

BALTIMORE COUNTY PUBLIC SCHOOLS

DATE: March 24, 2009

TO: **BOARD OF EDUCATION**

FROM: Dr. Joe A. Hairston, Superintendent

SUBJECT: **REPORT ON MINORITY AND SMALL BUSINESS ENTERPRISES (MBE/SBE)**

ORIGINATOR: J. Robert Haines, Esq., Deputy Superintendent

RESOURCE PERSON(S): Barbara Burnopp, Chief Financial Officer
Rick Gay, Manager, Office of Purchasing

INFORMATION

Board of Education Policy 3200, Superintendent’s Rule 3200, and the State of Maryland have policies and regulations related to MBE/SBE participation on state-funded contracts. On October 1, 2008, the Interagency Committee (IAC) for Public School Construction added new requirements for MBE/SBE goal setting by individual project. The attached report outlines the history of BCPS purchasing with MBE/SBE vendors. It also compares to the new IAC regulations to the old regulations.

Attachment I – Purchasing with Minority and Small Business Enterprises

Purchasing with Minority and Small Business Enterprises

March 24, 2009

Definitions

- **Minority Business Enterprise (MBE)**
 - Defined by the State Finance Procurement Article 14-301 for State Construction, any legal entity that is:
 - at least 51% owned and controlled by one or more minority individuals or;
 - a non-profit entity organized to promote interests of the physically or mentally disabled.
 - State-funded contracts – must be certified by the Maryland Department of Transportation (MDOT)
 - County-funded contracts – must be certified by the MDOT or other recognized municipalities or minority associations.

Definitions (continued)

- **Minority Groups**
 - African Americans
 - Asian Americans
 - Hispanic Americans
 - Native Americans
 - Women
 - Persons with disabilities

Definitions (continued)

- Small Business Enterprise (SBE) as defined by State Finance Procurement Article 14-201
 - A business with 1-100 employees, depending on classification
 - Generates an annual revenue of less than \$7 million (for construction), and \$2 million for other business classifications

Board Policies and Superintendent's Rule

- Board Policy and Superintendent's Rule 3200 – Purchasing from Minority and Small Business Enterprises
- Board Policy 7460 – Construction – Purchases from Minority Businesses
- Sets goals for MBE/SBE involvement
- Specific goals for all contracts
 - 14% total value of contracts from both MBEs and SBEs
- Sets compliance with state contract goals

State Regulations (14-302)

- Goal for State-Funded Public School Construction Contracts
 - 25% total value of contracts from MBE
 - 7% minimum classified as African American
 - 10% minimum classified as Woman-owned
 - Specifically looks at subcontractors in addition to prime contractor
 - New Interagency Commission on School Construction (IAC) procedures effective October 1, 2008

Governors Office of Minority Affairs (GOMA)
 Report on Local Education Agencies
 MBE Participation for FY 2008

	Number of Projects	Total Contracts Awarded	Total MBE Dollars Awarded	MBE Participation
Dorchester County	5	\$22,459,540	\$4,864,704	21.66%
Baltimore County	27	\$166,905,522	\$35,409,303	21.22%
Wicomico County	1	\$73,644,880	\$13,773,886	18.70%
Anne Arundel County	22	\$78,843,310	\$12,904,544	16.37%
Washington County	12	\$20,755,058	\$3,371,873	16.25%
Carroll County	5	\$839,205	\$129,385	15.42%
Harford County	5	\$6,061,338	\$875,500	14.44%
Calvert County	10	\$17,953,561	\$2,367,148	13.18%
Baltimore City	28	\$37,302,186	\$4,412,380	11.83%

Governors Office of Minority Affairs (GOMA)
 Report on Local Education Agencies
 MBE Participation for FY 2008 (Continued)

	Number of Projects	Total Contracts Awarded	Total MBE Dollars Awarded	MBE Participation
Howard County	22	\$106,380,304	\$11,340,839	10.66%
Montgomery County	37	\$236,749,836	\$20,115,961	8.50%
Fredrick County	6	\$5,963,547	\$468,329	7.85%
Cecil County	5	\$12,171,906	\$942,031	7.74%
Charles County	2	\$1,651,116	\$126,349	7.65%
Prince Georges County	58	\$49,301,313	\$3,283,990	6.66%
Kent County	1	\$1,647,400	\$99,458	6.04%
St. Mary's County	1	\$20,014,000	\$934,244	4.67%
Queen Anne's County	2	\$14,819,000	\$356,476	2.41%

Comparison of Old and New Procedures for State-Funded Contracts

Old Procedures from June 1, 2005

- Old procedures set goals for all of BCPS with each project having the same minority MBE goals without regard for type of work.
- No review of the project goals was necessary as each project was the same.
- Recommended participation goals for the system were included in each advertisement as well as bid documents.
- If a waiver for any portion of the goal was requested, the contractor was required to submit documentation of their effort to meet the goal.
- MBE liaison reviewed this documentation to confirm the effort. If the effort put forth by the contractor did not meet established criteria, the contractor was asked to provide additional documentation.

New Procedures Effective October 1, 2008

- New procedures require BCPS to set overall and minority-specific subgoals for each project.
- Procurement Review Group (PRG) analyzes each project for potential certified MBE contractor participation.
- Recommended participation goals for each project included in the advertisement and all bid documents.
- Bidder required to submit documentation within 10 business days of good-faith effort to meet the goals, if requesting a waiver.
- Purchasing agent reviews documentation to confirm the good-faith effort without which the bid must be found non-responsive.
- Adds compliance requirements.

New IAC Procedures Impact on BCPS

- **Project Solicitation Process**
 - Ongoing MBE outreach efforts
 - Individual project goal setting done by the PRG
 - Pre-bid meeting to inform bidders of expectations and MBE legal and technical requirements
 - Review of bid submission materials
- **Contract Award Process**
 - Receipt of ALL documentation within 10 days, including supporting material for a request for waiver
 - Review of documentation of good-faith effort to meet goal before granting of any waiver
- **Construction Compliance Process**
 - Scrutiny of substitutions of MBE subcontractors with non-MBE subcontractors
 - Maintenance of documentation to ensure compliance
 - Reporting of payments to subcontractors

Additional Background on New IAC Procedures

- State MBE goal is NOT a set-aside:
 - No bid should be automatically rejected because it does not meet the goal or subgoals
 - Low bidder who is otherwise responsive and responsible **MUST** be given the opportunity to present documentation in support of a request for waiver
 - A bid should be rejected on MBE grounds if:
 - Required MBE forms are not submitted or not properly completed.
 - Documentation required within 10 days of bid to support a request for waiver is not submitted or not properly completed.
 - Documentation does not provide convincing evidence of good-faith outreach efforts.
 - Documentation does not provide convincing evidence of why available and interested MBEs were not used.

