
Table of Contents

CHAPTER 5: MARKET AREA ANALYSIS	5-1
I. MARKET AREA DEFINITION.....	5-1
A. LEGAL CRITERIA FOR GEOGRAPHIC MARKET AREA	5-1
B. APPLICATION OF THE CROSON STANDARD.....	5-2
II. MARKET AREA ANALYSIS.....	5-5
III. LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY MARKET AREA.....	5-9



List of Tables

TABLE 5.01:	DISTRIBUTION OF ALL CONTRACTS AWARDED JANUARY 1, 2008 THROUGH DECEMBER 31, 2010.....	5-5
TABLE 5.02:	DISTRIBUTION OF CONSTRUCTION CONTRACTS AWARDED JANUARY 1, 2008 THROUGH DECEMBER 31, 2010.....	5-6
TABLE 5.03:	DISTRIBUTION OF ARCHITECTURE AND ENGINEERING SERVICES CONTRACTS AWARDED JANUARY 1, 2008 THROUGH DECEMBER 31, 2010.....	5-7
TABLE 5.04:	DISTRIBUTION OF MISCELLANEOUS AND OTHER PROFESSIONAL SERVICES CONTRACTS AWARDED JANUARY 1, 2008 THROUGH DECEMBER 31, 2010	5-77
TABLE 5.05:	DISTRIBUTION OF GOODS AND OTHER SERVICES CONTRACTS AWARDED JANUARY 1, 2008 THROUGH DECEMBER 31, 2010.....	5-88
TABLE 5.06:	METRO’S MARKET AREA CONTRACT DISTRIBUTION - ALL INDUSTRIES: JANUARY 1, 2008 THROUGH DECEMBER 31, 2010.....	5-10



CHAPTER 5: MARKET AREA ANALYSIS

I. MARKET AREA DEFINITION

A. Legal Criteria for Geographic Market Area

The Supreme Court's decision in *City of Richmond v. J.A. Croson Co. (Croson)*¹ held that programs established by local governments to set goals for the participation of minority and woman-owned firms must be supported by evidence of past discrimination in the awarding of their contracts. Prior to the *Croson* decision, local agencies could implement race-conscious programs without developing a detailed public record to document the underutilization of minority and women-owned business enterprises in their awarding of contracts. Instead, they relied on widely recognized societal patterns of discrimination.²

Croson established that a local government could not rely on society-wide discrimination as the basis for a race-based program but, instead, was required to identify discrimination within its own contracting jurisdiction.³ In *Croson* the Court found the City of Richmond's Minority Business Enterprise (MBE) construction program to be unconstitutional because there was insufficient evidence of discrimination in the local construction market.

Croson was explicit in saying that the local construction market was the appropriate geographical framework within which to perform statistical comparisons of business availability and business utilization. Therefore, the identification of the local market area is particularly important because it establishes the parameters within which to conduct a disparity study.



¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

² *United Steelworkers v. Weber*, 433 U.S. 193, 198, n. 1 (1979).

³ *Croson*, 488 U.S. at 497 (1989).

B. Application of the Croson Standard

While *Croson* emphasized the importance of the local market area, it provided little assistance in defining its parameters.⁴ However, it is informative to review the Court's definition of the City of Richmond's market area. In discussing the geographic parameters of the constitutional violation that must be investigated, the Court interchangeably used the terms "relevant market,"⁵ "Richmond construction industry,"⁶ and "city's construction industry."⁷ Thus, these terms were used to define the proper scope for examining the existence of discrimination within the City. This interchangeable use of terms lends support to a definition of market area that coincides with the boundaries of a contracting jurisdiction.

An analysis of the cases following *Croson* reveals a pattern that provides additional guidance for defining the market area. The body of cases examining *reasonable* market area definition is *fact based*, rather than dictated by a specific formula.⁸ In *Cone Corporation v. Hillsborough County*⁹ the Eleventh Circuit Court of Appeals considered a study in support of Florida's Hillsborough County MBE Program, which used minority contractors located in the County as the measure of available firms. The program was found to be constitutional under the compelling governmental interest element of the strict scrutiny standard.

