



## Overview

Throughout the past decade, disparity studies have been sought after as the preferred method of gathering statistical and anecdotal evidence of discrimination against disadvantaged, minority-owned, and woman-owned business enterprises (D/M/WBEs) for use in litigation, to stave off potential challenges to programs, or in advance of any new legislation enacting such a program. However, although significant public resources have been expended on such studies since the *City of Richmond v. J.A. Croson Co.* decision, the results have frequently been rejected by courts as legally inadequate, statistically unsound, or politically motivated. These courtroom rejections underscore not only the increasingly rigorous legal standards to which statistical evidence is being held, but also the risk of using a supporting expert with limited qualifications. In the event of a legal challenge, disparity studies—and the credentials of those behind them—are subject to a level of intense scrutiny for which many consultants are ill prepared.

### NERA's Approach

Economists are uniquely qualified to determine the presence and quantify the impact of race and gender discrimination affecting D/M/WBEs in product and geographic markets. In fact, economists pioneered these types of analyses in the context of wage and salary employment.

NERA economists have translated these analyses into the context of entrepreneurship and self-employment. We are the only consultants in the field who have been qualified as experts in federal and state courts on multiple occasions. Our objective, high-quality studies help clients to implement and defend their supplier diversity initiatives. We frequently work with clients to mount legal defenses based upon our studies and have extensive experience conducting periodic, proactive reviews to anticipate potential challenges. We are also frequently retained to critique—and, in some cases, completely redo—the work of other consultants.

### Areas of Expertise

In conducting disparity studies, our experts focus on the key factors—such as firm size, time in business, qualifications, and experience—that are likely to be tainted by discrimination. We also look beyond an agency's specific contracting activities and analyze disparities in the marketplace as a whole to provide a more accurate and relevant picture of the state of business discrimination in a particular city, state, or region. Moreover, we are the undisputed leader in the application of statistical and economic databases to business disparity study analyses. Our researchers specialize in organizing, analyzing, and interpreting large and complicated national and regional databases.

We frequently partner with law firms, academic affiliates, market survey and research firms, and focus group organizers to provide clients with access to a range of specialized, non-economic expertise on a project-by-project basis. We have established collaborative relationships with these firms and have extensive experience coordinating subcontractor contributions. Chief among these is Colette Holt of Colette Holt & Associates, who serves as NERA's legal counsel on disparity studies and is a nationally recognized expert in designing and implementing affirmative action programs.

Our work is defined by:

- Innovative, established expertise and substantive, specialized experience
- Legal defensibility
- Collaborative approach
- Commitment to Affirmative Action programs and objectives
- Clear results

## At A Glance Availability and Disparity Studies

# NERA

Economic Consulting

NERA economists also work with:

- Public entities, to proactively evaluate current programs and/or pending legislation to help anticipate potential challenges
- Private sector entities, to conduct studies that establish a benchmark for their existing supplier diversity initiatives
- Large-scale public works projects, to apply similar methodologies for specialty studies

## Client Experience

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### ***Northern Contracting, Inc. v. Illinois DOT***

In 2000, highway contractor Northern Contracting, Inc. (NCI) filed suit against the Illinois Department of Transportation (IDOT) over IDOT's Disadvantaged Business Enterprise (DBE) program, which promotes a level playing field for socially and economically disadvantaged businesses in federally assisted transportation projects. The lawsuit challenged the constitutionality of the federal DBE program regulations as well as IDOT's application of those regulations. The US District Court for the Northern District of Illinois ruled in favor of IDOT on 8 September 2005. In her decision, District Court Judge Rebecca Pallmeyer extensively cited NERA Vice President Dr. Jon Wainwright's testimony and NERA's research, along with the expert testimony of attorney Colette Holt. NCI appealed the decision in April 2006. In January 2007, the Court of Appeals upheld Dr. Wainwright's initial analysis, ruling that NCI had failed to prove any of its arguments, a failure that "reflects NCI's broader inability to demonstrate that IDOT's DBE program is in violation of the Constitution."

### **Litigation Experience**

NERA's experience and knowledge has led to successful litigation outcomes for our clients. Our work in public contracting is extensive and includes the following matters, among others:

*Northern Contracting, Inc. v. Illinois DOT*

*Concrete Works, Inc. v. City and County of Denver*

*Builders Association of Greater Chicago v. City of Chicago*

*Sherbrooke Turf v. Minnesota DOT and US DOT*

*Associated Utility Contractors of Maryland, Inc. v. City of Baltimore*

*Houston Contractors Association v. Metropolitan Transit Authority of Harris County*

*North Shore Concrete & Associates, Inc., v. The City of New York et al.*

### **Representative Clients**

NERA has conducted post-Crosby studies and related research for over 60 public sector clients since 1990. In all of these cases, our studies were accepted and adopted by our clients. To date, none of these programs developed on the basis of a NERA study has been successfully challenged.

Cities of Austin, Baltimore, Boston, Chicago, Denver, New Orleans, and New York

State Departments of Transportation in Illinois, Maryland, Minnesota, and Missouri

States of Illinois, Maryland, Massachusetts, New York, and Texas

Various counties, airports, universities, transit authorities, and other special districts

## About NERA

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NERA Economic Consulting ([www.nera.com](http://www.nera.com)) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For nearly half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from over 20 offices across North America, Europe, and Asia Pacific.

## Contact

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