Good-Faith Effort Documentation

- A list of the portions of the work or supplies identified by the bidder to be potentially accomplished by MBEs
- A detailed statement of the efforts made by the bidder at least ten (10) days before the bid due date to solicit minority business enterprises through written notices that describe the categories of work for which subcontracting is being solicited, the type of work to be performed and specific instructions on how to submit a bid
- Follow-up actions taken by the bidder within the 10 days will also be reviewed
- A detailed statement of the bidder's efforts to make personal contact with MBE firms

Good-Faith Effort (Continued)

- A record of the name, address, telephone number and dates contacted for each MBE
- A description of the information provided to MBEs regarding the drawings, specifications, and the anticipated work schedule for each portion of the work
- Information on activities to assist minority business enterprises to fulfill bonding requirements if necessary
- Information on activities to publicize contracting opportunities to minority business enterprises including attendance at pre-bid meetings
- A record of pricing submitted by each MBE which the bidder considers not to be acceptable, and a detailed statement of reasons for this conclusion

Contracting Process (Continued)

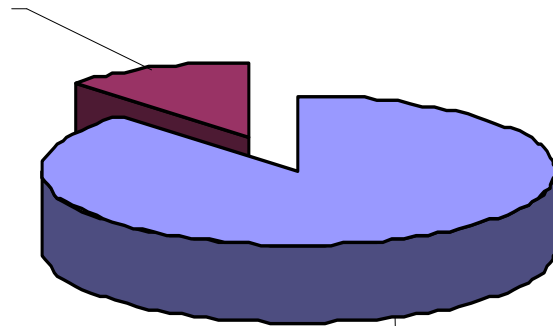
- **State-Funded Construction Contracts**
 - All invitations for bids outline MBE participation goals.
 - Purchasing notifies the Maryland/ Washington Minority Contractors Association (MWMCA) and Governor's Office of Minority Affairs of all available bids.
 - Purchasing directly notifies all pre-qualified contractors of available bids through the online plan room.

Contracting Process (Continued)

- State-Funded Construction Contracts (continued)
 - A *Utilization Affidavit*, a *Schedule for Participation* and an *Outreach Efforts Compliance Statement* must be completed at the time of bid submission.
 - As necessary, a request for a waiver must be submitted if the state goals cannot be met, and an *Unavailability Certificate for Minority Subcontractors* must be submitted.

FY 2008 Operating, Grants, Capital, and Food Services Expenditures

Items Subject to
Competitive Procurement
Process
19%
\$274 million

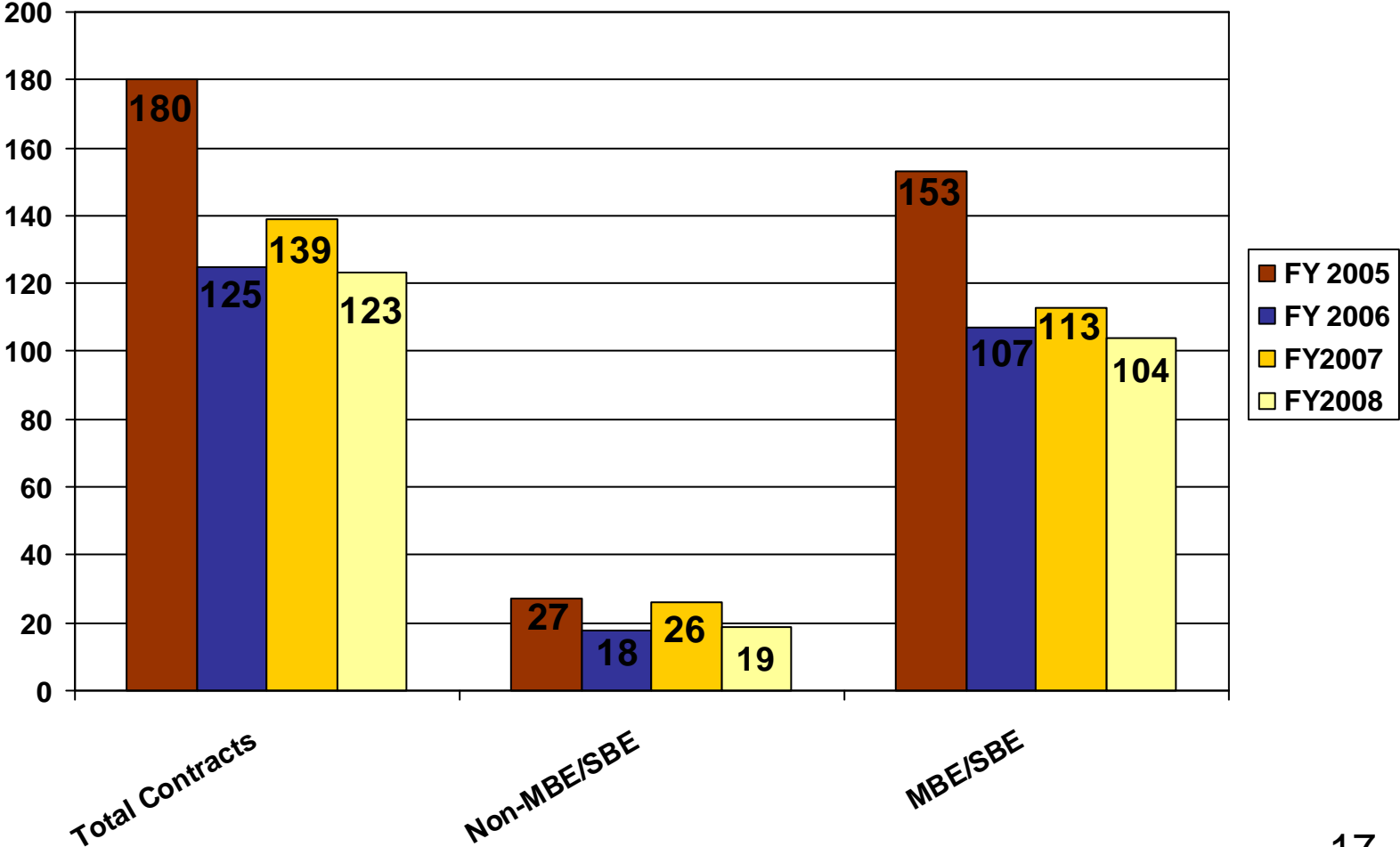


Items not Subject to Bid
(Ex: utilities, salaries, benefits,
copyrighted materials [texts], insurance,
rent, maintenance fees)
81%
\$1.13 billion

