inquiry: whether the challenged program constituted direct state participation in the market.’” *Id.* at 208.

The Eighth Circuit, the *Lakeside* court found, refused to find that the Supreme Court’s application of the market participant exception was limited to situations where the city is the employer of those affected by the regulation at issue. According to the Eighth Circuit, the relevant inquiry in a Dormant Commerce Clause case that potentially implicates the market participant exception is whether the state is participating as a proprietor; the state does not need to be an employer, buyer, or seller to be considered a market participant. Accordingly, the *Lakeside* court granted the Defendants’ motion for summary judgment as to the Commerce Clause claims.

Equal Protection Clause. The *Lakeside* court next held that unless a classification warrants some form of heightened review because it jeopardizes the exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest. Since the court found the right to seek employment is not a fundamental right and that the law does not categorize on the basis of an inherently suspect characteristic, the court said the law is analyzed under the rational basis test.

Under the rational basis test, the court stated a legislative classification must be sustained if the classification itself is rationally related to a legitimate governmental interest. All that must be shown is any

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reasonably conceivable state of facts that could provide a rational basis for the classification. *Lakeside*, citing *Gilmore v. County of Douglas*, 406 F.3d 935, 937 (8th Cir. 2005). The court pointed out that rational basis review accords challenged statutory classifications a strong presumption of validity which is overcome only if the party challenging them negates “every conceivable basis which might support it.” *Lakeside*, quoting *In dep. Charities of America, Inc. v. Minnesota*, 82 F.3d 791, 797 (8th Cir. 1996) (quoting *F.C.C. v. Beach Commc’ns, Inc.*, 508 U.S. 307, 315 (1993)).

The court found that courts have split as to whether a state law giving preference to residents in employment on a public works project violates the Equal Protection Clause. These decisions, according to the court, suggest that while showing a preference for hiring state or county residents for public works projects is permissible under the Equal Protection Clause, any additional requirements may not withstand Equal Protection scrutiny. Under these decisions, preferring to employ residents of the state or county where the project is located is a legitimate governmental interest, but attempts to sub-categorize residents of the state or county any further violate the Equal Protection Clause.

In this case, the court held the Excessive Unemployment Law does not serve a legitimate governmental purpose. The law is designed to disadvantage workers who are residents of states with laws that discriminate against Missouri workers, and Defendants did not show any other public interest considerations to justify the Law’s difference in treatment.

2. In *Kohlbeck v. City of Omaha, Neb.*, 447 F.3d 552 (8th Cir. 2006)

The Eighth Circuit considered a challenge by Caucasian firefighters against the city’s implementation of an affirmative action employment plan based on claims of reverse discrimination, which although involving employment by firefighters, not contractors, is instructive to the study. The court held the city’s affirmative action plan, as it applied to promotional decisions

within the fire department, was not narrowly tailored to further the goal of remedying past discrimination.

The court stated that Omaha developed a Plan consistent with its interpretation of the Office of Federal Contracting Compliance Programs Guidelines on Affirmative Action Programs (Guidelines), referencing 41 C.F.R. § 60–2.1 *et seq.* (2000). These Guidelines are not binding on municipalities. *Kohlbeck*, citing, 41 C.F.R. at § 60–1.5(4). The court said the Guidelines specify that “availability,” which is “an estimate of the number of qualified minorities ... available for employment in a given job group, expressed as a percentage of all qualified persons available for employment in the job group,” must be determined for each job group. *Id.* citing 41 C.F.R. § 60–2.14

The court held that it applies strict scrutiny to all governmental distinctions on the basis of race, citing the Supreme Court’s decision in *Grutter v. Bollinger*, 539 U.S. 306, 326, (2003) which stated it has held that all racial classifications imposed by government ‘must be analyzed’ by a reviewing court under strict scrutiny.” Applying strict scrutiny, a racial classification is constitutional under the Equal Protection Clause of the Fourteenth Amendment, only if it is a narrowly tailored measure that furthers a compelling governmental interest. *Grutter*, 539 U.S. at 326.

