

FINAL REPORT  
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# UTILIZATION AND AVAILABILITY STUDY

PRINCE GEORGE'S COUNTY,  
MARYLAND



# PRINCE GEORGE’S COUNTY

## UTILIZATION AND AVAILABILITY STUDY

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Specifically, County representatives that dedicated their time, attention, and expertise to this study include:

County Executive, Angela D. Alsobrooks; Chief Administrative Officer, Major Riddick; Deputy Chief Administrative Officer, Tara Jackson; Director of Central Services and Project Director of the Disparity Study, Jonathan R. Butler; Deputy Director of Central Services, Glenn Moorehead; Executive Director of the Supplier Development & Diversity Division of Central Services & Project Manager of the Disparity Study, Debra F. Carter; MBE Compliance Manager, County Council, Miranda Jackson; Office of Central Services Staff; Department of Environment; Department of Finance; Department of Public Works & Transportation; and area business owners who participated in the study’s anecdotal activities.

CHAPTER I. INTRODUCTION

Utilization and Availability Study

*Prince George's County, Maryland*





## I.1 INTRODUCTION

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MGT of America Consulting, LLC (MGT), is pleased to submit the **2019 Utilization and Availability Study** to Prince George’s County, MD (County). A disparity study determines if there are disparities between the utilization of minority- and women-owned business enterprises (M/WBEs) compared to the availability of M/WBEs in the marketplace who are ready, willing, and able to perform work. MGT analyzed procurement data for the following business categories:

- ◆ Construction Services;
- ◆ Architecture and Engineering;
- ◆ Professional Services;
- ◆ Other Services; and
- ◆ Goods and Supplies.

The Study analyzes whether a disparity exists between the number of available M/WBEs providing goods or services in the above business categories (availability) and the number who are contracting with the County as prime contractors (utilization). A subcontractor utilization analysis was conducted for the County in the construction category.

CHAPTER SECTIONS	
	◆◆◆
1.1	Introduction
1.2	Study Team
1.3	Background
1.4	Overview of Study Approach
1.5	Report Organization
1.6	Glossary of Terms

## I.2 STUDY TEAM

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The MGT team who conducted the 2019 Utilization and Availability Study is the most experienced and skilled team in the disparity study business. MGT’s disparity team has extensive social science research experience, including in all aspects of disparity research. The experience of our team enables us to navigate the challenges, obstacles, volatility, and complexities associated with conducting legally defensible disparity research, which can derail even the most well-planned and executed disparity study.

The completion of this study would not have been possible without the dedication, support, and responsiveness of County staff.

### I.2.1 MGT PROJECT TEAM

MGT is a Tampa, Florida-based research and management consulting firm. Since 1990, MGT has conducted over 215 disparity and disparity-related studies. The team of experts who dedicated their time, attention, and expertise to this study include:

#### **DR. FRED SEAMON, EXECUTIVE VICE PRESIDENT/QUALITATIVE RESEARCHER**

Dr. Seamon was responsible for ensuring the team had the necessary staff and resources to address the deliverables set forth in the scope of work. Dr. Seamon also conducted policy interviews with County officials and stakeholders. Dr. Seamon has over 30 years of consulting, research, and teaching experience. He has been conducting research related to access and equity since he was a graduate student. Dr.

Seamon has been involved in over 100 of MGT's disparity and disparity-related research studies. His disparity study areas of expertise include qualitative research methods, community engagement, and outreach and policy analysis. He has extensive experience analyzing the structure, operations, and processes of public sector organizations and nonprofit agencies and conducting research studies related to access, equity, and disparities in education, business, and human services. His consulting experience also includes workforce development, organizational development, program evaluation, program auditing, and performance management in workforce development, developmental disabilities, and community philanthropy.

**MR. REGGIE SMITH, VICE PRESIDENT/QUALITATIVE RESEARCHER**

Mr. Smith is the leader of MGT's disparity study business unit and is nationally recognized for managing and directing disparity studies. He has directed 40 disparity studies since joining MGT and has managed some of the largest disparity studies in the country. He plays a key role in developing, refining, and executing MGT's methodology and quality standards for conducting disparity studies. Mr. Smith is a highly skilled project manager with the knowledge and skills necessary to manage the complexity of a disparity study. In addition to his disparity study experience, Mr. Smith has extensive experience providing consulting, training, and public relations services to private and public sector agencies, particularly in local government. Mr. Smith also specializes in managing and conducting reengineering, operational assessments, organizational and performance reviews, and administrative technology projects for city, county, and state government agencies.

**MS. VERNETTA MITCHELL, DISPARITY SERVICES MANAGER/PROJECT MANAGER**

Ms. Mitchell served as the project manager for the County. In addition to managing the project, Ms. Mitchell led the qualitative research effort for this study. She has over 20 years of experience in minority business program development, public and private sector SBE and M/WBE program administration, construction, and government procurement. She has successfully managed dozens of disparity studies since joining MGT and has functional knowledge and expertise in project management, project scheduling, analytical reporting, facilitation, and public relations. Ms. Mitchell's extensive experience in procurement, construction, and program administration has enabled Ms. Mitchell to use her expertise in the development and management of qualitative data collection that has led to more efficient analyses and reporting of business participation.

**MR. ANDRES BERNAL, SENIOR CONSULTANT/QUANTITATIVE DATA MANAGER**

Mr. Bernal was responsible for collecting and analyzing the County's contracting and procurement data and serves as the data manager for MGT's disparity studies. He has extensive experience in the collection and analysis of large complex data and applying various statistical and mathematical computations to reach reliable and valid conclusions that are used to shape disparity study findings and recommendations. Mr. Bernal has a law degree and an impressive background in economic theories, including Microeconomic Theory, Macroeconomic Theory, Econometrics, Urban Economics, Experimental Economics, Human and Labor Resource Economics, and Regression Analysis.

## **MGT SUBCONSULTANTS**

### **BUSINESS STRATEGY CONSULTANTS – (MBE)**

Business Strategy Consultants (BSC) is a Prince George’s County-based minority and small business professional services firm which specializes in providing support in the area of Contract/Acquisition, Finance/Accounting, and Information Technology. BSC have been in business since 2001 and continue to provide excellent service to clients in the federal, state/local government, and the private sectors. BSC assisted with this study by conducting interviews with business owners and assisting with focus groups, stakeholder interviews, review of policies and procedures, and data collection.

### **LEMPUGH, INC. DBA LMD – (WBE)**

Lempugh, Inc., is a Prince George’s County-based woman-owned small business communications firm focused on helping clients evolve, thrive, and grow. Lempugh blend behavioral science and data with knowledge and expertise to change the way people think and motivate them to act. Lempugh assisted with community outreach to inform the community about the disparity study and managed the community meetings.

### **OPPENHEIM RESEARCH – ANNELIESE OPPENHEIM, PRESIDENT (WBE)**

Ms. Anneliese Oppenheim is the CEO of Oppenheim Research and a longtime partner with MGT. Ms. Oppenheim was responsible for conducting the custom census surveys and the business owner telephone surveys for this project. She has over 20 years of experience in the field of survey analysis and opinion research. Her work has included public opinion polling, policy study, program evaluation, and product and advertising research.

### **ARMAND RESOURCE GROUP**

Armand Resource Group (ARG)’s founder and senior staff each have over twenty (20) years of uninterrupted experience in contract compliance, DBE, MBE, SBE program design, compliance monitoring, team building, mentoring, EEO, OJT, workforce, Title VI, EJ, ADA, civil rights, public engagement, outreach, forensic/fraud investigations, civil rights training and staff development and other affirmative action/diversity services. ARG assisted with the development of a master M/WBE database.

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## **1.3 BACKGROUND**

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In December 2014, the County contracted with MGT to conduct a 2019 Utilization and Availability Study. Due to unforeseen circumstances, the project was suspended in August 2015. When the project resumed in February 2018, the County and MGT reevaluated the scope of work and updated methodology and revised the study period to include the most recent and available data. The County’s study includes procurement activity from July 1, 2010, through June 30, 2018 (FY2010 – FY2018). The objectives of this study were to:

- ◆ Determine whether County, either in the past or currently, engages in discriminatory practices in the solicitation and award of contracts in Construction, Architecture and Engineering, Professional Services, Other Services, and Goods and Supplies to M/WBEs.

- ◆ Determine if a legally justified need exists for the establishment of a M/WBE program in accordance with the guidelines set forth by the Supreme Court and relevant subsequent cases.
- ◆

At the time of the release of this Study, the County operates a race- and gender-neutral program called the County-based Small Business (CBSB) targeted for small businesses located in Prince George’s County. This study analyzes the dollars spent with those CBSB firms that are owned and operated by minorities and women in the scope of the study research.

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## **I.4 OVERALL STUDY APPROACH**

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MGT followed a carefully designed work plan that allowed the study team to fully analyze availability and utilization of M/WBEs in the County’s geographic and product market from each agency’s study period. The 2019 Utilization and Availability Study business categories, defined in **Chapter 4, Market Area and Utilization Analyses**, are:

- ◆ Construction;
- ◆ Architecture and Engineering;
- ◆ Professional Services;
- ◆ Other Services; and
- ◆ Goods and Supplies.

The 2019 Utilization and Availability Study analyzed contracting opportunities in these procurement categories in order to identify whether a statistical disparity exists. A statistical disparity demonstrates whether the County is a passive participant in private sector discrimination and/or that lingering effects of past discrimination exist that give rise to a compelling governmental interest for the County M/WBE Program.

The work plan consisted of, but was not limited to, the following major tasks:

- ◆ Establish data parameters and finalize the work plan.
- ◆ Conduct a legal review.
- ◆ Review County policies, procedures, and programs.
- ◆ Determine County geographic and product markets.
- ◆ Conduct market area and utilization analyses.
- ◆ Determine the availability of qualified firms.
- ◆ Analyze the availability and utilization of primes or subcontractors in County geographic and product markets.
- ◆ Quantify the disparity between availability and utilization for primes and subcontractors.

- ◆ Conduct a survey of business owners.
- ◆ Collect and analyze anecdotal information.
- ◆ Prepare and present draft and final reports for the study.

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## I.5 REPORT ORGANIZATION

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In addition to this introductory chapter, this 2019 Utilization and Availability Study report consists of:

<b>CHAPTER 2</b>	<p><b>LEGAL FRAMEWORK</b></p> <p>Chapter 2 presents the legal framework and an overview of the controlling legal precedents that impact remedial procurement programs with a concentration on the United States Court of Appeals for the Fourth Circuit.</p>
<b>CHAPTER 3</b>	<p><b>REVIEW OF POLICIES, PROCEDURES, AND PROGRAMS</b></p> <p>Chapter 3 provides MGT’s analysis of race- and gender-neutral and race- and gender-conscious policies, procedures, and programs.</p>
<b>CHAPTER 4</b>	<p><b>MARKET AREA AND UTILIZATION ANALYSES</b></p> <p>Chapter 4 presents the methodology used to determine the relevant geographic market area, and the analyses of vendor utilization by the County and College for the procurement of Construction, Architecture and Engineering, Professional Services, Other Services, and Goods and Supplies contracts.</p>
<b>CHAPTER 5</b>	<p><b>AVAILABILITY AND DISPARITY ANALYSES</b></p> <p>Chapter 5 presents the availability of M/WBEs in geographic and product markets and the disparity between the availability and utilization of M/WBEs.</p>
<b>CHAPTER 6</b>	<p><b>PRIVATE SECTOR ANALYSIS</b></p> <p>Chapter 6 provides an analysis of the disparities present in the private sector and the effect on M/WBEs. This private sector analysis demonstrates why race and gender-conscious programs and goals are necessary to ensure it does not become a passive participant in private sector discrimination.</p>

<b>CHAPTER 7</b>	<p><b>ANECDOTAL ANALYSIS</b></p> <p>Chapter 7 contains an analysis of anecdotal data collected from the survey of business owners, personal interviews, focus groups, and public meetings.</p>
<b>CHAPTER 8</b>	<p><b>FINDINGS AND RECOMMENDATIONS</b></p> <p>Chapter 8 provides a summary of the findings and recommendations based upon the analyses presented in this study.</p>
<b>APPENDICES</b>	<p>The appendices contain additional analyses and supporting documentation and data.</p>

MGT recommends reading the 2019 Utilization and Availability Study report in its entirety to understand the basis for the findings and conclusions presented in **Chapter 8, Findings and Recommendations**.

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## **1.6 GLOSSARY OF TERMS**

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This glossary contains definitions of common terms and acronyms used throughout the 2019 Utilization and Availability Study report. Additional and more detailed definitions can be found in various chapters of the report.

Anecdotal	A personal account of experiences of businesses doing business with or attempting to do business with the County collected through surveys, interviews, public hearings, and focus groups.
Aspirational Goal	A benchmark percentage of spending by an agency with a particular group over a period of time. The aspirational goal is typically an annual goal.
Anecdotal Database	A compiled list of utilized firms and registered vendors developed from several different sources, including Dun & Bradstreet. This list was used to develop the pool of available firms to participate in the anecdotal activities.
Awards	Awards reflect anticipated dollar amounts a prime contractor or vendor are scheduled to receive upon completion of a contract.
Contract	All types of County agreements, to include direct payments and purchase orders, for the procurement of Construction, Architecture and Engineering, Professional Services, Other Services, and Goods and Services.
Custom Census	Custom census involves using Dun & Bradstreet as a source of business availability. A short survey is conducted on a random sample of firms supplied by Dun & Bradstreet, requesting specific information, i.e., ethnic and gender status, willingness to work on County projects.

CBSB	An abbreviation for a County Based Small Business. A firm who meets the requirements of Section 10A – 163(b) and whose application for certification as a County Based Small Business is approved by the Purchasing Agent or is a County Based Minority Business Enterprise that meets the requirements of Section 10A – 163(g). CBSB’s are principally headquartered in Prince George’s County who meet the business size standards in compliance with the Code of Maryland Regulations (COMAR). The majority of the CBSB’s are MBE’s.
DBE	An abbreviation for a Disadvantaged Business Enterprise. A DBE is a for-profit business that has met the certification requirements that is at least 51 percent owned and controlled by one or more socially or economically disadvantaged individuals, whose personal net worth does not exceed the U.S. Department of Transportation’s current threshold in accordance with federal regulations, 49 CFR, part 26.
Direct Payment	Payment made to prime contractors or vendors without the development of a contract.
Disparity Index/ Disparity Ratio	The ratio of the percentage of utilization and the percentage of availability for a particular demographic group multiplied by 100. Disparities were calculated for primes and subcontractors for each of the business categories.
Disparity Study	A study that reviews and analyzes the utilization and availability of disadvantaged, minority-, and women-owned businesses in a particular market area to determine if disparity exists in the awarding of contracts to minority, women, and small business enterprises by a public entity.
Expenditures	Expenditures are payments made by the County to primes, and payments made by primes to subcontractors, where applicable.
Good Faith Efforts	Documented evidence of the primes’ efforts to meet established project goals to contract with M/WBE firms.
Intermediate Scrutiny	The second level of federal judicial review to determine whether certain governmental policies are constitutional. Less demanding than “strict scrutiny.”
Lowest Responsible, Responsive Bidder	An entity that provides the lowest price, has responded to the needs of the requestor, and has not violated statutory requirements for vendor eligibility.
M/WBE	An abbreviation for a minority- or woman-owned business enterprise. An M/WBE is a business that is at least 51 percent owned and operated by one or more individuals who are African American, Asian American, Hispanic American, Native American, or Nonminority Women.
Master Vendor Database	A database that maintains firms who have conducted business with the County, registered with the County, bid on County projects, certified as minority, woman, or approved small local business with the County, or data obtained from Dun & Bradstreet on firms who are willing to provide services that the County procure.

MBE	An abbreviation for a minority-owned business enterprise. An MBE is a business that is at least 51 percent owned and operated by one or more individuals who are African American, Asian American, Hispanic American, or Native American who has met the certifications requirements in accordance with COMAR and the Maryland. Department of Transportation.
MSA	An abbreviation for Metropolitan Statistical Area. Metropolitan Statistical Areas are geographic entities defined by the U.S. Office of Management and Budget (OMB) for use by Federal statistical agencies in collecting, tabulating, and publishing Federal statistics.
NAICS	North American Industry Classification System (NAICS) is the standard used by Federal agencies to classify business establishments and entities. NAICS codes come in the form of 2-6-digit codes.
Non-MWBE	An abbreviation for firms not identified as minority- or woman-owned.
Passive Discrimination	The act of perpetuating discrimination by awarding contracts to firms that discriminate against minority- and women-owned firms.
Prima Facie	Evidence which is legally sufficient to establish a fact or a case.
Prime	The contractor or vendor to whom a purchase order or contract is issued by the County.
Private Sector	The for-profit part of the national economy that is not under direct government control.
Procurement Category	The type of service or good provided under a contract or purchase order awarded. The categories analyzed are Construction, Architecture and Engineering, Professional Services, Other Services, and Goods and Supplies.
Project Goals	Goals placed on an individual project or contract, as opposed to aspirational goals placed on overall agency spending.
Public Sector	The non-profit part of the economy that is controlled by the government.
PUMS	An acronym for Public Use Microdata Sample. PUMS contains records for a sample of housing units with information on the characteristics of each unit and each person in it. PUMS files are available from the American Community Survey (ACS) and the Decennial Census.
Purchase Order	A commercial document and first official offer issued by a buyer to a seller, indicating types, quantities, and agreed prices for products or services.
Regression Analysis	A technique for modeling and analyzing several variables when the focus is on the relationship between a dependent variable and one or more independent variables. More specifically, a regression analysis helps one understand how the typical value of the dependent variable changes when any one of the independent variables is varied, while the other independent variables are held constant. For the purpose of this study, a multivariate regression analysis was used to examine



	<p>the influence of an owner’s race and gender on gross revenues reported by firms participating in a survey of vendors administered during the study.</p>
Relevant Market	<p>The geographical area where the firms that have been awarded the majority of the County contract dollars are located.</p>
SBE	<p>An abbreviation for small business enterprise. An SBE is a for-profit business pursuant to Section 3 of the Small Business Act whose annual average gross receipts are not in excess of the standards established by the Small Business Administration’s regulation under 13 C.F.R. 121 for a consecutive three-year period.</p>
Sole Source	<p>Contracting or purchasing goods or general services from one entity.</p>
Statistically Significant	<p>The likelihood that a result or relationship is caused by something other than mere random chance. Statistical hypothesis testing is traditionally employed to determine if a result is statistically significant or not. This provides a “p-value” representing the probability that random chance could explain the result. In general, a 5 percent or lower p-value is considered statistically significant.</p>
Strict Scrutiny	<p>The highest level of federal judicial review to determine whether certain governmental policies are constitutional. Applies to race-conscious programs.</p>
Subcontractor	<p>A vendor or contractor providing goods or services to a prime contractor or vendor under contract with the County.</p>
Utilization	<p>Examines the expenditures and awards made to primes and subcontractors in the relevant geographic market area for each procurement category (Construction, Architecture and Engineering, Professional Services, Other Services, and Goods and Supplies). The utilization data is presented as the dollars spent and the percentage of the total dollars by racial, ethnic, and gender classification.</p>
WBE	<p>An abbreviation for a woman-owned business enterprise. A WBE is a business that is at least 51 percent owned and operated by one or more nonminority women.</p>

## CHAPTER 2. LEGAL FRAMEWORK

### Utilization and Availability Study

*Prince George's County, Maryland*



This chapter provides the legal background for the study and for the review of the Jobs First Act. The Jobs First Act has the following major components:

- ◆ M/WBE Program.
- ◆ Small Business Program.
- ◆ County Based Business Program (Local Business Enterprise).
- ◆ Local Hiring Program.
- ◆ Community Benefits Agreements.
- ◆ Labor Peace Agreements.

The focus of the review is on relevant decisions from the U.S. Supreme Court and the Fourth Circuit Court of Appeals, which covers the Prince George’s County area. The material that follows does not constitute legal advice to Prince George’s County on M/WBE programs, affirmative action, or any other matter. Instead, it provides a context for the statistical and anecdotal analysis that appears in subsequent chapters of this report.

## CHAPTER SECTIONS



- 2.1 Introduction
- 2.2 Standards of Review for Race-Specific and Gender-Specific Programs
- 2.3 Evidence Showing a Compelling Governmental Interest
- 2.4 Satisfying Strict Scrutiny
- 2.5 Active or Passive Discrimination
- 2.6 Anecdotal Evidence of Discrimination in Disparity Studies
- 2.7 Narrowly Tailored to Remedy Identified Discrimination
- 2.8 Small Business Procurement Preferences
- 2.9 Local Business Enterprise Preferences
- 2.10 Local Hiring Program
- 2.11 Community Benefits Agreements
- 2.12 Labor Peace Agreements
- 2.13 Conclusions

## 2.1 INTRODUCTION

The Supreme Court decisions in *Richmond v. Croson Company (Croson)*,<sup>1</sup> *Adarand v. Peña (Adarand)*,<sup>2</sup> and later cases have established and applied the constitutional standards for an affirmative action program. This chapter identifies and discusses those decisions, summarizing how courts evaluate the constitutionality of race-specific and gender-specific programs. Decisions of the Fourth Circuit offer the most directly binding authority; in particular, the recent decision involving the North Carolina Department of Transportation (NCDOT) M/WBE program in *H.B. Rowe v. Tippett*.<sup>3</sup> Where the Fourth Circuit has not directly addressed an issue involving M/WBE programs since the *Croson* decision, this review considers decisions from other circuits.

By way of a preliminary outline, the courts have determined that an affirmative action program involving governmental procurement of goods or services must meet the following standards:

- ◆ A remedial race-conscious program is subject to strict judicial scrutiny under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
  - Strict scrutiny has two basic components: a compelling governmental interest in the program and narrow tailoring of the program.

<sup>1</sup> *Richmond v. Croson*, 488 U.S. 469 (1989).

<sup>2</sup> *Adarand v. Peña*, 515 U.S. 200 (1995).

<sup>3</sup> *H.B. Rowe v. Tippett*, 615 F.3d 233 (4<sup>th</sup> Cir 2010).

- To survive the strict scrutiny standard, a remedial race-conscious program must be based on a compelling governmental interest.
  - “Compelling interest” means the government must prove past or present racial discrimination requiring remedial attention.
  - There must be a specific “strong basis in the evidence” for the compelling governmental interest.
  - Statistical evidence is preferred and possibly necessary as a practical matter; anecdotal evidence is permissible and can offer substantial support, but it probably cannot stand on its own.
- Program(s) designed to address the compelling governmental interest must be narrowly tailored to remedy the identified discrimination.
  - “Narrow tailoring” means the remedy must fit the findings.
  - The evidence showing compelling interest must guide the tailoring very closely.
  - Race-neutral alternatives must be considered first.
  - A lesser standard, intermediate judicial scrutiny, applies to programs that establish gender preferences.
  - To survive the intermediate scrutiny standard, the remedial gender-conscious program must serve important governmental objectives and be substantially related to the achievement of those objectives.
  - The evidence does not need to be as strong and the tailoring does not need to be as specific under the lesser standard.

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## **2.2 STANDARDS OF REVIEW FOR RACE-SPECIFIC AND GENDER-SPECIFIC PROGRAMS**

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### **2.2.1 RACE-SPECIFIC PROGRAMS: THE CROSON DECISION**

*Croson* established the framework for testing the validity of programs based on racial discrimination. In 1983, the Richmond City Council (Council) adopted a Minority Business Utilization Plan (the Plan) following a public hearing in which seven citizens testified about historical societal discrimination. In adopting the Plan, the Council also relied on a study indicating that “while the general population of Richmond was 50 percent African American, only 0.67 percent of the city’s prime construction contracts had been awarded to minority businesses in the five-year period from 1978 to 1983.”<sup>4</sup>

The evidence before the Council also established that a variety of state and local contractor associations had little or no minority business membership. The Council relied on statements by a Council member whose opinion was that “the general conduct of the construction industry in this area, the state, and

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<sup>4</sup> *Croson*. at 479-80.

around the nation, is one in which race discrimination and exclusion on the basis of race is widespread.”<sup>5</sup> There was, however, no direct evidence of race discrimination on the part of the city in its contracting activities, and no evidence that the city’s prime contractors had discriminated against minority-owned subcontractors.<sup>6</sup>

The Plan required the city’s prime contractors to subcontract at least 30 percent of the dollar amount of each contract to one or more minority-owned business enterprises (MBEs). The Plan did not establish any geographic limits for eligibility. Therefore, an otherwise qualified MBE from anywhere in the United States could benefit from the 30 percent set-aside.

J.A. Croson Company, a non-MBE mechanical plumbing and heating contractor, filed a lawsuit against the city of Richmond alleging that the Plan was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment. After a considerable record of litigation and appeals, the Fourth Circuit struck down the Richmond Plan and the Supreme Court affirmed this decision.<sup>7</sup> The Supreme Court determined that strict scrutiny was the appropriate standard of judicial review for MBE programs, which means that a race-conscious program must be based on a compelling governmental interest and be narrowly tailored to achieve its objectives. This standard requires a firm evidentiary basis for concluding that the underutilization of minorities is a product of past discrimination.<sup>8</sup>

### 2.2.2 GENDER-SPECIFIC PROGRAMS

The Supreme Court has not addressed the specific issue of a gender-based classification in the context of a woman-owned business enterprise (WBE) program. *Croson* was limited to the review of an MBE program. In evaluating gender-based classifications, the Court has used what some call “intermediate scrutiny,” a less stringent standard of review than the “strict scrutiny” applied to race-based classifications. Intermediate scrutiny requires that classifying persons on the basis of sex “must carry the burden of showing an exceedingly persuasive justification for the classification.”<sup>9</sup>

The Fourth Circuit has ruled that the **intermediate scrutiny** standard is satisfied by “by showing at least that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.”<sup>10</sup> The Fourth Circuit in *H.B. Rowe* agreed with other federal circuits that intermediate scrutiny “can rest safely on something less than the ‘strong basis in evidence’.”<sup>11</sup> This ‘something less’ can mean that the state statute in this instance must “present [ ] sufficient probative evidence in support of its stated rationale for enacting a gender preference, i.e., . . . the evidence [must be] sufficient to show that the preference rests on evidence-informed analysis rather than on stereotypical generalizations.”<sup>12</sup>

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<sup>5</sup> Id. at 480.

<sup>6</sup> Id.

<sup>7</sup> Id. at 511.

<sup>8</sup> Id. at 493.

<sup>9</sup> *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982) (quoting *Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981)); see also *United States v. Virginia*, 518 U.S. 515, 531 (1996), *Nguyen v. U.S.*, 533 U.S. 53, 60 (2001). For an earlier Fourth Circuit application of intermediate scrutiny see *Adkins v. Rumsfeld*, 464 F.3d 456, 468 (4<sup>th</sup> Cir. 2006).

<sup>10</sup> *Hogan*, 458 U.S. at 724 (internal quotation marks omitted).

<sup>11</sup> *H.B. Rowe*, at 10 (citing *Engineering Contractors* at 909).

<sup>12</sup> Id. at 10 (citing *Engineering Contractors* at 910, *Concrete Works* at 959).

## 2.3 EVIDENCE SHOWING A COMPELLING GOVERNMENTAL INTEREST

For government contracting programs, courts have yet to find a compelling governmental interest for affirmative action other than remedying discrimination in the relevant marketplace. In other arenas, diversity has served as a compelling governmental interest for affirmative action. For example, the Ninth Circuit upheld race-based admission standards at an experimental elementary school in order to provide a more real world education experience.<sup>13</sup> More recently, in *Petit v. Chicago*, the Seventh Circuit relied on *Grutter v. Bollinger* (*Grutter*) in stating that urban police departments had “an even more compelling need for diversity” than universities and upheld the Chicago program “under the *Grutter* standards.”<sup>14</sup> The recent holding that other compelling interests may support affirmative action does not yet appear to have any application to public contracting.<sup>15</sup>

*Croson* identified two necessary factors for establishing racial discrimination sufficiently to demonstrate a compelling governmental interest in establishing an M/WBE program. First, there needs to be identified discrimination in the relevant market.<sup>16</sup> Second, the governmental factor enacting the M/WBE program must have somehow perpetuated the discrimination to be remedied by the program,<sup>17</sup> either actively or at least passively with “the infusion of tax dollars into a discriminatory industry.”<sup>18</sup>

Although the Supreme Court in *Croson* did not specifically define the methodology that should be used to establish the evidentiary basis required by strict scrutiny, the Court did outline governing principles. Lower courts have expanded the Supreme Court’s *Croson* guidelines and have applied or distinguished these principles when asked to decide the constitutionality of state, county, and city programs that seek to enhance opportunities for minorities and women.

### 2.3.1 POST-ENACTMENT EVIDENCE

The Supreme Court in *Croson* found pre-enactment evidence of discrimination insufficient to justify the program. The defendant in *Croson* did not seek to defend its program based on post-enactment evidence. However, following *Croson*, a number of circuits did defend the use of post-enactment evidence to support the establishment of a local public sector affirmative action program.<sup>19</sup> Some cases required both pre-enactment and post-enactment evidence.<sup>20</sup>

The Supreme Court case of *Shaw v. Hunt*<sup>21</sup> (*Shaw*) raised anew the issue of post-enactment evidence in defending local public sector affirmative action programs. *Shaw* involved the use of racial factors in

<sup>13</sup> *Hunter v. Regents of University of California*, 190 F.3d 1061 (9<sup>th</sup> Cir. 1999).

<sup>14</sup> *Petit v. Chicago*, 352 F.3d 1111 (7<sup>th</sup> Cir. 2003).