Hillsborough County's program was based on statistics indicating that specific discrimination existed in the construction contracts awarded by the County, not in the construction industry in general. Hillsborough County had extracted data from within its own jurisdictional boundaries and assessed the percentage of minority businesses available in Hillsborough County. The Court stated that the study was properly conducted within the "local construction industry."¹⁰

Similarly, in *Associated General Contractors v. Coalition for Economic Equity (AGCCII)*,¹¹ the Ninth Circuit Court of Appeals found the City and County of San Francisco's MBE Program to have the factual predicate necessary to survive strict scrutiny. The San Francisco MBE Program was supported by a study that assessed the number of available MBE contractors within the City and County of San Francisco. The

⁴ *Adarand*, which extended *Croson*'s strict scrutiny standard to federal programs, did not change *Croson*'s approach to market area where federal funds are involved.

⁵ *Croson*, 488 U.S. at 471 (1989).

⁶ *Id.* at 500.

⁷ *Id.* at 470.

⁸ *See, e.g.*, *Concrete Works of Colorado v. City of Denver, Colorado*, 36 F.3d 1513, 1528 (10th Cir. 1994).

⁹ *Cone Corporation v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990).

¹⁰ *Id.* at 915.

¹¹ *Associated General Contractors of California v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401 (9th Cir. 1991).



Court found it appropriate to use the City and County as the relevant market area within which to conduct a disparity study.¹²

In *Coral Construction v. King County* the Ninth Circuit Court of Appeals held that “a set-aside program is valid only if actual, identifiable discrimination has occurred within the local industry affected by the program.”¹³ In support of its MBE Program, King County offered studies compiled by other jurisdictions, including entities completely within the County or coterminous with the boundaries of the County, as well as a separate jurisdiction completely outside of the County. The plaintiffs contended that *Croson* required King County to compile its own data and cited *Croson* as prohibiting data sharing.

The Court found that data sharing could potentially lead to the improper use of societal discrimination data as the factual basis for a local MBE program and that innocent third parties could be unnecessarily burdened if an MBE program were based on outside data. However, the Court also found that the data from entities within the County and from coterminous jurisdictions was relevant to discrimination in the County. They also found that the data posed no risk of unfairly burdening innocent third parties.

The Court concluded that data gathered by a neighboring county could not be used to support King County’s MBE Program. The Court noted:

It is vital that a race-conscious program align itself as closely to the scope of the problem legitimately sought to be rectified by the governmental entity. To prevent overbreadth, the enacting jurisdiction should limit its factual inquiry to the presence of discrimination within its own boundaries.¹⁴

However, the Court did note that the “world of contracting does not conform itself neatly to jurisdictional boundaries.”¹⁵

There are other situations where courts have approved a definition of market area that extends beyond a jurisdiction’s geographic boundaries. In *Concrete Works v. City and County of Denver*¹⁶ the Tenth Circuit Court of Appeals directly addressed the issue of whether extra-jurisdictional evidence of discrimination can be used to determine the “local market area” for a disparity study. In *Concrete Works* the defendant relied on evidence of discrimination in the six-county Denver Metropolitan Statistical Area (MSA) to support its MBE program. Plaintiffs argued that the federal constitution prohibited

¹² Id. at 1415.

¹³ *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991), cert. denied, 112 S.Ct. 875 (1992).

¹⁴ Id. at 917.

¹⁵ Id.

¹⁶ *Concrete Works*, 36 F.3d 1513, 1528 (10th Cir. 1994).



consideration of evidence beyond jurisdictional boundaries. The Court of Appeals disagreed.