The court held: “In determining whether a race-conscious remedy is narrowly tailored, we look at factors such as the efficacy of alternative remedies, the flexibility and duration of the race conscious remedy, the

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relationship of the numerical goals to the relevant labor market, and the impact of the remedy on third parties.”⁷²

In examining these factors, the court stated that it must ensure that the racial classifications are not used any more broadly than the asserted compelling interest requires. The court quoted the Supreme Court in *Grutter*, 539 U.S. at 342 “[R]acial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands.” and the Eighth Circuit in *Sherbrooke*, 345 F.3d at 971 “[T]o be narrowly tailored, a national program must be limited to those parts of the country where race-based measures are demonstrably needed.” (emphasis removed). To ensure narrow tailoring, the court concluded it must conduct “a most searching examination” requiring “the most exact connection between justification and classification,” citing *Gratz v. Bollinger*, 539 U.S. 244, 270 (2003) and *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 236 (1995).

The court found the relationship of Omaha’s numerical goals to the relevant labor market is not sufficiently exact to withstand this searching examination, referencing the court *In re Birmingham Reverse Discrimination Employment Litig.*, 20 F.3d 1525, 1549 (11th Cir. 1994) (rejecting a plan with no relationship between the numerical goals and the relevant market as not narrowly tailored). Because Omaha employs the use of racial classifications in situations where there is no identified past discrimination, the court held that its affirmative action plan, as it applies to promotional decisions, is not narrowly tailored to further the goal of remedying past discrimination.

For a remedial racial classification to be justified, the court held it is necessary that a prima facie case of discrimination be established. The court notes the Supreme Court in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 500 (1989) that rejected claims of a compelling interest in remediating discrimination when no *prima facie* case could be established. The court said that Omaha used statistical evidence to distinguish between those situations where discrimination is demonstrated and those where no discrimination can be presumed.

The court said that establishing a prima facie case of discrimination based simply on statistical evidence is difficult, and it has recognized that a disparity between actual hiring levels and expected hiring levels does not necessarily demonstrate discrimination. The court citing the *Croson* decision stated that “[n]umbers must be *statistically significant* before one can properly conclude that any apparent racial disparity results from some factor other than random chance.” (emphasis added).

The court concluded that the approach used in this case by the city did not require a statistically significant showing of discrimination before racial classifications are triggered, and thus the decisions at issue were the result of racial classifications not narrowly tailored to remedy identified past discrimination.

⁷² *Sherbrooke Turf, Inc. v. Minn. Dept. of Transp.*, 345 F.3d 964, 971 (8th Cir.2003) (citing *United States v. Paradise*, 480 U.S. 149, 171, 187 (1987))

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3. Lutheran Church-Missouri Synod v. F.C.C., 141 F.3d 344 (D.C. Cir. 1998).

In *Lutheran Church*, the church appealed the Federal Communication Commission's ("FCC") finding that it transgressed equal employment opportunity regulations through the use of religious hiring preferences and inadequate minority recruiting. The court held that race-conscious EEO regulations were subject to strict scrutiny review and that the FCC's justification for its EEO regulations, which was fostering diverse programming content, did not satisfy the strict scrutiny standard of a "compelling" governmental interest, thus violating equal protection.

The EEO regulations imposed by the FCC provided that stations must adopt an affirmative action "EEO program" targeted to minorities and women, and that the program must include a plan for: (1) disseminating the equal opportunity program to job applicants and employees; (2) using minority- and women-specific recruiting sources; (3) evaluating the station's employment profile and job turnover against the availability of minorities and women in its recruitment area; (4) offering promotions to minorities and women in a nondiscriminatory fashion; and (5) analyzing its efforts to recruit, hire, and promote minorities and women.

The court held the FCC's EEO rule was an unconstitutional race-based classification, holding that the rule was subject to strict constitutional scrutiny because it was "built on the notion that stations should aspire to a workforce that attains, or at least approaches, proportional [racial] representation" and "oblige[d] stations to grant some degree of preference to minorities in hiring." *Id.* at 352–53. The court further held that the Commission's sole rationale for its rule, promoting "diversity of programming," was not a compelling governmental justification, pointing out the Commission had expressly abjured preventing employment discrimination as a goal of its EEO regulation. *Id.* at 354–55.

