Headline: PUSHED ASIDE

SubHead: Who benefits most from government programs set up to help minorities and women land their share of business contracts? Millionaires. Wealthy companies. Friends of politicians. Who gets shortchanged? Those who most need the program.

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Text: Dale Mason Cochran and her husband, celebrity lawyer Johnnie Cochran Jr., control a personal fortune worth at least $5 million.

Burnell Moliere, who earns about $500,000 per year from his janitorial firm, is worth $3.6 million.

And Roger "Mickey" Boes, made rich by his metalworks company, is worth more than $4 million.

Despite their wealth, these millionaires have been deemed disadvantaged by several New Orleans agencies, allowing their companies to receive a total of more than $13 million in government contracts through special programs meant to assist the city's economic underclass.

Altogether, at least 11 millionaires have had their companies certified as "disadvantaged business enterprises" by local agencies during the past 12 years. As a result, their companies have gained access to work that was supposed to go to struggling companies whose owners have been hurt by discrimination.

Many supporters of the programs, including dozens of minority and women business owners, say the inclusion of such people shows that the programs are deeply flawed.

"Those programs work for the people who need them the least, not the people who need them the most," said Guico Machine Works Inc. owner David Guidry, a local black businessman, Chamber of Commerce leader and New Orleans Dock Board member.

By contrast, Mayor Marc Morial said there is no reason to keep the wealthy from participating in programs that predominantly help minority- and woman-owned companies.

"Fundamentally, I don't believe that success should be penalized," Morial said.

In theory, the programs are supposed to help those who historically have been shut out of the local economy. Though the local programs have different names and rules, they all have the same overall mission: helping small, disadvantaged businesses get more work through the public sector.

But a Times-Picayune investigation has found that local business-development programs aimed at the underprivileged have been mismanaged, and that many of the biggest winners in the system are anything but needy. Although the programs clearly have benefited some disadvantaged businesses, serious flaws are depriving other deserving entrepreneurs of work.

Among the newspaper's findings:

* Of the $314 million that flowed through local disadvantaged business programs in the past 12 years, at least a third, or $105 million, went to 48 companies that were certified even though they didn't meet local rules or would not qualify for similar programs run by the U.S. Small Business Administration because their revenues were too high or because their owners exceeded the federal agency's $250,000 net-worth limit for new applicants. Millionaires owned at least six of those companies, which collectively received more than $35 million from the programs.

*Only 288 of the 1,224 companies that were certified locally as disadvantaged business enterprises received any work through the programs, with the top 25 receiving $155 million in business, or about half the total DBE pie.

*None of the agencies limit the amount of work that can be received by any single DBE, which effectively encourages prime contractors to rely on the same disadvantaged subcontractors over and over as they attempt to meet agency goals on DBE participation.

* Four local agencies approved every company that sought certification as a disadvantaged business enterprise even though dozens didn't meet the rules. Officials at two of the agencies acknowledged that they have certified companies that should have been rejected.

* Among the companies taking advantage of the programs are at least seven woman-owned businesses that in fact have men as their chief investors and managers. Those companies collected more than $20 million through the programs.

* Firms that give campaign contributions to local politicians who oversee the programs received DBE work three times as often as those that do not. Of the 228 DBE owners who contributed to the two most recent mayors of New Orleans, slightly more than half got work, including eight of the top 10 beneficiaries. By contrast, 168 of the nearly 1,000 disadvantaged businesses that gave nothing got jobs through the programs.

In its investigation, The Times-Picayune analyzed seven DBE programs in New Orleans. After winning a lawsuit in state court over access to DBE program files, the newspaper reviewed more than a million pages of records, including hundreds of DBE certification applications and thousands of contracts.

Four of the programs are subject to federal oversight but are administered locally, by officials at the Housing Authority of New Orleans, the New Orleans Aviation Board, the Orleans Levee Board and the Regional Transit Authority. The city controls the programs at the Sewerage & Water Board and the Mayor's Office of Small & Emerging Business Development. The Orleans Parish School Board has its own program.

Together, the seven agencies spend about $1.4 million annually to administer the programs. Although some administrators track DBE participation, just two of the agencies have attempted to evaluate whether their DBE programs are accomplishing their objectives, and the last such performance audit was in 1995.

The newspaper's investigation did not extend to other parishes in the New Orleans area; none has a similar program, and a survey of those parishes indicated that no agency could even guess the percentage of business it gave to minority- or woman-owned firms.