Critical to the Court's acceptance of the Denver MSA as the relevant local market was the finding that more than 80 percent of construction and design contracts awarded by Denver were awarded to contractors within the MSA. Another consideration was that Denver's analysis was based on U.S. Census data, which was available for the Denver MSA but not for the city itself. There was no undue burden placed on nonculpable parties, as Denver had conducted a majority of its construction contracts within the area defined as the local market. Citing *AGCCII*,¹⁷ the Court noted:

[t]hat any plan that extends race-conscious remedies beyond territorial boundaries must be based on very specific findings that actions that the city has taken in the past have visited racial discrimination on such individuals.¹⁸

Similarly, New York State conducted a disparity study in which the geographic market consisted of New York State and eight counties in northern New Jersey. The geographic market was defined as the area encompassing the location of businesses that received more than 90 percent of the dollar value of all contracts awarded by the agency.¹⁹

State and local governments must pay special attention to the geographical scope of their disparity studies. *Croson* determined that the statistical analysis should focus on the number of qualified minority business owners in the government's marketplace.²⁰ The text of *Croson* itself suggests that the geographical boundaries of the government entity comprise an appropriate market area, and other courts have agreed with this finding. In addition other cases have approved the use of a percentage of the dollars spent by an agency on contracting.

It follows then that an entity may limit consideration of evidence of discrimination to discrimination occurring within its own jurisdiction. Under certain circumstances extra-jurisdictional evidence can be used if the percentage of governmental dollars supports such boundaries.



¹⁷ *AGCC II*, 950 F.2d 1401 (9th Cir. 1991).

¹⁸ *Concrete Works*, 36 F.3d at 1528 (10th Cir. 1994).

¹⁹ "Opportunity Denied! New York State's Study," 26 *Urban Lawyer* No. 3, Summer 1994.

²⁰ *Croson*, 488 U.S. at 501 (1989).

II. MARKET AREA ANALYSIS

Although *Croson* and its progeny do not provide a bright line rule for the delineation of the local market area, taken collectively, the case law supports a definition of market area as within the geographic area where the jurisdiction spends a majority of its dollars. It is within its market area where Los Angeles County Metropolitan Transportation Authority (Metro) may consider evidence of discrimination.

A review of the contracts awarded by Metro shows that the jurisdictions where the businesses receive most of its 182 contracts and the majority of the contract dollars was Los Angeles County.

1. Summary of the Distribution of All Contracts Awarded

Metro awarded 182 contracts valued at \$318,869,443 during the January 1, 2008 through December 31, 2010 study period. Businesses based in Metro's market area received 58.79 percent of these contracts and 71.86 percent of the dollars. The distribution of all contracts awarded and dollars received by all firms within and outside of Metro's market area is depicted below in Table 5.01.

**Table 5.01: Distribution of All Contracts Awarded
January 1, 2008 through December 31, 2010**

County	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Los Angeles	107	58.79%	\$229,154,451	71.86%
Orange	17	9.34%	\$69,322,338	21.74%
Out-Of-State-FL	2	1.10%	\$12,257,183	3.84%
San Bernardino	17	9.34%	\$2,712,586	0.85%
Out-Of-State-TX	2	1.10%	\$2,069,825	0.65%
Out-Of-State-GA	6	3.30%	\$1,042,989	0.33%
San Diego	3	1.65%	\$842,997	0.26%
Riverside	5	2.75%	\$503,670	0.16%
Sacramento	1	0.55%	\$462,164	0.14%
Out-Of-State-NY	2	1.10%	\$168,300	0.05%
Out-Of-State-MA	3	1.65%	\$78,792	0.02%
Out-Of-State-PA	1	0.55%	\$35,500	0.01%
Out-Of-State-OH	1	0.55%	\$34,663	0.01%
Out-Of-State-WI	1	0.55%	\$31,525	0.01%
Out-Of-State-CO	3	1.65%	\$27,639	0.01%
Sonoma	1	0.55%	\$22,000	0.01%
Out-Of-State-IL	1	0.55%	\$21,041	0.01%
Out-Of-State-MD	2	1.10%	\$19,422	0.01%
Out-Of-State-SC	1	0.55%	\$15,500	0.00%



County	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Out-Of-State-MI	1	0.55%	\$14,499	0.00%
Alameda	1	0.55%	\$14,200	0.00%
Out-Of-State-VA	1	0.55%	\$6,239	0.00%
San Mateo	1	0.55%	\$5,186	0.00%
Ventura	1	0.55%	\$3,540	0.00%
Out-Of-State-NV	1	0.55%	\$3,194	0.00%
Total	182	100.00%	\$318,869,443	100.00%

2. Distribution of Construction Contracts

Metro awarded 31 construction contracts valued at \$146,949,873 during the January 1, 2008 through December 31, 2010 study period. Businesses based in Metro's construction market area received 64.52 percent of the construction contracts and 77.37 percent of the dollars. The distribution of the construction contracts awarded and dollars received by all firms within and outside of Metro's construction market area is depicted below in Table 5.02.