Accordingly, the court remanded the matter to the Commission to determine whether it had a compelling governmental interest in preventing discrimination to support its regulation of employment practices in the broadcast industry. *Id.* at 356. On remand, the Commission suspended the EEO rule in its entirety and issued a Notice of Proposed Rulemaking soliciting comments on a draft replacement rule.

The Commission issued a new EEO rule requiring licensees to achieve a "broad outreach" in their recruiting efforts. To this end, the new EEO rule provided that a licensee must make a good faith effort to widely disseminate any information about job openings and, in order to "afford broadcasters flexibility in designing their EEO programs."

4. MD/DC/DE Broadcasters Ass'n v. F.C.C., 236 F.3d 13 (D.C. Cir. 2001).

In *MD/DC/DE*, the court held that the EEO Rule adopted by the FCC (after the *Lutheran Church* case) pressured licensees to recruit minorities and women, that affirmative outreach in recruitment, targeted at minorities, constituted a racial classification subject to strict scrutiny, and that the regulation was not narrowly tailored to further the interest in preventing discrimination, and thus violated equal protection.

The court stated that the Supreme Court in *Adarand Constructors, Inc. v. Peña* held that "any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny." 515 U.S. 200, 224 (1995). The court concluded the issue in this case is whether a government mandate for recruitment targeted at minorities constitutes a "racial classification" that subjects persons of different races to "unequal treatment."

The court pointed out it expressly reserved this question in *Lutheran Church–Missouri Synod v. FCC*, 154 F.3d 487, 492 (1998), denying reh'g

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in *Lutheran Church*, 141 F.3d 344 (stating “whether the government can encourage—or even require—an outreach program specifically targeted on minorities is, of course, a question we need not decide”).

The court found that it need not resolve the issue of a compelling governmental interest in preventing discrimination because the new EEO rule is not narrowly tailored to further that interest. First, Option B places pressure upon each broadcaster to recruit minorities without a predicate finding that the particular broadcaster discriminated in the past or reasonably could be expected to do so in the future. “Quite apart from the question of a compelling governmental interest, such a sweeping requirement is the antithesis of rule narrowly tailored to meet a real problem.” *Id. citing City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 508 (1989).

The court said that the requirement that licensees report the race of each applicant is another departure from the norm of narrow tailoring and results rather than mere outreach. The court found that the race of each job applicant is relevant to the prevention of discrimination only if the Commission assumes that minority groups will respond to non-discriminatory recruitment efforts in some predetermined ratio, such as in proportion to their percentage representation in the local workforce. Any such assumption, according to the court, stands in direct opposition to the guarantee of equal protection. *Id. citing Lutheran Church*, 141 F.3d at 352 (noting that Commission’s claim that its goal of proportional representation was equivalent to goal of nondiscrimination “presupposes that non-discriminatory treatment typically will result in proportional representation in a station’s workforce. The Commission provides no support for this dubious proposition.”).

The court held that because the new EEO rule was not narrowly tailored, it did not withstand strict scrutiny, and violated the equal protection component of the Due Process Clause of the Fifth Amendment.

5. *Contractors Ass’n of Eastern Pennsylvania v. Secretary of Labor*, 442 F.2d 159 (3d Cir. 1971), cert denied, 404 U.S. 854 (1971).

In *Contractors Ass’n*, the complaint challenged the validity of the Philadelphia Plan, promulgated by the federal defendants under the authority of Executive Order No. 11246. That Plan was embodied in two 1969 orders issued by officials of the United States Department of Labor. In summary, they require that bidders on any federal or federally assisted construction contracts for projects in a five-county area around Philadelphia, the estimated total cost of which exceeds \$500,000, to submit an acceptable affirmative action program which includes specific goals for the utilization of minority manpower in six skilled crafts: ironworkers, plumbers and pipefitters, steamfitters, sheet metal workers, electrical workers, and elevator construction workers.

