A Brief History of Affirmative Action Relative to the United States Construction Industry

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Affirmative action was originally meant to remove by law, as required by the Equal Pay Act and the 1964 Civil Rights Act, "artificial barriers" that prevented disadvantaged business enterprises from entering and competing in the workforce on an equal basis. This paper addresses the history, legal precedents and the current status of affirmative action as it pertains to the US construction industry.

Keywords: Affirmative Action, Construction, Disadvantaged Business Enterprise, Women Owned Business Enterprise (WBE)

Introduction

Affirmative action is a government mandated or voluntary program that consists of activities specifically to identify, recruit, promote, and/or retain qualified members of disadvantaged minority groups in order to overcome the result of past discrimination and to deter employers from engaging in discriminatory practices in the present. Simply removing existing impediments is not sufficient for changing the relative positions of women and minorities. To be truly effective in deterring discrimination, employers must take specific steps to remedy the consequences of discrimination (Herring and Collins, 1995).

How does the construction industry performing myriad types of projects in various locations with a temporary, transient workforce comply with affirmative action programs? How can minority-owned construction firms assimilate into a Caucasian-dominated industry without appearing to be incompetent and financially insolvent? It is important for today's construction students to understand the history behind Title VII of the Civil Rights Act for the simple fact that it appears on every company job posting and corporate website. It is also important for the students to familiarize themselves with the current policy of affirmative action, Executive Order 11246, in order to participate on public projects with goals or perform work with large private clients seeking to incorporate the diversity of the community on their construction projects. Finally, this paper provides a brief synopsis of excellent programs available to any small business, whether or not the company is minority-owned, which may be a resource for students staring their own construction companies.

History

Title VII of the Civil Rights Act is the basic legal charter of women's rights on the job in the United States. The act was passed by Congress in 1964 and signed by former president Lyndon Johnson. The order currently in force requires firms with 15 or more employees that sell

products to the federal government to establish and implement detailed plans for hiring women and minorities into jobs from which they have been excluded (Bergman, 1986). As a result of the Civil Rights Act, the Equal Employment Opportunity Commission (EEOC) was established to investigate complaints of discrimination in the workplace and, in some cases, bring lawsuits against employers. However, very few lawsuits are initiated because the EEOC has limited resources; the process is expensive and time-consuming; and the plaintiffs fear reprisal from future employment opportunities (Bergman, 1986).

Another federal agency set up to fight discrimination is the Office of Federal Contract Compliance Policy (OFCCP), which was created to enforce requirements that federal contractors identify, hire, and promote minorities and women in numbers roughly proportional to their availability in the labor market (Herring and Collins, 1995). The OFCCP has required each federal contractor with more than 15 employees to formulate an affirmative action plan. The heart of such a plan is a set of numerical goals and timetables for hiring and promoting women, African Americans, Hispanic Americans, and other designated minority groups. The goals are formulated to give each group a share in each type of job equal to its representation in the labor force. Employers are required to attempt to recruit women and minorities for jobs that were nontraditional for them (Bergman, 1986). The underlying premise of this requirement is that if employers acted in a nondiscriminatory fashion, their workforce would eventually reflect the composition of the surrounding population. Affirmative action evolved when compliance efforts that relied on "good faith" and "equal opportunity" proved to be an ineffective and inadequate approach to eliminating deep-rooted discriminatory employment processes. Thus, the OFCCP was vested with the authority to withhold or withdraw federal funds from federal contractors, giving it the ability to compel equal employment opportunity in the nation's major employers (Herring and Collins, 1995).

The Small Business Act created the Small Business Administration (SBA) in 1953 to protect and encourage small businesses. Section 8(a) of this law authorized the SBA to contract with federal agencies to provide goods and services and subcontract with small businesses owned by socially or economically disadvantaged persons. Section 8(a) amended by the SBA in 1976 required that a certified participant must identify with the disadvantages of his/her racial group and prove that such disadvantages have personally affected the applicant's ability to enter into the marketplace. Thus, business owners (of any race, creed or color) seeking certification as Disadvantaged Business Enterprises (DBEs) must submit a signed and notarized statement that they are socially and economically disadvantaged; disclose the owner's personal net worth, which must be less than $750,000 excluding home and business equity; and submit other supporting documentation required by the certifying agency (Cunningham et al, 2002).

