



Case & Project Experience

NERA Economists' Role in *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003)

Overview

The Builders Association of Greater Chicago sued the City of Chicago over the constitutionality of its 1990 ordinance that established construction contract set-asides and subcontracting goals for minority- and woman-owned businesses. NERA was retained by Chicago to provide expert research and trial testimony to document the City's compelling interest in continuing its race-based remedial program.

In December 2003, the US district court held that while the City did not meet the "narrow tailoring" requirement for its minority program, the evidence provided by NERA experts and others was sufficiently strong to support the City's compelling interest claim. The judge recognized that "the City has a compelling interest in preventing its tax dollars from perpetuating a market so flawed by past discrimination that it restricts existing minority- and women-owned business enterprises (M/WBEs) from unfettered competition in that market."

In an unprecedented order, the court allowed the City six months to continue its existing remedial efforts while crafting a revised M/WBE program to meet the constitutional requirement of narrow tailoring. The ruling was a victory for the City and a new M/WBE program was created and implemented, with additional guidance by NERA, in May 2004.

Background

In 1989, in light of the U.S. Supreme Court's landmark opinion in *City of Richmond v. J. A. Croson Co.*, 488 US 469 (1989), that applied strict constitutional scrutiny to race-conscious government affirmative action programs, Mayor Richard M. Daley appointed a blue ribbon panel to propose a constitutional minority set-aside program. The Report of the Blue Ribbon Panel examined City

procurement practices and M/WBE utilization on City contracts, and made recommendations for the design and implementation of a M/WBE Procurement Program. The 1990 ordinance established M/WBE set-asides and subcontracting goals for all categories of City procurement of 25 percent to MBEs and five percent to WBEs.

In 1996, the Builders Association of Greater Chicago (BAGC) challenged the M/WBE Program. After intensive preparation, the City's case went to trial in 2003.

NERA's Role

The City hired NERA economists to provide expert research and trial testimony concerning discrimination against minorities and women in the Chicago construction industry. Using Federal Reserve System data, the NERA team provided an econometric analysis of access to credit and found that minority-owned firms were substantially more likely to be denied credit than other groups. We also found that when minorities were able to obtain loans, they were required to pay higher interest rates on average than whites. When the plaintiff's expert employed an alternative methodology, the results not only confirmed our findings regarding minorities but indicated that women-owned firms were discriminated against in the credit market as well.

The Result

The NERA testimony was part of the mosaic of proof that convinced the court that the City retains a compelling interest in ensuring that its construction contracting not return to "near white male monopoly." While the City had presented strong evidence of discrimination in its marketplace, the court held that the 1990 program was no longer narrowly tailored to the 2003 evidence. However, in recognition of the evidence establishing the City's compelling interest, the court stayed the injunction for six

months to give the City time to narrowly tailor its program. The City retained NERA to provide updated statistical analysis and to oversee the revision process and draft the new ordinance. In May 2004, the Chicago City Council approved the new program.

Contracting Affirmative Action

NERA is a leading provider of studies related to historically disadvantaged business enterprise. These studies evaluate goals established by federal, state, and local governments, and help public agencies to develop effective and lawful affirmative action programs for procuring goods and services from businesses owned by minorities and women. Learn more about our services and experience in the Labor and Employment section of our website at www.nera.com/labor.

Expert Involved

Dr. Jon Wainwright, NERA Senior Vice President

Dr. Jon Wainwright specializes in labor economics and industrial organization. He is an expert in analyzing the effects of discrimination and has testified as an expert witness in federal court and before Congress on these issues. A former Research Associate Professor at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin, Dr. Wainwright has extensive experience assisting clients with public contracting and employment policies, including statistical analysis of liability and damages, preparation of expert testimony, and preparation of deposition and cross-examination strategy for opposing expert witnesses. He is the author of *Racial Discrimination and Minority Business Enterprise: Evidence from the 1990 Census* (New York & London: Garland, 2000).

About NERA

NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over 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 more than 25 offices across North America, Europe, and Asia Pacific.

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