The Executive Order empowered the Secretary of Labor to issue rules and regulations necessary and appropriate to achieve its purpose. The Assistant Secretary of Labor issued an order implementing the Executive Order in the five-county Philadelphia area. The order required bidders, prior to the award of contracts, to submit ‘acceptable affirmative action’ programs “‘which shall include specific goals of minority manpower utilization.’” The order contained a finding that enforcement of the ‘affirmative action’ requirement of Executive Order No. 11246 had posed special problems in the construction trades.

The order pointed out that contractors and subcontractors must hire a new employee complement for each job, and they rely on craft unions as their prime or sole source for labor. The craft unions operate hiring halls. The court noted the order provided that because of the “exclusionary practices of labor organizations, the order finds ‘there traditionally has been only a small number of Negroes employed in these seven trades.’” The order provided that the Area Coordinator of

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the Office of Federal Contract Compliance, in conjunction with the federal contracting and administering agencies in the Philadelphia area, would determine definite standards for specific goals in a contractor's affirmative action program. After such standards were determined, each bidder would be required to commit itself to specific goals for minority manpower utilization.

The order set forth factors to be considered in determining definite standards, including:

- "1) The current extent of minority group participation in the trade.
- 2) The availability of minority group persons for employment in such trade.
- 3) The need for training programs in the area and/or the need to assure demand for those in or from existing training programs.
- 4) The impact of the program upon the existing labor force."

Acting pursuant to the 1969 order, representatives of the Department of Labor held public hearings in Philadelphia. The Assistant Secretary made findings with respect to each of the listed factors and ordered that certain ranges be established as the standards for minority manpower utilization for each of the designated trades in the Philadelphia area for four years.

The order specified that on each invitation to bid each bidder would be required to submit an affirmative action program. The order further provided: "4. No bidder will be awarded a contract unless his affirmative action program contains goals falling within the range set forth ... above. The purpose of the contractor's commitment to specific goals as to minority manpower utilization is to meet his affirmative action obligations under the equal opportunity clause of the contract."

Subsequently, the General State Authority of the Commonwealth of Pennsylvania issued invitations to bid for the construction of an earth dam. Although this dam was a Commonwealth project, part of the construction cost was to be funded by federal monies under a program administered by the Department of Agriculture. The Secretary of Agriculture, one of the federal defendants, as a condition for payment of federal financial assistance for the project, required the inclusion in each bid of a Philadelphia Plan Commitment in compliance with the 1969 order.

The Plaintiffs alleged that the Philadelphia Plan was illegal and void for the following reasons:

1. It is an action by the Executive branch not authorized by the constitution or any statute and beyond Executive power.
2. It is inconsistent with Title VII of the Civil Rights Act of 1964.
3. It is inconsistent with Title VI of the Civil Rights Act of 1964.
4. It is inconsistent with the National Labor Relations Act.
5. It is substantively inconsistent with and was not adopted in procedural accordance with Executive Order No. 11246.
6. It violates due process because: a) it requires contradictory conduct impossible of consistent attainment; b) it unreasonably requires contractors to undertake to remedy an evil for which the craft unions, not contractors, are responsible; c) it arbitrarily and without basis in fact singles out the five-county Philadelphia area for discriminatory treatment without adequate basis in fact or law; and d) it requires quota hiring in violation of the Fifth Amendment.

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The court said that while all federal procurement contracts must include an affirmative action covenant, the coverage on federally assisted contracts had been extended to construction contracts only. This choice was significant, according to the court, for it demonstrated that “Presidents were not attempting by the Executive Order program merely to impose their notions of desirable social legislation on the states wholesale. Rather, they acted in the one area in which discrimination in employment was most likely to affect the cost and the progress of projects in which the federal government had both financial and completion interests.”

The court found “in direct procurement the federal government has a vital interest in assuring that the largest possible pool of qualified manpower be available for the accomplishment of its projects. It had the identical interest with respect to federally assisted construction projects.”

Therefore, the court concluded that unless the Philadelphia Plan is prohibited by some other congressional enactment, its inclusion as a pre-condition for federal assistance was within the implied authority of the President and his designees.