Benchmark Goals

Set-asides in public works projects began with former president Richard Nixon's Executive Order 11458 in 1969. The Surface Transportation and Uniform Relocation Assistance Act section 105(f) of 1987 offered MBE and WBE firms a combined goal of 10% of the amount of work authorized. By 1989, thirty-six states and 190 local governments had adopted set-asides of one kind or another, earmarking a percentage of funds (the percentage varied) for business

endeavors that came to be labeled Disadvantaged Business Enterprises (DBEs), Minority Business Enterprises (MBEs), or Women Business Enterprises (WBEs) (Yates, S. 1994). However, businesses had to become certified with federal, state and local government agencies to qualify for these set-asides.

Section 105(f) had the result that subcontract awards could no longer be made to the lowest bidder on the basis of ability to do the best work for the best price. Instead, it brought about reverse discrimination throughout the construction industry. Less qualified and less experienced DBE firms could be awarded subcontracts over more qualified and more experienced companies owned by white men unless the latter teamed up with one of the former as a means of survival (Yates, S. 1994). For purposes of this paper, The American Heritage Dictionary defines reverse discrimination as discrimination against an individual or group that is traditionally in the majority especially when resulting from policies established to correct discrimination against members of a minority or disadvantaged group. In terms of the construction industry, the group that is traditionally in the majority is the Caucasian male-owned construction company.

To illustrate the concept of reverse discrimination, consider the following example of a federal or state highway project. Under most circumstances, about 90% of the work on a highway project is done by the prime contractor's own workforce. Only the remaining 10% or so – often landscaping, site safety, and similar light work – is available for subcontracting. The basic problem stems from the fact that a majority of minority-owned and women-owned firms involved in highway construction are subcontractors, not prime contractors. So if a project is governed by a 10% set-aside requirement, then 100% of the subcontract work must go to MBEs and/or WBEs. Under such circumstances, this would exclude the bids of subcontractors not in government-designated protected groups (Yates, S. 1994).

In 1989, there were 234 minority set-aside programs in states, counties, cities, and special districts across the country. Generally they covered businesses owned by members of the traditional affirmative action groups such as African Americans, Hispanic Americans, Asian Americans, Native Americans, Eskimos, Aleuts and women (Lanque, 1993). The programs employed a variety of devices to increase the number of contracts for MBEs and WBEs. Some jurisdictions, such as Washington, DC had a statutory set-aside, in this case 35%. Others, including Florida, determined the maximum number of subcontracts that could be created in a particular project and established a goal that as a practical matter required all of the subcontractors to be filled by MBEs or WBEs if they were available. Still other jurisdictions, such as San Francisco, created bidding preferences for M/WBEs on primary contracts along with goals for subcontracts. Many local programs were limitations of federal initiatives, and included the same groups and used the same preferential devices. Other programs were established in response to local concerns about employment and economic development in minority neighborhoods (Lanque, 1993).

Legal Precedents

It has been left to the courts to define what behavior is discriminatory and what is not and to set the nature of the evidence to be required as proof of discriminatory behavior. The growing

challenge to minority contract set-asides started in the 1970s and continued throughout the next two decades, faced serious challenges in the courts throughout the country. Two landmark cases that have directly affected the construction industry are discussed below.

City of Richmond v. Croson Construction Company, 488 U.S. 469 (1989)

In 1983, the city of Richmond, Virginia began to "set aside" 30 percent of its contracts for minority business enterprises (MBEs). Six months later, the J.A. Croson Company was low bidder on a project to install urinals in the city jail, but was denied a contract because of the set-aside provision. Croson filed suit. The city of Richmond did not present any evidence about how many MBEs were in the relevant market and how many city dollars they had received for minority set-asides. There was no evidence of discrimination against the various minority groups Richmond had included in its program. There was no evidence that Richmond even had any citizens belonging to those minority groups – Eskimos and Aleuts, for instance (Lanque, 1993).

The Supreme Court's opinion, written by Justice Sandra Day O'Connor, made it necessary for cities to provide specific evidence that a group had been previously discriminated against, as well as ways to correct the problem if one existed, before a race- or gender-conscious program could be put in place (Ruber, 1995). Jurisdictions had to conduct a statistical comparison to see if there was a disparity between the number of qualified, willing, and able MBEs and their utilization in government contracts.