<sup>15</sup> *Grutter v. Bollinger*, 539 U.S. 306 (2003). For an argument that other bases could serve as a compelling interest in public contracting, see Michael K. Fridkin, “The Permissibility of Non-Remedial Justifications for Racial Preferences in Public Contracting,” 24 *N. Ill. U. L. Rev.* 509 (Summer 2004).

<sup>16</sup> *Croson*, 488 U.S. at 492, 509-10.

<sup>17</sup> *Coral Construction v. King County*, 941 F.2d 910, 918 (9<sup>th</sup> Cir 1991).

<sup>18</sup> *Id.* at 922.

<sup>19</sup> See, e.g., *Engineering Contractors v. Dade County*, 122 F.3d 895 (11<sup>th</sup> Cir. 1997); *Contractors Association v. Philadelphia*, 6 F.3d 990, 1009 n. 18 (3<sup>rd</sup> Cir. 1993); *Concrete Works v. Denver*, 36 F.3d 1513 (10<sup>th</sup> Cir. 1994).

<sup>20</sup> See, e.g., *Coral Construction*, 941 F.2d 910, 920.

<sup>21</sup> *Shaw v. Hunt*, 517 U.S. 899 (1996).

drawing voting districts in North Carolina. In *Shaw*, the Supreme Court rejected the use of reports providing evidence of discrimination in North Carolina because the reports were not developed before the voting districts were designed. Thus, the critical issue was whether the legislative body believed that discrimination had existed before the districts were drafted.<sup>22</sup> Following the *Shaw* decision, two district courts rejected the use of post-enactment evidence in the evaluation of the constitutionality of local minority business programs.<sup>23</sup> A federal circuit court decision, covering the federal small disadvantaged business enterprise program, stated that, “For evidence to be relevant in a strict scrutiny analysis of the constitutionality of a statute, it must be proven to have been before Congress prior to enactment of the racial classification.”<sup>24</sup> The issue of post-enactment evidence was not directly addressed in *H.B. Rowe*, although the NCDOT M/WBE program was upheld based on studies conducted after the program was enacted.

### 2.3.2 RACIAL CLASSIFICATIONS SUBJECT TO STRICT SCRUTINY

In *Scott v. Jackson*, the city argued that its disadvantaged business program was not a racial classification subject to strict scrutiny because (1) it was based upon disadvantage, not race, and (2) it was a goals program and not a quota. The Fifth Circuit disagreed with the claim that the Jackson program was not a racial classification because the city used the federal Section 8(d), which grants a rebuttable presumption of social and economic disadvantage to firms owned by minorities.<sup>25</sup> Such a presumption is subject to strict scrutiny. The Fifth Circuit also noted that strict scrutiny applied not simply when race-conscious measures were required, but also when such measures were authorized or encouraged.<sup>26</sup> While this issue was not directly addressed in *H.B. Rowe*, the Fourth Circuit did state in an earlier case that with regard to a claim that an employment affirmative action program was not a racial quota, “In the end, appellees cannot escape the reality that these preferences will deny some persons the opportunity to be a state trooper or to advance as a state trooper solely because they belong to a certain race.”<sup>27</sup>

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## 2.4 SATISFYING STRICT SCRUTINY

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The Supreme Court in *Croson* stated that “where gross statistical disparities can be shown, they alone in a proper case may constitute *prima facie* proof of a pattern or practice of discrimination.”<sup>28</sup> But the statistics must go well beyond comparing the rate of minority presence in the general population to the rate of prime construction contracts awarded to MBEs. The Court in *Croson* objected to such a comparison, indicating that the proper statistical evaluation would compare the percentage of qualified

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<sup>22</sup> *Id.* at 910.

<sup>23</sup> *AUC v. Baltimore*, 83 F.Supp.2d 613, 620-22 (D.Md. 2000); *West Tenn. ABC v. Memphis City Schools*, 64 F.Supp.2d 714, 718-21 (W.D. Tenn. 1999).

<sup>24</sup> *Rothe v. U.S. Dept. of Defense*, 413 F.3d 1327, 1328 (Fed Cir 2005).

<sup>25</sup> *Scott v. City of Jackson*, 199 F.3d 206, 216-17 (5<sup>th</sup> Cir 1999).

<sup>26</sup> *Id.* at 215 (quoting *Bras v. California Public Utilities Commission*, 59 F.3d 869, 875 (9<sup>th</sup> Cir. 1995)).

<sup>27</sup> *Maryland Troopers Assn v. Evans*, 993 F.2d 1072, 1078 (4<sup>th</sup> Cir 1993).

<sup>28</sup> *Croson*, 488 U.S. at 501, quoting *Hazelwood School Division v. United States*, 433 U.S. 299, 307-308 (1977).

MBEs in the relevant market with the percentage of total municipal construction dollars awarded to them.<sup>29</sup>

The Supreme Court in *Croson* recognized statistical measures of disparity that compared the number of qualified and available M/WBEs with the rate of state construction dollars actually awarded to M/WBEs in order to demonstrate discrimination in a local construction industry.<sup>30</sup> To meet this more precise requirement, courts, including the Fourth Circuit, have accepted the use of a disparity index.<sup>31</sup>

### 2.4.1 DETERMINING AVAILABILITY

To perform proper disparity analysis, the government must determine “availability”—the number of qualified minority contractors willing and able to perform a particular service for the state and local government. In *Croson*, the Court stated, “Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise.”<sup>32</sup>

An accurate determination of availability also permits the government to meet the requirement that it “determine the precise scope of the injury it seeks to remedy” by its program.<sup>33</sup> Following *Croson*’s statements on availability, lower courts have considered how legislative bodies may determine the precise scope of the injury sought to be remedied by an MBE program. Nevertheless, the federal courts have not provided clear guidance on the best data sources or techniques for measuring M/WBE availability.

Different forms of data used to measure availability give rise to particular controversies. In *H.B. Rowe*, subcontractor availability was estimated using NCDOT-approved subcontractors, subcontractor awardees and prime contractors. The plaintiff’s expert argued in the case that subcontractor bidder data should be employed to estimate subcontractor availability rather than a vendor-based approach. The Fourth Circuit in *H.B. Rowe* noted that the available subcontractor bidder data did not change the results of the vendor data.<sup>34</sup>

### 2.4.2 RELEVANT MARKET AREA

Another issue in availability analysis is the definition of the relevant market area. Specifically, the question is whether the relevant market area should be defined as the area from which a specific percentage of purchases are made, the area in which a specific percentage of willing and able contractors may be located, or the area determined by a fixed geopolitical boundary.

The Supreme Court has not yet established how the relevant market area should be defined, and the relevant market was not directly addressed in *H.B. Rowe*. However, the study in *H.B. Rowe* defined the

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<sup>29</sup> *Id.* at 501.

<sup>30</sup> *Croson*, 488 U.S. at 503-504.

<sup>31</sup> *H.B. Rowe*, at 244. See also, *Engineering Contractors*, 122 F.3d at 914; *Concrete Works IV*, 321 F.3d at 964-69.

<sup>32</sup> *Croson*, 488 U.S. at 509 (emphasis added).

<sup>33</sup> *Id.*, 488 U.S. at 498.

<sup>34</sup> *H.B. Rowe*, at 246. In *Concrete Works*, in the context of plaintiffs’ complaint that the city of Denver had not used such information, the Tenth Circuit noted that bid information also has its limits. Firms that bid may not be qualified or able, and firms that do not bid may be qualified and able, to undertake agency contracts. *Concrete Works II*, 36 F.3d at 89-90; *Concrete Works IV*, 321 F.3d at 983-84.



relevant market as the area in which 75 percent of the dollars was spent by the agency with vendors in a particular procurement category.

### 2.4.3 FIRM QUALIFICATIONS

Another availability consideration is whether M/WBE firms are qualified to perform the required services. In *Croson*, the Supreme Court noted that although gross statistical disparities may demonstrate prima facie proof of discrimination, “when special qualifications are required to fill particular jobs, comparisons to the general population (rather than to the smaller group of individuals who possess the necessary qualifications) may have little probative value.” The Court, however, did not define the test for determining whether a firm is qualified. In *H.B. Rowe*, the plaintiff’s expert argued that prime contractor assessment of subcontractor qualifications should be used to assess M/WBE subcontractor qualification. But the Fourth Circuit noted that there was no data on prime contractor assessment of subcontractor qualifications.

### 2.4.4 WILLINGNESS

*Croson* requires that an “available” firm must be not only qualified but also willing to provide the required services. In this context, it can be difficult to determine whether a business is willing. The decision in *H.B. Rowe* did not directly address measures of willingness, but implicitly accepted the vendor-based measures of availability presented in the NCDOT as a measure of willingness.

### 2.4.5 ABILITY

Another availability consideration is whether the firms being considered are able to perform a particular service. Those who challenge affirmative action often question whether M/WBE firms have the “capacity” to perform particular services. In *H.B. Rowe* the court noted that capacity does not have the same force for subcontracts which are relatively small. NCDOT study provided evidence that more than 90 percent of subcontracts were less than \$500,000.<sup>35</sup> In addition, the study for NCDOT contained a regression analysis indicating that “African American ownership had a significant negative impact on firm revenue unrelated to firm capacity or experience.”<sup>36</sup>

### 2.4.6 DISPARITY INDEX

In the *H.B. Rowe* decision, the plaintiff noted that there was not substantial disparity when the percentage of subcontractors utilized (as opposed to the percent of dollars awarded) was compared to their availability. However, the Fourth Circuit noted that “the State pointed to evidence that prime contractors used minority businesses for low value work in order to comply with the Department’s goals.”<sup>37</sup> Along these lines, the Fourth Circuit noted that the average subcontract awarded to nonminority male subcontractors was more than double the size of subcontracts won by MBE subcontractors.<sup>38</sup>

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<sup>35</sup> Id. at 247.

<sup>36</sup> Id. at 261.

<sup>37</sup> Id. at 247.

<sup>38</sup> Id. at 245.

### 2.4.7 STATISTICAL SIGNIFICANCE IN DISPARITY STUDIES

While courts have indicated that anecdotal evidence may suffice without statistical evidence, no case without statistical evidence has been given serious consideration by any circuit court. In practical effect, courts require statistical evidence. Further, the statistical evidence needs to be held to appropriate professional standards.<sup>39</sup> In *H.B. Rowe*, the court noted that the NCDOT study focused on disparity ratios lower than 80 percent and conducted t-tests of statistical significance.

### 2.4.8 NON-GOAL EVIDENCE

Another question that has arisen in the case law is whether evidence of a decline in M/WBE utilization following a change in or termination of an M/WBE program is relevant and persuasive evidence of discrimination. The Fourth Circuit in *H.B. Rowe* found that a 38 percent decline in M/WBE utilization following the suspension of the program “surely provides a basis for a fact finder to infer that discrimination played some role in prime contractors’ reduced utilization of these groups during the suspension.”<sup>40</sup> Similarly, the Eighth Circuit in *Sherbrooke Turf Inc. v. Minnesota Department of Transportation* and the Tenth Circuit in *Concrete Works IV* found that such a decline in M/WBE utilization was evidence that prime contractors were not willing to use M/WBEs in the absence of legal requirements.<sup>41</sup>

## 2.5 ACTIVE OR PASSIVE DISCRIMINATION

In *Croson*, the Supreme Court stated, “It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that *public* dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of *private* prejudice.”<sup>42</sup> *Croson* provided that the government “can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment.”<sup>43</sup> The government agency’s active or passive participation in discriminatory practices in the marketplace may show the compelling interest. Defining passive participation, *Croson* stated, “Thus, if the city could show that it had essentially become a “passive participant” in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the city could take affirmative steps to dismantle such a system.”<sup>44</sup>

In the *H.B. Rowe* case, WBEs were over-utilized on NCDOT projects, but evidence was presented of very low M/WBE utilization in private sector commercial construction and econometric evidence of disparities in entry into and earnings from self-employment in construction in the Public Use Micro Sample data. The Fourth Circuit criticized the evidence offered by NCDOT for not having a t-test of statistical significance, for not showing that WBEs sought private sector work, and for less anecdotal evidence of private sector discrimination against WBEs than was shown for minorities. The Fourth Circuit contrasted affidavits produced in the *Concrete Works* case of firms testifying they sought private sector work and could not

<sup>39</sup> *Contractors Association*, 91 F.3d at 599-601.

<sup>40</sup> *H.B. Rowe*, at 248.

<sup>41</sup> *Concrete Works* at 985; *Sherbrooke Turf*, 345 F.3d 964, 973 (8<sup>th</sup> Cir 2003).

<sup>42</sup> *Coral Construction*, 941 F.2d at 922 (citing *Croson*, 488 U.S. at 492) (emphasis added).

<sup>43</sup> See *Croson*; see generally I. Ayres and F. Vars, “When Does Private Discrimination Justify Public Affirmative Action?” 98 *Columbia Law Review* 1577 (1998).

<sup>44</sup> *Croson*, 488 U.S. at 492.

obtain it. The court also stated that NCDOT didn't establish the overlap between private sector and public sector work in transportation although the court acknowledged that some of the subcontracting was the same in both sectors. There is negligible private sector highway construction. The econometric evidence of self-employment was not addressed. The Fourth Circuit did acknowledge that,

*We do not suggest that the proponent of a gender-conscious program must always tie private discrimination to public action...Rather, we simply hold where, as here, there exists substantial probative evidence of overutilization in the relevant public sector, a state must present something more than generalized private-sector data unsupported by compelling anecdotal evidence to justify a gender-conscious program.*<sup>45</sup>

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## 2.6 ANECDOTAL EVIDENCE OF DISCRIMINATION IN DISPARITY STUDIES

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Most disparity studies present anecdotal evidence along with statistical data. The Supreme Court in *Croson* discussed the relevance of anecdotal evidence and explained, "Evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified."<sup>46</sup> Although *Croson* did not expressly consider the form or level of specificity required for anecdotal evidence, the Fourth Circuit has addressed both issues.

In *H.B. Rowe*, there was evidence from a telephone survey, interviews, and focus groups. The Fourth Circuit favorably cited survey evidence of a "good old boys" network excluding MBEs from work, double standards in qualifications, primes viewing MBEs as less qualified, dropping MBEs after contract award and the firms changing their behavior when not required to use MBEs. This material was affirmed in interviews and focus groups. The Fourth Circuit also seemed to give some weight to the differences in responses between ethnic/gender groups regarding the aforementioned barriers. The Fourth Circuit concluded that, "The survey in the 2004 study exposed an informal, racially exclusive network that systematically disadvantaged minority subcontractors."<sup>47</sup>

The plaintiff argued that this data was not verified. To which the Fourth Circuit responded, "a fact finder could very well conclude that anecdotal evidence need not—and indeed cannot—be verified because it "is nothing more than a witness' narrative of an incident told from the witness' perspective and including the witness' perceptions."<sup>48</sup> The Fourth Circuit also commented favorably on the NCDOT study survey oversampling MBEs as long as the sample was random. The Fourth Circuit did state, citing precedent in *Maryland Troopers*, that it was problematic to infer "discrimination from reports of cronyism absent evidence of racial animus."<sup>49</sup>

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<sup>45</sup> *H.B. Rowe*, at 255.

<sup>46</sup> *Croson*, 488 U.S. at 509.

<sup>47</sup> *H.B. Rowe*, at 251.

<sup>48</sup> *H.B. Rowe*, at 249 (quoting *Concrete Works*, 321 F.3d at 989).

<sup>49</sup> *H.B. Rowe* at 251 (citing *Maryland Troopers*).

## 2.7 NARROWLY TAILORED TO REMEDY IDENTIFIED DISCRIMINATION

The discussion of compelling interest in the court cases has been extensive, but narrow tailoring may be the more critical issue. Many courts have held that even if a compelling interest for the M/WBE program can be found, the program has not been narrowly tailored.<sup>50</sup> The Fourth Circuit has laid out the following factors in determining whether or not a program was narrowly tailored:

*(1) the necessity of the policy and the efficacy of alternative race neutral policies; (2) the planned duration of the policy; (3) the relationship between the numerical goal and the percentage of minority group members in the relevant population; (4) the flexibility of the policy, including the provision of waivers if the goal cannot be met; and (5) the burden of the policy on innocent third parties.*<sup>51</sup>

In *H.B. Rowe*, the Fourth Circuit added to this list “overinclusiveness,” defined as the “tendency to benefit particular minority groups that have not been shown to have suffered invidious discrimination.”<sup>52</sup>

### 2.7.1 RACE-NEUTRAL ALTERNATIVES

Concerning race-neutral alternatives, the Supreme Court in *Croson* concluded that a governmental entity must demonstrate that it has evaluated the use of race-neutral means to increase minority business participation in contracting or purchasing activities. In *H.B. Rowe*, the Fourth Circuit noted that NCDOT had a Small Business Enterprise program and had undertaken all the race-neutral methods suggested by the DOT DBE program regulations. The Court went on to note that the plaintiff had identified “no viable race-neutral alternatives that North Carolina has *failed* to consider and adopt”<sup>53</sup> (emphasis in the original). The Court further noted that disparities persisted in spite of NCDOT employment of these race-neutral initiatives.

### 2.7.2 DURATION OF THE REMEDY

With respect to program duration, in *Adarand v. Peña*, the Supreme Court wrote that a program should be “appropriately limited such that it will not last longer than the discriminatory effects it is designed to eliminate.”<sup>54</sup> In *H.B. Rowe*, the Fourth Circuit stated that “the district court found two facts particularly compelling in establishing that it was narrowly tailored: the statute’s provisions (1) setting a specific expiration date and (2) requiring a new disparity study every 5 years.”... We agree.”<sup>55</sup> Other appellate courts have noted possible mechanisms for limiting program duration: required termination if goals have

<sup>50</sup> *Contractors Association*, 91 F.3d at 605; *Engineering Contractors*, 122 F.3d at 926-929; *Verdi v. DeKalb County School District*, 135 Fed. Appx 262, 2005 WL 38942 (11<sup>th</sup> Cir. 2005).

<sup>51</sup> *H.B. Rowe* at 252 (quoting *Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305, 344 (4<sup>th</sup> Cir. 2001))

<sup>52</sup> *H.B. Rowe*, at 252 (quoting *Alexander*, 95 F.3d at 316).

<sup>53</sup> *H.B. Rowe* at 252.

<sup>54</sup> *Adarand*, 515 U.S. at 238 (internal quotations and citations omitted).

<sup>55</sup> *H.B. Rowe*, at 253 (quoting *H.B. Rowe, Inc.*, 589 F. Supp. 2d at 597).

been met<sup>56</sup> and decertification of MBEs who achieve certain levels of success, or mandatory review of MBE certification at regular, relatively brief periods.<sup>57</sup>

### 2.7.3 RELATIONSHIP OF GOALS TO AVAILABILITY

Narrow tailoring under the *Croson* standard requires that remedial goals be in line with measured availability. Merely setting percentages without a carefully selected basis in statistical studies, as the city of Richmond did in *Croson* itself, has played a strong part in decisions finding other programs unconstitutional.<sup>58</sup>

In *H.B. Rowe*, the Fourth Circuit found that NCDOT participation goals were related to percentage MBE availability. First, the NCDOT goals were set project by project. Second, there was a report detailing the type of work likely to be subcontracted. Third, the NCDOT goal setting committee checks its database for availability. Finally, the Fourth Circuit noted that 10 percent of the NCDOT projects had a zero M/WBE goal.

### 2.7.4 FLEXIBILITY

In *H.B. Rowe*, the Fourth Circuit agreed with the ruling of the federal district court in the case that the NCDOT M/WBE program was flexible, stated that,

*The Program contemplates a waiver of project-specific goals when prime contractors make good faith efforts to meet those goals...Good faith efforts essentially require only that the prime contractor solicit and consider bids from minorities. The State does not require or expect the prime contractor to accept any bid from an unqualified bidder, or any bid that is not the lowest bid. Moreover, prime contractors can bank any excess minority participation for use against future goals over the following two years. Given the lenient standard and flexibility of the “good faith” requirement, it comes as little surprise that as of July 2003, only 13 of 878 good faith submissions-including Rowe’s-had failed to demonstrate good faith efforts.*

In contrast, the Third Circuit observed in *Contractors Association* that, “As we have explained, the 15 percent participation goal and the system of presumptions, which in practice require non-black contractors to meet the goal on virtually every contract, result in a 15 percent set-aside for black contractors in the subcontracting market.”<sup>59</sup>

The Fourth Circuit also noted that,

*The State does not require or expect the prime contractor to accept any bid from an unqualified bidder, or any bid that is not the lowest bid. Moreover, prime contractors can*

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<sup>56</sup> *Sherbrooke*, 354 F.3d at 972.

<sup>57</sup> *Adarand v. Slater*, 228 F.3d at 1179, 1180.

<sup>58</sup> *Contractors Association*, 91 F.3d at 607 (“The district court also found ... that the ... Ordinance offered only one reference point for the percentages selected for the various set-asides -- the percentages of minorities and women in the general population.”). See also *Builders Association of Greater Chicago*, 256 F.3d at 647.

<sup>59</sup> *Contractors Association*, 91 F.3d at 606.

*bank any excess minority participation for use against future goals over the following two years.*<sup>60</sup>

It is worth observing that these features of the NCDOT program are more narrowly tailored than the federal DBE program for federally funded transportation projects.<sup>61</sup>

### 2.7.5 BURDEN ON THIRD PARTIES

Narrow tailoring also requires minimizing the burden of the program on third parties. Waivers and good faith compliance are tools that serve this purpose of reducing the burden on third parties.<sup>62</sup> The plaintiff in *H.B. Rowe* argued that the solicitation requirements were burdensome and that it was forced to subcontract out work that could be self-performed. The Fourth Circuit noted that the solicitation requirements could be met with existing staff and the M/WBE program did not require subcontracting out work that could be self-performed.<sup>63</sup>

### 2.7.6 OVER-INCLUSION

Finally, narrow tailoring involves limiting the number and type of beneficiaries of the program. As noted above, there has to be evidence of discrimination to justify a group-based remedy, and over-inclusion of uninjured individuals or groups can endanger the entire program. However, the statute in question limited relief to “those racial or ethnicity classifications... that have been subjected to discrimination in the relevant marketplace and that have been adversely affected in their ability to obtain contracts with the Department.”<sup>64</sup>

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## 2.8 SMALL BUSINESS PROCUREMENT PREFERENCES

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Small business procurement preferences have existed since the 1940s. The first small business program had its origins in the Smaller War Plants Corporation (SWPC), established during World War II.<sup>65</sup> The SWPC was created to channel war contracts to small business. In 1947, Congress passed the Armed Forces Procurement Act, declaring, “It is the policy of Congress that a fair proportion of the purchases and contracts under this chapter be placed with small business concerns.”<sup>66</sup> Continuing this policy, the 1958 Small Business Act requires that government agencies award a “fair proportion” of procurement contracts to small business concerns.<sup>67</sup> The regulations are designed to implement this general policy.<sup>68</sup>

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<sup>60</sup> *H.B. Rowe*, at 253.

<sup>61</sup> Compare federal regulation 49 CFR Part 26 Appendix A(2) with North Carolina regulation 19NCAC 02d.1109(7).

<sup>62</sup> 49 CFR, Section 26, Part 53.

<sup>63</sup> *H.B. Rowe*, at 254.

<sup>64</sup> N.C. Gen. Stat. § 136-28.4(c)(2).

<sup>65</sup> See, generally, Thomas J. Hasty III, “Minority Business Enterprise Development and the Small Business Administration’s 8(a) Program: Past, Present, and (Is There a) Future?” *Military Law Review* 145 (Summer 1994): 1-112.

<sup>66</sup> 10 U.S.C. § 2301 (1976).

<sup>67</sup> 15 USC 631(a).

<sup>68</sup> See 32 C.F.R. §§ 1-701.1 to 1-707.7.

Section 8(b)(11) of the Small Business Act authorizes the Small Business Administration (SBA) to set aside contracts for placement with small business concerns. The SBA has the power:

*...to make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, to insure that a fair proportion of Government contracts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share of materials, supplies, and equipment to small-business concerns.<sup>69</sup>*

Every acquisition of goods and services anticipated to be between \$2,500 and \$100,000 is set aside exclusively for small business unless the contracting officer has a reasonable expectation of fewer than two bids by small businesses.<sup>70</sup>

There has been only one constitutional challenge to the long-standing federal SBE programs. In *J.H. Rutter Rex Manufacturing v. United States*,<sup>71</sup> a federal vendor unsuccessfully challenged the Army's small business set-aside as in violation of the due process clause of the Fifth Amendment to the U.S. Constitution, as well as the Administrative Procedures Act and the Armed Forces Procurement Act.<sup>72</sup> The court held that classifying businesses as small was not a "suspect classification" subject to strict scrutiny. Instead, the court ruled:

*Since no fundamental rights are implicated, we need only determine whether the contested socioeconomic legislation rationally relates to a legitimate governmental purpose... Our previous discussion adequately demonstrates that the procurement statutes and the regulations promulgated there under are rationally related to the sound legislative purpose of promoting small businesses in order to contribute to the security and economic health of this Nation.<sup>73</sup>*

A large number of state and local governments have maintained small business preference programs for many years.<sup>74</sup> No district court cases were found overturning a state and local small business preference program. There are no reported cases of litigation against local SBE programs. The legal foundations that have typically sued M/WBE programs have actually promoted SBE procurement preference programs as a race-neutral substitute for M/WBE programs.

There has been one state court case in which an SBE program was struck down as unconstitutional. The Cincinnati SBE program called for maximum practical M/WBE participation and required bidders to use good faith effort requirements to contract with M/WBEs up to government-specified M/WBE availability.

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<sup>69</sup> 15 U.S.C. § 637(b)(11).

<sup>70</sup> Federal Acquisition Regulations 19.502-2.

<sup>71</sup> 706 F.2d 702 (5<sup>th</sup> Cir. 1983), cert. denied, 464 U.S. 1008 (1983).

<sup>72</sup> Administrative Procedures Act, 5 U.S.C. §§ 552(a)(1)(E) (1976) and the "fair proportion" language of the Armed Forces Procurement Act, 10 U.S.C. § 2301 et seq. (1976), and the Small Business Act, 15 U.S.C. § 631 et seq. (1976).

<sup>73</sup> *J. H. Rutter Rex Manufacturing*, at 706 F.2d at 730 (emphasis added). See also *Dandridge v. Williams*, 397 U.S. 471 (1970).

<sup>74</sup> For example, Florida started a small business preference program in 1985 (FL St Sec. 287); Minnesota, in 1979 (Mn Stat 137.31); New Jersey, in 1993 (N.J.S.A 52:32-17).

Failure to satisfy good faith effort requirements triggered an investigation of efforts to provide opportunities for M/WBE subcontractors. In *Cleveland Construction v. Cincinnati*,<sup>75</sup> the state court ruled that the Cincinnati SBE program had race and gender preferences and had deprived the plaintiff of constitutionally protected property interest without due process of law. The city acknowledged that it had not offered evidence to satisfy strict scrutiny because it felt that it had been operating a race-neutral program.

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## 2.9 LOCAL BUSINESS ENTERPRISE PREFERENCES

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Local business enterprise (LBE) preferences provide business preference based on the location of a firm. Such geographic preferences are widespread, and some have been in place for decades.<sup>76</sup> More common is the preference for small local businesses, such as Prince George’s County’s county-based business program, which is an even more widespread practice. While called small business programs, these programs often provide preferences for local SBEs. The brief review in this section will consider challenges under federal statutes and regulations, as well as federal and state case law. The focus will be on local governments.

### 2.9.1 FEDERAL REGULATIONS

When local government’s projects are federally funded, those projects must comply with the federal laws covering those programs. Federal programs often require procurement using a competitive process.<sup>77</sup> Some federal programs expressly prohibit the use of geographic preferences.<sup>78</sup>

### 2.9.2 CONSTITUTIONAL CHALLENGES

There are no federal court cases expressly stating that local business preference programs are unconstitutional. However, local business preferences should be distinguished from preferences for hiring local residents, some of which have been struck down on constitutional grounds and are discussed further in Section 2.10 below. But LBE programs are subject to some questions on constitutional grounds. The four bases for constitutional challenges are the Due Process, Equal Protection Clause, Dormant Commerce Clause and the Privileges and Immunities Clause.

### 2.9.3 DUE PROCESS CHALLENGES

In *Rayco Construction Co. v. Vorsanger*,<sup>79</sup> an Arkansas law gave a 3 percent preference to contractors who had satisfactorily performed prior public contracts and who had paid state and local taxes on equipment needed for contract performance or on the equivalent amount of property for at least two consecutive years prior to bid submission.<sup>80</sup> The court stated that “due process requires that the criteria set out in the

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<sup>75</sup>*Cleveland Construction v. Cincinnati*, Case No. A0402638 (Ct Comm Pleas, Hamilton County, Ohio 2005).

<sup>76</sup> For a list of local preference program see the best practices appendix to this report.

<sup>77</sup> See, e.g., 7 C.F.R. § 3016.36(c)(1) (2010).

<sup>78</sup> See, e.g., 7 C.F.R. § 3016.36(c)(2) (2010).

<sup>79</sup> 397 F. Supp. 1105 (E.D. Ark. 1975).

<sup>80</sup> *Id.* at 1107-08.



statute be sufficiently definite and concrete to enable bidders to compute their bids intelligently, to enable contracting officers to grant or withhold preferences fairly and intelligently, and to enable both bidders and contracting officers to avoid criminal violations of the statute.”<sup>81</sup>

#### 2.9.4 EQUAL PROTECTION CLAUSE

As noted above, the Equal Protection Clause prohibits states from denying any person within its jurisdiction the **equal protection** of the laws. There have been several challenges to state preferences on Equal Protection grounds. However, challenges to local purchasing preferences based on the Equal Protection Clause have generally failed. Federal courts have ruled that programs favor local companies do not involve a suspect classification and can be justified as having a rational basis under the Equal Protection Clause.