U.S. Census Bureau figures for 1992, the most recent year available, indicate that minority firms are not doing well in those parishes. For instance, the revenues of black-owned companies based in Jefferson Parish accounted for less than 1 percent of the total revenue of all businesses, even though black-owned firms represented 14 percent of the companies in the parish.

'The rich stay rich'

Many disadvantaged business owners expressed frustration with the way New Orleans programs are run, even though they agree with the long-standing principles behind them.

With few exceptions, companies remain in the programs long after they have grown successful, leaving little room for new entrepreneurs to get assistance. The agencies have formed no consensus about when companies should graduate from the programs, and none of the agencies imposes a time limit on participation.

Moreover, companies attempting to obtain disadvantaged status complain of a time-consuming mountain of paperwork and confusing regulations, exacerbated by seven agencies with seven different sets of standards and application procedures. Many small-business owners say it's not worth the trouble.

"There are just a few contractors who make all the money, and the only reason they do it is because they are politically connected and the majority of us aren't," said Accurate Construction owner Allen Marcelin, an African-American whose company received $201,875 through the programs. "The rich stay rich, and the powerful stay powerful."

No guarantees on success

Indeed, in the imperfect world of DBE programs, the rich sometimes inherit the earth.

Dale Cochran, a black California business owner who grew up in New Orleans, helped build a concession company with contracts at several airport terminals across the country. Despite her success, she is considered a disadvantaged business owner by the New Orleans Aviation Board, which made it possible for her firm to collect $4 million under a program originally designed to build a stronger black middle class in New Orleans.

Moliere, who turned a small janitorial service into one of the biggest black-owned businesses in the area, owns companies that have received more than $8 million in the past 11 years from two local agencies that consider him disadvantaged.

Boes, a white man, was granted disadvantaged status by three local agencies and in 1995 won a subcontract worth $1 million to install railings and other metalwork on a New Orleans elementary school named after civil rights leader Martin Luther King Jr. Since then, he has won four more jobs under the programs.

Some agency officials acknowledged weaknesses in the way the programs are administered, or in the rules themselves.

But Morial said the city and other agencies shouldn't be blamed because a handful of companies are raking in so much of the available DBE money.

"You know what? The program doesn't guarantee success," Morial said. "It guarantees opportunity, . . . and some minority companies are more resourceful than others."

Morial said opportunity is not linked to political contributions. He and other elected officials denied any connection between campaign donors and the awarding of work to DBE companies.

"I think the reason they support me is because I've been an advocate for their cause, the cause of opening doors for minority businessmen," Morial said. "I can't guarantee anything, though. Some guys are more educated, more aggressive than others. They build relationships."

Morial said the DBE programs haven't been around long enough to produce a new generation of minority- and woman-owned companies that are strong enough to survive without public help. Morial said those firms shouldn't be required to graduate from the programs until they are equally successful in winning contracts in the private sector.

"We have made no demonstrable progress in that area," he said. "That's one of the reasons why people of my generation with professional degrees are leaving the city. That's an emotional issue with me."

The legacy of set-asides

It's an issue Morial grew up hearing about at the dinner table. The city's first program for disadvantaged businesses was created in 1981 by Morial's father, former Mayor Ernest N. "Dutch" Morial. The program guaranteed that 10 percent of all purchases of goods and services by the Sewerage & Water Board would be set aside for minority suppliers. Dutch Morial expanded the program to city construction projects in 1983, adding woman-owned businesses to the set-aside requirements. Other local agencies, including the Orleans Parish School Board, subsequently created their own "set-aside" programs.

All of those programs were put on hold in 1989, however, when the U.S. Supreme Court struck down a similar program in Richmond, Va., that set aside 30 percent of that city's construction contracts for minority businesses. In City of Richmond v. J.A. Croson Co., the court ruled that such programs constitute reverse discrimination unless they are "narrowly tailored" to remedy the effects of prior discrimination.

"While there is no doubt that the sorry history of both private and public discrimination in this country has contributed to a lack of opportunities for black entrepreneurs, this observation, standing alone, cannot justify a rigid racial quota in the awarding of public contracts," Justice Sandra Day O'Connor said in her majority opinion.

The elder Morial, who died several months after the ruling was issued, blasted the court for taking a "big step in the wrong direction," adding that it would be difficult, if not impossible, to meet the court's requirements. "Those who discriminated in the past, those who were in control, did not keep records of these actions," he said.