**Table 5.02: Distribution of Construction Contracts Awarded
January 1, 2008 through December 31, 2010**

County	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Los Angeles	20	64.52%	\$113,688,469	77.37%
Orange	3	9.68%	\$31,638,931	21.53%
Out-Of-State-GA	2	6.45%	\$992,695	0.68%
Sacramento	1	3.23%	\$462,164	0.31%
San Bernardino	4	12.90%	\$119,555	0.08%
Riverside	1	3.23%	\$48,059	0.03%
Total	31	100.00%	\$146,949,873	100.00%



3. Distribution of Architecture and Engineering Contracts

Metro awarded 17 architecture and engineering contracts valued at \$114,676,896 during the January 1, 2008 through December 31, 2010 study period. Businesses based in Metro's architecture and engineering market area received 52.94 percent of the architecture and engineering contracts and 62.03 percent of the dollars. The distribution of the architecture and engineering contracts awarded and dollars received by all firms within and outside of Metro's architecture and engineering market area is depicted below in Table 5.03.

Table 5.03: Distribution of Architecture and Engineering Contracts Awarded January 1, 2008 through December 31, 2010

County	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Los Angeles	9	52.94%	\$71,137,728	62.03%
Orange	4	23.53%	\$29,212,157	25.47%
Out-Of-State-FL	2	11.76%	\$12,257,183	10.69%
Out-Of-State-TX	2	11.76%	\$2,069,825	1.80%
Total	17	100.00%	\$114,676,893	100.00%

Distribution of Miscellaneous and Other Professional Services Contracts

Metro awarded 63 miscellaneous and other professional services contracts valued at \$17,218,959 during the January 1, 2008 through December 31, 2010 study period. Businesses based in Metro's miscellaneous and other professional services market area received 66.67 percent of the miscellaneous and other professional services contracts and 42.21 percent of the dollars. The distribution of the miscellaneous and other professional services contracts awarded and dollars received by all firms within and outside of Metro's miscellaneous and other professional services market area is depicted below in Table 5.04.

Table 5.04: Distribution of Miscellaneous and Other Professional Services Contracts Awarded January 1, 2008 through December 31, 2010

County	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Orange	4	6.35%	\$8,279,759	48.09%
Los Angeles	42	66.67%	\$7,267,696	42.21%
San Diego	3	4.76%	\$842,997	4.90%
Riverside	2	3.17%	\$426,003	2.47%
Out-Of-State-NY	2	3.17%	\$168,300	0.98%
San Bernardino	3	4.76%	\$161,099	0.94%
Out-Of-State-CO	3	4.76%	\$27,639	0.16%



County	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Sonoma	1	1.59%	\$22,000	0.13%
Out-Of-State-MD	1	1.59%	\$12,081	0.07%
Out-Of-State-GA	1	1.59%	\$7,845	0.05%
Ventura	1	1.59%	\$3,540	0.02%
Total	63	100.00%	\$17,218,959	100.00%

4. Distribution of Goods and Other Services Contracts

Metro awarded 71 goods and other services contracts valued at \$40,023,718 dollars during the January 1, 2008 through December 31, 2010 study period. Businesses based in Metro's goods and other services market area received 50.7 percent of the goods and other services contracts and 92.6 percent of the dollars. The distribution of the goods and other services contracts awarded and dollars received by all firms within and outside of Metro's goods and other services market area is depicted below in Table 5.05.