Annual Reporting Results FY 2005 – FY 2008

Contract Awards that Include MBE/SBE Participation

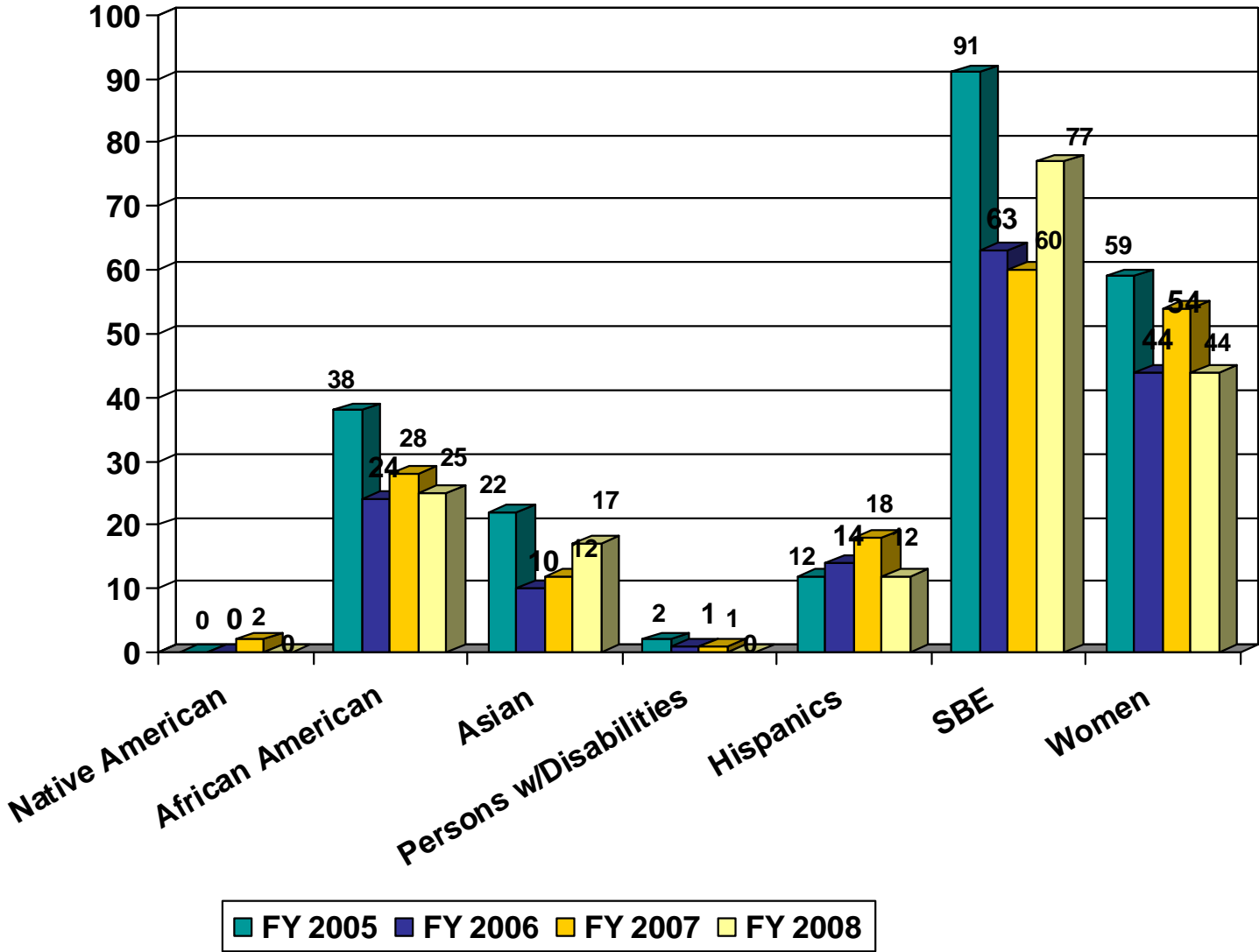
July 1, 2004 through June 30, 2008



Annual Reporting Results FY 2005 – FY 2008

Contract Awards that Include MBE/SBE Participation

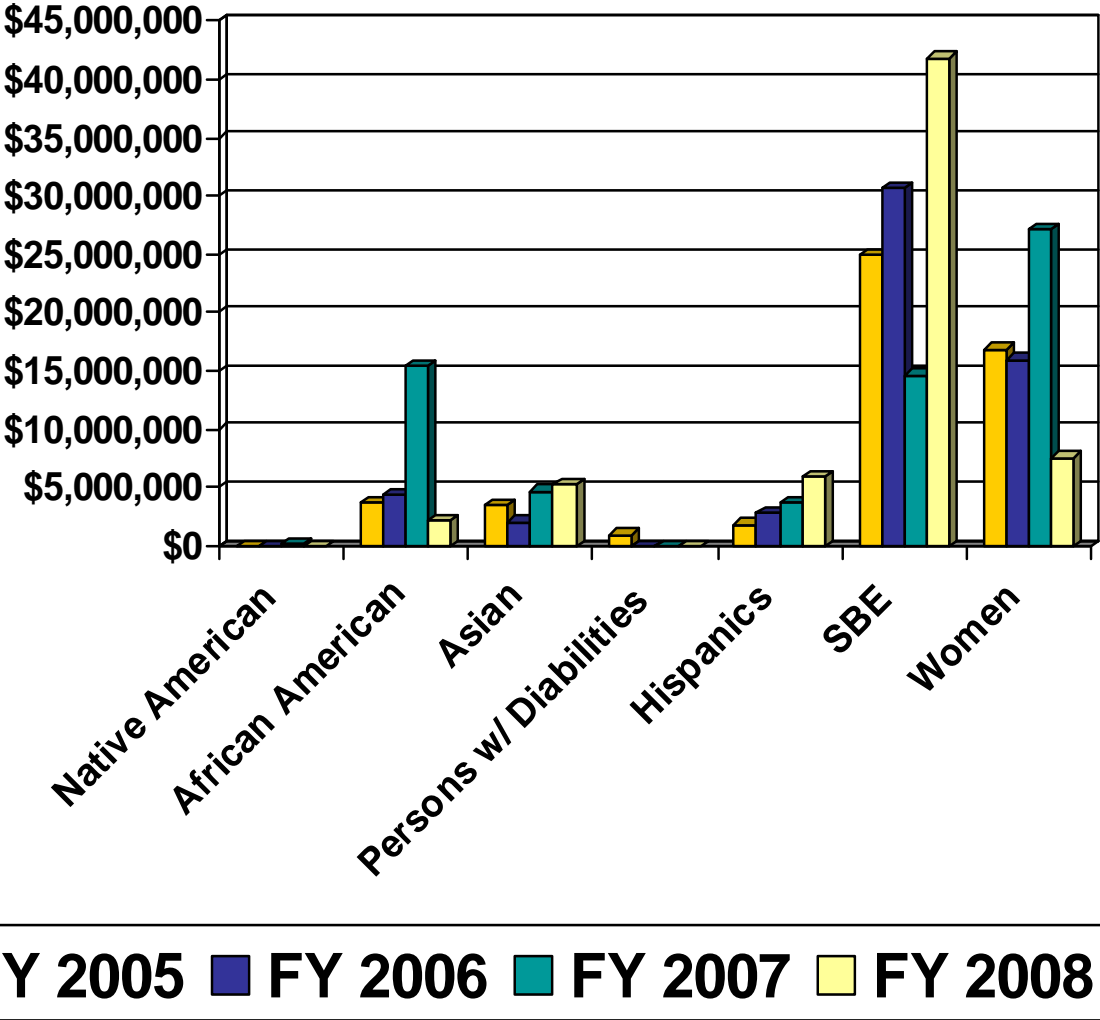
July 1, 2004 through June 30, 2008



Annual Reporting Results FY 2005 – FY 2008

Dollar Value of Participation that Includes MBE/SBE

July 1, 2004 through June 30, 2008