Although minority leaders predicted that the Supreme Court ruling would kill set-asides, similar programs flourished once local officials found experts who were able to document the existence of discrimination in public contracting.

In the past 12 years, four studies commissioned by local agencies have found a pattern of racial and gender discrimination in the way public- and private-sector contracts were awarded in New Orleans.

For instance, a 1991 study for the water board found that the agency awarded just 24 contracts, worth 1 percent of total contract dollars, to minority-owned firms between 1962 and 1987, despite the fact that thousands of minority-owned firms existed at the time and that the city's African-American population reached 54 percent by the late 1980s.

A 1994 study for the city of New Orleans found that in the private sector, minority businesses were receiving just 60 percent of the work they should have been getting in professional services and commodities, and less than 6 percent of the work in construction.

"Clearly, African-Americans and other minorities need the assistance of government in order to survive from day to day," concluded a 1992 report by Metro Consulting and Research Firm Inc. of New Orleans.

A community vision

After the Croson decision, local public officials often used language from the battle for civil rights in creating DBE programs. The School Board's policy says the board has a responsibility to help eliminate the "evils of private prejudice in private industry" by making sure companies owned by "socially and economically disadvantaged persons" have the "maximum opportunity" to obtain work from the school system.

At the Aviation Board, then-incoming Chairman Revius Ortique Jr. said in 1994 that the fate of New Orleans rested on the success of the program, which he immediately strengthened to bolster what he said was an embarrassingly low amount of participation from disadvantaged businesses in airport projects.

"While it is our objective to build a great airport, we are also going to build it in good conscience," Ortique said. "Good conscience demands that the total community share in these funds that are available. . . . Unless and until we improve the economic condition of all of the citizenry, we are going to suffer the consequences of violence, poverty and all of society's defects that we suffer if we don't do something about it."

Marc Morial said recently that the goal of the programs is to "create some sort of business class in the minority community. The drain on the minority brain trust in this town is very acute. Our children who become lawyers and engineers when they go away to college, they don't stay in town. . . . Our children gravitate to Atlanta, Dallas and other cities in the North or West."

Slide rules

Although Morial said the intent of local DBE programs is primarily to help minority- and woman-owned firms, the rules for participating in such programs have changed dramatically since the Croson decision was issued.

Instead of using just race and gender to determine eligibility, most agencies have opened their programs to all people, as long as they are able to prove they are socially and economically disadvantaged.

This is how the process works: Companies fill out an application and send it to an agency, which is supposed to determine whether the company and its owners meet various eligibility guidelines. But the rules governing who should be eligible for the DBE list are a subject of disagreement, even within the agencies.

HANO and three other local agencies consider any business owned by minorities or women to be "presumptively disadvantaged." That is, the firms are certified as DBEs unless someone files a written complaint about the applicant or the agency finds evidence that the company or its owners don't qualify for the program. By contrast, white men must document their claims of social and economic disadvantage in great detail for these agencies.

The programs at the School Board and water board are race- and gender-neutral, which means that all applicants must prove they are socially and economically disadvantaged.

The city has the loosest standards. As long as a business is owned and controlled by minorities or women, and the company is capable of performing the work for which it seeks certification, it automatically is certified for the city's DBE program.

Agencies use various methods to determine social disadvantage. Some require business owners to fill out detailed questionnaires that cover everything from where an applicant grew up to what kind of discrimination the applicant has faced in the business world.

The test is much easier for determining economic disadvantage, because most agencies base that decision on a company's annual revenue. Except for the city, the agencies use guidelines established by the U.S. Small Business Administration, which has set different limits depending on the type of business the DBE does.

The SBA's limits on annual revenue range from $500,000 to $25 million, with most companies capped at $5 million. Most local agencies also have an upper limit, ranging from $14 million at HANO to $17 million at the School Board. The city is the only agency that does not have a revenue limit.

The other major economic factor is the personal net worth of the firm's owner. At HANO, the cap is $250,000, the same as the Small Business Administration's ceiling for new DBEs. Three other agencies -- the Aviation Board, the Regional Transit Authority and the Levee Board -- imposed a $750,000 limit in 1999 at the direction of the U.S. Department of Transportation, which helps finance and oversees their programs. But there are no net-worth caps in the other programs.

Nina Hebert-Marchand, who runs the DBE program at the Orleans Levee Board, said she thinks her agency's new net-worth cap of $750,000 is too high for a poor community such as New Orleans. Janice Abadie, her counterpart at the RTA, agrees.