In *Smith Setzer v South Carolina Procurement Review Panel*, a low bidder challenged a local preference on Equal Protection grounds.<sup>82</sup> The Fourth Circuit applied a rational basis test as no suspect classification or fundamental right was involved.<sup>83</sup> Using the rational basis standard, the court ruled that the purpose of the law—that benefits generated by state expenditures go to state taxpayers for whom the state was created to serve—was legitimate.<sup>84</sup> At the same time, the Fourth Circuit noted that “[f]or if it is true that there will be instances in which the state border provides a useful and legitimate line of demarcation, there also will be instances in which it acts as a capricious or protectionist line.”<sup>85</sup> In addition, the state pointed to an economic study showing that South Carolina would lose \$2.1 million by purchasing from Setzer.

In another example, Pennsylvania enacted a statute requiring the purchase of Pennsylvania steel.<sup>86</sup> A challenge was made to the Pennsylvania Steel Products Procurement Act, as a “blatant attempt at economic protectionism,” in violation of the Equal Protection Clause. But the federal court found that Pennsylvania’s distinction between domestic and foreign steel products was “rationally related to a legitimate governmental purpose,” that is, to support a struggling industry that contributed significant employment and tax revenue to the state.

The Wyoming Supreme Court upheld the constitutionality of a local preference in *Galesburg Construction v. Memorial Hospital*, 641 P.2d 745 (Wyo 1982). The Wyoming statute granted residents a 5 percent bid preference.<sup>87</sup> Residents were defined as being incorporated or residing in the state one year before bid opening. The court held that the state had a legitimate interest in promoting local industry and the bid preference advanced that interest.

A municipal LBE program was challenged on equal protection grounds in *AGC v. San Francisco*.<sup>88</sup> In the San Francisco ordinance there was a 5 percent LBE bidding preference and no goals, quotas, or set-asides.

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<sup>81</sup> Id. at 1110.

<sup>82</sup> 20 F.3d 1311 (4th Cir. 1994).

<sup>83</sup> Id. at 1323.

<sup>84</sup> Id.

<sup>85</sup> Id. at 1322.

<sup>86</sup> *Trojan Technologies v. Pennsylvania*, 916 F.2d 903 (3d Cir 1990).

<sup>87</sup> Wy Stat Section 16-6-102.

<sup>88</sup> *AGC v. San Francisco*, 813 F.2d 922 (9th Cir. 1987).

The LBE definition was deemed by the court to be “rather broad” because it involved having a fixed office or distribution point in the city and paying permit and license fees from a San Francisco address.<sup>89</sup> The Ninth Circuit allowed the San Francisco ordinance on several grounds. First, the appeals court noted that the city could “rationally allocate its own funds to ameliorate” the impediments faced by LBEs.<sup>90</sup> Second, the court found a legitimate purposes for the ordinance in lessening the economic burden on LBEs due to “the higher administrative costs of doing business in the City,” and to encourage firms to relocate to San Francisco.<sup>91</sup> Third, the court noted that the measures used to achieve city were reasonable.

On the other hand, there have been two cases upholding equal protection challenges to local preferences. In *Big D Construction Corp. v. Court of Appeals for the State of Arizona, Division One*,<sup>92</sup> the Arizona Supreme Court held that the state’s law giving preference to “resident tax paying contractors” violated the Equal Protection Clause. The original Arizona law gave preference to contractors who were “licensed in Arizona, [had] successfully completed prior public contracts, [and had] paid Arizona state and county taxes on a plant and equipment of the type required for performance of the contract (or on real or personal property equivalent in value) for at least two consecutive years prior to making the bid.”<sup>93</sup> This criteria had been amended to require only that the firm had successfully completed previous public contracts and paid at least \$200 in taxes within the state for at least two consecutive years prior to the bid.<sup>94</sup> The location of the bidder’s home office was dropped as a factor in determining eligibility for the preference.<sup>95</sup> The court ruled that the eligibility criteria no longer reasonably related to the state’s purpose—“to provide employment for Arizona residents and contractors,<sup>96</sup> and hence equal protection.<sup>97</sup>

In *Rayco Construction*, discussed above, the court also challenged the 3 percent local preference on Equal Protection grounds. The district court struck down an Arkansas preference law as violating of the Equal Protection Clause. The district court held, that the statute’s differentiation did not have a rational basis for the classification.<sup>98</sup> The court found the requirement limiting the criteria to past performance of only public contracts was not rational.<sup>99</sup> The court also questioned the constitutionality of differentiating contractors based on property ownership or tax payments.<sup>100</sup>

### 2.9.5 DORMANT COMMERCE CLAUSE

The next objection to LBE programs comes from the Commerce Clause. Article One of the Constitution confers upon Congress the power to regulate interstate commerce.<sup>101</sup> The Supremacy Clause of the Constitution grants to the federal government the power to preempt state laws that conflict with federal

<sup>89</sup> Id.

<sup>90</sup> Id. at 942-43.

<sup>91</sup> Id. at 943.

<sup>92</sup> 789 P.2d 1061 (Ariz. 1990).

<sup>93</sup> Id. at 1065.

<sup>94</sup> Id. at 1066.

<sup>95</sup> Id.

<sup>96</sup> Id. at 1067.

<sup>97</sup> Id. at 1068-70.

<sup>98</sup> *Rayco Construction*, at 1111.

<sup>99</sup> Id. at 1111-12.

<sup>100</sup> Id. at 1112.

<sup>101</sup> U.S. Const., art. I., § 8 (reading, “Congress shall have Power ... to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes ...”).

laws. The Supreme Court has found implicit in the Constitution “a self-executing limitation on the power of the States to enact laws imposing substantial burdens on such commerce.”<sup>102</sup> Consequently a state statute is unconstitutional under what has become known as the Dormant Commerce Clause if it poses undue burdens on interstate commerce.<sup>103</sup> It follows that under the Dormant Commerce Clause, “discrimination against interstate commerce in favor of local business or investment is *per se* invalid, save in a narrow class of cases in which the municipality can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest.”<sup>104</sup>

The Dormant Commerce Clause has been justified on both economic and political grounds. On economic grounds the Dormant Commerce Clause “prohibits economic protectionism.”<sup>105</sup> From a political standpoint a state law that only harms interests from other states “is not likely to be subjected to those political restraints which are normally exerted on legislation where it affects adversely some interests within the state.”<sup>106</sup>

Historically the Supreme Court employed a two-part test for the Dormant Commerce Clause: (1) does the state regulation discriminate against interstate commerce on its face; or, (2) are the burdens imposed on interstate commerce excessive relative to the alleged local benefits.<sup>107</sup> A statute that fails either part of this test (the “Pike test”) is invalid under the Dormant Commerce Clause. LBE programs discriminate against interstate commerce on their face and thus seemingly should fail the Pike test.

There are two important exceptions to this application of the Dormant Commerce Clause. First, local governments may “discriminate” in favor of local products or services when Congress expressly grants permission for such actions.<sup>108</sup> Moreover, under the Commerce Clause the U.S. Supreme Court has ruled that when local preferences are required under federal grants there is no Dormant Commerce Clause issue, ruling that “where state or local government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with interstate commerce.”<sup>109</sup>

The second exception to the Dormant Commerce Clause is more relevant to a local LBE program. The “market participant” doctrine allows a local agency to pass ‘protectionist’ legislation so long as the agency is participating in the market as a buyer or seller of goods and services, rather than regulating the market.<sup>110</sup> Thus, the Commerce Clause was not intended to prohibit an agency from favoring its own citizens over others as a market participant. The U.S. Supreme Court has ruled that governments enjoy unrestricted ability to select their trading partners and contractual terms.<sup>111</sup> Indeed, in light of “the long recognized right of trader or manufacturer, engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal...” and that “...when acting as

<sup>102</sup> *S.-C. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 87 (1984); see also *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273 (1988).

<sup>103</sup> See *Big Country Foods, Inc. v. Bd. of Educ. Anchorage Sch. Dist.*, 952 F.2d 1173, 1177 (9th Cir. 1992).

<sup>104</sup> *C & A Carbone v. Town of Clarkstown*, 511 U.S. 383, 392 (1994).

<sup>105</sup> *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 274 (1988).

<sup>106</sup> *S.C. St. Hwy. Dept. v. Barnwell Bros., Inc.*, 303 U.S. 177, 185 n. 2 (1938).

<sup>107</sup> *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

<sup>108</sup> *W. & S. Life Ins. Co. v. State Bd. of Calif.*, 451 U.S. 648 (1981).

<sup>109</sup> *White v. Massachusetts Council of Construction Employers, Inc.* 460 U.S. 204, 213 (1983).

<sup>110</sup> *S.-C. Timber Dev., Inc.*, 467 U.S. at 93 (holding that “if a state is acting as a market participant, rather than as a market regulator, the dormant Commerce Clause places no limitation on its activities”).

<sup>111</sup> *Perkins v. Lukens Steel*, 310 U.S. 113, 127 (1940).

proprietors, States should similarly share existing freedoms from federal constraints, including the inherent limits of the Commerce Clause.”<sup>112</sup>

In general, a government is acting as a market participant when they are buying and selling like a private organization rather than taxing or regulating the market. Thus, “In making the determination whether a state is acting as a market participant or regulator, a court must examine whether the state or local government has imposed restrictions that ‘reach beyond the immediate parties with which the government transacts business.’”<sup>113</sup> The U.S. Supreme Court has clarified that the market participant doctrine does not allow a local agency to impose conditions “that have a substantial regulatory effect outside of that particular market.”<sup>114</sup> Note that the line between market participant and market regulator has not always been clear. Nevertheless, under the Market Participant Exception LBE programs should pass constitutional hurdles.

Given these results it is not surprising that no federal court case was found overturning, or even challenging, an LBE program under the Dormant Commerce Clause.

## 2.9.6 PRIVILEGES AND IMMUNITIES CLAUSE

Another risk to an LBE program comes from the Privileges and Immunities Clause. The U.S. Supreme Court has identified the original purpose of the Privileges and Immunities Clause as prohibiting discrimination on the basis of state citizenship. Historically the U.S Supreme Court has applied a two-part test under the Privileges and Immunities Clause: (1) did the state or local government violate a fundamental right, and (2) did the state or local government have a substantial reason for doing so.<sup>115</sup>

While similar and interrelated with the Dormant Commerce Clause, the Immunities Clause and the Commerce Clause provide different constitutional protections. The Dormant Commerce Clause is a judicially-created doctrine designed to prevent economic protectionism while the Privileges and Immunities Clause is a Constitutional provision created to protect individual rights.

A clarification of the application of the Immunities Clause to a local preference came from the U.S. Supreme Court in *United Building & Constr. Trades v. Camden*.<sup>116</sup> In *Camden*, a municipal ordinance required that at least 40 percent of the employees of contractors and subcontractors working on city construction projects be Camden residents. The *Camden* Court clarified that only those rights fundamental to interstate harmony were protected by the Immunities Clause. However, federal courts have found that the right to contract with a governmental entity is not a fundamental right.<sup>117</sup> In addition, the Supreme Court has held that the Privileges and Immunities Clause does not protect corporations.<sup>118</sup>

<sup>112</sup> *Reeves, Inc. v. Stake*, 447 U.S. 429, 439 (1980).

<sup>113</sup> *Big Country Foods v. Bd. of Educ.*, 952 F.2d 1173, 1178 (9th Cir. 1992).

<sup>114</sup> *S.-C. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 97 (1984).

<sup>115</sup> *Toomer v. Witsell*, 334 U.S. 385, 395-96 (1948).

<sup>116</sup> *United Building & Constr. Trades v. Camden*, 465 U.S. 208 (1984).

<sup>117</sup> See, e.g., *Tennessee Small Schools Systems v. McWherter*, 851 S.W.2d at 153.

<sup>118</sup> *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 177, 181, (1869)) This result was reaffirmed by the Supreme Court in *Western & Southern Life Ins. Co. v. State Bd. of Equalization*, 451 U.S. 648, (1981).

Consequently an Immunities challenge should only arise relative to an individual seeking to contract with a local government.

It is worth observing that no case was found overturning, or even challenging, an LBE program based upon the Immunities Clause.<sup>119</sup> Only municipal resident hiring programs have been challenged on Immunities Clause grounds.

In conclusion, no constitutional challenges have been succeeded in federal court with regard to an LBE program. An LBE program should survive: (1) a challenge under the Equal Protection Clause because LBE programs generally have a rational basis for their existence, (2) a challenge under the Dormant Commerce Clause based upon the Market Participant exception, and (3) a challenge under the Immunities Clause, because the clause does not apply to corporations and public contracts are not a fundamental right.

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## 2.10 LOCAL HIRING PROGRAM

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The basic purposes of local worker hiring programs is to lessen local unemployment and channel local resources back to local agency constituents. While there are a number of local worker hiring programs across the country, there have been few circuit court decisions directly addressing local work hiring preferences. As the law now stands, there are two main areas of legal challenge to local worker hiring programs:

1. Dormant Commerce Clause.
2. Privileges and Immunities Clause.

### 2.10.1 DORMANT COMMERCE CLAUSE

The Dormant Commerce Clause was summarized above in the discussion of LBE programs. The same market participant exception applies to local worker hiring programs. In addition, under the Commerce Clause, the U.S. Supreme Court has ruled that when local preferences are required under federal grants there is no Dormant Commerce Clause issue, ruling that, “where state or local government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with interstate commerce.”<sup>120</sup>

### 2.10.2 PRIVILEGES AND IMMUNITIES CLAUSE

The Privileges and Immunities Clause was summarized above in the discussion of LBE programs. The application here, however, is somewhat different. A clarification of the application of the Immunities Clause to a local worker hiring preference came in *United Building & Constr. Trades v. Camden*.<sup>121</sup> As noted previously, in *Camden*, a municipal ordinance required at least 40 percent of the employees of contractors and subcontractors working on city construction projects be Camden residents. The *Camden* Court

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<sup>119</sup> One state court case challenging an LBE program, argued that an Illinois School Board did not have the authority under state statutes to authorize an LBE program. *Best Bus Joint Venture v. The Board of Education of the City of Chicago*, First District Appellate Court No. 1-96-2927 (May 9, 1997).

<sup>120</sup> *White v. Massachusetts Council of Construction Employers, Inc.* 460 U.S. 204, 213 (1983).

<sup>121</sup> *United Building & Constr. Trades v. Camden*, 465 U.S. 208 (1984).

devised a three-part test to evaluate the constitutionality of such an ordinance under the Privileges and Immunities Clause:

1. The jurisdiction must document “substantial reason” for the preference.
2. The jurisdiction must demonstrate that non-residents can be held partly responsible for the documented problem.
3. The proposed remedy must be narrowly tailored.

The *Camden* Court also made four other significant holdings. First, the Market Participant exception does not apply to Privileges and Immunities analysis. Second, the Immunities Clause does apply to laws that discriminate on the basis of municipal residency, not simply state residency. Third, as mentioned previously in the discussion of LBE programs, only those rights fundamental to interstate harmony are protected by the Immunities Clause. Fourth, employment by a city vendor is a fundamental right while employment by the city itself is not a fundamental right.<sup>122</sup>

The application of *Camden* to local hiring preferences can be found in *Hudson MSA Building and Construction v. Jersey City*,<sup>123</sup> which involved a program requiring city vendors to make good faith efforts to hire 51 percent city residents. While Jersey City provided data on unemployment and poverty in Jersey City, the evidence did not show, “that out-of-state workers [were] a cause of unemployment and poverty within its borders.”<sup>124</sup> Thus, just reciting data on unemployment and poverty will not be enough to overcome an Immunities Clause challenge. A local worker hiring study must link non-residents to the documented problem. A federal court reached a similar conclusion in a review of a local hiring program of the city of Worcester.<sup>125</sup>

There has been little guidance from the federal courts in general or the Fourth Circuit in particular, as to what statistical evidence would support a local hiring program. The most guidance has come from a 1984 case in the 7<sup>th</sup> Circuit in *WCM Window Co v. Bernardi* in which the federal appellate court stated in reference to an Illinois resident hiring statute,

Illinois has presented no information--statistical or otherwise, evidentiary or subject to judicial notice, at trial or on appeal--concerning the benefits of the preference law. We are not told the unemployment rate in Illinois' construction industry, what such unemployment costs the state, whether it would be significantly increased by throwing open public construction projects to nonresidents (which might just cause a reshuffling of jobs between public and private projects), and whether the costs--if any--to Illinois of allowing nonresident labor on such projects, costs in higher unemployment or welfare benefits paid unemployed construction workers or their families, are likely to exceed any cost savings in public construction from hiring nonresident workers.<sup>126</sup>

<sup>122</sup> See also *McCarthy v. Philadelphia Civil Service Commission*, 424 U.S. 645 (1976) (upholding a municipal ordinance that required all Philadelphia city government employees to be residents of the city).

<sup>123</sup> 960 F.Supp. 823 (Dist Ct D NJ 1996).

<sup>124</sup> *Id.* at 831.

<sup>125</sup> *Util. Contrs. Ass'n of New Eng. v. City of Worcester*, 236 F. Supp. 2d 113 (D.Mass, 2001).

<sup>126</sup> *WCM Window Co v. Bernardi*, 730 F.2d 486, 498 (7<sup>th</sup> Cir 1984).

In conclusion, a local hiring program generally needs some factual predicate evidence, but there is limited guidance as to what evidence would be sufficient to support a local hiring program.

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## 2.11 COMMUNITY BENEFITS AGREEMENTS

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### 2.11.1 BACKGROUND

Originating in California in the late 1990s, Community Benefit Agreements (CBAs) have spread nationally and have become recognized as a standard component of major projects in the areas of housing, energy, commercial development, arenas, transportation, and landfills. The garden variety CBA is an agreement between a developer and local governments and community organizations. CBAs often include requirements for affordable housing and local hiring, and provide for financial grants, local hiring, and affordable housing, as well as other benefits to the local community in exchange for community support, public subsidies, and avoidance of litigation.

### 2.11.2 LEGAL ISSUES

There is very little case law on CBAs and few statutes specifically authorizing CBAs. As such, CBAs have an uncertain legal status.

Some have argued that CBAs are essentially development agreements and are thus only permissible when state statute authorizes development agreements. However, in a development agreement, developers offer amenities in exchange for a freeze in zoning requirements over a period of time.<sup>127</sup> CBAs in contrast do not force government approval and do not bind future legislative bodies.

Another analogy is contract zoning in which a local government promises zoning relief in advance in exchange for an amenity. Contract zoning is generally prohibited.<sup>128</sup> But under a CBA a municipality is free to choose with regard to permits it allows.

Several other possible avenues of challenge to CBA agreements include:

- ◆ Are CBAs an unlawful delegation of legislative power to private persons? One court found that delegation of public authority to private persons or entities is “strictly scrutinized because, unlike government officials or agencies, private persons will often be wholly unaccountable to the general public.”<sup>129</sup>
- ◆ Are CBAs an unconstitutional taking of private property under the U.S. and Maryland constitutions?<sup>130</sup>

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<sup>127</sup> See *City of W. Hollywood v. Beverly Towers, Inc.*, 805 P.2d 329, 334 n.6, 335 (Cal. 1991).

<sup>128</sup> See *Church v. Town of Islip*, 168 N.E.2d 680, 683 (N.Y. 1960); See also *Collard v. Inc. Village of Flower Hill*, 421 N.E.2d 818, 821 (N.Y. 1981).

<sup>129</sup> *Board of Trustee of Employee Retirement System v. Baltimore*, 317 Md 72, 94 (1989).

<sup>130</sup> Article II, Section 40 of the Maryland Constitution and the 5<sup>th</sup> Amendment to the U.S. Constitution.

- ♦ Do CBAs engage in suspect classifications that give rise to an Equal Protection challenge under the U.S. and Maryland constitutions?<sup>131</sup>
- ♦ Does the CBA define what constitutes an enforceable contract under Maryland law? (A definition which is to be determined by the State of Maryland and cannot be decided by a County in Maryland.)

Many of these objections are hypothetical in the sense that they have not been tested in court. Moreover, many objections can be addressed in the drafting of CBA legislation.

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## 2.12 LABOR PEACE AGREEMENTS

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### 2.12.1 BACKGROUND

Standard labor peace agreements generally require:

Civility—such that union organizing campaigns are based on arguments and not derision.

Access—the company provides the union with access to employee contact information, and/or the company physical site.

Recognition—the agreement may provide for union recognition in the event of showing majority support for union, typically with signed authorization cards.

Some labor peace agreements require company subcontractors to satisfy the same conditions.

Labor peace agreements are fairly common across the United States. Labor peace agreements have also become a part of negotiations when developers seek subsidies, loans and tax incentives from a local agency. The labor peace agreement is part of the security sought by the local agency. Some states, including Maryland,<sup>132</sup> have legislation specifically authorizing labor peace agreements.

### 2.12.2 LEGAL ISSUES

The primary legal issue with labor peace agreements is federal preemption. Although the National Labor Relations Acts (NLRAs)<sup>133</sup> do not contain express preemption language, the federal courts have long taken the position that when the state or local government attempts to regulate activity governed by the NLRA the state rules are preempted by the NLRA.<sup>134</sup>

One important exception to federal labor law preemption is the U.S. Supreme Court decision in *Boston Harbor*.<sup>135</sup> *Boston Harbor* contains a similar “marketplace participant” exception when a local

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<sup>131</sup> Article 24 of the Maryland Constitution and the 14<sup>th</sup> Amendment to the U.S. Constitution. See *Verzi v. Baltimore County*, 333 Md. 411, 417(1994) (Article 24 has the same equal protection concepts as the 14<sup>th</sup> Amendment to the U.S. Constitution).

<sup>132</sup> Maryland State Code §9-1A-07 (c)7 (v). New York state law also authorizes labor peace agreements. New York State Code, Public Authorities, Article IX, Title IV, Contracts of Public Authorities.

<sup>133</sup> 29 U.S.C. § 151, et. Seq.

<sup>134</sup> *San Diego Bldg. & Constr. Trades Council v. Garmon*, 359 U.S. 236 (1959). *Metro Life Ins v. Mass*, 471 U.S. 724, 747-48 (1985).

<sup>135</sup> *Building and Constr. Trades Council v. Associated Builders & Contractors of Mass/RI, Inc.* 507 U.S. 218 [1993].



government, acting as a private participant in the marketplace, is not subject to preemption. Instead preemption only applies to state labor regulations. Using this reasoning a Massachusetts agency was allowed to require a project labor agreement for any firms involved in the agency's Boston Harbor clean up. The Court was providing for equal treatment with regard to PLAs in the private sector. Because the NLRA allows a private firm to require a project labor agreement, a state agency can require a project labor agreement when it is hiring a firm to provide goods or services.

The *Boston Harbor* case, however, did not clearly spell out the foundations for marketplace immunity. Consequently, there have been conflicting lower court opinions since *Boston Harbor*. More specifically, the case on labor peace agreements has been contradictory. For example, in a widely cited case, the 7<sup>th</sup> Circuit in *Milwaukee Ass'n of Commerce v. Milwaukee County*, held that a labor peace agreement requirement for contracts for transportation and other services to elderly and disabled citizens was preempted by the NLRA.<sup>136</sup>

The issue is further complicated when an agency is providing subsidies. Is the agency a market participant? For example, in *Hotel Employees v. Marriott*, the San Francisco Redevelopment Authority (SFRA) acquired land to build a mixed-use development.<sup>137</sup> The SFRA awarded a hotel chain a contract to build a hotel and convention center on the land. The SFRA required a labor peace agreement for the deal. The SFRA, however, did not own or manage the hotel. However, the deal contained a long-term lease such that the hotel would pay a fixed minimum rent and a percentage rent. The Court concluded that the SFRA was a market participant.

In contrast, in *ABC of Rhode Island v. Providence*, the city required a project labor agreement in exchange for a tax stabilization agreement which froze tax rates and property valuation for 12 years.<sup>138</sup> The court found that the PLA was not protected by marketplace participant immunity. The court found that the city was assessing taxes and not buying construction services.

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## 2.13 CONCLUSIONS

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As noted above the Jobs First Act has the following major components:

- ◆ M/WBE Program
- ◆ Small Business Program
- ◆ County Based Business Program (Local Business Enterprise)
- ◆ Local Hiring Program
- ◆ Community Benefits Agreements
- ◆ Labor Peace Agreements

The M/WBE program and the local hiring program require factual predicate evidence to support them. As summarized earlier, when governments develop and implement a contracting program that is sensitive to race and gender, they must understand the case law that has developed in the federal courts. These

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<sup>136</sup> 431 F.3d at 277-78.

<sup>137</sup> *Hotel Employees & Restaurant Employees v. Marriott*, 961 F.2d 1464 (9thCir1992)[get case]

<sup>138</sup> 108 F.Supp.2d73 (DRI 2000). [get case]

cases establish specific requirements that must be addressed so that such programs can withstand judicial review for constitutionality and prove to be just and fair. Given current trends in the application of the law, local governments must engage in specific fact-finding processes to compile a thorough, accurate, and specific evidentiary foundation to determine whether there is, in fact, discrimination sufficient to justify an affirmative action plan. Further, state and local governments must continue to update this information and revise their programs accordingly.

While the Supreme Court has yet to return to this exact area of law to sort out some of the conflicts, the Fourth Circuit has recently provided some guidance on core standards. Ultimately, MBE and WBE programs can withstand challenges if state and local governments comply with the requirements outlined by the courts.

While there is ample case law on the evidence needed to support an M/WBE program, there is little guidance from the courts on what evidence is necessary to support a local hiring program. However, it is clear that simply citing poverty and unemployment statistics is insufficient. Employment problems must be linked to non-residents.

Small and local based business enterprise do not require factual predicate evidence. Community benefits and labor peace programs also do not require factual predicate evidence but may run into legal challenges based upon how the programs are designed. There is a degree of legal uncertainty about aspects of both community benefits programs and labor peace programs given the state of the current case law.

CHAPTER 3. REVIEW OF POLICIES,  
PROCEDURES, AND PROGRAMS

Utilization and Availability Study

*Prince George's County, Maryland*



This chapter focuses on policies, procedures, and programs used by Prince George’s County, to purchase goods and services. It provides a brief description of the procurement and contracting environment in which minority, and women business enterprises (M/WBEs) operate, as well as background for the data analysis and foundations for the report recommendations. Finally, it provides a brief description of the remedial efforts undertaken by the County with regard to procurement in the categories of construction, other services, professional services, architecture and engineering), and goods and supplies.

Our review of policies and procedures is presented in 13 sections. **Section 3.1** describes the methodology used to conduct the review of contracting policies, procedures, and programs. **Sections 3.2** through **3.12** cover programs to assist M/WBEs.

#### CHAPTER SECTIONS



3.1	Methodology
3.2	Historical Background
3.3	Certification
3.4	Goals
3.5	Incentives
3.6	Reporting
3.7	Outreach
3.8	Supplier Diversity and Development Division
3.9	Prompt Payment
3.10	Financial Assistance Programs
3.11	Bonding Programs
3.12	Management and Technical Assistance
3.13	Conclusions

## 3.1 METHODOLOGY

This section discusses the steps taken to summarize the County’s race- and gender-based programs and race- and gender-neutral programs. Our review focused on elements of the remedial programs that might affect M/WBEs utilization. The analysis included the following steps:

- ◆ Collection, review, and summarization of County contracting and purchasing policies currently in use. Discussions with managers about the changes that contracting and purchasing policies underwent during the study period and their effects on the remedial programs.
- ◆ Development of questionnaires administered to key County contracting and purchasing staff and officials to determine how existing contracting and purchasing policies have been implemented. Interviews were conducted with County management and staff regarding the application of policies, discretionary use of policies, exceptions to written policies and procedures, and impact of policies on key users.
- ◆ Review of applicable County rules, resolutions, and policies that guide the remedial programs. This included discussing with both County personnel and program participants the operations, policies, and procedures of the remedial programs and any remedial policy changes over time.
- ◆ Finally, MGT collected and reviewed copies of previous studies of minority business development conducted in the geographic region and performed a review of race- and gender-neutral programs.

In all, MGT conducted nine interviews with current County staff during March 2015. For this portion of the study, County documents collected and reviewed are itemized in **Table 3-1**.

**TABLE 3-1. DOCUMENTS REVIEWED DURING POLICY AND PROCEDURE REVIEW**

INDEX	DESCRIPTION
1.	Prince George's County Procurement Regulations, Chapters 1-XXVII
2.	Proposed Operating Budget FY 2016, Volume I, Office of Central Services
3.	Prince George's County Code Sec. 10A-101
4.	Prince George's County Code Sec. 10A-136
5.	Prince George's County Code Sec. 10A-138
6.	Prince George's County Code Sec. 10A-153
7.	Prince George's County Code Sec. 10A-160
8.	Prince George's County Code Sec. 10A-161
9.	Prince George's County Code Sec. 10A-162
10.	Prince George's County Code Sec. 10A-174
11.	City Council of Prince George's County, County CBE Definitions and Eligibility Standards
12.	Prince George's County, Universal Certification Application
13.	Prince George's County, MBDD Certification Presentation (PowerPoint)
14.	DJMA, Prince George's County Government Disparity Study Final Report, November 2006
15.	Code of Maryland Regulations 21.01.02.01(80).

## 3.2 HISTORICAL BACKGROUND

The County has several programs in place to assist small, minority, women, and veteran-owned firms.<sup>139</sup> The County has a minority business enterprise (MBE) program and several County-based business programs. The County-based programs were enacted by the Council in November 2011, through the Jobs First Act (CB-17-2011) and CB-67-2014, effective January 5, 2015. These programs are all discussed in more detail below.