Statistical proof of discrimination is complex. Justice O'Connor's opinion in *Croson* focuses on the importance of finding a statistical disparity between the availability and the utilization of qualified minority contractors willing and able to perform a service. How should this availability be measured? At a minimum, the availability data should take into account the actual geographic area from which the jurisdiction's public contractors are drawn. The data should also be broken down by type of market, and by the various groups the M/WBE program covers. For example, discrimination against Asians in heavy construction does not prove that other minorities suffer discrimination in heavy construction nor does it prove that Asians suffer discrimination in other markets. Finally, the analysis should take into account Croson's "willing and able" language by considering the capacity of firms to take on jobs of differing sizes. In the construction market, just 12% of the nation's firms have 5 or more employees, yet their work accounts for 78% of total revenues. Since M/WBEs are generally newer and smaller than non-M/WBEs failure to take the size of firms into account will exaggerate the availability of M/WBEs (Lanque, 1993). Therefore, larger firms may have higher dollar contract awards than smaller firms and that could account for disparities in the average size of the contract awarded. Thus, firm capacity is an important variable in the awarding of contracts to M/WBEs.

Adarand Constructors v. Pena, 515 U.S. 200 (1995)

Randy Pech, owner of Adarand Constructors in Colorado Springs, CO, made affirmative action history when his lawsuit challenging a minority set-aside program in federal highway contracting made it to the Supreme Court. Adarand Constructors bid for, but did not receive, a $104,000 contract to install guardrails and signage on a road in San Juan National Forest. Adarand,

bidding as a subcontractor, maintains it lost the contract because the main contractor was paid a $10,000 bonus by the federal government to encourage participation by minority and women-owned companies. A minority-owned firm was awarded the contract. Adarand sued, saying the bonus program discriminated against white males. The Court declared in a 5-4 decision that the government's selection of a Latino contractor over the low bidder, white-owned company, for a job in Colorado was unconstitutional. Justice O'Connor, writing for the Court, held that all racial classifications, whether passed by Congress or the states, must be strictly scrutinized by judges and can only survive if they are narrowly tailored to accomplish a compelling governmental interest (Rosen, 1995). The result of *Adarand* was to hold federal procurement preference programs to the same level of strict scrutiny as state and local programs.

The Current Policy of Affirmative Action: Executive Order 11246

The Office of Federal Contract Compliance Programs (OFCCP), as part of the United States Department of Labor (US DOL), administers and enforces Executive Order 11246 which prohibits discrimination and requires affirmative action to ensure equal employment opportunity (EEO) without regard to race, color, gender, religion and/or national origin. All contractors and subcontractors holding non-exempt federal and federally assisted construction contracts and subcontracts exceeding $10,000 must comply with Executive Order 11246 (US DOL, 2005). To comply with Executive Order 11246, contractors must demonstrate good faith efforts to meet their affirmative action goals (set-aside programs) for the employment of minorities and women in the construction industry. There are two types of set-aside programs. One type is based on a specified percentage of the number or total dollar value of government contracts allotted to disadvantaged business enterprises. The other type makes prime contractors allot a specified percentage of the total amount of government contracts to disadvantaged subcontractors and/or suppliers.

In order to take into account the fluid and temporary nature of the construction workforce, OFCCP does not require construction contractors to develop written affirmative action programs. Instead, OFCCP has established the utilization goals based on civilian labor force participation rates, and has outlined in the regulations good faith steps for construction contractors to follow. The goals by geographic area are determined by the Deputy Assistant Secretary of the OFCCP and are expressed as a percentage of the hours worked by the contractor's aggregate workforce in each trade on all construction work performed in the geographic area, regardless whether the work is federal, federally assisted or non-federal. If a contractor is working in a jurisdiction away from its home base, then it will apply the goals established for the geographic area where the work is actually performed. The current goal for the utilization of women is 6.9% of work hours and applies to all of a contractor's construction sites regardless of where the federal or federally assisted contract is being performed (US Department of Labor, 2005).

Table 1
Minority Goals by State and County (Abbreviated)
Source: Technical Assistance Guide for Federal Construction Contractors

State	Goal (%)
Arizona	
SMSA Counties: Tucson, Pima	24.1
Non-SMSA Counties: Cochise, Graham, Greenlee, Santa Cruz	27.0
SMSA Counties: Phoenix, Maricopa	15.8
Non-SMSA Counties: Apache, Coconino, Gila, Mohave, Navajo, Pinal, Yavapai, Yuma	19.6
Nevada	
SMSA Counties: Las Vegas, Clark	
Non-SMSA Counties: Esmeralda, Lincoln, Nye, Beaver, Garfield, Iron, Kane, Washington	13.9
SMSA Counties: Reno, Washoe	8.2
Non-SMSA Counties: Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Storey, White Pine, Carson City	9.2