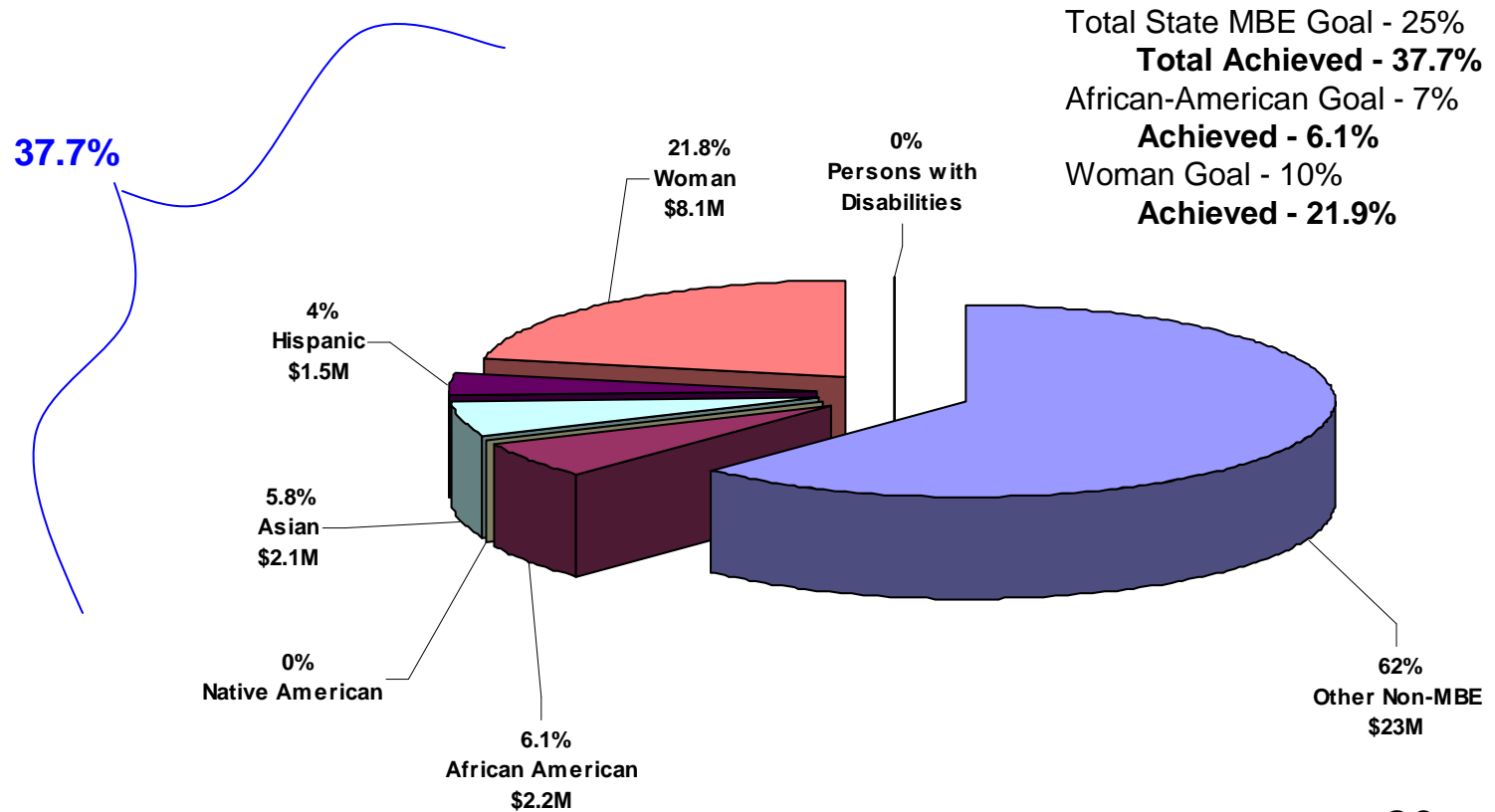


Annual Reporting Results FY 2005

State-Funded Contracts – Total \$36.9 million

MBE Participation for State-Funded Construction Projects by Category

July 1, 2004 through June 30, 2005



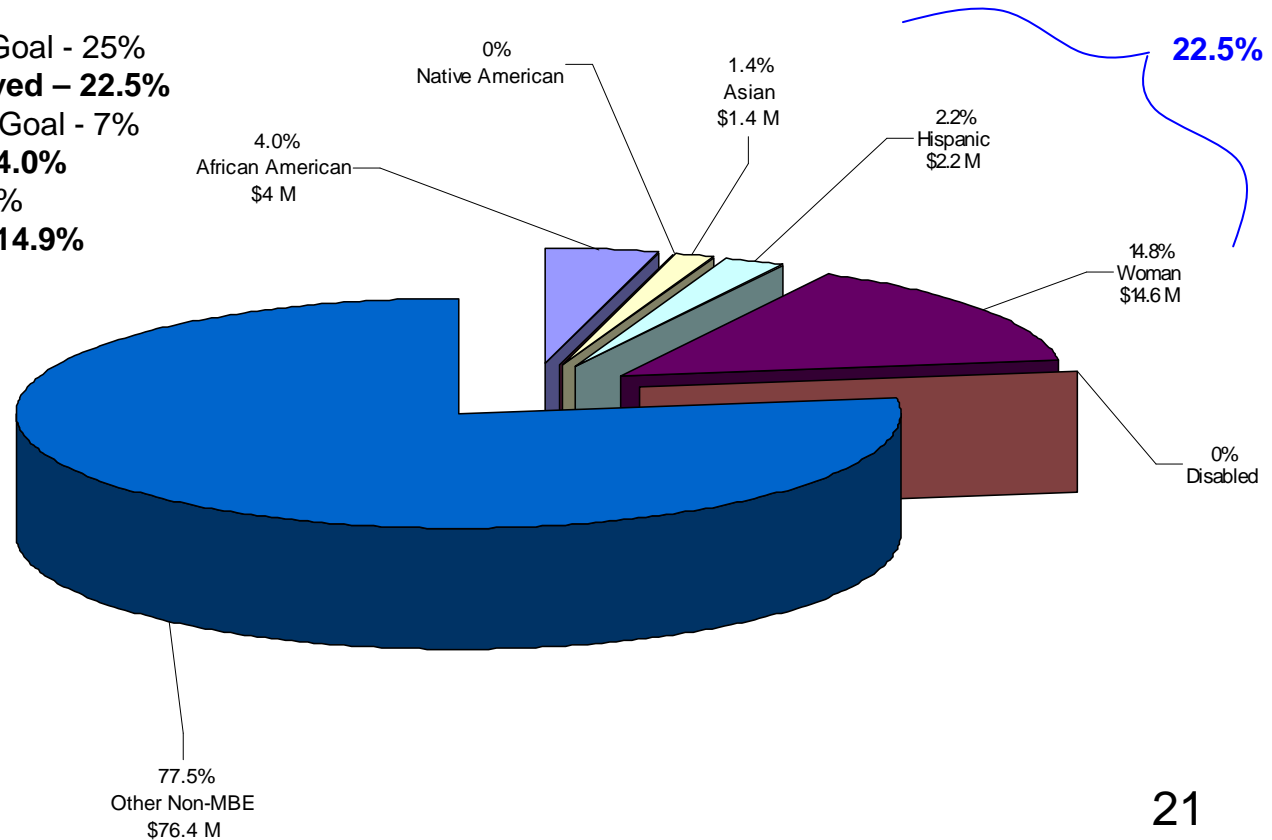
Annual Reporting Results FY 2006

State-Funded Contracts – Total \$98.7 million

MBE Participation for State-Funded Construction Projects by Category

July 1, 2005 through June 30, 2006