## 3.3 CERTIFICATION

### 3.3.1 M/WBE CERTIFICATION

The County defines a minority business enterprise as any business enterprise:

- A. Which is at least fifty-one percent (51%) owned by one or more minority individuals, or, in the case of any publicly owned corporation, at least fifty-one percent (51%) of the stock is owned by one or more minority individuals; and
- B. Whose general management and daily business affairs and essential productive operations are

<sup>139</sup> In 2006 the County released a disparity study. DJMA, *Prince George's County Government Disparity Study Final Report*, November 2006.

controlled by one or more minority individuals; and

- C. Which has been certified by the Supplier Development and Diversity Division as a Minority Business Enterprise pursuant to Division 6 of this Subtitle.<sup>140</sup>

The County defines minority as:

“...those who have been subjected to prejudice or cultural bias because of their identity as a member of a group in terms of race, color, ethnic origin, or gender, without regard to their individual capabilities.”

Minority individuals are limited to members of the following groups:

- A. African Americans (Black Americans), which includes persons having origins in any of the Black racial groups of Africa;
- B. Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- C. Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
- D. Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- E. Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- F. Females, regardless of race, ethnicity, or origin; and
- G. Veterans and Service-Disabled Veterans.

It is worth noting here that nonminority females, veterans, and service-disabled veterans are included in the County definition of minority and therefore in the definition of MBE.<sup>141</sup>

The County certifies MBEs and County rules allow, under the following terms, for a reciprocal certification program:

1. That has entered into a reciprocal acceptance of minority business enterprise certification agreement with the County; or

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<sup>140</sup> Prince George’s County Code Sec. 10A-101(a)(26).

<sup>141</sup> Prince George’s County Code Sec. 10A-101(a)(27). See also the Prince George’s County, Universal Certification Application. <http://www.princegeorgescountymd.gov/sites/SupplierDevelopment/Resources/onlineforms/Documents/Universal%20Application%20020915.pdf>.

2. That administers a minority business enterprise certification program that is substantially equivalent to the program operated by the Supplier Development and Diversity Division; or
3. That administers a minority business enterprise certification program utilizing eligibility criteria that is likely to further the County’s goals under this Division 6 of the Code, as determined by the Purchasing Agent.<sup>142</sup>

The County Universal Certification Form asks for certifications from Maryland DOT, Washington Metro Area Transit Authority, Minority Supplier Development Council, Women’s Presidents Education Organization, the Commonwealth of Virginia, the 8A program, the Disadvantaged Business Enterprise (DBE) program, and the HUBZone program.<sup>143</sup>

**Table 3-2** shows County MBE certifications, recertifications, and applications from FY 2012 through FY 2014. The County has a long-term target of 2,300 certified firms by FY 2020.<sup>144</sup>

**TABLE 3-2. COUNTY CERTIFIED MINORITY BUSINESSES, FY 2012 THROUGH FY 2014**

CERTIFICATIONS	FY 2012	FY 2013	FY 2014
<b>Number of new minority business applications</b>	596	477	347
<b>Number of minority business recertifications</b>	658	754	701
<b>Total Number of registered and certified minority businesses (cumulative)</b>	959	907	818

### 3.3.2 COUNTY-BASED BUSINESS CERTIFICATION

The County rules define a County-based business as a firm which document that:

1. Its chief executive officer and the highest-level managerial employees of the business maintain their offices and perform their managerial functions in the County;
2. Is not delinquent in the payment of any County taxes, charges, fees, rents, or claims;
3. The business has operated within the County within the preceding twelve (12) months;
4. The preceding twelve (12) months the business has continuously maintained a valid business license or permit;
5. During the preceding twelve (12) months the business has continuously occupied an office within the County, as its principal place of operation; and
6. More than fifty percent (50%) of the business’ full-time employees are County residents; or the owners of more than fifty percent (50%) of the business are County residents; or more than fifty percent (50%) of the assets of the business, excluding bank accounts, are located in the County;

<sup>142</sup> Prince George’s County Code Sec. 10A-136(s).

<sup>143</sup> Prince George’s County, Universal Certification Application.

<http://www.princegeorgescountymd.gov/sites/SupplierDevelopment/Resources/onlineforms/Documents/Universal%20Application%20020915.p df>.

<sup>144</sup> Proposed Operating Budget FY 2016, Volume I, Office of Central Services, page 145.

or more than fifty percent (50%) of the total sales or other revenues of the business are derived from transactions of the business in the County.<sup>145</sup>

A County-based small business is a County-based business that meets the state of Maryland definition of “small business,”<sup>146</sup> or for construction firms meets the federal definition of “small business concern.”<sup>147</sup>

**Table 3-3** shows the state of Maryland revenue and size standards for small business classification.

**TABLE 3-3. SMALL BUSINESS REVENUE AND EMPLOYEE SIZE STANDARDS, STATE OF MARYLAND, 2015**

BUSINESS CATEGORY	GROSS SALES	EMPLOYEES
Wholesale	\$4,000,000	50
Retail	\$3,000,000	25
Manufacturing	\$2,000,000	100
Service	\$10,000,000	100
Construction	\$7,000,000	50
Architectural and Engineering	\$4,500,000	100

Source: Code of Maryland Regulations 21.01.02.01(80).

The federal small business size standards are \$36.5 million for building construction and heavy and civil engineering construction (with the exception of \$27.5 million for Dredging and Surface Cleanup Activities and Land subdivision) and \$15 million for specialty contractors.<sup>148</sup>

In addition, the County can certify a non-profit entity that satisfies the eligibility requirements as a County-based business or a County-based small business.<sup>149</sup>

A certified County-located business:

- ◆ Has a County office, but is not a County-based business; or
- ◆ Has at least five full time equivalent employees in the County office for the duration of the County’s lease; or
- ◆ Has at least three full time equivalent employees in the County office, with at least two of those being County residents for the duration of the County’s lease; or
- ◆ If such business has an ownership interest in the building containing the office, it has at least three full time equivalent employees in the County office for the full duration of the business’ ownership interest of the building.<sup>150</sup>

There were 201 County-based businesses and 52 County-located businesses in FY 2014.<sup>151</sup>

<sup>145</sup> Prince George’s County Code Sec. 10A-163(a).

<sup>146</sup> Prince George’s County Code Sec. 10A-163(b). The State of Maryland small business definition is located at COMAR 21.01.02.01(80).

<sup>147</sup> 13 CFR Part 121.

<sup>148</sup> 13 CFR Part 121.201.

<sup>149</sup> Prince George’s County Code Sec. 10A-163(e).

<sup>150</sup> Prince George’s County Code, Section 10A-101(13-4).

<sup>151</sup> Proposed Operating Budget FY 2016, Volume I, Office of Central Services, page 146.



### 3.3.3 DBE CERTIFICATION

The Maryland DOT has managed unified certification for the state of Maryland since 1990, including a unified DBE directory used by the County.<sup>152</sup> The Maryland UCP uses the federal definitions of a DBE. There were 1,223 certified firms in the Maryland DBE directory in Prince George's County in June 2015.<sup>153</sup>

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## 3.4 GOALS

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The County has the following goals for its programs:

- ◆ County based-minority businesses or minority businesses -- 30 percent.<sup>154</sup>
- ◆ County-based business goal -- 50 percent.<sup>155</sup>
- ◆ County-based small business goal -- 30 percent.<sup>156</sup>

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## 3.5 INCENTIVES

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### 3.5.1 MINORITY BUSINESS INCENTIVES

The County has the following incentives for County-based minority businesses and minority businesses:

- ◆ A minimum 20 percent subcontracting goal.<sup>157</sup>
- ◆ Reduction of bid prices for evaluation purposes by 5 percent for MBEs and 15 percent for County-based MBEs.<sup>158</sup>
- ◆ Reduction of bid prices for evaluation purposes by 1.5 percent for every 10 percent increment of certified County-based MBE participation and 0.5 percent) for every 10 percent increment of certified MBE participation.<sup>159</sup>
- ◆ Up to 15 percent of the total scored evaluation points for an MBE or County-based MBE.<sup>160</sup>

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<sup>152</sup> Maryland DOT, Federal Disadvantaged Business Enterprise Program, updated April 30, 2013. [http://www.mdot.maryland.gov/Office%20of%20Minority%20Business%20Enterprise/Resources\\_Information/MD%20DBE%20Program%20Manual%20April%202013.PDF](http://www.mdot.maryland.gov/Office%20of%20Minority%20Business%20Enterprise/Resources_Information/MD%20DBE%20Program%20Manual%20April%202013.PDF).

<sup>153</sup> <http://mbe.mdot.state.md.us/directory/>. This count includes nonprofit firms and firms owned by socially and economically disadvantaged individuals, but not community rehabilitation firms, of which there were 11 firms. There were no firms owned by the disabled on this list in Prince George's County.

<sup>154</sup> Prince George's County Code Sec. 10A-136(a). The following procurement categories are exempt from the MBE goal: Grants (and County contributions to nonprofits), public utility bills, real property acquisitions and leases, right-of-way easements, permits and license fees, legal settlements, legislative payouts, employee reimbursements and allowances, debt service, financing and investment agreements, postage, employee relocation expenses, stipends, landfill charges, travel expenses, membership dues, conference and seminar fees, contracts between units of County government, and contract employee agreements. Prince George's County Procurement Regulations, Chapter XXVII, Section B.2.

<sup>155</sup> Prince George's County Code Sec. 10A-162.

<sup>156</sup> *Id.*

<sup>157</sup> Prince George's County Code Sec. 10A-136(b).

<sup>158</sup> Prince George's County Code Sec. 10A-136(c).

<sup>159</sup> Prince George's County Code Sec. 10A-136(d).

<sup>160</sup> Prince George's County Code Sec. 10A-136(i).

- ◆ 5 preference points for an out-of-County MBE.<sup>161</sup>

### 3.5.2 COUNTY-BASED BUSINESS INCENTIVES

The County has the following incentives for County-based businesses:

- ◆ Apply a bid or proposal preference of 10 percent to any certified County-based business.
- ◆ Apply a bid or proposal preference of 15 percent to any certified County-based small business.
- ◆ Apply a bid or proposal preference at an increasing rate of 1 percent for every 10 percent increment of certified County-based business participation, up to a maximum 10 percent bid preference.
- ◆ Apply a bid or proposal preference at an increasing rate of 1.5 percent for every 10 percent increment of certified County-based small business participation, up to maximum 15 percent bid preference.<sup>162</sup>

The County-based business incentives apply to financial firms involved in the financing and sale of County government debt, brokerage firms, investment banking firms, investment management firms, consultants, and other firms that manage or invest funds controlled or administered by a County agency or the County government.<sup>163</sup>

For competitive procurements above \$100,000, the County sets a 40 percent subcontractor participation goal for County-based businesses.<sup>164</sup> For competitive procurement less than \$100,000 the County allows for set-asides to County-based small businesses, subject to certain limitations.<sup>165</sup> The County does not have to set-aside small procurements to County-based small businesses if there are not at least two such businesses capable of providing the goods or services, or the price is in excess of 12 percent or more than the likely price in the open market.<sup>166</sup> If there are not two County-based small businesses to satisfy the set-aside requirements, the County can set-aside the small procurement to County-based businesses, again, if there are at least two such businesses and the price is not in excess of 12 percent or more than the likely price in the open market.<sup>167</sup>

The Business Development Reserve Program (BDRP) Program is a two-year pilot set-aside that includes “Boot Camp” classes, which are mandatory in order to participate in the program. The BDRP started in 2014. The BDRP pilot program initially accepted 50 qualified businesses into the program. The County used a lottery system to select applicants. BDRP applicants came from County-based small businesses in the following industries: Construction Information, Technology, Health Professional, Services

<sup>161</sup> Prince George’s County Code Sec. 10A-136(c).

<sup>162</sup> Prince George’s County Code Sec. 10A-160(a). The preferences allowed under this Section and Section 10A-136 are not applied cumulatively for the same business.

<sup>163</sup> Prince George’s County Code Sec. 10A-160(c).

<sup>164</sup> Prince George’s County Code Sec. 10A-161(a). The costs of materials, goods, and supplies are not counted towards the 40 percent participation requirement, unless such materials, goods, and supplies are purchased from County-based businesses.

<sup>165</sup> Prince George’s County Code Sec. 10A-162(c). Prince George’s County Code Sec. 10A-158.01 also provides for sheltered markets for County-based businesses.

<sup>166</sup> Prince George’s County Code Sec. 10A-162(c)(1).

<sup>167</sup> Prince George’s County Code Sec. 10A-162(c)(2).

Nonprofessional, and Services. Procurement opportunities to be provided by five Prince George’s County Government agencies: Office of Central Services (OCS), Department of Public Works & Transportation, Office of Information Technology, Department of Environment Resources, and the Health Department.

County-based business incentives apply to non-County agencies and entities that receive more than 50 percent of their annual budget from the County unless the requirements violate state or federal law.<sup>168</sup>

### 3.5.3 COUNTY-LOCATED BUSINESS INCENTIVES

The County-located business program, recently enacted in January 2015, has the following incentives:

- ◆ Apply a bid or proposal preference of 7 percent to any certified County-located business.
- ◆ Apply a bid or proposal preference at an increasing rate of 0.7 percent for every 10 percent increment of certified County-located business participation, up to a maximum 7 percent bid preference.<sup>169</sup>

### 3.5.4 WAIVERS

In order to secure a waiver of the minority business enterprise requirements a firm must submit in writing:

1. A detailed statement of the efforts made to select portions of the work proposed to be performed by minority business enterprises in order to increase the likelihood of achieving the stated goal;
2. A detailed statement of the efforts made to contact and negotiate with minority business enterprises including:
  - a. The names, addresses, dates, and telephone numbers of the minority business enterprises contacted;
  - b. A description of the information provided to the minority business enterprises regarding the plans, specifications, and anticipated time schedule of the work to be performed; and
  - c. As to each minority business enterprise that placed a subcontract quotation or offer which the bidder considered not to be acceptable, a detailed statement of the reasons for this conclusion.
3. A list of minority business enterprises found to be unavailable to perform under the contract. The Purchasing Agent may grant the waiver only upon a reasonable demonstration by the bidder the minority business enterprise participation goal is unable to be obtained at a reasonable price and if the Purchasing Agent determines that the public interest will be served.<sup>170</sup>

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<sup>168</sup> Prince George’s County Code Sec. 10A-162(g).

<sup>169</sup> Prince George’s County Code Sec. 10A-174.

<sup>170</sup> Prince George’s County Procurement Regulations, Chapter XXVII, Section G.4.d.

There are similar waiver requirements for County-based business goals. In order to secure a waiver of the County-based business requirements a firm must:

1. Provide a detailed written statement of the reasons the vendor is unable to maintain its percentages of County-based business or County-based small business participation;
2. Provide a detailed written statement of its efforts to maintain its percentages of County-based business or County-based small business participation, including the precise reasons and justifications for the departure of County-based businesses and County-based small businesses from the procurement since the initial award of the procurement and the vendor's efforts to contact and negotiate with other County-based businesses or County-based small businesses including:
  - a. The names, addresses, and telephone numbers of the County-based businesses or County-based small businesses that were contacted and the dates such County-based businesses were contacted, and
  - b. A description of the information provided to County-based businesses or County-based small businesses regarding the descriptions of services or goods sought for the procurement, including plans, specifications and anticipated time schedule for any portions of the work to be performed, where applicable;
3. As to each County-based business or County-based small business that placed a subcontract or other quotation or offer which the vendor considered not to be acceptable, a detailed written statement that includes sufficient reasons for this conclusion;
4. A written list of County-based businesses or County-based small businesses found to be unavailable to perform under the procurement; and
5. Provide a detailed description demonstrating that the vendor made sufficient efforts to assist interested County-based businesses or County-based small businesses in obtaining bonding, lines of credit, or insurance required by the vendor.

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## 3.6 REPORTING

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The County Code requires monthly reporting of bids and awards in line with meeting the goals of Prince George's County Sec. 10A-136.<sup>171</sup> **Table 3-4** shows the dollar and percentage of County contracts awarded to MBEs from FY 2012 through FY 2014. Reported County MBE utilization averaged \$84.0 million from FY 2012 through FY 2014, 33.2 percent of County spending.

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<sup>171</sup> Prince George's County Code Sec. 10A-138.

TABLE 3-4. PRINCE GEORGE'S COUNTY REPORTED MINORITY BUSINESS UTILIZATION, FY 2012 THROUGH FY 2014

CERTIFICATIONS	FY 2012	FY 2013	FY 2014
Amount of County's Procurement Dollars awarded to MBEs	\$84,156,125	\$88,364,432	\$79,500,000
Percent of County's Procurement Dollars awarded to MBEs	36%	34%	30%

Source: County Proposed Operating Budget FY 2016, Volume I, Office of Central Services, page 147.

### 3.7 OUTREACH

- ◆ Holding pre-bid conferences. The County's outreach efforts have included:
  - Posting forthcoming construction projects on the County website.
  - Launching THE PULSE, a Quarterly Business News Magazine and the companion television show, The Pulse, launched in November 2014.
  - Using Facebook and Twitter.
- ◆ Co-sponsoring the annual Prince George's County Business Conference & Expo with the State of Maryland's Governor's Office of Minority Affairs. Sponsoring partners have included: MGM National Harbor, Wells Fargo, The Washington Informer, Washington Suburban Sanitary Commission, CSA Group, and Corvias Solutions. There have been over 400 attendees at past Expos. The Expo is streamed live on the web.
- ◆ Presenting the Veteran-Owned Business Forum.
- ◆ Hosting 17 outreach events with a total of 1,231 people in attendance in 2013. County workshops have included County-based Business Certification Training, MONEY-to-MAIN STREET, The Prince George's County Way, County Connections Forum and a four-part workshop mini-series, THE BLUEPRINT - Successful Government Contracting.
- ◆ Developing a Strategic Sourcing Initiative.

### 3.8 SUPPLIER DIVERSITY AND DEVELOPMENT DIVISION

The County Supplier Diversity and Development Division (SDDD), formerly the Minority Business Development Division (MBDD), currently is responsible for maximizing contract opportunities for Prince George's County registered MBEs and local businesses.<sup>172</sup> The SDDD had a full-time staff of seven employees, including three business analysts in FY 2014.<sup>173</sup> In FY 2015, the SDDD had a budget of

<sup>172</sup> County Proposed Operating Budget FY 2016, Volume I, Office of Central Services, page 164.

<sup>173</sup> County Proposed Operating Budget FY 2016, Volume I, Office of Central Services, page 146. The County budgeted twelve SDDD staff positions for FY 2015. County Proposed Operating Budget FY 2016, page 164.

\$1,193,400.<sup>174</sup> In addition, County regulations provide that each County department should have an MBE coordinator.<sup>175</sup>

The SDDD reports to the County OCS.<sup>176</sup> It is worth noting in this regard, however, that the OCS has as its Goal 1: “To provide assistance to County-based and minority business in order to diversity, build capacity, and foster economic development.”<sup>177</sup> Moreover, the current budget states that with respect to this objective the OCS is to “focus exclusively on the dynamically changing requirements of the Jobs First Act.”<sup>178</sup> Contract Administration & Procurement, a division within the OCS, also reports on the County’s MBE activities.<sup>179</sup>

The OCS has the following strategies to meet its certification objectives:

- ◆ Continue to implement a certification program.
- ◆ Conduct staff training for County-based certification.
- ◆ Conduct site visits for County-based firms and County-located firms.
- ◆ Identify and negotiate certification reciprocity with local jurisdictions to increase the pool of MBE applicants.<sup>180</sup>

The OCS has the following strategies to meet its MBE utilization objectives:

- ◆ Identify opportunities early in the procurement process.
- ◆ Utilize technology to identify qualified contractors.
- ◆ Reduce the number of rider and extended contracts to promote competition.
- ◆ Set mandatory subcontractor requirements for larger contracts and monitor compliance.<sup>181</sup>

The OCS has the following strategies to meet its County-based business utilization objectives:

- ◆ Identify opportunities early in the procurement process.
- ◆ Utilize technology to identify qualified contractors.
- ◆ Reduce the number of rider and extended contracts to promote competition.<sup>182</sup>

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<sup>174</sup> County Proposed Operating Budget FY 2016, Volume I, Office of Central Services, page 164.

<sup>175</sup> Prince George’s County Procurement Regulations, Chapter XXVII, Section D.

<sup>176</sup> County Proposed Operating Budget FY 2016, Volume I, Office of Central Services, Organizational Chart, page 155.

<sup>177</sup> County Proposed Operating Budget FY 2016, Volume I, Office of Central Services, page 145. Budget, Office of Central Services, page 145.

<sup>178</sup> County Proposed Operating Budget FY 2016, Volume I, Office of Central Services, page 145.

<sup>179</sup> County Proposed Operating Budget FY 2016, Volume I, Office of Central Services, page 162.

<sup>180</sup> County Proposed Operating Budget FY 2016, Volume I, Office of Central Services, page 146.

<sup>181</sup> County Proposed Operating Budget FY 2016, Volume I, Office of Central Services, page 148.

<sup>182</sup> County Proposed Operating Budget FY 2016, Volume I, Office of Central Services, page 148.

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### 3.9 PROMPT PAYMENT

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County prompt payment policy states that, “It is the policy of the County to make a payment under a procurement contract within thirty calendar days after the receipt date.”<sup>183</sup> Interest penalties accrue daily beginning 31 calendar days after the receipt date.<sup>184</sup>

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### 3.10 FINANCIAL ASSISTANCE PROGRAMS

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The Prince George’s County Economic Development Corporation has the following financial aid programs:

1. Contract Financing, up to 90 percent of project funds are advanced.
2. Microloans, of \$5,000 to \$50,000 with limited paperwork.
3. Term Loans, with Community and Commercial Banks.
4. Equipment financing.
5. SBA 504 loans, with 10 percent down.

#### 3.10.1 ECONOMIC DEVELOPMENT INCENTIVE FUND

The County has dedicated \$50 million to Economic Development Incentive Fund, which is administered by FSC First, a financial institution specialized in financing small and minority businesses and the Prince George’s County Economic Development Corporation. Projects are selected based on significant economic impact such as job creation and retention, increasing the commercial tax base, and promoting small, local, and minority business development. The minimum loan amount is \$250,000 for a maximum 10-year term. Loan funds can be used for real estate acquisitions, building construction and improvement, equipment, and working capital.

#### 3.10.2 FSC FIRST

FSC First, which has some County funding, has the following loan programs:

1. SBA 504 Fixed Asset financing. This program finances up to 40 percent of project cost, up to \$5.5 million.
2. Microenterprise Loan Fund. This program funds loans for start-ups and expansions from \$5,000 to \$35,000.
3. Contractor Cash Flow Fund. This program provides loans for the first 90 days of contract performance and interim financing for the start-up phase of a contract. Loans range from \$25,000 to \$250,000.

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<sup>183</sup> Prince George’s County Code Sec. 10A-153(b).

<sup>184</sup> Prince George’s County Code Sec. 10A-153(c). Receipt date means the later of the recorded date on which proper invoice is received by the designated payment office or delivery of acceptable goods or services in accordance with the contract document(s).

4. Small Business Growth Fund. This fund provides loans for small business expansion. Loans range from \$25,000 to \$250,000.

### **3.10.3 SMALL BUSINESS ADMINISTRATION**

The SBA maintains the 504 Loan Program, the 7A Loan Guarantee Program, the SBA's Community Advantage program and the SBA's Pre-qualification program. The 504 Program is for the acquisition of fixed assets only, such as real estate and equipment. Small Business Administration 504 loans range from \$250,000 to \$1,500,000. The 7A Guaranty Program provides lines of credit or term loans for most business purposes. The SBA's 7A loans range from \$50,000 to \$2,000,000. The Community Advantage Program targets low and moderate-income neighborhoods. SBDC PreQual Program assists firms with obtaining SBA loan guarantees. This program is for DBEs, veterans, and rural businesses. The loan funds can be used for working capital, debt payment, equipment and inventory purchases, construction, and real estate purchases.

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## **3.11 BONDING PROGRAMS**

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The County Economic Development Corporation does provide direct bonding assistance to meet these requirements. Some local programs help firms with bonding.

Under the SBA's Prior Approval Program, the SBA guarantees 90 percent of the losses on contracts up to \$100,000 for socially and economically disadvantaged businesses, as well as HUBZone firms, 8(a) firms and veteran owned businesses. The SBA can guarantee bonds up to 80 percent of a \$6.5 million bond if a federal contracting officer certifies that the guarantee is necessary. The SBA Preferred Program allows bonds without prior approval. The SBA guarantee for this program is 70 percent. The SBA program does not bond a contractor but guarantees a surety bond.

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## **3.12 MANAGEMENT AND TECHNICAL ASSISTANCE**

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The County has participated in and collaborated with some business development organizations in the Prince George's County area. Several programs target small and minority business development in certain geographic areas, as opposed to procurement areas. Specific examples of the Prince George's County Economic Development Corporation are listed below:

- ◆ Certification.
- ◆ Staffing assistance.
- ◆ Payroll.
- ◆ Accounting.
- ◆ Marketing plans.
- ◆ Website development.
- ◆ Proposal writing.



The Economic Development Corporation has the following partners in business development assistance:

- ◆ **De Anders Associates, LLC.** A financial management consulting firm. Servicing small to mid-sized companies.
- ◆ **Meridian Management Group, Inc.** A professional asset manager for economic development and private equity funds.
- ◆ **Old Line Bank.** A general banking business.
- ◆ **Federal National Payables Inc.** A working-capital finance to small businesses.
- ◆ **Business Solutions Management Group Inc.** A consulting firm focused on servicing the comprehensive needs of businesses.

### 3.12.1 SMALL BUSINESS DEVELOPMENT CENTERS

There are two SBDCs in Prince George’s County, the Corridor Region SBDC headquarters in College Park and the Bowie Business Innovation Center at Bowie State. The SBDCs are part of the statewide SBDC network. The State SBDC Network is a partnership between the SBA, the state of Maryland, and the University of Maryland. SBDCs assist firms with accounting, finance, marketing, operations, new venture planning, loan proposals, strategic planning, employee manuals, and technical assistance.

### 3.12.2 PROCUREMENT TECHNICAL ASSISTANCE PROGRAM

The national Procurement Technical Assistance Program (PTAP) was started in 1985 to provide technical assistance to businesses selling to the U.S. Department of Defense (DOD). Since then, the services of PTAP have expanded and there is a PTAP serving the Prince George’s County area. The Maryland PTAP provides consulting services primarily for state and federal contracting but does partner with the County Economic Development Corporation.

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## 3.13 CONCLUSIONS

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The County has a long-standing MBE policy and a new County-based business program. Both programs have a range of tools to increase utilization of firms eligible for these programs. There are a number of business development organizations in the Prince George’s County area, several of which partner with the County directly or through the County Economic Development Corporation.

CHAPTER 4. MARKET AREA AND  
UTILIZATION ANALYSIS

**Utilization and Availability Study**

*Prince George's County, Maryland*



## 4.1 INTRODUCTION

This chapter presents the results of MGT’s market area and utilization analyses of firms utilized by Prince George’s County for procurements between fiscal years July 1, 2010, and June 30, 2018. The specific procurement categories analyzed were Construction, Architecture and Engineering, Professional Services, Other Services, and Goods and Supplies.

### CHAPTER SECTIONS



- 4.1 Introduction
- 4.2 Data Collection and Management
- 4.3 Market Area Analysis
- 4.4 Utilization Analysis

## 4.2 DATA COLLECTION AND MANAGEMENT

MGT staff compiled and reconciled electronic data provided by the County to develop a Master Prime Utilization Database to support the needs of the study. The County used GEAC for data provided between 2010 and 2013, and SAP data between 2014 and 2018, to compile expenditures. MGT worked closely with the County to drill down to those expenditures that were competitive in nature. MGT combined comparable and related data fields from the GEAC and SAP data programs to efficiently and accurately update, prepare, review, and analyze the data. Subcontractor data was retrieved from contract files during onsite data collection. To ensure that all available expenditures were included in the analysis, MGT conducted “local offices” research which identified if firms in the Master Prime Utilization Database had an established office in the relevant geographic market area. If so, that address was used, and dollars paid to the firm were included in the market area analyses.

### 4.2.1 STUDY PERIOD

MGT analyzed expenditures between fiscal years July 1, 2010, and June 30, 2018.

### 4.2.2 PROCUREMENT CATEGORIES AND EXCLUSIONS

MGT analyzed the procurement categories identified by the County, encompassing five broad categories: Construction, Architecture and Engineering, Professional Services, Other Services, and Goods and Supplies. To further define spending in the broader categories MGT used North American Industry Classification System (NAICS) codes that analyzed the product market for the County. This product market allows MGT to identify those vendors within the NAICS categories able to conduct work for the county and therefore will be sampled for the custom census availability. The product market analysis can be found in **Appendix A, Product Market Analysis**. Where NAICS codes were not provided in the County’s data, MGT researched information based on description of services, company websites, and, in some cases, phone calls to companies to gather more information to appropriately classify each firm if needed. These procurement categories are defined as:

- ◆ Construction: Services provided for the construction, renovation, rehabilitation, repair, alteration, improvement, demolition, and excavation of physical structures, excluding the performance of routine maintenance.

- ◆ Architecture and Engineering: Architects, professional engineers, and firms owned by parties with such designations.
- ◆ Professional Services: Financial services, legal services, medical services, educational services, information technology services, and other professional services.
- ◆ Other Services: Janitorial and maintenance services, uniformed guard services, computer services, certain job shop services, graphics, photographic services, and landscaping.
- ◆ Goods and Supplies: Purchases of physical items, office goods, miscellaneous building materials, books, equipment, vehicles, and computer equipment.