Minority goals are formulated in terms of work hours performed in a specific Standard Metropolitan Statistical Area (SMSA or urban area) or Economic Area (EA or rural area). For example, XLT Construction has a federal contract for construction work in Las Vegas, Nevada. The goals for Las Vegas apply to all of XLT's construction work in Las Vegas, both the federal and non-federal work. In addition, if XLT Construction performs construction work in Phoenix, Arizona, it would apply the Phoenix goals to all its construction work in Phoenix, whether or not it had a federal or federally assisted contract in Phoenix. Minority goals for the states of Arizona and Nevada are shown in Table 1. This information is extracted from Appendix B-80 of the Technical Assistance Guide for Federal Construction Contractors which has minority goals for all 50 states and their respective counties.

Contractors may establish higher goals if they desire. Although a contractor is required to make good faith efforts to meet his/her goals, the goals are not quotas and no sanctions are imposed solely for failure to meet them. In lieu of a written affirmative action program, the regulations enumerate the sixteen good faith steps construction contractors must take in order to increase the utilization of minorities and women in the skilled trades. Construction contractors must document the steps and actions that they take to ensure these requirements are met. As summarized from the Construction Contractors Technical Assistance Guide (http://www.dol.gov/esa/ofccp/TAguides/ctaguide.htm), contractors and subcontractors must:

1. Maintain a work environment free of harassment, intimidation, and coercion.
2. Establish and maintain current lists of minority and female recruitment resources.
3. Maintain current files containing the names, addresses and telephone numbers of each minority or female off-the-street applicant and minority or female referral.
4. Notify the Deputy Assistant Secretary in writing when the union with which the contractor/subcontractor has a collective bargaining agreement has not referred a woman or minority individual sent by the contractor/subcontractor.
5. Develop on-the-job training opportunities or participate in training programs for the job area(s) which expressly include minorities and women.
6. Disseminate EEO policies via policy manuals, collective bargaining agreements, and postings on bulletin boards.

7. Review, on a yearly basis, EEO policies and affirmative action obligations with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions.
8. Disseminate EEO policies externally by including them in any advertising in the news media (including minority and female news media).
9. Direct recruitment efforts to minority, female and community organizations, schools and training organizations serving the contractor's recruitment area.
10. Encourage current minority and female employees to recruit other minority persons and women.
11. Validate all tests and other selection requirements where there is an obligation to do so.
12. At least once a year, evaluate all minority and female personnel for promotional opportunities.
13. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect.
14. Ensure that all facilities and company activities are non-segregated except for single-user toilets and changing facilities.
15. Document and maintain records of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers.
16. At least once a year, conduct a review of all supervisors' adherence to and performance under the company's EEO policies and affirmative action obligations.

Objections to Affirmative Action

Numerical goals (set-aside programs) and timetables of affirmative action are in some circumstances legal, but are they desirable? On one side it has been argued that they create injustice, are a form of reverse discrimination, and do harm to those they are designed to benefit. The chief argument in favor of the use of numerical goals and timetables for hiring and promoting is that without them women and minorities are likely to be excluded from construction contracts. The imposition of numerical goals and timetables is the only way that has been found to hold businesses accountable. In the absence of numerical goals, the enforcing agency can only collect vague promises from employers "not to discriminate" (Bergman, 1986).

A genuine drawback of affirmative action from the point of view of women and minority construction owners is that they must face the suspicion by other contractors that they are incompetent, financially insolvent, or perform poor quality work. This suspicion is particularly upsetting to those women and minority contractors who are qualified to perform the work, but just want an opportunity to compete on an equal level for the construction contracts. The concept of affirmative action, which attempts to promote equal employment opportunity for women and minority groups, is often greeted by Caucasians, in many instances, as a policy of "inequality." Majority-owned firms complain that when goals become quotas, they may be forced to employ unqualified persons and increase their costs because of the need for extra training and supervision. Majority contractors also cite the fact that many minority firms have difficulty in obtaining bonds for their work (Wright, 1992).

Affirmative action has come under siege not only for being politically unpopular, but also for being ineffective as a policy for reducing levels of inequality for targeted groups. Some have challenged affirmative action because it purportedly helps those members of minority groups who need minimal assistance, while at the same time it does little for those who are among the "truly disadvantaged." Others have criticized such programs for unfairly stigmatizing qualified minority candidates who must endure the perception that they were selected or promoted only because of their company's need for minority representation. Others have derided affirmative action polices as reverse discrimination that benefits minority groups at the expense of equally or more qualified non-minority construction contractors (Herring and Collins, 1995).