Total State MBE Goal - 25%
Total Achieved – 22.5%
African-American Goal - 7%
Achieved – 4.0%
Woman Goal - 10%
Achieved – 14.9%



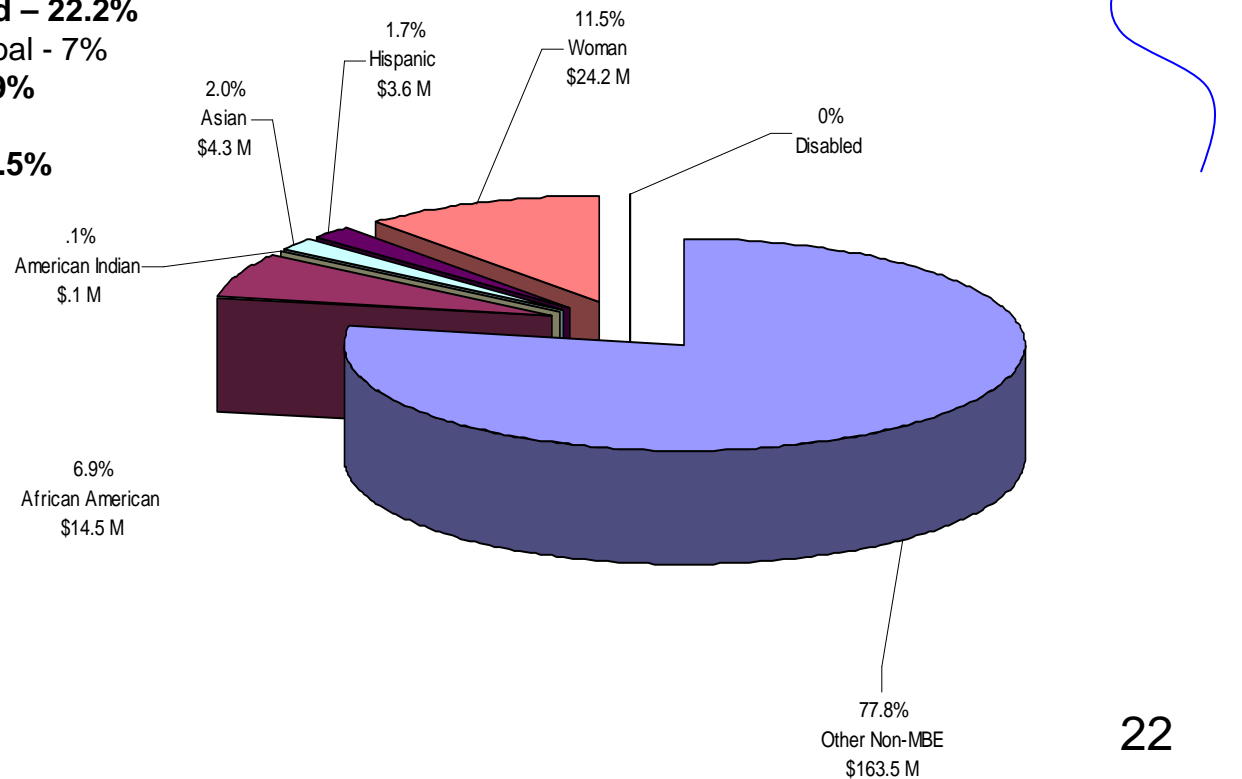
Annual Reporting Results FY 2007

State-Funded Contracts – Total \$210.2 million

MBE Participation for State-Funded Construction Projects by Category

July 1, 2006 through June 30, 2007

Total State MBE Goal - 25%
Total Achieved – 22.2%
 African-American Goal - 7%
Achieved – 6.9%
 Woman Goal - 10%
Achieved – 11.5%