The following types of transactions were excluded from the analysis due to not being considered competitive in nature:

- ◆ Transactions that fell outside of the study period.
- ◆ Transactions associated with firms located outside the U.S.
- ◆ Transactions associated with non-procurement activities.
- ◆ Administrative items such as utility payments, medical payments, leases for real estate, or insurance.
- ◆ Salary and fringe benefits, training, parking, or conference fees.
- ◆ Transactions associated with nonprofit organizations and governmental agencies.

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## 4.3 MARKET AREA ANALYSIS

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As prescribed by *Croson* and subsequent cases, a disparity study requires definition of a market area to ensure that a relevant pool of vendors is considered in analyzing the availability and utilization of firms. If these boundaries are stretched too far, the universe of vendors becomes diluted with firms with no interest or history in working with the agency, and thus their demographics and experiences have little relevance to actual contracting activity or policy. On the other hand, a boundary set too narrowly risks the opposite circumstance of excluding a high proportion of firms who have contracted with, or bid for work with, the agency and, thus, may also skew the prospective analyses of disparity.

### 4.3.1 METHODOLOGY

Based on *Croson* guidelines, the relevant market area for the County was determined to be the geographic areas from which the majority of its purchases are procured based on the location of the firms. Specifically, the relevant market area contains Prince George's County in addition to the following: District of Columbia, Fairfax City, Fairfax County, and Montgomery County. This market area was decided upon due to the large amount of spend and close proximity to the County.

The choice of counties as the unit of measurement is based on the following:

- ◆ The courts have accepted counties as a standard geographical unit of analysis in conducting equal employment and disparity analyses.
- ◆ County boundaries are externally determined and, hence, are free from any researcher bias that might result from any arbitrary determinations of boundaries of geographical units of analysis.
- ◆ Census data and other federal and county data are routinely collected and reported using county boundaries.

**Overall Market Area.** To determine the full extent of the market area in which the County utilized firms, MGT determined geographic locations of utilized vendors by their county jurisdictions identified by their ZIP codes. The overall market area presents the total dollars spent for each procurement category included within the scope of the study.

**Relevant Market Area.** Once the overall market area was established, the relevant market area was determined by examining geographic areas from which the majority of its purchases are procured. Based on the results of the market area analysis conducted for each business category, the recommended relevant market area is as follows: Prince George’s County, District of Columbia, Fairfax City, Fairfax County, and Montgomery County.

The dollars expended were summarized by county according to the location of each firm and by the services they provided to the County in the following procurement categories: Construction, Architecture and Engineering, Professional Services, Other Services, and Goods and Supplies.

**Prince George’s County  
Relevant Market Area**

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Prince George’s County, MD

District of Columbia

Fairfax City, VA

Fairfax County, VA

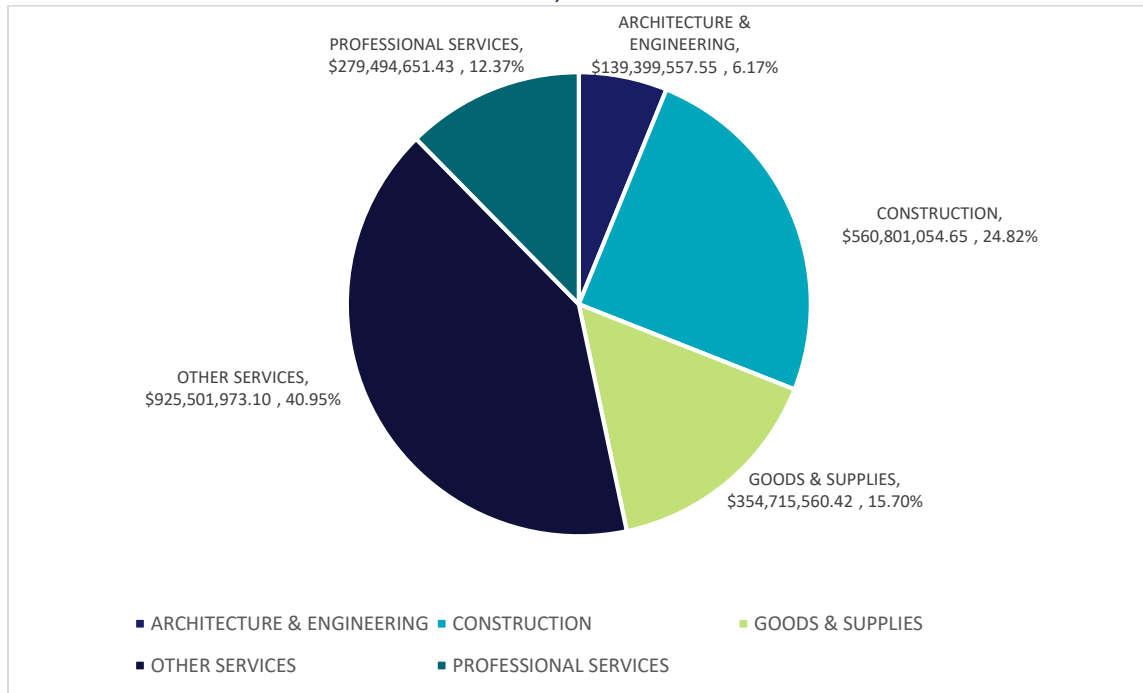
Montgomery County, MD

### 4.3.2 ANALYSIS AND IDENTIFICATION OF RELEVANT MARKET AREA

As described in the preceding section, an overall market area was first established to account for all County’ payments, after which more specific regions were analyzed to arrive at a relevant market area to support the objectives of the study. Detailed information supporting this market area analyses are presented in **Appendix B**, Detailed Geographic Market Area Analysis to this report.

**Figure 4-1** shows \$2,259.912 million were awarded to firms located within the overall market area between July 1, 2010, and June 30, 2018. **Table 4-1** shows the overall market area spend by MWBE category and business category.

FIGURE 4-1. SUMMARY OF DOLLARS, PRIME LEVEL DOLLARS (PAYMENTS) BY BUSINESS CATEGORY, OVERALL MARKET AREA, PRINCE GEORGE'S COUNTY



Source: MGT developed a Master Prime Utilization Database based on Prince George's County GEAC and SAP systems between July 1, 2010, and June 30, 2018.

TABLE 4-1. SUMMARY OF DOLLARS, PRIME LEVEL DOLLARS (PAYMENTS) BY BUSINESS OWNERSHIP CLASSIFICATION AND BUSINESS CATEGORY, OVERALL MARKET AREA, PRINCE GEORGE’S COUNTY

BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	ARCHITECTURE & ENGINEERING	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS & SUPPLIES
AFRICAN AMERICANS	\$291,603,096.91	\$44,531,647.09	\$8,916,535.97	\$33,291,958.02	\$182,624,598.98	\$22,238,356.85
ASIAN AMERICANS	\$60,047,631.37	\$9,799,826.49	\$13,585,003.20	\$12,376,911.00	\$6,648,330.85	\$17,637,559.83
HISPANIC AMERICANS	\$160,161,918.07	\$131,209,347.65	\$4,928,299.35	\$3,376,810.74	\$18,047,145.44	\$2,600,314.89
NATIVE AMERICANS	\$799,898.30	\$	\$	\$573,027.45	\$	\$226,870.85
<b>TOTAL MINORITY FIRMS</b>	<b>\$512,612,544.65</b>	<b>\$185,540,821.23</b>	<b>\$27,429,838.52</b>	<b>\$49,618,707.21</b>	<b>\$207,320,075.27</b>	<b>\$42,703,102.42</b>
NONMINORITY WOMAN FIRMS	\$209,337,586.60	\$8,005,683.11	\$1,762,052.00	\$3,646,712.12	\$190,164,630.37	\$5,758,509.00
<b>TOTAL M/WBE FIRMS</b>	<b>\$721,950,131.25</b>	<b>\$193,546,504.34</b>	<b>\$29,191,890.52</b>	<b>\$53,265,419.33</b>	<b>\$397,484,705.64</b>	<b>\$48,461,611.42</b>
TOTAL NON-MBE FIRMS	\$1,537,962,665.90	\$367,254,550.31	\$110,207,667.03	\$226,229,232.10	\$528,017,267.46	\$306,253,949.00
<b>TOTAL FIRMS</b>	<b>\$2,259,912,797.15</b>	<b>\$560,801,054.65</b>	<b>\$139,399,557.55</b>	<b>\$279,494,651.43</b>	<b>\$925,501,973.10</b>	<b>\$354,715,560.42</b>
BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	ARCHITECTURE & ENGINEERING	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS & SUPPLIES
AFRICAN AMERICANS	12.90%	7.94%	6.40%	11.91%	19.73%	6.27%
ASIAN AMERICANS	2.66%	1.75%	9.75%	4.43%	0.72%	4.97%
HISPANIC AMERICANS	7.09%	23.40%	3.54%	1.21%	1.95%	0.73%
NATIVE AMERICANS	0.04%	0.00%	0.00%	0.21%	0.00%	0.06%
<b>TOTAL MINORITY FIRMS</b>	<b>22.68%</b>	<b>33.08%</b>	<b>19.68%</b>	<b>17.75%</b>	<b>22.40%</b>	<b>12.04%</b>
NONMINORITY WOMAN FIRMS	9.26%	1.43%	1.26%	1.30%	20.55%	1.62%
<b>TOTAL M/WBE FIRMS</b>	<b>31.95%</b>	<b>34.51%</b>	<b>20.94%</b>	<b>19.06%</b>	<b>42.95%</b>	<b>13.66%</b>
TOTAL NON-MBE FIRMS	68.05%	65.49%	79.06%	80.94%	57.05%	86.34%
<b>TOTAL FIRMS</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: MGT developed a Master Prime Utilization Database based on Prince George’s County GEAC and SAP systems between July 1, 2010, and June 30, 2018.

Narrowing the geographic scope to analyze the majority of dollars expended within the County’s procurement activity, it was determined that the region encompassing Prince George’s County the District of Columbia, Fairfax City, Fairfax County, and Montgomery County will be used as the relevant geographic market area for purposes of this study and will be referred to as the Established Geographic Market Area.

**Table 4-2** shows that firms located within the relevant market area accounted for 92.43 percent of spend across all procurement categories. When broken down by procurement category, firms located within the established relevant market area also accounted for a majority of the County's spend in their respective categories:

- ◆ 91.72 percent of the dollars awarded in Construction;
- ◆ 85.27 percent of the dollars awarded in Architecture and Engineering;
- ◆ 90.24 percent of the dollars awarded in Professional Services;
- ◆ 96.18 percent of the dollars awarded in Other Services;
- ◆ 88.33 percent of the dollars awarded in Goods and Supplies.

TABLE 4-2. MARKET AREA ANALYSIS, DISTRIBUTION OF DOLLARS BY BUSINESS CATEGORY, PRINCE GEORGE'S COUNTY MARKET AREA

<b>Inside/Outside Prince George's County Relevant Geographic Market Area</b>		
<b>CONSTRUCTION</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside Prince George's County Relevant Market Area</i>	\$514,349,875.99	91.72%
<i>Outside Prince George's County Relevant Market Area</i>	\$46,451,178.66	8.28%
<b>CONSTRUCTION, TOTAL</b>	<b>\$560,801,054.65</b>	<b>100.00%</b>
<b>ARCHITECTURE &amp; ENGINEERING</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside Prince George's County Relevant Market Area</i>	\$ 118,863,186.70	85.27%
<i>Outside Prince George's County Relevant Market Area</i>	\$ 20,536,370.85	14.73%
<b>A&amp;E, TOTAL</b>	<b>\$ 139,399,557.55</b>	<b>100.00%</b>
<b>PROFESSIONAL SERVICES</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside Prince George's County Relevant Market Area</i>	\$ 252,223,006.69	90.24%
<i>Outside Prince George's County Relevant Market Area</i>	\$ 27,271,644.74	9.76%
<b>PROFESSIONAL SERVICES, TOTAL</b>	<b>\$ 279,494,651.43</b>	<b>100.00%</b>
<b>OTHER SERVICES</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside Prince George's County Relevant Market Area</i>	\$890,180,021.60	96.18%
<i>Outside Prince George's County Relevant Market Area</i>	\$35,321,951.50	3.82%
<b>OTHER SERVICES, TOTAL</b>	<b>\$925,501,973.10</b>	<b>100.00%</b>
<b>GOODS &amp; SUPPLIES</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside Prince George's County Relevant Market Area</i>	\$ 313,325,526.94	88.33%
<i>Outside Prince George's County Relevant Market Area</i>	\$ 41,390,033.48	11.67%
<b>GOODS &amp; SUPPLIES, TOTAL</b>	<b>\$ 354,715,560.42</b>	<b>100.00%</b>
<b>ALL BUSINESS CATEGORIES</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside Prince George's County Relevant Market Area</i>	\$2,088,941,617.92	92.43%
<i>Outside Prince George's County Relevant Market Area</i>	\$170,971,179.23	7.57%
<b>ALL BUSINESS CATEGORIES, TOTAL</b>	<b>\$2,259,912,797.15</b>	<b>100.00%</b>

Source: MGT developed a Master Prime Utilization Database based on Prince George's County's GEAC and SAP systems between July 1, 2010, and June 30, 2018.



### 4.3.3 MARKET AREA CONCLUSIONS

When analyzing the relevant geographic market area, over 92 percent of the expenditures were in Prince George’s County Relevant Market Area. Analysis of M/WBE utilization, availability, anecdotal, and private sector will be based on firms located in the Relevant Market Area. The definition of the relevant market area allows for detailed examinations of contracting activity with local vendors. The following section describes the results of this utilization analysis for the County within the relevant market area.

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## 4.4 UTILIZATION ANALYSIS

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The utilization analysis presents a summary of payments within the scope of the study and an initial assessment of the effectiveness of initiatives in promoting the inclusion of M/WBEs in the County’s contracting and procurement activities.

The utilization analysis is based on the defined relevant market area, as described in the preceding sections of this chapter. The payments data included within this analysis encompass dollars paid to primes located within the relevant market area (excluding all subcontracting payments, or “pure primes”). The utilization analysis for subcontractors is encompasses data retrieved from contract files during onsite data collection. The County maintained the most complete set of subcontractor data for construction; therefore, the subcontractor utilization is based on construction only.

Analysis of these data is broken down by the procurement categories of Construction, Architecture and Engineering, Professional Services, Other Services, and Goods and Supplies, and encompasses payments between July 1, 2010, and June 30, 2018.

MGT collected vendor registration, membership, and certification lists from various agencies containing M/WBE designations. MGT then created a comprehensive list by cross referencing multiple governmental websites containing data on the M/WBE status of firms. This list was then used to flag M/WBEs against Prince George’s County payment data. If the firms were not located on any of these lists, they were assumed to be non-M/WBE for purposes of the analysis.

It should be noted that the County’s CB30 reports on CBSB spending will not match the total dollars spent with M/WBE total dollars spent because of the differing methodologies in reporting utilization.

### 4.4.1 CLASSIFICATION OF FIRMS

Firms included in the utilization analysis have been assigned business owner classifications according to the definitions provided below.<sup>185</sup>

- ♦ **MBE Firms.** In this study, businesses classified as minority- and women-owned firms (MBE) are those which are at least 51 percent owned and controlled by members of one of five groups: African Americans, Asian Americans, Hispanic Americans, Native Americans, or Nonminority

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<sup>185</sup> Business ownership classification was based on the race, ethnicity, and gender classification of the owner during the study period.

Women. These groups were defined according to the United States (U.S.) Census Bureau as follows:

- **African Americans:** U.S. citizens or lawfully admitted permanent residents having an origin in any of the black racial groups of Africa.
- **Asian Americans:** U.S. citizens or lawfully admitted permanent residents who originate from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- **Hispanic Americans:** U.S. citizens or lawfully admitted permanent residents of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese cultures or origins regardless of race.
- **Native Americans:** U.S. citizens or lawfully admitted permanent residents who originate from any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.
- **Nonminority Women:** U.S. citizens or lawfully admitted permanent residents who are non-Hispanic white women. Minority women were included in their respective minority category.
- ♦ **Total Minority Firms.** All minority-owned firms, regardless of gender.
- ♦ **Non-M/WBE Firms.** Firms that were identified as nonminority male or majority-owned were classified as non-M/WBE firms. If there was no indication of business ownership, these firms were also classified as non-M/WBE firms.

#### 4.4.2 PRIME UTILIZATION

**Table 4-3** shows the prime M/WBE utilization amounted to 33.88 percent of total payments within the relevant market area; 13.59 percent for African American firms, 9.84 percent to Nonminority Women firms, 7.66 percent for Hispanic American firms, 2.75 percent for Asian American firms, and 0.03 percent for Native American firms. Detailed analyses showing the utilization of firms by business ownership classification and year are presented in **Appendix C, Detailed Utilization**. Utilization for specific procurement classifications is summarized below:

- ♦ Construction shows the utilization of prime M/WBE firms was 36.01 percent. Hispanic American firms accounted for 25.51 percent, African American firms accounted for 7.58, Asian American firms accounted for 1.79 percent, and Nonminority Women firms accounted for 1.13 percent.
- ♦ Architecture and Engineering shows the utilization of prime M/WBE firms was 1.32 percent. Asian American firms accounted for 0.62 percent, African American firms accounted for 0.41 percent, Hispanic American firms accounted for 0.24 percent, and Nonminority Women firms accounted for 0.05 percent.
- ♦ Professional Services shows the utilization of prime M/WBE firms was 20.82 percent. African American firms accounted for 13.00, Asian American firms accounted for 4.85 percent, Nonminority Women firms accounted for 1.44 percent, Hispanic American firms accounted for 1.34 percent, and Native American firms accounted for 0.19 percent.
- ♦ Other Services shows the utilization of prime M/WBE firms was 44.50 percent. Nonminority Women firms accounted for 21.33 percent, African American firms accounted for 20.42 percent,

Hispanic American firms accounted for 2.00 percent, and Asian American firms accounted for 0.74 percent. There was no utilization of Native American firms.

- ♦ Goods and Supplies shows the utilization of prime M/WBE firms was 14.75 percent. African American firms accounted for 6.92 percent, Asian American firms accounted for 5.27 percent, Nonminority Women firms accounted for 1.66 percent, Hispanic American Firms accounted for 0.83 percent, and Native American firms accounted for 0.07 percent.

TABLE 4-3. PRIME ONLY UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION AND BY PROCUREMENT CATEGORIES

BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	ARCHITECTURE & ENGINEERING	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS & SUPPLIES
AFRICAN AMERICANS	\$ 283,916,615.15	\$ 38,988,253.54	\$ 8,661,645.97	\$ 32,777,303.02	\$ 181,791,817.38	\$ 21,697,595.24
ASIAN AMERICANS	\$ 57,529,548.63	\$ 9,221,973.06	\$ 12,942,536.89	\$ 12,237,721.23	\$ 6,620,846.09	\$ 16,506,471.36
HISPANIC AMERICANS	\$ 159,947,866.24	\$ 131,209,347.65	\$ 4,928,299.35	\$ 3,376,810.74	\$ 17,836,794.61	\$ 2,596,613.89
NATIVE AMERICANS	\$ 701,590.30	\$ -	\$ -	\$ 474,719.45	\$ -	\$ 226,870.85
<b>TOTAL MINORITY FIRMS</b>	<b>\$ 502,095,620.32</b>	<b>\$ 179,419,574.25</b>	<b>\$ 26,532,482.21</b>	<b>\$ 48,866,554.44</b>	<b>\$ 206,249,458.08</b>	<b>\$ 41,027,551.34</b>
NONMINORITY WOMAN FIRMS	\$ 205,534,478.93	\$ 5,812,313.08	\$ 1,003,244.00	\$ 3,640,721.12	\$ 189,882,029.51	\$ 5,196,171.22
<b>TOTAL M/WBE FIRMS</b>	<b>\$ 707,630,099.25</b>	<b>\$185,231,887.33</b>	<b>\$ 27,535,726.21</b>	<b>\$ 52,507,275.56</b>	<b>\$ 396,131,487.59</b>	<b>\$ 46,223,722.56</b>
TOTAL NON-M/WBE FIRMS	\$ 1,381,311,518.67	\$ 329,117,988.66	\$ 91,327,460.49	\$ 199,715,731.13	\$ 494,048,534.01	\$ 267,101,804.38
<b>TOTAL FIRMS</b>	<b>\$ 2,088,941,617.92</b>	<b>\$ 514,349,875.99</b>	<b>\$ 118,863,186.70</b>	<b>\$ 252,223,006.69</b>	<b>\$ 890,180,021.60</b>	<b>\$ 313,325,526.94</b>
BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	ARCHITECTURE & ENGINEERING	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS & SUPPLIES
AFRICAN AMERICANS	13.59%	7.58%	7.29%	13.00%	20.42%	6.92%
ASIAN AMERICANS	2.75%	1.79%	10.89%	4.85%	0.74%	5.27%
HISPANIC AMERICANS	7.66%	25.51%	4.15%	1.34%	2.00%	0.83%
NATIVE AMERICANS	0.03%	0.00%	0.00%	0.19%	0.00%	0.07%
<b>TOTAL MINORITY FIRMS</b>	<b>24.04%</b>	<b>34.88%</b>	<b>22.32%</b>	<b>19.37%</b>	<b>23.17%</b>	<b>13.09%</b>
NONMINORITY WOMAN FIRMS	9.84%	1.13%	0.84%	1.44%	21.33%	1.66%
<b>TOTAL M/WBE FIRMS</b>	<b>33.88%</b>	<b>36.01%</b>	<b>23.17%</b>	<b>20.82%</b>	<b>44.50%</b>	<b>14.75%</b>
<b>TOTAL NON-M/WBE FIRMS</b>	<b>66.12%</b>	<b>63.99%</b>	<b>76.83%</b>	<b>79.18%</b>	<b>55.50%</b>	<b>85.25%</b>

Source: MGT developed a Master Prime Utilization Database based on Prince George's County's GEAC and SAP systems between July 1, 2010, through June 30, 2018.

#### 4.4.3 SUBCONTRACTOR UTILIZATION

The subcontractor analysis is for construction only since that was the most complete dataset available for the study. The data captured only included utilization for M/WBE firms on County construction projects and did not maintain data on non-M/WBE utilization. **Table 4-4** illustrates an analysis of subcontracting utilization based on estimated subcontracting. MGT had the distribution of subcontract dollars to M/WBEs by race, ethnicity, and gender classification, but needed to know construction subcontracts granted to non-M/WBEs in order to establish a reasonable basis to determine the relative proportion of construction subcontract dollars awarded to the corresponding prime construction contracts.

Our experience has shown that subcontracting generally represents 20 to 35 percent of the prime construction contract amounts. Census data support the applicability of this rule of thumb for this project. The “2012 Census of Construction – Geographic Area Summary Findings” shows that the cost of construction work subcontracted out over an average in the state of Maryland, Commonwealth of Virginia, and District of Columbia was 27 percent. Using this percentage, MGT was able to calculate the amount that is estimated to go to subcontractors in construction. For construction in the market area, \$514,349,875 went to primes; therefore, 27 percent of that is \$138,874,466. This is the amount that MGT is estimating goes to subs in the County’s market area. From MGT onsite data collection, \$47,675,235 went to M/WBEs, so MGT estimates that \$91,199,231 went to non-MWBEs.

**TABLE 4-4. SUBCONTRACTOR UTILIZATION ESTIMATES ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION AND BY PROCUREMENT CATEGORIES**

BUSINESS OWNERSHIP CLASSIFICATION	CONSTRUCTION
AFRICAN AMERICANS	\$ 16,400,684.31
ASIAN AMERICANS	\$ 20,934,001.34
HISPANIC AMERICANS	\$ 8,056,540.56
NATIVE AMERICANS	\$ -
<b>TOTAL MINORITY FIRMS</b>	<b>\$ 45,391,226.20</b>
NONMINORITY WOMEN FIRMS	\$ 2,284,009.25
<b>TOTAL M/WBE FIRMS</b>	<b>\$ 47,675,235.46</b>
TOTAL NON-M/WBE FIRMS	\$ 91,199,231.06
<b>TOTAL FIRMS</b>	<b>\$ 138,874,466.52</b>
BUSINESS OWNERSHIP CLASSIFICATION	CONSTRUCTION
AFRICAN AMERICANS	11.81%
ASIAN AMERICANS	15.07%
HISPANIC AMERICANS	5.80%
NATIVE AMERICANS	0.00%
<b>TOTAL MINORITY FIRMS</b>	<b>32.69%</b>
NONMINORITY WOMEN FIRMS	1.64%
<b>TOTAL M/WBE FIRMS</b>	<b>34.33%</b>
TOTAL NON-M/WBE FIRMS	65.67%

#### 4.4.4 PRINCE GEORGE’S COUNTY UTILIZATION

The County currently tracks, and reports utilization of firms certified as County-Based Small Businesses (CBSB) and County-Located firms. The CBSB certification is based on firms with headquarters in Prince George’s County where County-located firms have an office or presence in the County. MGT conducted additional analyses of utilization for CBSB certified firms and County located firms.

#### COUNTY-LOCATED PRIME UTILIZATION

County-located Business utilization is presented in **Table 4-5** below. The County spent \$1,897 million dollars with firms located in Prince George’s County.

TABLE 4-5. PRIME UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION  
BY PROCUREMENT CATEGORIES – COUNTY LOCATED BUSINESSES

BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	ARCHITECTURE & ENGINEERING	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS & SUPPLIES
AFRICAN AMERICANS	\$272,830,170.57	\$38,970,351.74	\$8,333,476.24	\$28,621,623.24	\$178,377,420.18	\$18,527,299.17
ASIAN AMERICANS	\$51,540,846.77	\$7,469,807.66	\$11,547,552.25	\$9,896,071.41	\$6,171,925.65	\$16,455,489.80
HISPANIC AMERICANS	\$148,730,146.44	\$129,991,442.31	\$4,891,249.35	\$3,376,810.74	\$7,874,030.15	\$2,596,613.89
NATIVE AMERICANS	\$701,590.30	\$0.00	\$0.00	\$474,719.45	\$0.00	\$226,870.85
<b>TOTAL MINORITY FIRMS</b>	<b>\$473,802,754.08</b>	<b>\$176,431,601.71</b>	<b>\$24,772,277.84</b>	<b>\$42,369,224.84</b>	<b>\$192,423,375.98</b>	<b>\$37,806,273.71</b>
NONMINORITY WOMAN FIRMS	\$203,170,441.17	\$5,265,989.22	\$1,003,244.00	\$2,701,793.58	\$189,083,296.15	\$5,116,118.22
<b>TOTAL M/WBE FIRMS</b>	<b>\$676,973,195.25</b>	<b>\$181,697,590.93</b>	<b>\$25,775,521.84</b>	<b>\$45,071,018.42</b>	<b>\$381,506,672.13</b>	<b>\$42,922,391.93</b>
TOTAL NON-MBE FIRMS	\$1,220,889,718.99	\$265,701,359.23	\$52,198,743.25	\$187,388,313.15	\$472,470,367.81	\$243,130,935.55
<b>TOTAL FIRMS</b>	<b>\$1,897,862,914.24</b>	<b>\$447,398,950.16</b>	<b>\$77,974,265.09</b>	<b>\$232,459,331.57</b>	<b>\$853,977,039.94</b>	<b>\$286,053,327.48</b>
BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	ARCHITECTURE & ENGINEERING	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS & SUPPLIES
AFRICAN AMERICANS	14.38%	8.71%	10.69%	12.31%	20.89%	6.48%
ASIAN AMERICANS	2.72%	1.67%	14.81%	4.26%	0.72%	5.75%
HISPANIC AMERICANS	7.84%	29.05%	6.27%	1.45%	0.92%	0.91%
NATIVE AMERICANS	0.04%	0.00%	0.00%	0.20%	0.00%	0.08%
<b>TOTAL MINORITY FIRMS</b>	<b>24.97%</b>	<b>39.43%</b>	<b>31.77%</b>	<b>18.23%</b>	<b>22.53%</b>	<b>13.22%</b>
NONMINORITY WOMAN FIRMS	10.71%	1.18%	1.29%	1.16%	22.14%	1.79%
<b>TOTAL M/WBE FIRMS</b>	<b>35.67%</b>	<b>40.61%</b>	<b>33.06%</b>	<b>19.39%</b>	<b>44.67%</b>	<b>15.01%</b>
TOTAL NON-MBE FIRMS	64.33%	59.39%	66.94%	80.61%	55.33%	84.99%

Source: MGT developed a Master Prime Utilization Database based on Prince George's County's GEAC and SAP systems between July 1, 2010, through June 30, 2018

**COUNTY-BASED SMALL BUSINESS (CBSB) PRIME UTILIZATION**

Firms certified with the County as CBSB's received \$539 million dollars during the study period. **Table 4-6** details the business ownership classifications and procurement categories of firms.

