

Fact Sheet: One Billion in Contract Dollars Lost Annually by Businesses Owned by Women, People of Color Due to Prop. 209

Proposition 209, passed in November 1996, ended the use of race and gender conscious decision-making in California in the areas of public employment, public education, and public contracting or procurement. A major impact was in the public procurement process of the State of California as well as local governments. Minority and women business enterprises (MWBEs), which had been erasing the disparity between their availability and their utilization, were heavily impacted. Some never recovered.

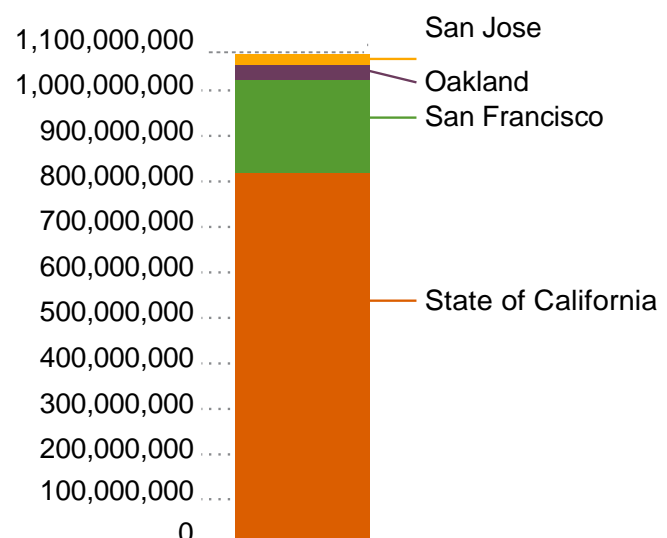
This study attempts to quantify the impact by measuring the loss in contract dollars to those businesses. Proposition 209 caused the state and local governments to end their race-conscious contracting programs, resulting in a loss of \$1 billion to \$1.1 billion annually for MWBEs. This study shows the following impacts in today's dollars due to Proposition 209:

- The loss of about \$820 million per year in MWBE contracts with the State of California
- The loss of about \$200 million per year in MWBE contracts with the City/County of San Francisco, with some of this loss materializing immediately after Proposition 209 and additional losses following the 2004 Coral Construction case, which definitively ended San Francisco's race-conscious procurement program
- The loss of about \$30 million per year in MWBE contracts with the City of Oakland
- The loss of an estimated \$20 million per year in MWBE contracts with the City of San Jose following the 2000 Hi-Voltage Wire Works case, which definitively ended San Jose's race-conscious contracting program
- There are also numerous indirect impacts of Proposition 209 which this study does not attempt to quantify.

The largest loss in contracts for MWBEs was with the State of California, in which up to \$823 million has been lost each year since Proposition 209. In fiscal year (FY) 1994-1995, \$519 million was contracted to MWBEs, the equivalent of \$823 million in October 2014 dollars. When the state ended its MWBE program, it appears that only a few MWBEs regained contracts with the state. There was only a negligible increase in Small Business Enterprise procurement with the state following Proposition 209, the main route to state contracts that would still be available for these minority- or women-owned small businesses.

The second largest loss of MWBE contracts was with City and County of San Francisco. By refusing to accept an unduly narrow reading of the reach of Proposition 209, San Francisco maintained its race-conscious program until 2004, when the *Coral Construction* legal decision forced the City to end it. From 1992 to 1995¹, before Proposition 209, San Francisco averaged \$202 million per year (in October 2014 dollars) in contracts or sub-contracts to MWBEs. Contracts to MWBEs dropped to an estimated \$71 million in FY 1997-98 while the city maintained the provisions of its race conscious program that were legally defensible within Proposition

Figure 1 Annual Loss in MWBE Contracts in Dollars (October 2014 \$)



209. The percentage of contracts to MWBEs never recovered to pre-Proposition 209 levels. Furthermore, San Francisco appears to have stopped collecting and/or reporting MWBE data in the few years following the *Coral Construction* case, so it is not possible to know how far contracting with MWBEs dropped off. A likely estimate would be that the majority of contracting with MWBEs disappeared.

Additional impacts on MWBE contracts occurred in San Jose and Oakland. San Jose continued its MWBE sub-contracting goal and outreach program on city construction projects until the *Hi-Voltage Wire Works* decision in February 2000, which ruled against the City of San Jose's MWBE policy. This resulted in a loss of approximately \$20 million per year (in Oct. 2014 \$) for MWBEs who sought to be sub-contractors on San Jose construction projects. The City of Oakland's MWBE program reached levels of MWBE contracting above 30 percent, which was fully dismantled after Proposition 209, resulting in an approximate loss of \$30 million per year (in Oct. 2014 \$) for MWBEs.

Other jurisdictions were indirectly impacted by Proposition 209. CALTRANS' Disadvantaged Business Enterprise (DBE) program is driven by federal law, so it was not impacted by Proposition 209.² However Proposition 209 contributed to an atmosphere where it became acceptable for many in the state to accept CALTRANS' very low DBE goals and attainment. Los Angeles initiated a race-neutral program after the 1989 *Croson* decision,³ so its Minority, Women, and Other Business Enterprise (MWOBE) program was not impacted by Proposition 209. However, Proposition 209 took a potentially stronger race-conscious program off the table for Los Angeles MWBE advocates and policy-makers. San Diego ended its MWBE program several years prior to Proposition 209, following the 1989 *Croson* decision, so it was not impacted by Proposition 209, however, like Los Angeles, Proposition 209 limited the options of MWBE advocates.

The state MWBE program and the San Francisco MWBE program were consistent with the 1989 *Croson* decision and other national jurisprudence, including use of disparity studies. These programs, as well as the CALTRANS DBE program of the early 1990s, had some of the highest MWBE and DBE outcomes of any state or local program in the country. Even today, Maryland is one of the only states that can match the 19 percent MWBE spending that California attained from 1994 to 1995. Likewise, the CALTRANS DBE program attained 25 percent DBE spending from 1992 to 1995⁴, before it was gutted by Governor Pete Wilson's Executive Order W124-95 in June 1995. Few, if any, states today can match California's 25 percent in the early 1990s. Similarly, San Francisco had an MWBE percentage of 31 percent from 1992 to 1995, which is higher than the MWBE percentage of any of the 20 largest cities today.

Comparing state MWBE contracting with state Small Business Enterprise (SBE) contracting between 1990 and 1997 shows that contracting levels of these two programs rose and fell together. While this paired trending might be coincidental, it is more likely that when the State felt an opening for more diverse procurement it found ways to increase both MWBE and SBE procurement. When the State felt pressure to decrease MWBE procurement, it also felt pressure to decrease SBE procurement. Therefore, it is not likely that most of the pressure against the MWBE program was coming from SBE firms, that is, small businesses owned by white males. Rather the pressure against both of these programs was likely coming from larger contractors, the main financial contributors to the campaign to pass Proposition 209, as well as other large businesses, including corporations.

1 July 1, 1992, to June 30, 1995.

2 CALTRANS MWBE program on projects only with state funds was ended June 30, 1997, with Proposition 209, just as with every state agency.

3 On January 23, 1989, the U.S. Supreme Court issued a 6-3 decision in *City of Richmond v J.A. Croson Co.* against the City of Richmond, Virginia's ability to calibrate its MBE contracting goals to the percentage of minority population in the city. However, it upheld the right of the City of Richmond and all public entities to have race-conscious procurement programs based on availability as shown in disparity studies. It remains the primary legal decision guiding MWBE policies.

4 July 1, 1992, to June 30, 1995