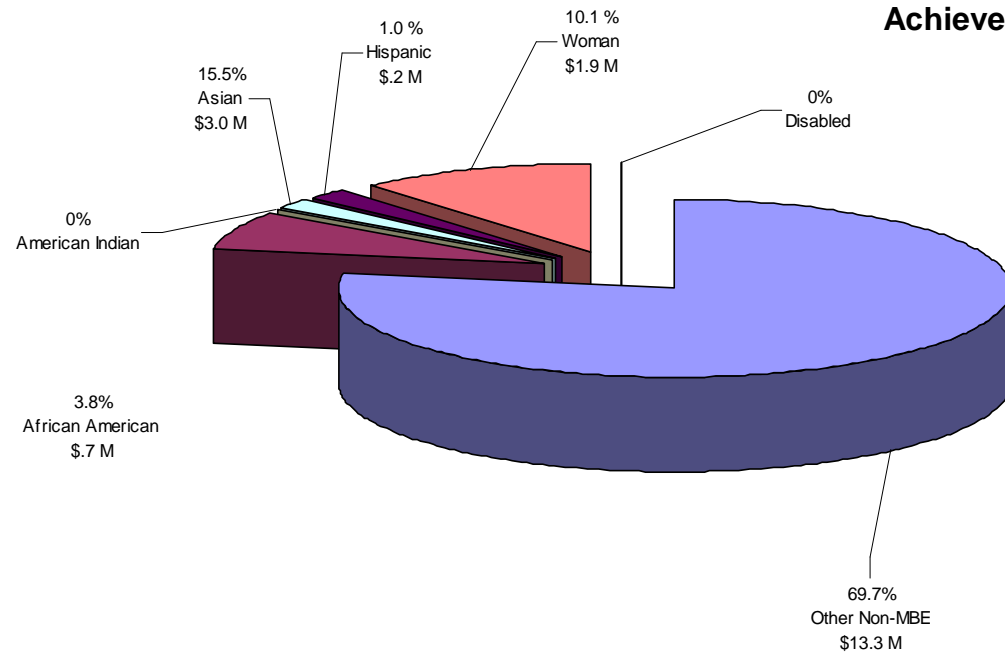
Annual Reporting Results FY 2008

State-Funded Contracts – Total \$19.1 million

MBE Participation for State-Funded Construction Projects by Category

July 1, 2007 through June 30, 2008

Total State MBE Goal - 25%
Total Achieved – 30.3%
African-American Goal - 7%
Achieved – 3.8%
Woman Goal - 10%
Achieved – 10.1%