Plaintiffs contended that the Plan, “by imposing remedial quotas, requires them to violate the basic prohibitions of Section 703(a), 42 U.S.C. § 2000e-2(a): ‘It shall be an unlawful employment practice for an employer— (1) to fail or refuse to hire ... any individual ... because of such individual’s race ... or (2) to ... classify his employees in any way which would deprive ... any individual of employment opportunities ... because of such individual’s race.’” The Plaintiffs claimed that because the Plan “requires that the contractor agree to specific goals for minority employment in each of the six trades and requires a good faith effort to achieve those goals, they argue, it requires (1) that they refuse to hire some white tradesmen, and (2) that they classify their employees by race, in violation of § 703(a).”

The court stated the 1969 order “contained findings that although overall minority group representation in the construction industry in the five-county Philadelphia area was thirty per cent, in the six trades representation was approximately one per cent. It found, moreover, that this obvious underrepresentation was due to the exclusionary practices of the unions representing the six trades.” The court found that it was the practice of building contractors to rely on union hiring halls as the prime source for employees.

The court pointed out the order “made further findings as to the availability of qualified minority tradesmen for employment in each trade, and as to the impact of an affirmative action program with specific goals upon the existing labor force.” The court noted the Department of Labor “found that contractors could commit to the specific employment goals ‘without adverse impact on the existing labor force.’ Some minority tradesmen could be recruited, in other words, without eliminating job opportunities for white tradesmen.”

The court concluded that to “read § 703(a) in the manner suggested by the plaintiffs we would have to attribute to Congress the intention to freeze the status quo and to foreclose remedial action under other authority designed to overcome existing evils. We discern no such intention either from the language of the statute or from its legislative history. Clearly the Philadelphia Plan is color-conscious.”

The court rejected the contention that Title VII prevents the President acting through the Executive Order program from attempting to remedy the absence from the Philadelphia construction labor of minority tradesmen in key trades. The court also stated that what it said about Title VII applied with equal force to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., which prohibits racial and other discrimination in any program or activity receiving federal financial assistance. The court concluded “this general prohibition against discrimination cannot be construed as limiting Executive

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authority in defining appropriate affirmative action on the part of a contractor.” The court held that the Philadelphia Plan does not violate the Civil Rights Act of 1964.

The court noted the “absence of a judicial finding of past discrimination is also legally irrelevant. The Assistant Secretary acted not pursuant to Title VII but pursuant to the Executive Order. Regardless of the cause, exclusion from the available labor pool of minority tradesmen is likely to have an adverse effect upon the cost and completion of construction projects in which the federal government is interested. “ The court found that “even absent a finding that the situation found to exist in the five-county area was the result of deliberate past discrimination, the federal interest in improving the availability of key tradesmen in the labor pool would be the same.” While a court must find intentional past discrimination before it can require affirmative action under 42 U.S.C. § 2000e-5(g), the court stated, “that section imposes no restraint upon the measures which the President may require of the beneficiaries of federal assistance.”

The Due Process contentions. Plaintiffs urged that the Plan violates the Due Process Clause of the Fifth Amendment in several ways.

“First, they allege that it imposes on the contractors contradictory duties impossible of attainment. This impossibility arises, they say, because the Plan requires both an undertaking to seek achievement of specific goals of minority employment and an undertaking not to discriminate against any qualified applicant or employee, and because a decision to hire any black employee necessarily involves a decision not to hire a qualified white employee.” The court rejected this argument stating the findings in the 1969 order disclosed that the specific goals may be met, considering normal employee attrition and anticipated growth in the industry, without adverse effects on the existing labor force.

The court rejected the Plaintiffs argument that the Plan is arbitrary and capricious administrative action, in that it singles out the contractors and makes them take action to remedy the situation created by acts of past discrimination by the craft unions. The court found this argument misconceived the source of the authority for the affirmative action program. “Plaintiffs are not being discriminated against. They are merely being invited to bid on a contract with terms imposed by the source of the funds.” The court concluded the “affirmative action covenant is no different in kind than other covenants specified in the invitation to bid. The Plan does not impose a punishment for past misconduct. It exacts a covenant for present performance.”