"In New Orleans, $750,000 is not disadvantaged," Abadie said. "That's my personal opinion. To be truthful, it should be less than $300,000."

Hebert-Marchand thinks the cap should be $150,000 to $200,000. Under federal regulations, both agencies could ask the government for permission to lower their net-worth limits, but neither has done so.

It is hard to determine how many of the 1,224 companies that have been certified locally would pass the Small Business Administration's net-worth test for business owners. Because most agencies either don't have a net-worth cap or began using one only recently, the vast majority of applicants have not furnished such data on their applications. About 13 percent of the certified DBEs reviewed by The Times-Picayune provided personal financial statements.

Of that group of 156, one out of five DBE owners would have exceeded the SBA's $250,000 limit on personal net worth for new applicants. The SBA calculates net worth by adding an individual's savings, investments and all other assets -- with the exception of an applicant's equity in their home and business -- and then subtracting personal debts.

Among the chosen

Once a company is granted disadvantaged business status, it is put on a list of certified DBEs. That list is circulated throughout the business community, where prime contractors are expected to subcontract a certain percentage of public work to companies on the list.

For example, the airport awarded a $19.8 million construction contract in 1996 to Centex-Landis Construction Co. Centex-Landis was the low bidder on the job, and it also had to agree to meet the airport's DBE goal of 25 percent, which meant that at least a fourth of the work had to be parceled out to disadvantaged companies. Failure to make "good-faith" efforts to reach that goal could have resulted in rejection of the company's bid.

To meet the goal, Centex-Landis subcontracted work to 19 companies on the airport's list of certified DBEs. Those companies received a total of $5.9 million, ranging from $5,476 for a janitorial company to $1.1 million for a construction company that leased equipment.

Such subcontracting work has largely replaced the practice of minority set-asides. In the past 12 years, about $60 million was awarded locally in set-asides to disadvantaged businesses, which competed for the work solely against other DBEs. That was about one fifth of all DBE dollars. The only local agency that continues to set work aside for DBEs is the School Board, which stopped the practice on construction projects several years ago but continues to set work aside in the area of goods and services.

In public archives, contract files are full of reports showing the care local agencies take to check up on their prime contractors. In most cases, companies are required to submit monthly reports documenting exactly how much money was spent with DBEs in the period. Most prime contractors also must obtain agency approval any time they wish to switch one DBE for another.

But the agencies are much less diligent when it comes to screening the firms seeking DBE status.

At HANO, officials certified at least 22 companies that failed to meet eligibility guidelines, records show.

Housing authority officials said those companies were approved because no one from outside the agency challenged their certification. Unless such a challenge is made, minority and women applicants automatically are approved, even if they warrant disqualification, said procurement director Mary Alexander, who helps oversee the program.

At the airport, which has denied more applicants than any other local agency, officials have approved a dozen companies that exceeded the agency's revenue limits, records show. Airport officials defended their work, saying all those companies submitted tax returns showing they qualified for the program. Airport officials refused to release those records because, they said, the returns are confidential and exempt from public-records laws. A review of corporate financial statements, court documents and records submitted by the companies to other local agencies and the newspaper, however, shows their revenues were too high to qualify for the airport program.

No applicant denied

At the Levee Board, Hebert-Marchand, who said she has never denied certification to an applicant since the program was started in 1993, said she clearly made mistakes in several certification cases. Records show that among the companies that got Levee Board DBE work, at least two that should have been denied certification received $2.3 million.

"I must apologize, because I work very hard making sure the company meets the requirement," Hebert-Marchand said. "These . . . companies you named, I don't know how they got by me."

The city's policy of no revenue limits has helped one of New Orleans' biggest construction contractors, a company that one agency rejected for DBE status on the ground that the woman-owned business appeared to be a front for male operators.

During the past five years, Gootee Construction has received more than $10 million in work as a woman-owned business through the city's Open Access Plan, which requires participation by minorities and women on various public and private projects that receive city financing or support.

Under the revenue limits imposed at other agencies, Gootee wouldn't have qualified for the program. Since 1995, when the company was first certified, its annual revenue has climbed from about $20 million to $35 million, company President Patrick Gootee said.

Gootee has never been certified directly by the city. Instead, it was certified in 1995 by Harrah's New Orleans Casino, the first company required to use the Open Access program. In fulfilling its Open Access goals, Harrah's may determine what companies qualify as DBEs, and under the city's direction, it does not use revenue limits in its certification process.