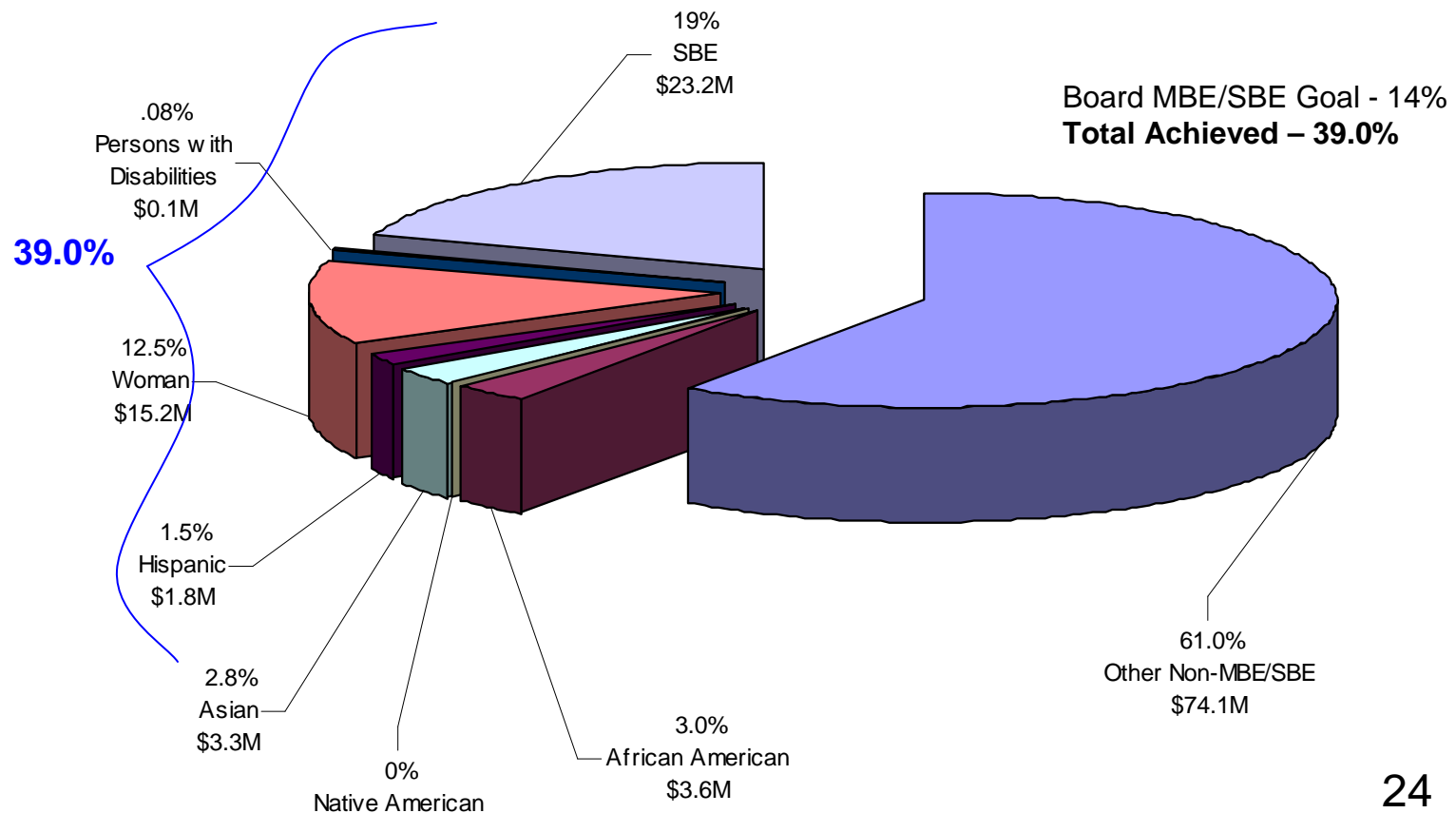


Annual Reporting Results FY 2005

MBE and SBE Participation for all Contracts by Category

Total Contracts - \$121.3 million

July 1, 2004 through June 30, 2005



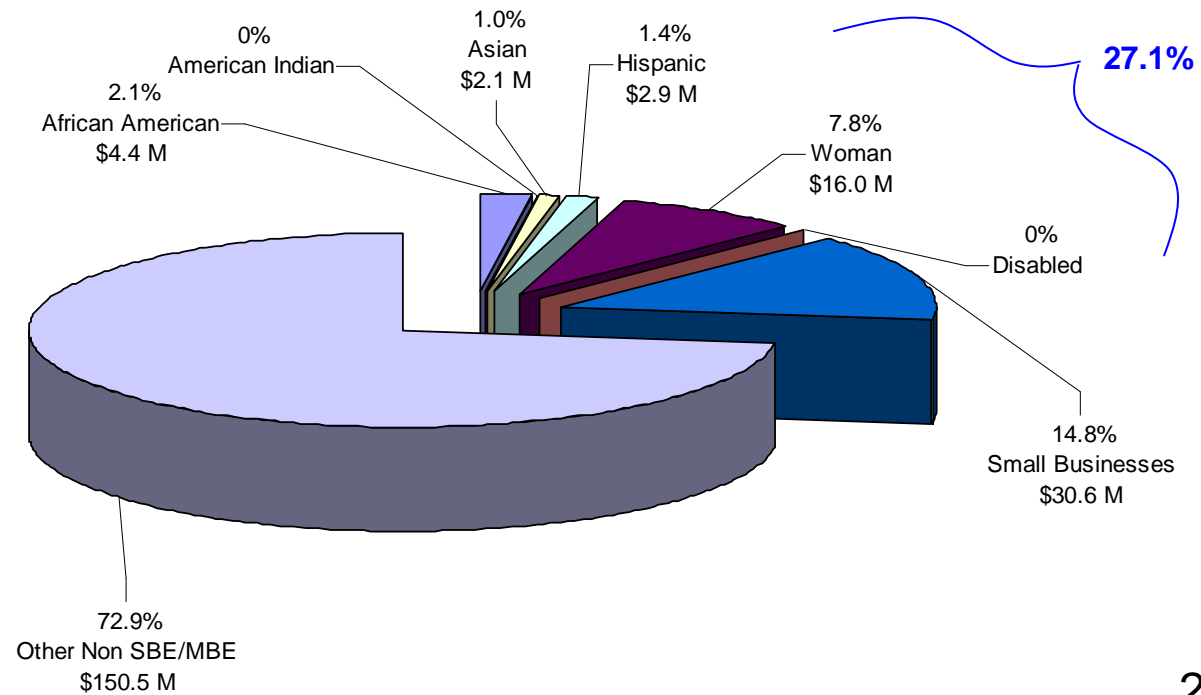
Annual Reporting Results FY 2006

MBE and SBE Participation for all Contracts by Category

Total Contracts - \$206.4 million

July 1, 2005 through June 30, 2006

Board MBE/SBE Goal - 14%
Total Achieved – 27.1%

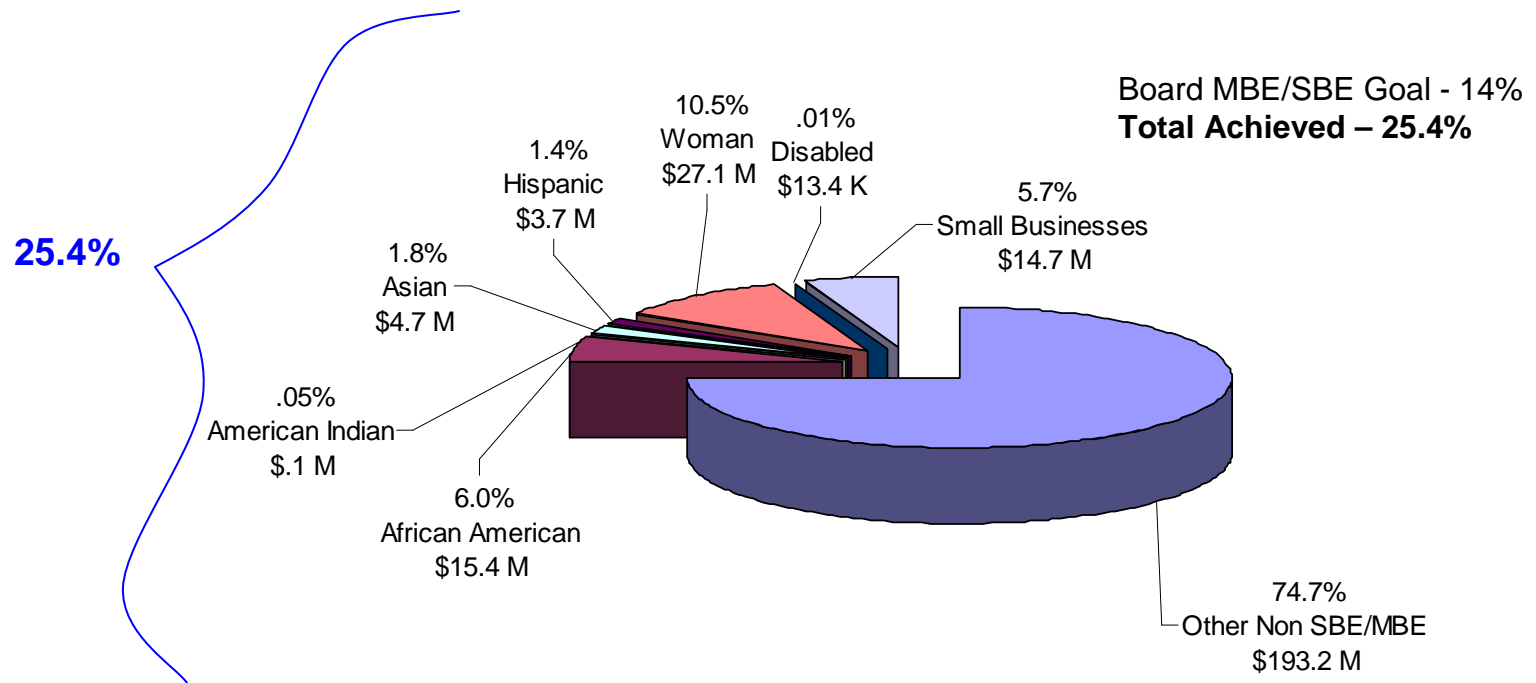


Annual Reporting Results FY 2007

MBE and SBE Participation for all Contracts by Category

Total Contracts - \$258.9 million

July 1, 2006 through June 30, 2007

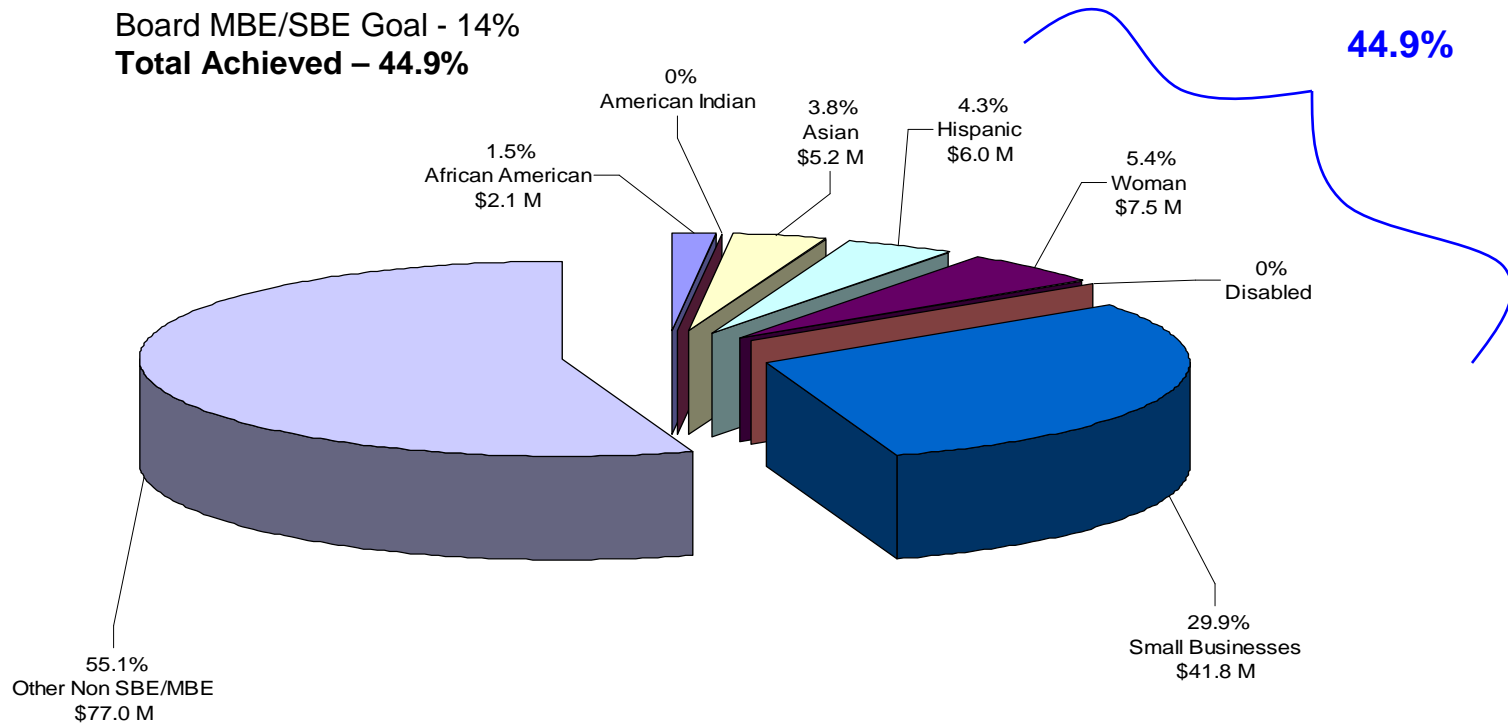


Annual Reporting Results FY 2008

MBE and SBE Participation for all Contracts by Category

Total Contracts - \$139.8 million

July 1, 2007 through June 30, 2008



Reporting

- Annual Report – MBE/SBE
- Bi-Monthly Friday Letter – Minority and Small Business Enterprises Report – New Contracts

MBE Outreach Efforts

The MBE Officer for BCPS has:



- Participated in the Maryland Public Purchasing Association Reverse Trade Show.
- Participated in the Southern Maryland Regional and Small Business Procurement Expo.
- Participated in the MSDE Workgroup to revise the Minority Business Procedures for State Funded Public School Construction Projects.
- Participated in Alliance Express Baltimore, a trade show for small and minority businesses.
- Participated in Baltimore County MBE/WBE Procurement Fair.
- Continued the use of Gardens Reprographics automatic bidder notification for construction projects.

MDOT Listing on BCPS Web Site

Office of Purchasing

Friday, February 13, 2009
All schools operating on normal posted schedule.

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MBE Contractors

MBE Contractors

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- [MDOT-Certified Division 2 Contractors](#) (Site Construction)
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Contracting Process

- Solicitations are advertised by the Office of Purchasing on the Web page.
- Beginning in 2008, all state bids are also advertised on eMaryland Marketplace and on their online system.
- For state-funded construction contracts, the Office of Purchasing notifies the Maryland/ Washington Minority Contractors Association (MWMCA) and Governor's Office of Minority Affairs of all available bids.