The court rejected Plaintiff’s claim that the specific goals specified by the Plan are racial quotas prohibited by the equal protection aspect of the Fifth Amendment. The court stated “the Philadelphia Plan is valid Executive action designed to remedy the perceived evil that minority tradesmen have not been included in the labor pool available for the performance of construction projects in which the federal government has a cost and performance interest. The Fifth Amendment does not prohibit such action.”

The court rejected the challenges to the administrative procedures in determining the goals. The court found the Assistant Secretary relied upon published data, which itself may have been sufficient to justify administrative action leading to the specification of contract provisions. But the court stated it need not decide that issue, “for in our view the data in the September 23, 1969, order revealing the percentages of utilization of minority group tradesmen in the six trades compared with the availability of such tradesmen in the five-county area, justified issuance of the order without regard to a finding as to the cause of the situation.” The court found the “federal interest is in maximum availability of construction tradesmen for the projects in which the federal government has a cost and completion interest. A

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finding as to the historical reason for the exclusion of available tradesmen from the labor pool is not essential for federal contractual remedial action.”

The court therefore held the Executive Order (Philadelphia Plan) valid.

6. Associated General Contractors of Massachusetts, Inc. v. Altshuler, 361 F.Supp. 1293 (D. Mass. 1973).

Contractors brought action to enjoin state officials from soliciting bids in connection with public building construction contracts which included provisions asserted to be unconstitutional and inconsistent with state law. The court held that the field of equal employment opportunities was not preempted by reason of Executive Order promulgating bid conditions to be included in all federally assisted construction contracts; and that where racial imbalance existed in the construction trade in particular areas and such imbalance was the result of past racial discrimination, the provision proposed to be used in Massachusetts public building construction contracts in such areas requiring contractors to maintain a minimum 20 percent minority work force in each job category, as interpreted to require that only “qualified” workers be hired, did not violate the due process and equal protection clauses of the United States Constitution nor any provision of the Constitution of Massachusetts. The court held the injunctive and declaratory relief was denied.

This matter was commenced before the Court by virtue of plaintiffs’ complaint requesting permanent injunctive relief against the defendants from soliciting bids or proposals in connection with the construction of buildings for use by Boston State College, or in connection with any other public building construction contract, which may include § 1B of the contract drafted by the Commonwealth for the Boston State College project.

Plaintiffs also sought a declaration that § 1B of that contract is both unconstitutional and inconsistent with existing Massachusetts law including for the following reasons: (1) it imposes on the contractor securing the bid for said contract obligations to have minimum minority man-hour quotas without regard to qualifications and other requirements inconsistent with obligations under federal bid conditions and the federal equal employment opportunity clause found in all federally assisted construction programs, and therefore violated the Supremacy Clause in Article VI of the Constitution of the United States; and (2) it requires the contractor to hire fixed minimum minority man-hour quotas in each job category without regard to qualifications and hence violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, as well as Articles I, X and XII of the Declaration of Rights of the Constitution of Massachusetts.

The Federal Equal Employment Opportunity Clause, the Secretary of Labor of the United States Department of Labor pursuant to § 201 of Executive Order No. 11246 (30 F.R. 12319), as amended, and 41 C.F.R. 60, promulgated Bid Conditions to be included in all bid documents for federally assisted construction contracts. The federal equal employment opportunity clause and Bid Conditions set forth affirmative action and equal employment opportunity requirements designed to bring about increased minority employment in federally assisted construction contracts.

In order to be considered a responsive bidder and eligible to be awarded such a contract, all bidders must agree with both the federal equal employment opportunity clause and the Bid Conditions as promulgated by the Secretary of Labor. The court said the Boston State Contract originally is regarded as a federally assisted construction contract, and therefore is subject to the aforementioned Federal Equal Employment Opportunity Clause and Bid Conditions.