**TABLE 4-6. PRIME UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION  
BY PROCUREMENT CATEGORIES – COUNTY BASED SMALL BUSINESSES**

BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	ARCHITECTURE & ENGINEERING	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS & SUPPLIES
AFRICAN AMERICANS	\$125,333,890.82	\$30,092,486.00	\$4,381,615.60	\$20,020,820.55	\$55,223,689.25	\$15,615,279.42
ASIAN AMERICANS	\$28,927,194.51	\$1,861,778.27	\$1,620,142.66	\$7,083,825.89	\$4,313,656.98	\$14,047,790.71
HISPANIC AMERICANS	\$139,507,764.23	\$128,921,136.63	\$2,314,236.00	\$3,376,810.74	\$2,609,381.33	\$2,286,199.53
NATIVE AMERICANS	\$226,870.85	\$0.00	\$0.00	\$0.00	\$0.00	\$226,870.85
<b>TOTAL MINORITY FIRMS</b>	<b>\$293,995,720.41</b>	<b>\$160,875,400.90</b>	<b>\$8,315,994.26</b>	<b>\$30,481,457.18</b>	<b>\$62,146,727.56</b>	<b>\$32,176,140.51</b>
NONMINORITY WOMAN FIRMS	\$13,672,786.04	\$2,513,905.68	\$211,611.00	\$2,993,210.37	\$4,095,223.07	\$3,858,835.92
<b>TOTAL M/WBE FIRMS</b>	<b>\$307,668,506.45</b>	<b>\$163,389,306.58</b>	<b>\$8,527,605.26</b>	<b>\$33,474,667.55</b>	<b>\$66,241,950.63</b>	<b>\$36,034,976.43</b>
TOTAL NON-MBE FIRMS	\$232,066,583.37	\$133,233,688.66	\$4,398,295.99	\$9,974,155.62	\$52,914,537.37	\$31,545,905.73
<b>TOTAL FIRMS</b>	<b>\$539,735,089.82</b>	<b>\$296,622,995.24</b>	<b>\$12,925,901.25</b>	<b>\$43,448,823.17</b>	<b>\$119,156,488.00</b>	<b>\$67,580,882.16</b>
BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	ARCHITECTURE & ENGINEERING	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS & SUPPLIES
AFRICAN AMERICANS	23.22%	10.15%	33.90%	46.08%	46.35%	23.11%
ASIAN AMERICANS	5.36%	0.63%	12.53%	16.30%	3.62%	20.79%
HISPANIC AMERICANS	25.85%	43.46%	17.90%	7.77%	2.19%	3.38%
NATIVE AMERICANS	0.04%	0.00%	0.00%	0.00%	0.00%	0.34%
<b>TOTAL MINORITY FIRMS</b>	<b>54.47%</b>	<b>54.24%</b>	<b>64.34%</b>	<b>70.15%</b>	<b>52.16%</b>	<b>47.61%</b>
NONMINORITY WOMAN FIRMS	2.53%	0.85%	1.64%	6.89%	3.44%	5.71%
<b>TOTAL M/WBE FIRMS</b>	<b>57.00%</b>	<b>55.08%</b>	<b>65.97%</b>	<b>77.04%</b>	<b>55.59%</b>	<b>53.32%</b>
TOTAL NON-MBE FIRMS	43.00%	44.92%	34.03%	22.96%	44.41%	46.68%

Source: MGT developed a Master Prime Utilization Database based on Prince George's County's GEAC and SAP systems between July 1, 2010, through June 30, 2018

**4.4.5 CONCLUSION**

The prime utilization analysis of firms in the relevant market area shows that non-M/WBE firms are utilized at substantially higher rates than their M/WBE counterparts. Overall, 66.12 percent of the County's spending went to non-M/WBE firms, while only 33.88 percent went to M/WBE firms. The highest utilization rates among M/WBE classifications included African American and Nonminority Women firms, accounting for 20.42 percent and 21.33 percent, respectively, of spending in the relevant market area. Further analyzing the individual procurement categories, Other Services saw the highest utilization of M/WBE firms (44.50 percent), while Architecture and Engineering saw the lowest utilization of M/WBE firms (1.32 percent). The construction subcontracting analysis showed that non-M/WBE firms were also utilized at substantially higher rates than their M/WBE counterparts. The utilization of M/WBE

construction subcontracting firms was 34.33 percent, and non-M/WBE accounted for 65.67 percent of construction subcontracting.

Minority- and women- owned firms located in Prince George's County received 35.67 percent of the total dollar spent with firms located in the County, and 57.50 percent of the dollars spent with CBSB. While non-M/WBE prime utilization is ostensibly quite high compared to M/WBEs, throughout the views on utilization that have been presented in this chapter, the proportion of firms willing and able to provide services to the County offer a critical qualifying context in any determination of disparity. Availability and resulting disparity ratios are presented in **Chapter 5**, which follows, to provide more definitive conclusions in this respect.

CHAPTER 5. AVAILABILITY AND  
DISPARITY ANALYSIS

Utilization and Availability Study

*Prince George's County, Maryland*





## 5.1 INTRODUCTION

This chapter presents the availability and disparity analyses and results. The availability analysis provides an estimate of the minority- and women-owned business enterprise (M/WBE) ownership status of the pool of vendors that are ready, willing, and able to work with the Prince George’s County in its geographic and product marketplaces. The disparity analysis determines whether there is an observed statistically significant difference between the County’s utilization of M/WBEs compared to their respective availability. As with prior chapters, this analysis focuses on expenditures in the procurement categories of Construction, Architecture and Engineering, Professional Services, Other Services, and Goods and Supplies between fiscal years July 1, 2010, and June 30, 2018.

### CHAPTER SECTIONS



- 5.1 Introduction
- 5.2 Availability Analysis
- 5.3 Disparity Analyses and Significance Testing

## 5.2 AVAILABILITY ANALYSIS

MGT’s approach to estimating the availability of firms ready, willing, and able to perform work for the County within its defined geographic and product markets are detailed in this section, followed by a presentation and review of the associated findings.

### 5.2.1 AVAILABILITY METHODOLOGY

The Supreme Court in *City of Richmond, v. J.A. Croson Co.* indicated the evidence necessary to support a race-conscious public contracting program: Where there is a significant statistical disparity between the number of qualified minority contractors **willing and able** to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise.<sup>186</sup>

In order to analyze whether a significant statistical disparity exists, MGT must first determine the **availability** of firms of different ownership classifications by determining those that are willing and able to perform work within the County’s geographic and product markets.

- ◆ In the approach taken to establish availability in this study, **willingness**<sup>187</sup> is established either through (1) a firm’s prior utilization by the County, or (2) by direct affirmation from an authoritative party within the organization, as collected via survey.
- ◆ Whether a firm is **able** to perform the work is determined by either (1) their past history of performing work with the County, or (2) their alignment with the narrowly-tailored product markets of goods or services that have been procured by the County, courtesy of their Dun & Bradstreet-assigned industry classification, as well as their physical presence within the geographic market.

<sup>186</sup> 488 U.S. 469, 509 (1989).

<sup>187</sup> Willingness is defined as any firm that is interested in working for Prince George’s County.

It is important to note that we did not filter firms as “able” or “not able” based on any thresholds for capacity for two reasons: (1) the scalable nature of firms, which may reasonably add capacity to handle jobs beyond previous performance, and (2) the inherent concern that discrimination may have influenced the historical or existing scale of operation of the firms within the market.

Post-*Croscon* case law does not prescribe a particular approach to derive vendor availability, which has enabled agencies to use a variety of methods to estimate pools of available vendors that have withstood legal scrutiny. Among varying methods, however, the “custom census” is considered a preferable means of estimation.<sup>188</sup> The custom census surveys a representative sample of firms offering the procured goods and services within an organization’s relevant geographic and product markets. The result of the custom census provides estimated M/WBE ownership percentages for the prospective universe of vendors willing and able to work with the focus agency – in this case, Prince George’s County.

In its 2010 ‘Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program,’ the National Cooperative Highway Research Program (NCHRP) asserted that “the custom census approach to measuring DBE availability, when properly executed, is superior to the other methods,” because:

- ◆ It assumes the broadest possible view of the prospective universe of vendors.
- ◆ Closely related to the above, it inherently takes an inclusive, or “remedial,” approach to the pool of vendors, including consideration of potentially disenfranchised firms.
  - It does so by examining the full market of potential vendors via independent resources or repositories of vendor information. Said differently, it is not shaped or influenced by the focus organization’s or other government organizations’ historical operations or behaviors.
- ◆ It has consistently withstood legal scrutiny and has been upheld “by every court that has reviewed it.”

MGT’s data assessment and evaluation of alternative methods for measuring the number of firms willing and able to work with the County confirmed that a custom census approach would provide the most accurate representation of available firms in the relevant market area. In developing the custom census, MGT analyzed a representative sample of firms within the County’s marketplaces for each of the five procurement categories and combined these survey results with accounts of the known universe of vendors who have recently performed work for the County. Thus, MGT’s research and estimation process to determine the numbers of willing and able firms within the market area entailed two prongs:

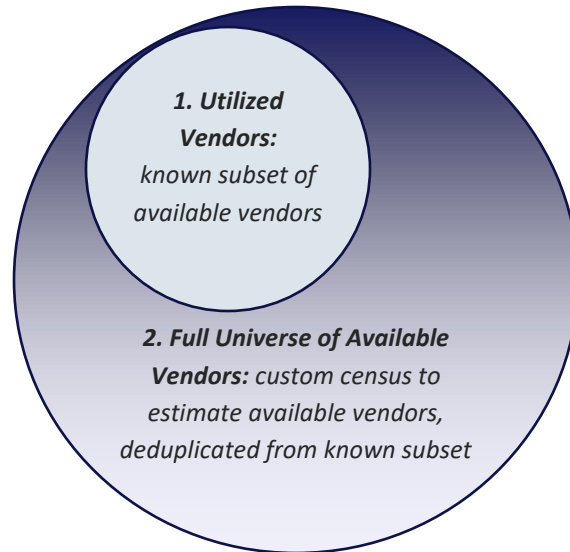
1. Collecting an inventory of market area firms who have already performed work for the County.
2. Conducting a “custom census” survey of a representative number of firms *that (i) have not done business with the County, but (ii) maintain a physical address within the market area and that (iii) directly affirm interest in working with the County via survey response.* The representative sample

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<sup>188</sup> See *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 966 (10th Cir. 2003) (*Concrete Works IV*), cert. denied, 540 U.S. 1027 (2003) (referring to the custom census as “more sophisticated” than earlier studies using census data); *Northern Contracting, Inc. v. Illinois Dep’t of Transp.*, 473 F.3d 715, 723 (7th Cir. 2007) (finding that the custom census “arrive[s] at more accurate numbers than would be possible through use of just the list [of the number of registered and prequalified DBEs under Illinois law].”).

was extrapolated to the full universe of firms in the market area within each procurement category, as per Dun & Bradstreet’s current database of firms.

FIGURE 5-1. AVAILABLE VENDOR UNIVERSE



The first set defined above (utilized vendors) was combined with a (deduplicated) extrapolation of the second set to arrive at a comprehensive account of the number of firms available to work for the County, segmented by the procurement categories defined to describe the types of goods or services purchased. The proportion of firms by type of ownership and procurement category estimated in this fashion represent an unadjusted or “base” depiction of availability, purely reflective of the number of businesses in each procurement category.

Industry best-practice recommends application of weights to these availability proportions according to the volume of dollars spent procuring relevant goods or services within each category to enhance the accuracy of these base measures of availability for each procurement category.<sup>189</sup> To illustrate:

*Consider an entity and single procurement category that spends \$100,000 annually on road painting and has 1,000 firms available to perform this type of service, while it spends \$10,000,000 annually on road paving where it can identify only 10 firms in its market area available to perform this service. If the entity were to use raw numbers to establish availability for both of these services, over 99 percent of its availability measurement (1,000 firms out of 1,010 total) would be driven by the racial/ethnic/gender categories of ownership among road painting firms – none of which would be able to provide services relevant to 99 percent of its spending activity (only \$100,000 of \$10,100,000 total spent relevant to road painting). Instead, the dollars of spending should be used to “weight” the availability measurement so that availability is accurately calibrated to the proportion of dollars spent (in this case, 99 percent of availability driven by the population of road paving vendors).*

<sup>189</sup> See, for example, U.S. Department of Transportation, Office of Civil Rights, [Tips for Goal-Setting in the Disadvantaged Business Enterprise \(DBE\) Program](#).

To establish these weighted availability estimates, MGT first divided each of the five procurement categories into more granular subsectors to establish measurements of availability (percentages of total available firms by M/WBE classifications of ownership) within more homogenous (specific and similar) families of goods or services. Weights were then applied to these percentages according to the proportions of dollars spent in each subsector, before combining the weighted subsectors back into revised representations of availability for the major procurement categories. This approach ensures that availability measurements were reflective of firms available to perform work *in proportion to the categories and respective volumes of dollars actually spent by the County*.

## 5.2.2 AVAILABILITY ANALYSIS

Following the methodology prescribed in **Section 5.2.1**, MGT derived estimates for proportions of available firms for the racial, ethnic, and gender ownership classes and five defined procurement categories.

### PRIME FIRMS

**Table 5-1** shows the estimated availability of firms by racial, ethnic, and gender ownership across all procurement categories and in the aggregate in the relevant geographic market area. MGT observed the following:

- ◆ African American-owned firms represented 18.15 percent of available vendors.
- ◆ Asian American-owned firms represented 3.69 percent of available vendors.
- ◆ Hispanic American-owned firms represented 4.91 percent of available vendors.
- ◆ Native American-owned firms represented 0.59 percent of available vendors.
- ◆ Nonminority Women-owned firms represented 7.04 percent of available vendors.
- ◆ M/WBEs represented 34.37 percent of available vendors.
- ◆ Non-M/WBEs represented 65.63 percent of available vendors.

TABLE 5-1. ESTIMATION OF AVAILABLE FIRMS, ALL PROCUREMENT CATEGORIES

BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS & SUPPLIES
AFRICAN AMERICAN FIRMS	18.15%	23.21%	15.66%	15.27%	20.02%	7.79%
ASIAN AMERICAN FIRMS	3.69%	6.72%	5.24%	2.81%	2.35%	2.62%
HISPANIC AMERICAN FIRMS	4.91%	3.64%	5.54%	5.34%	5.80%	3.85%
NATIVE AMERICAN FIRMS	0.59%	0.00%	0.33%	0.56%	1.04%	0.39%
<b>TOTAL MINORITY FIRMS</b>	<b>27.33%</b>	<b>33.57%</b>	<b>26.76%</b>	<b>23.99%</b>	<b>29.21%</b>	<b>14.65%</b>
NONMINORITY WOMEN FIRMS	7.04%	9.38%	6.51%	5.06%	6.18%	7.45%
<b>TOTAL M/WBE FIRMS</b>	<b>34.37%</b>	<b>42.94%</b>	<b>33.27%</b>	<b>29.05%</b>	<b>35.39%</b>	<b>22.10%</b>
NON-M/WBE FIRMS	65.63%	57.06%	66.73%	70.95%	64.61%	77.90%
<b>TOTAL</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: Custom Census Analysis.

Study Period: July 1, 2010, through June 30, 2018.

In the **Construction** category (**Table 5-2**), availability estimates were:

- ◆ African American-owned firms represented 23.21percent of available vendors.
- ◆ Asian American-owned firms represented 6.72 percent of available vendors.
- ◆ Hispanic American-owned firms represented 3.64 percent of available vendors.
- ◆ Native American-owned firms represented 0.00 percent of available vendors.
- ◆ Nonminority Women-owned firms represented 9.38 percent of available vendors.
- ◆ M/WBEs represented 42.94 percent of available vendors.

**TABLE 5-2. ESTIMATION OF AVAILABLE FIRMS, CONSTRUCTION**

BUSINESS OWNERSHIP CLASSIFICATION	AVAILABLE FIRMS ESTIMATE (%)
AFRICAN AMERICAN FIRMS	23.21%
ASIAN AMERICAN FIRMS	6.72%
HISPANIC AMERICAN FIRMS	3.64%
NATIVE AMERICAN FIRMS	0.00%
<b>TOTAL MINORITY FIRMS</b>	<b>33.57%</b>
NONMINORITY WOMEN FIRMS	9.38%
<b>TOTAL M/WBE FIRMS</b>	<b>42.94%</b>
NON-M/WBE FIRMS	57.06%

Source: Custom Census Analysis.

Study Period: July 1, 2010, through June 30, 2018.

In the **Architecture and Engineering** category (**Table 5-3**) availability estimates were:

- ◆ African American-owned firms represented 15.66 percent of available vendors.
- ◆ Asian American-owned firms represented 5.24 percent of available vendors.
- ◆ Hispanic American-owned firms represented 5.44 percent of available vendors.
- ◆ Native American-owned firms represented 0.33 percent of available vendors.
- ◆ Nonminority Women-owned firms represented 6.51 percent of available vendors.
- ◆ M/WBEs represented 33.27 percent of available vendors.

TABLE 5-3. ESTIMATION OF AVAILABLE FIRMS, ARCHITECTURE AND ENGINEERING

BUSINESS OWNERSHIP CLASSIFICATION	AVAILABLE FIRMS ESTIMATE
	(%)
AFRICAN AMERICAN FIRMS	15.66%
ASIAN AMERICAN FIRMS	5.24%
HISPANIC AMERICAN FIRMS	5.54%
NATIVE AMERICAN FIRMS	0.33%
<b>TOTAL MINORITY FIRMS</b>	26.76%
NONMINORITY WOMEN FIRMS	6.51%
<b>TOTAL M/WBE FIRMS</b>	33.27%
NON-M/WBE FIRMS	66.73%

Source: Custom Census Analysis.

Study Period: July 1, 2010, through June 30, 2018.

In the **Professional Services (Table 5-4)** category, availability estimates were:

- ♦ African American-owned firms represented 15.27 percent of available vendors.
- ♦ Asian American-owned firms represented 2.81 percent of available vendors.
- ♦ Hispanic American-owned firms represented 5.34 percent of available vendors.
- ♦ Native American-owned firms represented 0.56 percent of available vendors.
- ♦ Nonminority Women-owned firms represented 5.06 percent of available vendors.
- ♦ M/WBEs represented 29.05 percent of available vendors.

TABLE 5-4. ESTIMATION OF AVAILABLE FIRMS, PROFESSIONAL SERVICES

BUSINESS OWNERSHIP CLASSIFICATION	AVAILABLE FIRMS ESTIMATE
	(%)
AFRICAN AMERICAN FIRMS	15.27%
ASIAN AMERICAN FIRMS	2.81%
HISPANIC AMERICAN FIRMS	5.34%
NATIVE AMERICAN FIRMS	0.56%
<b>TOTAL MINORITY FIRMS</b>	23.99%
NONMINORITY WOMEN FIRMS	5.06%
<b>TOTAL M/WBE FIRMS</b>	29.05%
NON-M/WBE FIRMS	70.95%

Source: Custom Census Analysis.

Study Period: July 1, 2010, through June 30, 2018.

In the **Other Services (Table 5-5)** category, availability estimates were:

- ♦ African American-owned firms represented 20.02 percent of available vendors.
- ♦ Asian American-owned firms represented 2.35 percent of available vendors.
- ♦ Hispanic American-owned firms represented 5.80 percent of available vendors.
- ♦ Native American-owned firms represented 1.04 percent of available vendors.
- ♦ Nonminority Women-owned firms represented 6.18 percent of available vendors.
- ♦ M/WBEs represented 35.39 percent of available vendors.

TABLE 5-5. ESTIMATION OF AVAILABLE FIRMS, OTHER SERVICES

BUSINESS OWNERSHIP CLASSIFICATION	AVAILABLE FIRMS ESTIMATE
	(%)
AFRICAN AMERICAN FIRMS	20.02%
ASIAN AMERICAN FIRMS	2.35%
HISPANIC AMERICAN FIRMS	5.80%
NATIVE AMERICAN FIRMS	1.04%
<b>TOTAL MINORITY FIRMS</b>	29.21%
NONMINORITY WOMEN FIRMS	6.18%
<b>TOTAL M/WBE FIRMS</b>	35.39%
NON-M/WBE FIRMS	64.61%

Source: Custom Census Analysis.

Study Period: July 1, 2010, through June 30, 2018.

Finally, in the **Goods and Supplies (Table 5-6)** category, availability estimates were:

- ◆ African American-owned firms represented 7.79 percent of available vendors.
- ◆ Asian American-owned firms represented 2.62 percent of available vendors.
- ◆ Hispanic American-owned firms represented 3.85 percent of available vendors.
- ◆ Native American-owned firms represented 0.39 percent of available vendors.
- ◆ Nonminority Women-owned firms represented 7.45 percent of available vendors.
- ◆ M/WBEs represented 22.10 percent of available vendors.

TABLE 5-6. ESTIMATION OF AVAILABLE FIRMS, GOODS AND SUPPLIES

BUSINESS OWNERSHIP CLASSIFICATION	AVAILABLE FIRMS ESTIMATE
	(%)
AFRICAN AMERICAN FIRMS	7.79%
ASIAN AMERICAN FIRMS	2.62%
HISPANIC AMERICAN FIRMS	3.85%
NATIVE AMERICAN FIRMS	0.39%
<b>TOTAL MINORITY FIRMS</b>	14.65%
NONMINORITY WOMEN FIRMS	7.45%
<b>TOTAL M/WBE FIRMS</b>	22.10%
NON-M/WBE FIRMS	77.90%

Source: Custom Census Analysis.

Study Period: July 1, 2010, through June 30, 2018.

### SUBCONTRACTOR AVAILABILITY

**Table 5-7** shows the estimated availability of construction subcontractors by racial, ethnic, and gender ownership and in the aggregate in the relevant geographic market area. MGT observed that M/WBE firms are estimated to make up 56.92 percent of construction subcontractors with African Americans making up 23.24 percent, Asian Americans at 15.93 percent, Nonminority Women at 11.23 percent, Hispanic Americans at 6.27 percent, and Native Americans at 0.26 percent of the total estimated construction subcontractor availability.

TABLE 5-7. ESTIMATION OF AVAILABLE SUBCONTRACTORS, CONSTRUCTION

BUSINESS OWNERSHIP CLASSIFICATION	CONSTRUCTION (%)
AFRICAN AMERICANS	23.24%
ASIAN AMERICANS	15.93%
HISPANIC AMERICANS	6.27%
NATIVE AMERICANS	0.26%
<b>TOTAL MINORITY FIRMS</b>	<b>45.69%</b>
NONMINORITY WOMEN FIRMS	11.23%
<b>TOTAL M/WBE FIRMS</b>	<b>56.92%</b>
TOTAL NON-M/WBE FIRMS	43.08%

### 5.3 DISPARITY METHODOLOGY AND RESULTS

MGT used the County's utilization data (**Chapter 4**) and the availability estimates presented in the previous section (**Section 5.2**) to identify potential disparities in the County's procurement practices. A summary of the approach is provided in **Section 5.3.1** followed by the results of these disparity calculations and associated statistical significance testing in **Section 5.3.2**.

#### 5.3.1 DISPARITY ANALYSIS METHODOLOGY

Once the utilization of prime M/WBE firms has been determined, it must be compared to the available M/WBE firms in the market area. To demonstrate an evidentiary basis for enacting a race-conscious program and to satisfy *Croson's* compelling interest prong, governmental entities must present evidence of underutilization of M/WBEs that would give rise to an inference of discrimination in public contracting.<sup>190</sup> If disparity can be shown, a *prima facie* case may be established if the differences between utilization and availability are statistically significant. Appropriate statistical tests must be used to determine if significant differences exist between availability and utilization of M/WBEs. MGT determines disparity by creating a disparity index as well as using statistical significance testing.

The disparity index is the ratio of the percentage of utilization and the percentage of availability times 100. The formula for a disparity index is displayed in the graphic to the right.

**DISPARITY INDEX FORMULA**

Disparity Index =

$$\%U_{m_1p_1} \div \%A_{m_1p_1} \times 100$$

Um<sub>1p1</sub> = utilization of minorities- and women-owned firms<sub>1</sub> for procurement<sub>1</sub>

Generally, disparity indices of 80 percent or higher—indicating close to full participation—are not considered significant.<sup>191</sup> The court referenced the Equal Employment Opportunity Commission's disparate impact guidelines, which establish the 80 percent test as the threshold for determining a *prima facie* case of discrimination.<sup>192</sup> According to the Eleventh Circuit, no circuit that has explicitly endorsed using disparity indices has held that an index of 80 percent or

<sup>190</sup> *City of Richmond v. Croson*, at 509.

<sup>191</sup> *Engineering Contractors Association of South Florida, Inc.*, 122 F.3d at 914.

<sup>192</sup> *Id.* at 914 (citing 29 C.F.R. § 1607.4(D) concerning the disparate impact guidelines and threshold used in employment cases).



greater is probative of discrimination, but they have held that indices below 80 percent indicate “significant disparities.”<sup>193</sup>

**t-TEST FORMULA**

$$t = \frac{u - a}{\sqrt{\frac{a * (1 - a) * \sum c_i^2}{(\sum c_i)^2}}}$$

t = the t-statistic

u = the ratio of minorities- and women-owned firms’ dollars to total dollars

a = the ratio of M/WBE firms to all firms

**STATISTICAL TESTING.** The Supreme Court in *Croscon* enforced the utility of statistics, concluding, “If there is a significant statistical disparity between the number of qualified, minority contractors who are willing and able to perform a particular service, and the number of contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise.” Most federal circuits have supported the use of standard deviation analyses to test the statistical significance of disparity indices. In addition to the disparity index, we will conduct Standard Deviation tests to ascertain the significance of the difference between the availability

and utilization. With Standard Deviation analyses, the reviewer can determine whether the disparities are substantial or statistically significant, which lends further statistical support to a finding of discrimination.

Disparity calculations are presented by the defined business categories and racial, ethnic, and gender classifications used in earlier phases of the project.

The Relevant Market Area for the following disparity analyses is defined as firms located in Prince George’s County, MD Relevant Market Area, which contains Prince George’s County in addition to the following: District of Columbia, Fairfax City, Fairfax County, and Montgomery County.

### 5.3.2 DISPARITY ANALYSES AND STATISTICAL SIGNIFICANCE

#### PRIME CONTRACTORS ONLY

The calculations of disparity ratios and significance testing in each of the procurement categories and ownership classifications by race, ethnicity, and gender are presented in **Tables 5-8** through **5-13**. Analysis of disparities across all procurement categories in **Table 5-8** reveals:

- ◆ African American-owned firms were substantially underutilized, with a substantial and statistically significant disparity ratio of 74.88;
- ◆ Asian American-owned firms were substantially underutilized, with a substantial disparity ratio of 74.72;
- ◆ Hispanic American-owned firms were overutilized, with a substantial and statistically significant disparity ratio of 156.02;

<sup>193</sup> *Engineering Contractors Association of South Florida, Inc.*, 122 F.3d at 914 (referencing the first appeal in *Contractors Association of Eastern Pennsylvania, Inc.*, 6 F.3d at 1005, crediting disparity index of 4 percent, and *Concrete Works II*, 36 F.3d at 1524, crediting disparity indices ranging from 0 percent to 3.8 percent).

- ◆ Native American-owned firms were substantially underutilized, with a substantial and statistically significant disparity ratio of 5.73;
- ◆ Nonminority Women-owned firms were overutilized, with a statistically significant disparity ratio of 139.74; and
- ◆ M/WBEs were underutilized, with a disparity ratio of 98.56.

**TABLE 5-8. DISPARITY RATIO AND SIGNIFICANCE TESTING, ALL PROCUREMENT CATEGORIES**

BUSINESS OWNERSHIP CLASSIFICATION	UTILIZATION	AVAILABILITY	DISPARITY INDEX	DISPARITY IMPACT	STATISTICAL SIGNIFICANCE	DISPARITY CONCLUSION
AFRICAN AMERICAN FIRMS	13.59%	18.15%	74.88	Underutilization	Yes	Disparity
ASIAN AMERICAN FIRMS	2.75%	3.69%	74.72	Underutilization	No	Disparity
HISPANIC AMERICAN FIRMS	7.66%	4.91%	156.02	Overutilization	Yes	No Disparity
NATIVE AMERICAN FIRMS	0.03%	0.59%	5.73	Underutilization	No	Disparity
<b>TOTAL MINORITY FIRMS</b>	<b>24.04%</b>	<b>27.33%</b>	<b>87.95</b>	<b>Underutilization</b>	<b>Yes</b>	<b>Disparity</b>
NONMINORITY WOMEN FIRMS	9.84%	7.04%	139.74	Overutilization	Yes	No Disparity
<b>TOTAL M/WBE FIRMS</b>	<b>33.88%</b>	<b>34.37%</b>	<b>98.56</b>	<b>Underutilization</b>	<b>No</b>	<b>Disparity</b>
NON-M/WBE FIRMS	<b>66.12%</b>	<b>65.63%</b>	<b>100.76</b>	Overutilization	No	No Disparity

Disparity Index: under 80 represents substantial underutilization.  
 “Yes” represents statistical significance at 95% confidence interval.

**Table 5-9** presents disparity ratios and significance testing for the **Construction** category. The lack of disparity results seen for several of the ownership classification can be attributed to the overutilization of several firms throughout the procurement categories. This will be discussed in more detail in the individual category results. Relevant findings include:

- ◆ African American-owned firms were substantially underutilized, with a substantial and statistically significant disparity ratio of 32.66;
- ◆ Asian American-owned firms were substantially underutilized, with a substantial and statistically significant disparity ratio of 26.67;
- ◆ Hispanic American-owned firms were overutilized, with a disparity ratio of 701.02. The lack of disparity for Hispanic American-owned firms is the result of overutilization of four firms that accounted for over 96 percent of the total utilization;
- ◆ Nonminority Women-owned firms were substantially underutilized, with a substantial and statistically significant disparity ratio of 12.05;
- ◆ M/WBEs were underutilized, with a statistically significant disparity ratio of 83.86;

TABLE 5-9. DISPARITY RATIO AND SIGNIFICANCE TESTING, CONSTRUCTION

BUSINESS OWNERSHIP CLASSIFICATION	UTILIZATION	AVAILABILITY	DISPARITY INDEX	DISPARITY IMPACT	STATISTICAL SIGNIFICANCE	DISPARITY CONCLUSION
AFRICAN AMERICAN FIRMS	7.58%	23.21%	32.66	Underutilization	Yes	Disparity
ASIAN AMERICAN FIRMS	1.79%	6.72%	26.67	Underutilization	Yes	Disparity
HISPANIC AMERICAN FIRMS	25.51%	3.64%	701.02	Overutilization	Yes	No Disparity
NATIVE AMERICAN FIRMS	0.00%	0.00%	-	*		
<b>TOTAL MINORITY FIRMS</b>	<b>34.88%</b>	<b>33.57%</b>	<b>103.92</b>	<b>Overutilization</b>	<b>No</b>	No Disparity
NONMINORITY WOMEN FIRMS	1.13%	9.38%	12.05	Underutilization	Yes	Disparity
<b>TOTAL M/WBE FIRMS</b>	<b>36.01%</b>	<b>42.94%</b>	<b>83.86</b>	<b>Underutilization</b>	<b>Yes</b>	<b>Disparity</b>
NON-M/WBE FIRMS	<b>63.99%</b>	<b>57.06%</b>	<b>112.15</b>	Overutilization	Yes	No Disparity

Disparity Index: under 80 represents substantial underutilization.