One of the most serious problems with implementation of the DBE program was the appearance of fraudulent DBEs and the difficulty faced by prime contractors and government agencies trying to distinguish between legitimate DBE's and fraudulent ones. The quota law encouraged the formation of "illegal shams and front operations" established for the sole purpose of filling quotas. These brokerage firms receive the contract award, request 5-10% of the gross as their fee, and then force the non-minority firms to perform the work for the shams or perform no work at all. Many of these brokerage firms were owned by minority-group members who were relatively well off economically (Yates, S. 1994). Legitimate DBEs are often at a disadvantage relative to the front operations; the latter have the resources of larger, non-minority companies and can easily underbid them. The DBE program is sometimes explicitly rejected by those in its targeted groups who would prefer to compete in a free market.

Should Affirmative Action Be Eliminated?

Federal minority contracting opportunities serve as a major point of entry for women and minority business enterprises into the mainstream of American business (Rice and Mongkuo, 1998). In terms of securing federal contracts, less than 1% of all federal procurement involved a minority-owned business in 1976 (U.S. Small Business Administration, 1995). By 1987, 6% of all firms were minority-owned and federal contracts received by these minority businesses increased to about 2.7%. Between 1982 and 1991 some increase in the percentage and dollar amount of federal contracts awarded to women and minority-owned business occurred. In 1994 the value of all federal minority contracts was $14.6 billion or 8.3% of the total federal procurement (Rice and Mongkuo, 1998). In 2005 (the latest date numbers were available), small businesses were awarded $79.6 billion or 25% of the total $314 billion in federal prime contracts. Table 2 shows the prime contract awards by procurement preference program for 2001 through 2005.

Table 2
Prime Contract Awards by Procurement Preference Program
Source: US Small Business Administration Report to the President

	2001		2002		2003		2004		2005	
	$ billion	%	$ billion	%	$ billion	%	$ billion	%	$ billion	%
All Businesses	242.5	100	259.3	100	277.58	100	299.9	100	314	100
Small Businesses	53.8	22.1	54.2	20.9	65.5	23.6	69.2	23.0	79.6	25.0
Disadvantaged Business	6.2	2.5	5.5	2.1	19.5	7.0	18.5	6.1	21.7	6.9
8(a) Businesses	6.2	2.8	5.5	2.1	10.1	3.6	8.4	2.8	10.5	3.3
Non-8(a) SDBs	0.04	0.3	0	0	9.3	3.4	10.1	3.3	11.3	3.6
HUBZone Businesses	0.45	0.2	0.7	0.3	3.4	1.2	4.8	1.6	6.1	1.9
Women-Owned Business	7.2	3	7.1	2.7	8.3	3	9.1	3	10.5	3.3
Veteran-Owned Business	0.6	0.2	0.4	0.2	0.5	0.2	1.2	0.4	1.9	0.6

When asked whether the set-aside program in his area helped women and minority entrepreneurs enter and succeed in the construction industry, Ralph Stout, Jr. of Southern Seeding Services in North Carolina stated: "I don't think it has. I see two types of contractors. There is one who is going to be in business whether there's a goal program, set-aside program, or not. Then I see contractors who are in business because of the goal programs" (Yates, S. 1994). According to Gordon Wright, few people will dispute the intent of affirmative action programs designed to provide greater opportunity for ethnic minorities and women in the nonresidential building industry, but their application easily provokes animosity. Implementing affirmative action is difficult and requires the commitment of all parties. Owners, industry groups and individual firms are nevertheless accepting the challenge. Affirmative action programs are not uncommon on large private, public, or quasi-public projects in major metropolitan areas, even if they are not mandated. Many owners and contractors regard these programs as a smart investment because they contribute to the vitality of the area in which they build.

Procurement Preferences Available to Small Businesses

The US federal government utilizes several procurement preference programs targeted for small businesses in which the company does not necessarily have to be of minority ownership. These programs are intended to help small businesses succeed by providing assistance in the form of support for government contractors; access to capital, management and technical assistance; and export assistance. The intent of these programs is to address historical patterns of discrimination and poor market access of women and minority business enterprises (Rice and Mongkuo, 1998).