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The court found based on “information revealed in the depositions of several union officials, and on other statistical evidence available, that racial imbalance does exist in the Boston Construction Trades and such imbalance is the result of past discriminatory practices on the part of many entities of that industry.” The court stated the “Equal Employment Opportunity Local Union Report EEO-2” forms are most instructive. These forms must be filed annually with the federal government by any local union whose membership exceeds one hundred. The union is required to provide statistical information comparing the number of minority group members, referrals, and applicants, with the total numbers in each of those categories.

The court said it studied EEO-2 forms for the years 1968-72 filed by several construction trade unions servicing the City of Boston and has found “that the vast majority of the unions have been and remain racially imbalanced.”

In 1968 the statistics showed that twelve unions had a minority membership of approximately 3-4 percent or less, and three had minority memberships of 5 percent, 9 percent, and 15 percent, respectively. In 1969 thirteen unions reported a minority membership of 3-4 percent or less, two reported 5 percent, two reported 10 percent, and two laborers’ unions reported 15 percent and 18 percent, respectively. The court found the situation continued in 1970 and 1971 with similar statistics, showing only slight change by 1972 when the total minority membership of 21 unions was approximately 7 percent. The court noted that this figure would be significantly lower but for the relatively high minority percentage figures of two laborers’ unions.

The court stated that “a comparison of the union membership statistics and the census population statistics, clearly supports a finding of racial imbalance in the trade unions servicing the Boston area.” More importantly, the Court adopted the previously established

practice of accepting such statistics as sufficient evidence to support an inference of racial discrimination and holds that such inference has not been overcome by any contrary evidence, citing two Eight Circuit Court of Appeals cases and one Supreme Court case: *Carter v. Gallagher*, 452 F.2d 315, 323 (8th Cir. 1971); *Parham v. Southwestern Bell Telephone Co.*, 433 F.2d 421, 426 (8th Cir. 1970); *Turner v. Fouche*, 396 U.S. 346, 360, (1970).

The court said the “fact that the statistics are based on union membership figures does not prohibit their application to the construction trades as a whole. It is commonly known (and supported by affidavits in this case) that the majority of construction companies get their workers through union hall referrals.” The court found that as a result, “the companies become instrumental in the perpetuation of a racially discriminatory system of hiring in that industry.”

The court stated: “Plaintiffs here may argue that there is no evidence to prove that the individual construction companies named as plaintiffs use this method to get workers. No matter. Affirmative action plans, including a provision such as § 1B, are not designed to punish previous wrongdoers.” Rather, the court said, they seek to exact a “covenant for present performance” which will hopefully have the effect of abolishing the results of past discriminations in the construction industry regardless of who was at fault in the past. See *Contractors Ass’n. of Eastern Pa. v. Secretary of Labor*, 442 F.2d 159, 176 (3rd Cir. 1971).”

The Commonwealth of Massachusetts attempted to divest itself of receiving any federal funds for the Boston State Contract, but the federal government declined to agree to such a request pending the results of this litigation. Therefore, the Boston State Contract was regarded as a federally assisted construction contract.

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In examining the facts of the case at bar, the court found that Executive Order No. 11246, 30 F.R. 12319 (Sept. 28, 1965), provides for the inclusion in government contracts of provisions aimed at preventing discrimination by government contractors. The court said that it is “clearly stated in Order No. 11246 that the policy of the federal government is to provide equal job opportunity in all federal employment or federally funded projects, for all qualified persons, and to prohibit discrimination in employment because of race, creed, color or national origin, and to promote the realization of equal employment opportunity through a positive, continuing program. Order No. 11246 “carries forward” such a program.”

Governor Sargent declared in Article I that: “Non-discrimination and equal employment opportunity are the policy of the Executive Department of the Commonwealth of Massachusetts in all of its decisions, programs and activities. To that end, all state employees shall rigorously take affirmative action steps to ensure equality of opportunity in the internal affairs of state government, as well as in their relations with the public, including those persons and organizations doing business with the Commonwealth.” The Order further states that affirmative action: “... must also entail positive and aggressive measures to insure equal opportunity in the areas of hiring, promotion, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in-service apprenticeship training programs.”