**Table 5.05: Distribution of Goods and Other Services Contracts Awarded
January 1, 2008 through December 31, 2010**

County	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Los Angeles	36	50.70%	\$37,060,558.00	92.60%
San Bernardino	10	14.08%	\$2,431,932.00	6.08%
Orange	6	8.45%	\$191,491.00	0.48%
Out-Of-State-MA	3	4.23%	\$78,792.00	0.20%
Out-Of-State-GA	3	4.23%	\$42,449.00	0.11%
Out-Of-State-PA	1	1.41%	\$35,500.00	0.09%
Out-Of-State-OH	1	1.41%	\$34,663.00	0.09%
Out-Of-State-WI	1	1.41%	\$31,525.00	0.08%
Riverside	2	2.82%	\$29,608.00	0.07%
Out-Of-State-IL	1	1.41%	\$21,041.00	0.05%
Out-Of-State-SC	1	1.41%	\$15,500.00	0.04%
Out-Of-State-MI	1	1.41%	\$14,499.00	0.04%
Alameda	1	1.41%	\$14,200.00	0.04%
Out-Of-State-MD	1	1.41%	\$7,341.00	0.02%
Out-Of-State-VA	1	1.41%	\$6,239.00	0.02%
San Mateo	1	1.41%	\$5,186.00	0.01%
Out-Of-State-NV	1	1.41%	\$3,194.00	0.01%
Total	71	100.00%	\$40,023,718.00	100.00%



III. LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY MARKET AREA

During the study period, Metro awarded 182 construction, architecture and engineering, miscellaneous and other professional services, and goods and other services contracts valued at \$318,869,443. Metro awarded 58.79 percent of these contracts and 71.86 percent of dollars to businesses located in the market area. Given the distribution of the contracts awarded by Metro and the conditions in the applicable case law, the Study's market area is determined to be Los Angeles County. The analysis of discrimination has been limited to an examination of contracts awarded to available market area businesses.

Table 5.06 below presents an overview of the number of construction, architecture and engineering, miscellaneous and other professional services, and goods and other services contracts Metro awarded and the dollars spent in the market area during the January 1, 2008 through December 31, 2010 study period.

Construction Contracts: Twenty, or 64.52 percent of these contracts, were awarded to market area businesses. The dollar value of those contracts was \$113,688,469, or 77.37 percent of the total construction dollars.

Architecture and Engineering Contracts: Nine, or 52.94 percent of these contracts, were awarded to market area businesses. The dollar value of those contracts was \$71,137,728, or 62.03 percent of the total architecture and engineering dollars.

Miscellaneous and Other Professional Services Contracts: Forty-two, or 66.67 percent of these contracts, were awarded to market area businesses. The dollar value of those contracts was \$7,267,696, or 42.21 percent of the total miscellaneous and other professional services dollars.

Goods and Other Services Contracts: Thirty-six, or 50.7 percent of these contracts, were awarded to market area businesses. The dollar value of those contracts was \$37,060,558, or 92.6 percent of the total goods and other services dollars.



**Table 5.06: Metro's Market Area Contract Distribution - All Industries:
January 1, 2008 through December 31, 2010**

Market Area	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Combined Industries				
Market Area	107	58.79%	\$229,154,451.00	71.86%
Outside Market Area	75	41.21%	\$89,714,992.00	28.14%
Total	182	100.00%	\$318,869,443.00	100.00%
Construction				
Market Area	20	64.52%	\$113,688,469.00	77.37%
Outside Market Area	11	35.48%	\$33,261,404.00	22.63%
Total	31	100.00%	\$146,949,873.00	100.00%
Architecture and Engineering				
Market Area	9	52.94%	\$71,137,728.00	62.03%
Outside Market Area	8	47.06%	\$43,539,165.00	37.97%
Total	17	100.00%	\$114,676,893.00	100.00%
Miscellaneous and Other Professional Services				
Market Area	42	66.67%	\$7,267,696.00	42.21%
Outside Market Area	21	33.33%	\$9,951,263.00	57.79%
Total	63	100.00%	\$17,218,959.00	100.00%
Goods and Other Services				
Market Area	36	50.70%	\$37,060,558.00	92.60%
Outside Market Area	35	49.30%	\$2,963,160.00	7.40%
Total	71	100.00%	\$40,023,718.00	100.00%