“Yes” represents statistical significance at 95% confidence interval.

\*No utilization or availability so disparity analysis could not be calculated.

**Table 5-10** presents disparity ratios and significance testing for the **Architecture and Engineering** category. Relevant findings include:

- ♦ African American-owned firms were substantially underutilized, with a substantial and statistically significant disparity ratio of 46.52;
- ♦ Asian American-owned firms were overutilized, with a statistically significant disparity ratio of 207.99. The lack of disparity results for Asian American-owned firms is attributable to the overutilization of two firms that accounted for over 70 percent of the utilization;
- ♦ Hispanic American-owned firms were substantially underutilized, with a substantial disparity ratio of 74.88;
- ♦ Nonminority Women-owned firms were substantially underutilized, with a substantial and statistically significant disparity ratio of 12.97; and
- ♦ M/WBEs were substantially underutilized, with a substantial and statistically significant disparity ratio of 69.63.

TABLE 5-10. DISPARITY RATIO AND SIGNIFICANCE TESTING, ARCHITECTURE AND ENGINEERING

BUSINESS OWNERSHIP CLASSIFICATION	UTILIZATION	AVAILABILITY	DISPARITY INDEX	DISPARITY IMPACT	STATISTICAL SIGNIFICANCE	DISPARITY CONCLUSION
AFRICAN AMERICAN FIRMS	7.29%	15.66%	46.52	Underutilization	Yes	Disparity
ASIAN AMERICAN FIRMS	10.89%	5.24%	207.99	Overutilization	Yes	No Disparity
HISPANIC AMERICAN FIRMS	4.15%	5.54%	74.88	Underutilization	No	Disparity
NATIVE AMERICAN FIRMS	0.00%	0.33%	0.00	Underutilization	No	Disparity
<b>TOTAL MINORITY FIRMS</b>	<b>22.32%</b>	<b>26.76%</b>	<b>83.41</b>	<b>Underutilization</b>	<b>No</b>	<b>Disparity</b>
NONMINORITY WOMEN FIRMS	0.84%	6.51%	12.97	Underutilization	Yes	Disparity
<b>TOTAL M/WBE FIRMS</b>	<b>23.17%</b>	<b>33.27%</b>	<b>69.63</b>	<b>Underutilization</b>	<b>Yes</b>	<b>Disparity</b>
NON-M/WBE FIRMS	<b>76.83%</b>	<b>66.73%</b>	<b>115.14</b>	Overutilization	Yes	No Disparity

Disparity Index: under 80 represents substantial underutilization.

“Yes” represents statistical significance at 95% confidence interval.

**Table 5-11** presents disparity ratios and significance testing for the **Professional Services** category. Relevant findings include:

- ◆ African American-owned firms were underutilized, with a disparity ratio of 85.12;
- ◆ Asian American-owned firms were overutilized, with a disparity ratio of 172.39. The lack of disparity results for Asian American-owned firms is attributable to the overutilization of four firms that accounted for over 79 percent of the utilization;
- ◆ Hispanic American-owned firms were substantially underutilized, with a substantial and statistically significant disparity ratio of 25.05;
- ◆ Native American-owned firms were underutilized, with a disparity ratio of 33.40;
- ◆ Nonminority Women-owned firms were substantially underutilized, with a substantial and statistically significant disparity ratio of 28.53; and
- ◆ M/WBEs were substantially underutilized, with a substantial and statistically significant disparity ratio of 71.66.

**TABLE 5-11. DISPARITY RATIO AND SIGNIFICANCE TESTING, PROFESSIONAL SERVICES**

BUSINESS OWNERSHIP CLASSIFICATION	UTILIZATION	AVAILABILITY	DISPARITY INDEX	DISPARITY IMPACT	STATISTICAL SIGNIFICANCE	DISPARITY CONCLUSION
AFRICAN AMERICAN FIRMS	13.00%	15.27%	85.12	Underutilization	No	Disparity
ASIAN AMERICAN FIRMS	4.85%	2.81%	172.39	Overutilization	No	No Disparity
HISPANIC AMERICAN FIRMS	1.34%	5.34%	25.05	Underutilization	Yes	Disparity
NATIVE AMERICAN FIRMS	0.19%	0.56%	33.40	Underutilization	No	Disparity
<b>TOTAL MINORITY FIRMS</b>	<b>19.37%</b>	<b>23.99%</b>	<b>80.76</b>	<b>Underutilization</b>	<b>No</b>	<b>Disparity</b>
NONMINORITY WOMEN FIRMS	1.44%	5.06%	28.53	Underutilization	Yes	Disparity
<b>TOTAL M/WBE FIRMS</b>	<b>20.82%</b>	<b>29.05%</b>	<b>71.66</b>	<b>Underutilization</b>	<b>Yes</b>	<b>Disparity</b>
NON-M/WBE FIRMS	<b>79.18%</b>	<b>70.95%</b>	<b>111.60</b>	Overutilization	Yes	No Disparity

Disparity Index: under 80 represents substantial underutilization.

“Yes” represents statistical significance at 95% confidence interval.

**Table 5-12** presents disparity ratios and significance testing for the **Other Services** category. Relevant findings include:

- ◆ African American-owned firms were overutilized, with a disparity ratio of 101.99;
- ◆ Asian American-owned firms were substantially underutilized, with a substantial disparity ratio of 31.68;
- ◆ Hispanic American-owned firms were substantially underutilized, with a substantial and statistically significant disparity ratio of 34.52;
- ◆ Native American-owned firms were substantially underutilized, with a disparity ratio of 0.00;
- ◆ Nonminority Women firms were overutilized, with a statistically significant disparity ratio of 345.19. The lack of disparity result is due to the overutilization of one Nonminority Woman firm that accounted for over 92 percent of the utilization; and

- ◆ M/WBEs were overutilized, with a substantial and statistically significant disparity ratio of 125.74.

**TABLE 5-12. DISPARITY RATIO AND SIGNIFICANCE TESTING, OTHER SERVICES**

BUSINESS OWNERSHIP CLASSIFICATION	UTILIZATION	AVAILABILITY	DISPARITY INDEX	DISPARITY IMPACT	STATISTICAL SIGNIFICANCE	DISPARITY CONCLUSION
AFRICAN AMERICAN FIRMS	20.42%	20.02%	101.99	Overutilization	No	No Disparity
ASIAN AMERICAN FIRMS	0.74%	2.35%	31.68	Underutilization	No	Disparity
HISPANIC AMERICAN FIRMS	2.00%	5.80%	34.52	Underutilization	Yes	Disparity
NATIVE AMERICAN FIRMS	0.00%	1.04%	0.00	Underutilization	No	Disparity
<b>TOTAL MINORITY FIRMS</b>	<b>23.17%</b>	<b>29.21%</b>	<b>79.32</b>	Underutilization	<b>No</b>	<b>Disparity</b>
NONMINORITY WOMEN FIRMS	21.33%	6.18%	345.19	Overutilization	Yes	No Disparity
<b>TOTAL M/WBE FIRMS</b>	<b>44.50%</b>	<b>35.39%</b>	<b>125.74</b>	Overutilization	<b>Yes</b>	<b>No Disparity</b>
NON-M/WBE FIRMS	55.50%	64.61%	85.90	Underutilization	Yes	Disparity

Disparity Index: under 80 represents substantial underutilization.

“Yes” represents statistical significance at 95% confidence interval.

**Table 5-13** presents disparity ratios and significance testing for the **Goods and Supplies** category. Relevant findings include:

- ◆ African American-owned firms were underutilized, with a disparity ratio of 88.87;
- ◆ Asian American-owned firms were overutilized, with a statistically significant disparity ratio of 201.39. The lack of disparity results seen is attributed to the overutilization of two Asian American-owned firms that accounted for over 94 percent of the utilization;
- ◆ Hispanic American-owned firms were substantially underutilized, with a substantial and statistically significant disparity ratio of 21.51;
- ◆ Native American-owned firms were substantially underutilized, with a substantial disparity ratio of 18.77.
- ◆ Nonminority Women-owned firms were substantially underutilized, with a substantial and statistically significant disparity ratio of 22.26; and
- ◆ M/WBEs were underutilized, with a substantial and statistically significant disparity ratio of 66.76.

TABLE 5-13. DISPARITY RATIO AND SIGNIFICANCE TESTING, GOODS AND SUPPLIES

BUSINESS OWNERSHIP CLASSIFICATION	UTILIZATION	AVAILABILITY	DISPARITY INDEX	DISPARITY IMPACT	STATISTICAL SIGNIFICANCE	DISPARITY CONCLUSION
AFRICAN AMERICAN FIRMS	6.92%	7.79%	88.87	Underutilization	No	Disparity
ASIAN AMERICAN FIRMS	5.27%	2.62%	201.39	Overutilization	Yes	No Disparity
HISPANIC AMERICAN FIRMS	0.83%	3.85%	21.51	Underutilization	Yes	Disparity
NATIVE AMERICAN FIRMS	0.07%	0.39%	18.77	Underutilization	No	Disparity
<b>TOTAL MINORITY FIRMS</b>	<b>13.09%</b>	<b>14.65%</b>	<b>89.40</b>	<b>Underutilization</b>	<b>No</b>	<b>Disparity</b>
NONMINORITY WOMEN FIRMS	1.66%	7.45%	22.26	Underutilization	Yes	Disparity
<b>TOTAL M/WBE FIRMS</b>	<b>14.75%</b>	<b>22.10%</b>	<b>66.76</b>	<b>Underutilization</b>	<b>Yes</b>	<b>Disparity</b>
NON-M/WBE FIRMS	85.25%	77.90%	109.43	Overutilization	Yes	No Disparity

Disparity Index: under 80 represents substantial underutilization.

“Yes” represents statistical significance at 95% confidence interval.

\*No utilization or availability so disparity analysis could not be calculated.

### CONSTRUCTION SUBCONTRACTOR DISPARITY

Overall, there is disparity in construction subcontracting for all business ownership classifications. The MBE disparity index is 71.53 and the Nonminority Women disparity index is 14.65.

TABLE 5-14. CONSTRUCTION SUBCONTRACTOR DISPARITY RATIO AND SUMMARY

BUSINESS OWNERSHIP CLASSIFICATION	UTILIZATION	AVAILABILITY (%)	DISPARITY INDEX	DISPARATE IMPACT	DISPARITY CONCLUSION
AFRICAN AMERICAN FIRMS	11.81%	23.24%	50.82	Underutilization	Disparity
ASIAN AMERICAN FIRMS	15.07%	15.93%	94.65	Underutilization	Disparity
HISPANIC AMERICAN FIRMS	5.80%	6.27%	92.58	Underutilization	Disparity
NATIVE AMERICAN FIRMS	0.00%	0.26%	0.00	Underutilization	Disparity
<b>TOTAL MINORITY FIRMS</b>	<b>32.69%</b>	<b>45.69%</b>	<b>71.53</b>	<b>Underutilization</b>	<b>Disparity</b>
NONMINORITY WOMEN FIRMS	1.64%	11.23%	14.65	Underutilization	Disparity
<b>TOTAL M/WBE FIRMS</b>	<b>34.33%</b>	<b>56.92%</b>	<b>60.31</b>	<b>Underutilization</b>	<b>Disparity</b>
TOTAL NON-M/WBE FIRMS	65.67%	43.08%	152.43	Overutilization	No Disparity

Disparity Index: under 80 represents substantial underutilization.

### 5.3.3 DISPARITY STUDY AVAILABILITY COMPARISON

#### PURPOSE

This comparison provides an overview of M/WBE firms from the 2006 and 2019 disparity studies to determine whether the number of M/WBE firms within Prince George's County has increased/decreased as a percentage of total firms available to conduct business with the County.

#### RELEVANT MARKET

- ◆ For the 2006 Disparity Study, the Washington-Baltimore DC-MD-VA-WV Combined Metropolitan Statistical Area (CMSA)<sup>194</sup> was established as the relevant market.
- ◆ For the 2019 Disparity Study, MGT and the County agreed that the relevant market area should include Prince George's County, Fairfax County, Fairfax City, District of Columbia, and Montgomery County.

#### BUSINESS CATEGORIES

- ◆ The 2006 Disparity Study identified four business categories:
  - Construction,
  - General Procurement,
  - Professional Services, and
  - Nonprofessional Services.
- ◆ The 2019 Disparity Study identified five business categories:
  - Construction,
  - Architecture and Engineering,
  - Goods and Supplies
  - Professional Services, and
  - Other Services.

#### OVERVIEW OF M/WBEs FIRMS WITHIN PRICE GEORGE'S COUNTY

Since the relevant market area in the 2006 Disparity Study differs from the relevant market area established by MGT and Prince George's County for the 2019 Disparity Study, this comparison only considers the firms within Prince George's County (i.e., firms in other counties/cities of the relevant market area were not included in the comparison). Additionally, the availability estimates for 2006 are based on the vendors availability data provided on page III-9 of that report.

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<sup>194</sup> 2006 Disparity Study conducted by D.J. Miller, page. 130

The table below shows the change in the estimated number of M/WBEs firms as a percentage of all available firms within Prince George’s County that are available to conduct business with the County.

- ◆ African American-owned firms decreased 29.6 percent.
- ◆ Asian American-owned firms did not change.
- ◆ Hispanic American-owned firms increased 2.8 percent
- ◆ Native American Firms increased 0.1 percent.
- ◆ Nonminority Women-owned firms decreased 0.3 percent.
- ◆ Overall M/WBEs-owned firms decreased 27.0 percent.
- ◆ Non-M/WBEs-owned firms increased 27.0 percent.

TABLE 5-15. OVERALL VARIANCE AVAILABILITY MARKET COMPARISON 2006 VS. 2019 STUDY

BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	MATERIAL & SUPPLIES <sup>195</sup>	PROFESSIONAL SERVICES	OTHER SERVICES <sup>196</sup>
AFRICAN AMERICAN FIRMS	-29.6%	-29.6%	-29.3%	-39.6%	-31.0%
ASIAN AMERICAN FIRMS	0.0%	1.8%	-0.4%	-1.8%	-0.7%
HISPANIC AMERICAN FIRMS	2.8%	-3.0%	3.1%	4.7%	3.7%
NATIVE AMERICAN FIRMS	0.1%	-0.8%	-0.1%	0.4%	0.6%
UNKNOWN M/WBE	0.0%	0.0%	-0.1%	0.0%	0.0%
TOTAL MINORITY FIRMS	-26.7%	-31.6%	-26.9%	-36.3%	-27.4%
NONMINORITY WOMEN FIRMS	-0.3%	4.0%	0.6%	-3.0%	-2.0%
TOTAL M/WBE FIRMS	-27.0%	-27.6%	-26.4%	-39.3%	-29.5%
NON-M/WBE	27.0%	27.6%	26.4%	39.3%	29.5%

In the **Construction** category, the changes in availability estimates were as follows:

- ◆ African American-owned firms decreased 29.6 percent.
- ◆ Asian American-owned increased 1.8 percent.
- ◆ Hispanic American-owned firms decreased 3.0 percent
- ◆ Native American Firms decreased 0.8 percent.
- ◆ Nonminority Women-owned firms increased 4.0 percent.
- ◆ Overall M/WBEs-owned firms decreased 27.6 percent.
- ◆ Non-M/WBEs-owned firms increased 27.6 percent.

<sup>195</sup> The Materials & Supplies business category in the 2019 study was compared against the General Procurement business category of the 2006 study.

<sup>196</sup> The Other Services business category in the 2019 study was compared against the Nonprofessional Services business category in the 2006 study.



TABLE 5-16. CONSTRUCTION AVAILABILITY MARKET COMPARISON 2006 VS. 2019 STUDY

BUSINESS OWNERSHIP CLASSIFICATION	2006 PGC	2019 PGC	CHANGE
AFRICAN AMERICAN FIRMS	52.8%	23.21%	-29.6%
ASIAN AMERICAN FIRMS	4.9%	6.72%	1.8%
HISPANIC AMERICAN FIRMS	6.7%	3.64%	-3.0%
NATIVE AMERICAN FIRMS	0.8%	0.00%	-0.8%
UNKNOWN M/WBE	0.0%	0.0%	0.0%
TOTAL MINORITY FIRMS	65.1%	33.6%	-31.6%
NONMINORITY WOMEN FIRMS	5.4%	9.4%	4.0%
TOTAL M/WBE FIRMS	70.5%	43.0%	-27.6%
NON-M/WBE	29.5%	57.06%	27.6%

In the **Professional Services** category, the changes in availability estimates were as follows:

- ◆ African American-owned firms decreased 39.6 percent.
- ◆ Asian American-owned decreased 1.8 percent.
- ◆ Hispanic American-owned firms increased 4.7 percent.
- ◆ Native American Firms increased 0.4 percent.
- ◆ Nonminority Women-owned firms decreased 3.0 percent.
- ◆ Overall M/WBEs-owned firms decreased 39.3 percent.
- ◆ Non-M/WBEs-owned firms increased 39.3 percent.

TABLE 5-17. PROFESSIONAL SERVICES AVAILABILITY MARKET COMPARISON 2006 VS. 2019 STUDY

BUSINESS OWNERSHIP CLASSIFICATION	2006 PGC	2019 PGC	CHANGE
AFRICAN AMERICAN FIRMS	54.8%	15.27%	-39.6%
ASIAN AMERICAN FIRMS	4.6%	2.81%	-1.8%
HISPANIC AMERICAN FIRMS	0.6%	5.34%	4.7%
NATIVE AMERICAN FIRMS	0.2%	0.56%	0.4%
UNKNOWN M/WBE	0.0%	0.0%	0.0%
TOTAL MINORITY FIRMS	60.3%	24.0%	-36.3%
NONMINORITY WOMEN FIRMS	8.1%	5.06%	-3.0%
TOTAL M/WBE FIRMS	68.3%	29.0%	-39.3%
NON-M/WBE	31.7%	70.95%	39.3%

In the **Other Services** category, the changes in availability estimates were as follows:

- ◆ African American-owned firms decreased 31.0 percent.
- ◆ Asian American-owned decreased 0.7 percent.
- ◆ Hispanic American-owned firms increased 3.7 percent.
- ◆ Native American Firms increased 0.6 percent.
- ◆ Nonminority Women-owned firms decreased 2.0 percent.
- ◆ Overall M/WBEs-owned firms decreased 29.5 percent.
- ◆ Non-M/WBEs-owned firms increased 29.5 percent.

TABLE 5-18. OTHER SERVICES AVAILABILITY MARKET COMPARISON 2006 VS. 2019 STUDY

BUSINESS OWNERSHIP CLASSIFICATION	2006 PGC	2019 PGC	CHANGE
AFRICAN AMERICAN FIRMS	51.1%	20.02%	-31.0%
ASIAN AMERICAN FIRMS	3.1%	2.35%	-0.7%
HISPANIC AMERICAN FIRMS	2.1%	5.80%	3.7%
NATIVE AMERICAN FIRMS	0.4%	1.04%	0.6%
UNKNOWN M/WBE	0.0%	0.0%	0.0%
TOTAL MINORITY FIRMS	56.6%	29.2%	-27.4%
NONMINORITY WOMEN FIRMS	8.2%	6.18%	-2.0%
TOTAL M/WBE FIRMS	64.9%	35.4%	-29.5%
NON-M/WBE	35.1%	64.61%	29.5%

In the **Goods & Supplies** category, the changes in availability estimates were as follows:

- ◆ African American-owned firms decreased 29.3 percent.
- ◆ Asian American-owned decreased .04 percent.
- ◆ Hispanic American-owned firms increased 3.1 percent.
- ◆ Native American Firms decreased 0.1 percent.
- ◆ Nonminority Women-owned firms decreased 0.1 percent.
- ◆ Overall M/WBEs-owned firms decreased 26.4 percent.
- ◆ Non-M/WBEs-owned firms increased 26.4 percent.

TABLE 5-19. GOODS &amp; SUPPLIES AVAILABILITY MARKET COMPARISON 2006 VS. 2019 STUDY

BUSINESS OWNERSHIP CLASSIFICATION	2006 PGC	2019 PGC	CHANGE
AFRICAN AMERICAN FIRMS	37.1%	7.78%	-29.3%
ASIAN AMERICAN FIRMS	3.0%	2.62%	-0.4%
HISPANIC AMERICAN FIRMS	0.8%	3.85%	3.1%
NATIVE AMERICAN FIRMS	0.5%	0.39%	-0.1%
UNKNOWN M/WBE	0.1%	0.0%	-0.1%
TOTAL MINORITY FIRMS	41.6%	14.6%	-26.9%
NONMINORITY WOMEN FIRMS	6.9%	7.45%	0.6%
TOTAL M/WBE FIRMS	48.5%	22.1%	-26.4%
NON-M/WBE	51.5%	77.90%	26.4%

### 5.3.4 CONCLUSIONS

The findings of the availability and disparity calculations in this chapter and the preceding depiction of utilization serve as the foundation for the County's M/WBE program going forward. These analyses provide the quantitative legal justification for any current or future remedies to assist M/WBE firms within the market area.

Disparities between utilization and availability were observed in many of the procurement and M/WBE categories considered in this study. **Table 5-20** summarizes the identified disparity as follows:

- ◆ In **Construction**, the disparity analysis showed that African American-, Asian American-, and Nonminority Women-owned firms were substantially underutilized, but no disparity was found among the hiring of Hispanic American owned firms. There was no utilization or availability of Native American-owned firms, therefore disparity could not be determined.
- ◆ In **Construction Subcontracting**, the disparity analysis showed that African American-, Native American-, Nonminority Women-owned firms were substantially underutilized, with Asian American and Hispanic American-owned firms being underutilized;
- ◆ In **Architecture and Engineering**, the disparity analysis showed that African American-, Native American-, Nonminority Women-, and Hispanic American-owned firms were substantially underutilized, but no disparity was found among the hiring of Asian American-owned firms;
- ◆ In **Professional Services**, the disparity analysis showed that African American-owned firms were underutilized, while Native American-, Nonminority Women-, and Hispanic American-owned firms were substantially underutilized, but no disparity was found among the hiring of Asian American-owned firms;
- ◆ In **Other Services**, the disparity analysis showed that Asian American-, Native American-, and Hispanic American-owned firms were substantially underutilized, but no disparity was found among the hiring of African American- and Nonminority Women-owned firms; and

- ◆ In **Goods and Supplies**, the disparity analysis revealed that African Americans, Hispanic American-, Native American-, and Nonminority Women-owned firms were substantially underutilized, but no disparity was found among the hiring of Asian American-owned firms.

TABLE 5-20. DISPARITY ANALYSIS SUMMARY

PROCUREMENT CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NONMINORITY WOMEN	MBE	M/WBE FIRMS
CONSTRUCTION	Disparity	Disparity	<b>No Disparity</b>	*	Disparity	<b>No Disparity</b>	Disparity
CONSTRUCTION SUBCONTRACTORS	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
ARCHITECTURE & ENGINEERING	Disparity	<b>No Disparity</b>	Disparity	Disparity	Disparity	Disparity	Disparity
PROFESSIONAL SERVICES	Disparity	<b>No Disparity</b>	Disparity	Disparity	Disparity	Disparity	Disparity
OTHER SERVICES	<b>No Disparity</b>	Disparity	Disparity	Disparity	<b>No Disparity</b>	Disparity	Disparity
GOODS & SUPPLIES	Disparity	<b>No Disparity</b>	Disparity	Disparity	Disparity	Disparity	Disparity

Study Period: January 1, 2013, through December 31, 2017.

\*No utilization or availability so disparity analysis could not be calculated.

CHAPTER 6. PRIVATE SECTOR  
ANALYSIS

**Utilization and Availability Study**

*Prince George's County, Maryland*



## 6.1 INTRODUCTION

The **Legal Framework** presented in **Chapter 2** of this report documented how a government entity must have a record of active or passive discrimination to justify remedies promoted through the institution of a minority- and women-owned business enterprise (M/WBE) program. Courts further require a *compelling-interest analysis* showing a connection between the government or agency and the public or private discrimination that may exist within their jurisdiction. Following documentation of disparities that exist in the public sector in **Chapter 5**, this chapter focuses on an over-arching question:

- ◆ ***Do private sector disparities exist in the private sector which compel the County to continue its M/WBE programs to avoid becoming a passive participant in discrimination?***

*Passive* discrimination describes a circumstance where a public entity resides in a market with measurably disparate circumstances in the private sector but is failing to take proactive actions to implement remedies within the domain of its control. Substantiating the relevance of an analysis of the private sector:

- ◆ Defining passive participation, the Supreme Court in *Croson* stated, “if the city could show that it had essentially become a ‘passive participant’ in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the city could take affirmative steps to dismantle such a system.”<sup>197</sup> This does not mean that the public entity is continuously turning a blind eye to discrimination but rather that the public entity has a compelling interest to mitigate private sector discrimination or risk becoming a passive participant to discrimination.
- ◆ Also stated in *Croson* is that “it is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that *public* dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of *private* prejudice.”<sup>198</sup>
- ◆ *Croson* further provided that the government “can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment.”<sup>199</sup>
- ◆ In *Concrete Works IV*, the courts expressly cited as evidence of discrimination that M/WBE contractors used for business with the city of Denver were not used by the same prime contractors for private sector contracts.<sup>200</sup>

### CHAPTER SECTIONS



- 6.1 Introduction
- 6.2 Private Sector Disparities in SBO Census Data
- 6.3 Analysis of Race, Ethnicity, and Gender Effects on Self-Employment Rates
- 6.4 Conclusion

<sup>197</sup> *Croson*, 488 U.S. at 492.

<sup>198</sup> *Coral Construction*, 941 F.2d at 922 (citing *Croson*, 488 U.S. at 492) (emphasis added).

<sup>199</sup> See *Croson*; see generally I. Ayres and F. Vars, “When Does Private Discrimination Justify Public Affirmative Action?” 98 *Columbia Law Review* 1577 (1998).

<sup>200</sup> *Concrete Works IV*, 321 F.3d at 984-85.

- ♦ In *Adarand v. Slater*, the Tenth Circuit favorably cited evidence of capital market discrimination as relevant in establishing the factual predicate for the federal DBE program.<sup>201</sup> The same court, in *Concrete Works IV*, found that barriers to business formation were relevant insofar as this evidence demonstrated that M/WBEs were “precluded from the outset from competing for public construction contracts.”<sup>202</sup>
- ♦ Also, in *Adarand*, the courts concluded there was a compelling interest for a government Disadvantaged Business Enterprise (DBE) program based primarily on evidence of private sector discrimination.<sup>203</sup>
- ♦ Along related lines, the court also found a regression analysis of census data to be relevant evidence showing barriers to M/WBE formation.<sup>204</sup>
- ♦ A district court upheld the state of North Carolina M/WBE program in road construction based largely on similar private sector evidence supplemented by evidence from databases covering private sector commercial construction.<sup>205</sup>

Thus, discriminatory practices in the market area may, in many circumstances, show or serve to support the *compelling interest* required by courts to support an agency’s program to intervene in order to prevent the agency from becoming a *passive participant* to discrimination.

With these decisions supporting investigation into this domain, as part of the development of a comprehensive framework and set of perspectives that have traditionally been used to justify M/WBE programs, this chapter provides an accumulation of evidence for the overarching question of whether or not ‘the County has continued compelling interest to maintain its M/WBE programs based on circumstances observed in the private sector. This is investigated using two specific sources of data leveraged to address three specific questions substantiating the over-arching research question regarding disparities in the private sector:

- ♦ **Prince George’s County, MD (County), construction permits data:**
  1. *Do disparities exist in utilization of M/WBE firms for commercial private sector construction projects relative to their availability?*
- ♦ **2012 Census Survey of Business Owners (SBO) data:**
  2. *Do marketplace disparities exist in the private sector within the five procurement categories?*
- ♦ **2015 Census American Community Survey (ACS) Public Used Microdata Sample (PUMS) data:**
  3. *Are racial, ethnic, and gender minority groups less likely than nonminority males (non-M/WBEs) to be self-employed?*

<sup>201</sup> *Adarand v. Slater*, 228 F.3d at 1169-70 (10<sup>th</sup> Cir. 2000).

<sup>202</sup> *Concrete Works IV*, 321 F.2d at 977. The district court rejected evidence of credit market discrimination as adequate to provide a factual predicate for an M/WBE program. *Concrete Works v. City and County of Denver*, 86 F. Supp. 2d 1042 (D. Colo. 2000) (*Concrete Works I*).

<sup>203</sup> *Adarand v. Slater*, 228 F.3d 1147 (10<sup>th</sup> Cir. 2000).