Four months after the casino certified the company, Gootee was denied certification by the airport. "Although it is alleged that women are the majority shareholders, the application fails to demonstrate that the female partners have a real and substantial interest in the company," reads the airport letter sent to company chairwoman and co-owner Kathleen Gootee.

Moreover, the airport concluded that the husbands of the two female owners bankrolled the startup, putting more than $100,000 into the company versus $1,000 from the two female owners.

Kathleen Gootee acknowledged that she and her sister-in-law, Elaine Gootee, organized the company as a 100 percent woman-owned business to utilize such programs.

"If the programs are out there, it would be to our advantage to use what is available," she said.

Rosa Langley, a city official who runs the Open Access program, said the airport's rejection of the company indicates Gootee shouldn't be participating in the city's program. But the company was recertified by Harrah's in 1999, which means the firm still is eligible for participation in Open Access projects.

"It's a shame that we're seeing something like this. . . . It makes a farce out of our program," Langley said.

'We don't need it'

Until they founded Gootee Construction in 1991, neither Kathleen nor Elaine Gootee had ever run a construction company. In fact, their only experience in the construction business was fairly brief, when they both worked a couple of years at Gibbs Construction Co., where Elaine's husband, Patrick Gootee, was president and his brother, Ken Gootee, was vice president of operations. Patrick Gootee said Elaine was a housewife until Gibbs hired her to do some administrative work in the late 1980s. Kathleen Gootee, Ken's wife, joined the company as an accountant about the same time, he said.

"They don't have 20 years of experience like me and Ken," said Patrick Gootee, who went to work for Gibbs in 1968 as an estimator and was joined about seven years later by his brother, a mechanical engineer.

During the past 12 years, Gootee Construction has worked on some of the biggest construction projects in the city. Some of that work came through the Open Access program. In 1995, Gootee was hired to do $7 million worth of work on the temporary casino. The firm also did $3.3 million in work on the third phase of the Ernest N. Morial Convention Center. Both projects were subject to the city's Open Access requirements.

Patrick Gootee said his company got the work because it offered a competitive price, not necessarily because it was certified as a woman-owned business. Louis Butler, former chairman of the Coalition of Minority Contractors in New Orleans, said Gootee is missing the point.

"This program is designed to make opportunities available to small and disadvantaged businesses," Butler said. "So let's assume that 10 percent of the pie should go to those companies. If you give a big chunk of that to a company that is more than capable of getting the work itself, then the companies who should be getting the benefits are not getting the benefits."

Gootee wouldn't have qualified for the program if Marc Morial hadn't removed many of the restrictions that were imposed in 1989 by Mayor Sidney Barthelemy and the City Council. But in 1995, less than a year after taking office, Morial issued an executive order that replaced the city's race- and gender-neutral plan with a program in which minority- and woman-owned businesses automatically were granted certification. Morial dumped the existing revenue limits, as well as restrictions on net worth and household income.

Barthelemy said recently that Gootee is a "perfect example of how you can abuse" a program without such limits.

"As I envisioned it and operated it, this program is supposed to provide opportunities to those struggling little companies, not a big, multimillion-dollar company that doesn't need help," Barthelemy said. "Gootee can go out and bid against the best of them, Boh Brothers and Broadmoor and everyone else. This program is supposed to help the smaller companies that don't have the expertise, the capital, to get into that kind of bidding."

Morial didn't specifically address Gootee, but he said he removed the revenue restrictions because he didn't think they made sense.

"The assumption behind revenue limitations is that companies reach a point where they don't need the program," Morial said. "The doors to the private sector in this city are closed. A lot of these companies, if they weren't doing business in the government sector, would be out of business tomorrow."

Patrick Gootee would argue with that.

"I'm not going to tell you that we need the help; we don't need it," Gootee said. "This company has been in business for nine years, and it is capable of doing anything it wants to do."

But Gootee said his company shouldn't be penalized for playing by the rules. "We play by the rules that are written," he said. "Change the rules if you don't like the rules."

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Caption: STAFF FILE PHOTO BY RIC FRANCIS
Mayor Marc Morial confronts members of the Coalition of Minority Contractors during a 1996 protest of minority participation in construction of Phase III of the Ernest N. Morial Convention Center. The coalition claimed that the prime contractor, Broadmoor Construction Co., was using the city's disadvantaged business program to award work to subcontracting firms that ostensibly were owned by women but were in fact 'front companies' for their husbands.

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