Small Disadvantaged Business Certification Program

The Small Business Administration (SBA) certifies Small Disadvantaged Businesses (SDBs) for participation in federal procurements aimed at overcoming the effects of discrimination. A small business must be 51% owned and controlled by a socially and economically disadvantaged individual(s). Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group. Social disadvantage must come from circumstances beyond their control. African Americans, Hispanic Americans, Asian Pacific Americans, Asian Americans, and Native Americans are presumed to

qualify. Economically disadvantaged individuals are those whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities (Small Business Association, 2005). All qualifying individuals must have a net worth of less than $750,000, excluding business equity and primary residence. Successful applicants must also meet applicable size standards for small businesses in their industry. Once certified, the company is added to an on-line registry of SDB-certified firms for a three-year period. Qualified SDBs receive a price evaluation adjustment of up to 10% on contracts. Qualified prime contractors can receive a credit when using certified SDBs on competitive negotiated construction contracts over $1,000,000 (Small Business Association, 2005).

8(a) Business Development Program

Unlike the Small Disadvantaged Business Certification Program which strictly pertains to benefits in federal procurement contracts, the 8(a) program offers a broad scope of assistance to socially and economically disadvantaged firms. However, 8(a) firms automatically qualify for SDB certification. Qualifications for the program are similar to those for the SDB certification program. Program participation is divided into the development stage, which takes four years, and the transitional stage which is five years. The developmental stage is designed to help 8(a) certified firms overcome their economic disadvantage by providing business developmental assistance. The transitional stage is designed to help participants overcome the remaining elements of economic disadvantage and to prepare participants for leaving the 8(a) program. The regional Division of Program Certification and Eligibility (DPCE) notifies applicants within 15 days if the application is complete, and then renders its decision within 90 days (Small Business Association, 2005).

HUBZone – Historically Underutilized Business Zone

The HUBZone Empowerment Contracting Program stimulates economic development and creates jobs in urban and rural communities by providing federal contracting preferences to small businesses. The program does not apply to contracts awarded by state and local governments. These preferences go to small businesses that obtain HUBZone (Historically Underutilized Business Zone) certification by employing people who live in a HUBZone and maintaining a principal office in one of these specially designated areas. To qualify for the program, a firm must be a small business by SBA size standards; the principal office must be located within a HUBZone; the business must be owned and controlled by one or more US citizens; and at least 35% of its employees must reside in a HUBZone. For construction companies, the principal office would be the location where the greatest number of employees perform their work, but excluding those who perform work at jobsite locations. The SBA lists all HUBZones by address, county or state on its website at www.sba.gov/hubzone.

Women-Owned Small Business (WOSB) Procurement Program

The Federal Acquisition Streamlining Act of 1994 established the government wide goal for participation by small businesses owned and controlled by women at not less than 5% of the total value of all prime contract and subcontract awards each year. The WOSB Procurement Program has a required goal set by law, but there are no set-aside procurement programs or incentives for

awarding a contract to a woman-owned small business. The Federal Acquisition Regulations defines a woman-owned business as one that is at least 51% owned and totally operated by one or more women. Because of the 5% procurement goal, agencies have a strong incentive to look for qualified women-owned businesses when fulfilling contractual needs (Small Business Association, 2005).

Conclusion

Affirmative action was originally meant to remove barriers that prevented women and minority groups from entering the workforce. Affirmative action takes the form of government sponsored legislation and programs designed to help disadvantaged minority groups overcome past discrimination and prevent employers from engaging in discriminatory practices. Despite legislation, minority contract set-aside programs and benchmark goals faced challenges in the courts throughout the US. Two landmark cases, the *City of Richmond v. Croson Construction Company* and *Adarand Constructors v. Pena*, made it necessary for cities to provide specific evidence that a group had been previously discriminated against before a minority set-aside program could be established. However, majority-owned firms viewed affirmative action policies as reverse discrimination that benefited minority groups at the expense of equally or more qualified non-minority construction contractors.

Currently, construction contractors' EEO and affirmative action obligations are specified in the bid solicitations for all federal and federally-assisted construction contracts and subcontracts in excess of $10,000. The notice informs the contractor/bidder of the affirmative action requirements imposed under Executive Order 11246, including the specified goals for minority and female participation. To comply with Executive Order 11246, contractors must demonstrate good faith efforts to meet their affirmative action goals. However, they are not penalized for not meeting the goals. The US federal government utilizes several procurement preference programs aimed at helping small businesses succeed by providing assistance in the form of support for government contractors; access to capital, management, and technical assistance; and export assistance. Finally, it is important to note that most of these programs are open to any small business without regard to race, color, gender, religion or national origin as long as they meet the requirements of the individual program.

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