As in the Federal Executive Order, the Governor’s Order makes provision for anti-discrimination clauses in state contracts for public buildings, etc. The court stated the Secretary of the Executive Office of Transportation and Construction (defendant Altshuler) has determined that § 1B is a proper contract clause, authorized by the Governor’s Order, to “carry forward” the policy of that order, and has included and will include it in all future public building construction

contracts in urban areas containing substantial minority residential concentrations.

Upon examination, the court found “it seems quite clear to this Court that the purpose of § 1B, in light of the Governor’s Order, and the purpose of the provisions of Executive Order No. 11246, in light of the policy of the federal government, are the same: that is, to require equal opportunity in hiring, etc. on state and federally supported projects, respectively.

In conclusion, the court found that § 1B is compatible with the federal executive order, and hence, does not fail because of the Supremacy Clause.

Unconstitutional Quota. Plaintiffs argued § 1B constituted a fixed racial quota which violated the Due Process and Equal Protection Clauses of the United States Constitution and Articles I, X, and XII of the Declaration of Rights of the Massachusetts Constitution. The particular section (1B-.03.1) which plaintiffs are challenging requires that the contractor “... shall maintain a not less than twenty percent ratio of minority employee man-hours to total employee man-hours in each job category.”

The court stated that plans similar to § 1B are permissible where there is evidence of past discrimination. The court “found that racial imbalance does exist in the Boston area construction trades and that such imbalance is the result of past racial discrimination.”

As a result of such findings the court held that “the provision of § 1B requiring contractors to maintain a minimum 20% minority work force in each job category does not violate the Constitution of the United States, but stands as a proper attempt to remedy the present effects of past discrimination.”

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The court found that the Massachusetts Supreme Judicial Court “has not determined conclusively whether “ratio hiring” or “quotas” are violative of the Massachusetts Constitution when used to remedy the present effects of past discrimination. This Court now holds that § 1B does not violate any provision of that Constitution.”

In consideration of the foregoing, the court held that § 1B’s intention to bring about equal employment opportunities for minorities is constitutional in all aspects, and consequently, plaintiffs’ request for injunctive and declaratory relief is denied.

7. Chamber of Commerce of U.S. v. Reich, 83 F.3d 439 (D.C. Cir. 1996)

In *Reich*, the court stated that Executive Order No. 11,246, requiring government contractors to engage in affirmative action so as to ensure nondiscrimination in employment, at issue in *Contractors Ass’n*, 442 F.2d 159, applied to all government contractors whether or not unionized.

The court said that effects on collective bargaining are therefore only incidental to its reach. The union argued in that case that the Department of Labor’s remedial order issued pursuant to this Executive Order, which required construction contractors to agree to hiring goals and timetables for minorities heretofore excluded from construction job opportunities, interfered with its hiring hall agreements with contractors. The right to enter into hiring hall agreements, the union emphasized, was guaranteed by section 8(f), 29 U.S.C. § 158(f) (1973) of the NLRA.

As the court pointed out, however, “racial discrimination is banned by both Title VII of the Civil Rights Act and the NLRA itself. *See Vaca v. Sipes*, 386 U.S. 171 (1967) (stating union has obligation under NLRA to serve the interests of all its members without discrimination). And collective bargaining agreements cannot act as shields preventing

remedial orders designed to prevent discrimination.” *Reich, citing Contractors Ass’n*, 442 F.2d at 174–75.

The court in *Reich* pointed out that: “The ‘Philadelphia Plan’ was predicated on the Assistant Secretary of Labor’s finding of exclusionary practices by unions resulting in the underrepresentation of minorities, which the court equated to discrimination. The maintenance of hiring hall agreements would have perpetuated this underrepresentation.”

Ongoing review.

The above discussion and cases referenced are not comprehensive or exhaustive but represent a summary of examples of certain legal considerations and federal court decisions in the Supreme Court, Eighth Circuit and other Circuit Courts of Appeal relating to workforce participation/local and minority hiring type programs, which are instructive to the study. Because this is an evolving area of the law, the legal considerations are subject to ongoing review as the law continues to develop. In addition, the legal framework and analysis and cases discussed in Appendix K may be instructive and potentially applicable to certain of the legal considerations in connection with this Appendix K.