<sup>204</sup> *Id.* at 977.

<sup>205</sup> *H.B. Rowe, Inc. v. Tippet*, 589 F.Supp. 2d 587 (ED NC 2008). The court, however, was very brief in discussing what factors in the study accounted for its ruling. The program was subsequently found to be unconstitutional as applied to women. *H.B. Rowe, Inc. v. Tippet*, 615 F.3d 233 (4<sup>th</sup> Cir. 2010).

4. *Does racial, ethnic, and gender status have an impact on self-employed individuals' earnings?*

In answering these questions, the private sector analysis also supports anecdotal comments offered in **Chapter 7, Anecdotal Analysis**, regarding difficulties M/WBE firms have in securing work on private sector projects.

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## 6.2 PRIVATE SECTOR UTILIZATION ANALYSIS BASED ON CONSTRUCTION PERMITS

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To help answer the over-arching research question regarding the existence of disparities in the private sector, as well as the specific question, *1. Do disparities exist in utilization of M/WBE firms for commercial private sector construction projects relative to their availability?*, construction permits issued by the County were analyzed. The value in examining permits is that they offer up-to-date records of actual construction activity undertaken in the area.

In order to isolate only commercial construction projects as the focus of analysis, public sector and residential permit records, where identified, were excluded. Additionally, to distinguish between primes and subs, MGT assigned general contractors as primes and all others as subs. Since the private sector permits data did not contain the contractor's race, ethnic, or gender information, MGT assigned business ownership classification using various vendor lists obtained from all registration and certification agencies in order to conduct a vendor match procedure. This vendor match procedure allowed MGT to assign business ownership classification to firms presented in the permit data. In order to achieve the greatest number of potential match combinations, in addition to electronically linking the various lists to the permits data, a manual match was also conducted. Firms identified as nonminority male, and firms for which there was no business ownership classification, were considered to be non-M/WBE firms and counted as non-M/WBE firms in the analysis conducted for this Study.

For the procurement category analysis, findings reported in this chapter deal only with private sector construction for two reasons: (1) permit data, by its nature, pertains only to construction activities, which is also the category for which data tends to be most extensive and reliable, and (2) courts have historically scrutinized construction activity in a given jurisdiction more than any other procurement category because, in both public and private sector business activity, it tends to be the most financially lucrative in terms of its impact on a local economy.

A total of \$553.367 million in prime contractor construction permits issued by the County during the study period (July 1, 2010, through June 30, 2018) were analyzed as part of this investigation. **Table 6-1** shows that 3.10 percent of the prime permits were let to M/WBEs, with highest M/WBE utilization observed for African American firms (1.79%) followed by Hispanic American firms (0.62%).



TABLE 6-1. UTILIZATION ANALYSIS OF FIRMS COMMERCIAL CONSTRUCTION

BUSINESS OWNERSHIP CLASSIFICATION	PRIME PERMITS	PERCENT OF PRIME PERMITS
AFRICAN AMERICAN FIRMS	\$ 9,915,840.00	1.79%
ASIAN AMERICAN FIRMS	\$ 1,017,200.00	0.18%
HISPANIC AMERICAN FIRMS	\$ 3,416,510.00	0.62%
NATIVE AMERICAN FIRMS	\$ 0.00	0.00%
<b>TOTAL MINORITY FIRMS</b>	<b>\$ 14,349,550.00</b>	<b>2.59%</b>
NONMINORITY FEMALE FIRMS	\$ 2,783,828.00	0.50%
<b>TOTAL M/WBE FIRMS</b>	<b>\$ 17,133,378.00</b>	<b>3.10%</b>
TOTAL NON-M/WBE	\$ 536,234,578.45	96.90%
<b>TOTAL FIRMS</b>	<b>\$ 553,367,956.45</b>	<b>100.00%</b>

Source: MGT developed a Master Commercial Private Sector Database based on commercial construction permitting data between July 1, 2010, and June 30, 2018.

With this point of reference established, MGT utilized two data sets to compare relative utilization of firms and gauge the scale of any differences. The first of these comparison data sets contained a listing of permits issued to contractors which appeared in both the permits and County public sector construction data, while the second data set contained firms utilized on County public sector construction projects during the study period.

TABLE 6-2. UTILIZATION ANALYSIS OF FIRMS  
COMMERCIAL CONSTRUCTION – PRIME ONLY

BUSINESS OWNERSHIP CLASSIFICATION	PERMITS ISSUED TO CONTRACTORS	PERCENT OF PERMITS	PUBLIC SECTOR UTILIZATION	PERCENT OF CONTRACTS
AFRICAN AMERICAN FIRMS	\$ 9,915,840.00	1.79%	\$ 38,988,253.54	7.58%
ASIAN AMERICAN FIRMS	\$ 1,017,200.00	0.18%	\$ 9,221,973.06	1.79%
HISPANIC AMERICAN FIRMS	\$ 3,416,510.00	0.62%	\$ 131,209,347.65	25.51%
NATIVE AMERICAN FIRMS	\$ 0.00	0.00%	\$ 0.00	0.00%
<b>TOTAL MINORITY FIRMS</b>	<b>\$ 14,349,550.00</b>	<b>2.59%</b>	<b>\$ 179,419,574.25</b>	<b>34.88%</b>
NONMINORITY FEMALE FIRMS	\$ 2,783,828.00	0.50%	\$ 5,812,313.08	1.13%
<b>TOTAL M/WBE FIRMS</b>	<b>\$ 17,133,378.00</b>	<b>3.10%</b>	<b>\$ 85,231,887.33</b>	<b>36.01%</b>
TOTAL NON-M/WBE FIRMS	\$ 536,234,578.45	96.90%	\$ 329,117,988.66	63.99%
<b>TOTAL FIRMS</b>	<b>\$ 553,367,956.45</b>	<b>100.00%</b>	<b>\$ 514,349,875.99</b>	<b>7.58%</b>

Source: MGT developed a Master Commercial Private Sector Database based on commercial construction permitting data between July 1, 2010, and June 30, 2018.

The goal of this analysis was to examine public sector and private sector contracting patterns for construction. MGT compared the public sector utilization of firms in County-issued data with private sector utilization of such firms, as reflected in the private commercial permit data, to analyze to what extent utilized contractors which appear in the County data also appear in the permitting data for commercial construction projects.

When the permit results are compared to the County utilization results, the County utilizes M/WBEs at lower rates than the commercial sector for prime contractors. From **Table 6-2**, the County M/WBEs accounted for 36.01 percent of the number of prime construction contracts, while M/WBEs accounted for 3.10 percent of the number of prime construction permits. Specifically, MBEs accounted for only 34.88 percent of prime construction contracts, while MBEs accounted for 2.59 percent of construction permits; and WBEs accounted for 1.13 percent of construction contracts, while WBEs accounted for 0.50 percent of construction permits.

While not definitive in isolation, the data does clearly show a pronounced difference in utilization of M/WBE firms within the private sector versus what we observed for the public sector, where program goals do not facilitate more equitable participation. Combining this perspective with others (such as the public sector disparity ratios presented in **Chapter 5** and vendor survey results and anecdotal evidence to be presented in **Chapter 7**), we see a prevailing theme in a pattern of cumulatively overwhelming evidence that disparities in contracting are fairly pervasive in this market.

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### 6.3 PRIVATE SECTOR DISPARITIES IN SBO CENSUS DATA

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To answer the over-arching research question regarding the existence of disparities in the private sector, as well as the specific question (1) of whether these disparities exist in procurement categories relevant to the County's contracting domain, MGT obtained and analyzed U.S. Census Bureau's 2012 Survey of Business Owners (SBO) data to measure private sector disparities.<sup>206</sup> SBO provides data on economic and demographic characteristics for businesses and business owners by geography (such as states and metropolitan areas), categorized by industries defined by North American Industry Classification System (NAICS) codes, and supporting information including firm receipts (sales),<sup>207</sup> firm employment size, and business ownership classification. The survey has been administered every five years since 1972 as part of the economic census.

The SBO gathers and reports data on (1) firms with paid employees, including workers on the payroll (employer firms), and (2) firms without paid employees, including sole proprietors and partners of unincorporated businesses that do not have any other employees on the payroll (non-employer firms), as well as (3) an aggregate across all firms. MGT calculated private sector disparity indices to examine whether M/WBE firms in any of these categories received a proportionate share of firm sales based on the availability of M/WBE firms, measured consistently with public sector availability presented in **Chapter 5**, as the number of classified firms divided by the total universe. Disparity indices were examined for all firms and employer firms.

The following NAICS codes<sup>208</sup> were analyzed because they align with the categories of utilization analyzed for the County:

- ◆ NAICS Code 23, Construction

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<sup>206</sup> These represent the most recent available data provided through the SBO program and were released in 2016.

<sup>207</sup> Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>208</sup> The two-digit NAICS code level was utilized as those codes are the most prevalent level across all the 2012 SBO data.

- ◆ NAICS Code 42, Wholesale Trade
- ◆ NAICS Code 54, Professional, Scientific, and Technical Services
- ◆ NAICS Code 56, Administrative and Support and Waste Management and Remediation Services
- ◆ NAICS Code 81, Other Services (Except Public Administration)

### 6.3.1 RESULTS OF ANALYSIS

This private sector analysis presents disparity results based on the following geographic market areas: (1) the Washington-Arlington-Alexandria, DC-VA-MD-WV Metro Statistical Area (MSA) and (2) the Prince George's County, MD, Relevant Market Area, which contains Prince George's County in addition to the following: District of Columbia, Fairfax City, Fairfax County, and Montgomery County. These market areas were chosen because 'data for those areas are readily available in the SBO that allow for similar comparison to the public-sector utilization. The results are based on the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA and (2) the Prince George's County, MD, Relevant Market Area.

#### WASHINGTON-ARLINGTON-ALEXANDRIA, DC-VA-MD-WV MSA

**Tables 6-3** through **6-7** show the measures of private sector disparities based on U.S. Census, 2012 SBO data for the population of available firms in the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA by race, ethnicity, and gender for construction; wholesale trade; professional, scientific, and technical services; administrative and support and waste management and remediation services; and other services (except public administration).

Based on the analysis of the U.S. Census, 2012 SBO data, overall there remains a significant gap between the market share of M/WBE firms and their share of the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA business population, where data were available.

#### NAICS CODE 23: CONSTRUCTION, WASHINGTON-ARLINGTON-ALEXANDRIA, DC-VA-MD-WV MSA

**Table 6-3** shows the availability, sales, and disparity results for construction. The results were derived from those firms which provide construction or construction-related services based on the NAICS Code 23.

There was a total of 54,854 construction firms (all firms<sup>209</sup>) in the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA in 2012, of which 51.69 percent were owned by minorities and 17.57 percent by nonminority women.

- ◆ African American-owned firms (disparity index of 18.57) were substantially underutilized, accounting for 11.24 percent of all firms and 2.09 percent of sales.
- ◆ Native American-owned firms (disparity index of 37.09) were substantially underutilized, accounting for 0.91 percent of all firms and 0.34 percent of sales.
- ◆ Asian American-owned firms (disparity index of 31.09) were substantially underutilized, accounting for 6.75 percent of all firms and 2.10 percent of sales.

<sup>209</sup> All firms, a compilation of employer firms and non-employer firms, were examined since non-employer firms can provide services at the subcontractor/subconsultant level, as well hire independent contractors to increase capacity.

- ◆ Hispanic American-owned firms (disparity index of 15.77) were substantially underutilized, accounting for 32.79 percent of all firms and 5.17 percent of sales.
- ◆ Nonminority Women-owned firms (disparity index of 46.68) were substantially underutilized, accounting for 17.57 percent of all firms and 8.20 percent of sales.

There was a total of 11,679 construction employer firms<sup>210</sup> in the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA in 2012, of which 24.43 percent were owned by minorities and 21.82 percent by nonminority women.

- ◆ African American-owned firms (disparity index of 40.54) were substantially underutilized, accounting for 4.51 percent of all firms and 1.83 percent of sales.
- ◆ Native American-owned firms (disparity index of 34.73) were substantially underutilized, accounting for 0.94 percent of all firms and 0.33 percent of sales.
- ◆ Asian American-owned firms (disparity index of 33.55) were substantially underutilized, accounting for 5.72 percent of all firms and 1.92 percent of sales.
- ◆ Hispanic American-owned firms (disparity index of 29.09) were substantially underutilized, accounting for 13.25 percent of all firms and 3.86 percent of sales.
- ◆ Nonminority Women-owned firms (disparity index of 36.57) were underutilized, accounting for 21.82 percent of all firms and 7.98 percent of sales.

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<sup>210</sup> Employer firms include firms with payroll at any time during 2012.

**TABLE 6-3.**  
**PRIVATE SECTOR CENSUS DISPARITIES**  
**NAICS CODE 23, CONSTRUCTION**  
**U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,**  
**WASHINGTON-ARLINGTON-ALEXANDRIA, DC-VA-MD-WV MSA**

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS (#)	ALL FIRMS, SALES (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	54,854	\$45,973,813	11,679	\$43,715,742
African American Firms	6,166	\$959,658	527	\$799,791
Native American Firms <sup>1</sup>	501	\$155,745	110	\$142,978
Asian American Firms <sup>2</sup>	3,703	\$965,003	668	\$838,856
Hispanic American Firms	17,984	\$2,377,593	1,548	\$1,685,646
Nonminority Women firms <sup>3</sup>	9,640	3,771,179	2,548	3,487,938
<b>PERCENTAGE OF MARKET AREA</b>				
All Firms	100.00%	100.00%	100.00%	100.00%
African American Firms	11.24%	2.09%	4.51%	1.83%
Native American Firms <sup>1</sup>	0.91%	0.34%	0.94%	0.33%
Asian American Firms <sup>2</sup>	6.75%	2.10%	5.72%	1.92%
Hispanic American Firms	32.79%	5.17%	13.25%	3.86%
Nonminority Women firms <sup>3</sup>	17.57%	8.20%	21.82%	7.98%
<b>DISPARITY INDEX</b>				
		ALL FIRMS		EMPLOYER FIRMS
All Firms		100.00		100.00
African American Firms		18.57		40.54
Native American Firms <sup>1</sup>		37.09		34.73
Asian American Firms <sup>2</sup>		31.09		33.55
Hispanic American Firms		15.77		29.09
Nonminority Women firms <sup>3</sup>		46.68		36.57

Source: MGT of America, Inc. conducted private sector disparities Market Area analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup> Native American consists of American Indian- and Alaska Native-owned firms.

<sup>2</sup> Asian American consists of Asian-owned and Native Hawaiian- and Other Pacific Islander-owned firms.

<sup>3</sup> Nonminority Women consists of Women-owned and Equally Women-/Male-owned firms.

<sup>4</sup> S denotes findings were withheld as the estimates did not meet U.S. Census publication standards.

Sales includes total shipments, receipts, revenue, or business done by the firm.

Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

**NAICS CODE 42: WHOLESALE TRADE, WASHINGTON-ARLINGTON-ALEXANDRIA, DC-VA-MD-WV MSA**

**Table 6-4** shows the availability, sales, and disparity results for wholesale trade firms. The results were derived from those firms which sell capital or durable goods to other businesses based on NAICS Code 42.

There was a total of 7,924 wholesale trade firms (all firms) in the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA in 2012, of which 33.06 percent were owned by minorities and 32.71 percent by nonminority women.

- ♦ African American-owned firms (disparity index of 18.54) were substantially underutilized, accounting for 13.31 percent of all firms and 2.47 percent of sales.
- ♦ Data for Native American-owned firms were withheld; therefore, private sector disparities were not conducted.
- ♦ Asian American-owned firms (disparity index of 13.41) were substantially underutilized, accounting for 13.69 percent of all firms and 1.84 percent of sales.
- ♦ Hispanic American-owned firms (disparity index of 29.90) were substantially underutilized, accounting for 5.54 percent of all firms and 1.66 percent of sales.
- ♦ Nonminority Women-owned firms (disparity index of 21.39) were substantially underutilized, accounting for 32.71 percent of all firms and 7.00 percent of sales.

There was a total of 3,571 wholesale trade employer firms in the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA in 2012, of which 18.76 percent were owned by minorities and close to 26.66 percent by nonminority women.

- ♦ African American-owned firms (disparity index of 71.52) were substantially underutilized, accounting for 3.42 percent of all firms and 2.44 percent of sales.
- ♦ Data for Native American-owned firms were withheld; therefore, private sector disparities were not conducted.
- ♦ Asian American-owned firms (disparity index of 13.99) were substantially underutilized, accounting for 12.57 percent of all firms and 1.76 percent of sales.
- ♦ Hispanic American-owned firms (disparity index of 64.40) were substantially underutilized, accounting for 2.55 percent of all firms and 1.64 percent of sales.
- ♦ Nonminority Women-owned firms (disparity index of 26.05) were substantially underutilized, accounting for 26.66 percent of all firms and 6.94 percent of sales.

**TABLE 6-4.**  
**PRIVATE SECTOR CENSUS DISPARITIES**  
**NAICS CODE 42, WHOLESALE TRADE**  
**U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,**  
**WASHINGTON-ARLINGTON-ALEXANDRIA, DC-VA-MD-WV MSA**

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS (#)	ALL FIRMS, SALES (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	7,924	\$75,386,914	3,571	\$74,752,330
African American Firms	1,055	\$1,861,293	122	\$1,826,425
Native American Firms <sup>1</sup>	41	S	8	S
Asian American Firms <sup>2</sup>	1,085	\$1,384,536	449	\$1,315,073
Hispanic American Firms	439	\$1,248,951	91	\$1,226,744
Nonminority Women firms <sup>3</sup>	2,592	5,275,016	952	5,190,712
<b>PERCENTAGE OF MARKET AREA</b>				
All Firms	100.00%	100.00%	100.00%	100.00%
African American Firms	13.31%	2.47%	3.42%	2.44%
Native American Firms <sup>1</sup>	0.52%	S	0.22%	S
Asian American Firms <sup>2</sup>	13.69%	1.84%	12.57%	1.76%
Hispanic American Firms	5.54%	1.66%	2.55%	1.64%
Nonminority Women firms <sup>3</sup>	32.71%	7.00%	26.66%	6.94%
<b>DISPARITY INDEX</b>				
		ALL FIRMS		EMPLOYER FIRMS
All Firms		100.00		100.00
African American Firms		18.54		71.52
Native American Firms <sup>1</sup>		S		S
Asian American Firms <sup>2</sup>		13.41		13.99
Hispanic American Firms		29.90		64.40
Nonminority Women firms <sup>3</sup>		21.39		26.05

Source: MGT of America, Inc. conducted private sector disparities Market Area analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup> Native American consists of American Indian- and Alaska Native-owned firms.

<sup>2</sup> Asian American consists of Asian-owned and Native Hawaiian- and Other Pacific Islander-owned firms.

<sup>3</sup> Nonminority Women consists of Women-owned and Equally Women-/Male-owned firms.

Sales includes total shipments, receipts, revenue, or business done by the firm.

Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

### **NAICS CODE 54: PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES, WASHINGTON-ARLINGTON-ALEXANDRIA, DC-VA-MD-WV MSA**

**Table 6-5** shows the availability, sales, and disparity results for professional, scientific, and technical services. Professional, scientific, and technical services, which require a high degree of expertise and training, were derived from those firms specializing in performing professional, scientific, and technical activities (such as legal advice, accounting, architecture, engineering, computer services, consulting services, advertising services) for others in NAICS Code 54.

There was a total of 123,327 professional, scientific, and technical services firms (all firms) in the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA in 2012, of which 32.00 percent were owned by minorities and 42.13 percent by nonminority women.

- ◆ African American-owned firms (disparity index of 16.94) were substantially underutilized, accounting for 14.16 percent of all firms and 2.40 percent of sales.
- ◆ Native American-owned firms (disparity index of 29.63) were substantially underutilized, accounting for 0.59 percent of all firms and 0.17 percent of sales.
- ◆ Asian American-owned firms (disparity index of 56.80) were substantially underutilized, accounting for 11.84 percent of all firms and 6.73 percent of sales.
- ◆ Hispanic American-owned firms (disparity index of 32.42) were substantially underutilized, accounting for 5.41 percent of all firms and 1.76 percent of sales.
- ◆ Nonminority Women-owned firms (disparity index of 22.65) were substantially underutilized, accounting for 42.13 percent of all firms and 9.54 percent of sales.

There was a total of 26,176 professional, scientific, and technical services employer firms in the State of Maryland Washington-Arlington-Alexandria, DC-VA-MD-WV MSA in 2012, of which 26.21 percent were owned by minorities and 30.96 percent by nonminority women.

- ◆ African American-owned firms (disparity index of 33.88) were substantially underutilized, accounting for 6.32 percent of all firms and 2.14 percent of sales.
- ◆ Native American-owned firms (disparity index of 43.55) were substantially underutilized, accounting for 0.26 percent of all firms and 0.15 percent of sales.
- ◆ Asian American-owned firms (disparity index of 40.56) were substantially underutilized, accounting for 16.41 percent of all firms and 6.66 percent of sales.
- ◆ Hispanic American-owned firms (disparity index of 52.95) were substantially underutilized, accounting for 3.13 percent of all firms and 1.66 percent of sales.
- ◆ Nonminority Women-owned firms (disparity index of 27.46) were substantially underutilized, accounting for 30.96 percent of all firms and 8.50 percent of sales.



**TABLE 6-5.**  
**PRIVATE SECTOR CENSUS DISPARITIES**  
**NAICS CODE 54, PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES**  
**U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,**  
**WASHINGTON-ARLINGTON-ALEXANDRIA, DC-VA-MD-WV MSA**

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS (#)	ALL FIRMS, SALES (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	123,327	\$135,932,663	26,176	\$130,602,522
African American Firms	17,458	\$3,258,974	1,654	\$2,796,161
Native American Firms <sup>1</sup>	723	\$236,092	93	\$202,083
Asian American Firms <sup>2</sup>	14,606	\$9,143,894	4,296	\$8,693,919
Hispanic American Firms	6,677	\$2,385,861	819	\$2,163,513
Nonminority Women firms <sup>3</sup>	51,957	12,971,796	8,105	11,104,492
PERCENTAGE OF MARKET AREA				
All Firms	100.00%	100.00%	100.00%	100.00%
African American Firms	14.16%	2.40%	6.32%	2.14%
Native American Firms <sup>1</sup>	0.59%	0.17%	0.36%	0.15%
Asian American Firms <sup>2</sup>	11.84%	6.73%	16.41%	6.66%
Hispanic American Firms	5.41%	1.76%	3.13%	1.66%
Nonminority Women firms <sup>3</sup>	42.13%	9.54%	30.96%	8.50%
DISPARITY INDEX				
		ALL FIRMS		EMPLOYER FIRMS
All Firms		100.00		100.00
African American Firms		16.94		33.88
Native American Firms <sup>1</sup>		29.63		43.55
Asian American Firms <sup>2</sup>		56.80		40.56
Hispanic American Firms		32.42		52.95
Nonminority Women firms <sup>3</sup>		22.65		27.46

Source: MGT of America, Inc. conducted private sector disparities Market Area analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup> Native American consists of American Indian- and Alaska Native-owned firms.

<sup>2</sup> Asian American consists of Asian-owned and Native Hawaiian- and Other Pacific Islander-owned firms.

<sup>3</sup> Nonminority Women consists of Women-owned and Equally Women-/Male-owned firms.

<sup>4</sup>S denotes findings were withheld as the estimates did not meet U.S. Census publication standards.

Sales includes total shipments, receipts, revenue, or business done by the firm.

Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

### **NAICS CODE 56: ADMINISTRATIVE AND SUPPORT AND WASTE MANAGEMENT AND REMEDIATION SERVICES, WASHINGTON-ARLINGTON-ALEXANDRIA, DC-VA-MD-WV MSA**

**Table 6-6** shows the availability, sales, and disparity results for administrative and support and waste management and remediation services (such as office administration, hiring and placing of personnel, document preparation and similar clerical services, solicitation, collection, security and surveillance services, cleaning, and waste disposal services) in NAICS Code 56.

There was a total of 46,433 administrative and support and waste management and remediation services firms (all firms) in the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA in 2012, of which 59.99 percent were owned by minorities and 53.71 percent by nonminority women.

- ◆ African American-owned firms (disparity index of 23.75) were substantially underutilized, accounting for 22.88 percent of all firms and 5.43 percent of sales.
- ◆ Data for Native American-owned firms were withheld; therefore, private sector disparities were not conducted.
- ◆ Asian American-owned firms (disparity index of 38.81) were substantially underutilized, accounting for 7.75 percent of all firms and 3.01 percent of sales.
- ◆ Hispanic American-owned firms (disparity index of 18.49) were substantially underutilized, accounting for 28.33 percent of all firms and 5.24 percent of sales.
- ◆ Nonminority Women-owned firms (disparity index of 31.39) were substantially underutilized, accounting for 53.71 percent of all firms and 16.86 percent of sales.

There was a total of 7,403 administrative and support and waste management and remediation services employer firms in the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA in 2012, of which 27.64 percent were owned by minorities and 32.30 percent by nonminority women.

- ◆ African American-owned firms (disparity index of 50.63) were substantially underutilized, accounting for 9.93 percent of all firms and 5.03 percent of sales.
- ◆ Data for Native American-owned firms were withheld; therefore, private sector disparities were not conducted.
- ◆ Asian American-owned firms (disparity index of 46.55) were substantially underutilized, accounting for 5.97 percent of all firms and 2.78 percent of sales.
- ◆ Hispanic American-owned firms (disparity index of 39.84) were substantially underutilized, accounting for 11.27 percent of all firms and 4.49 percent of sales.
- ◆ Nonminority Women-owned firms (disparity index of 48.44) were substantially underutilized, accounting for 32.30 percent of all firms and 15.65 percent of sales.

**TABLE 6-6.**  
**PRIVATE SECTOR CENSUS DISPARITIES**  
**NAICS CODE 56**  
**ADMINISTRATIVE AND SUPPORT/WASTE MANAGEMENT AND REMEDIATION SERVICES**  
**U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,**  
**WASHINGTON-ARLINGTON-ALEXANDRIA, DC-VA-MD-WV MSA**

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS (#)	ALL FIRMS, SALES (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	46,433	\$22,859,686	7,403	\$21,993,223
African American Firms	10,623	\$1,242,009	735	\$1,105,561
Native American Firms <sup>1</sup>	479	S	35	S
Asian American Firms <sup>2</sup>	3,600	\$687,814	442	\$611,311
Hispanic American Firms	13,153	\$1,197,557	834	\$987,128
Nonminority Women firms <sup>3</sup>	24,941	3,853,924	2,391	3,440,899
<b>PERCENTAGE OF MARKET AREA</b>				
All Firms	100.00%	100.00%	100.00%	100.00%
African American Firms	22.88%	5.43%	9.93%	5.03%
Native American Firms <sup>1</sup>	1.03%	S	0.47%	S
Asian American Firms <sup>2</sup>	7.75%	3.01%	5.97%	2.78%
Hispanic American Firms	28.33%	5.24%	11.27%	4.49%
Nonminority Women firms <sup>3</sup>	53.71%	16.86%	32.30%	15.65%
<b>DISPARITY INDEX</b>				
		ALL FIRMS		EMPLOYER FIRMS
All Firms		100.00		100.00
African American Firms		23.75		50.63
Native American Firms <sup>1</sup>		S		S
Asian American Firms <sup>2</sup>		38.81		46.55
Hispanic American Firms		18.49		39.84
Nonminority Women firms <sup>3</sup>		31.39		48.44

Source: MGT of America, Inc. conducted private sector disparities Market Area analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup> Native American consists of American Indian- and Alaska Native-owned firms.

<sup>2</sup> Asian American consists of Asian-owned and Native Hawaiian- and Other Pacific Islander-owned firms.

<sup>3</sup> Nonminority Women consists of Women-owned and Equally Women-/Male-owned firms.

<sup>4</sup> S denotes findings were withheld as the estimates did not meet U.S. Census publication standards.

Sales includes total shipments, receipts, revenue, or business done by the firm.

Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

### NAICS CODE 81: OTHER SERVICES (EXCEPT PUBLIC ADMINISTRATION), STATE MARKET AREA

**Table 6-7** shows the availability, sales, and disparity results for other services (except Public Administration) firms in NAICS Code 81. Firms in this sector primarily engage in equipment and machinery repairing, automotive repair services, electronic and precision equipment repair and maintenance services, providing laundry services, personal care services, and photofinishing services.

There was a total of 61,853 other services (except Public Administration) firms (all firms) in the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA in 2012, of which 64.26 percent were owned by minorities and 59.92 percent by nonminority women.

- ◆ African American-owned firms (disparity index of 24.20) were substantially underutilized, accounting for 28.56 percent of all firms and 6.91 percent of sales.
- ◆ Data for Native American-owned firms were withheld; therefore, private sector disparities were not conducted.
- ◆ Asian American-owned firms (disparity index of 73.37) were substantially underutilized, accounting for 21.93 percent of all firms and 16.09 percent of sales.
- ◆ Hispanic American-owned firms (disparity index of 39.94) were substantially underutilized, accounting for 12.87 percent of all firms and 5.14 percent of sales.
- ◆ Nonminority Women-owned firms (disparity index of 51.36) were substantially underutilized, accounting for 59.92 percent of all firms and 30.78 percent of sales.

There was a total of 6,736 administrative and support and waste management and remediation services employer firms in the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA in 2012, of which 39.07 percent were owned by minorities and 46.29 percent by nonminority women.

- ◆ African American-owned firms (disparity index of 52.47) were substantially underutilized, accounting for 5.75 percent of all firms and 3.01 percent of sales.
- ◆ Data for Native American-owned firms were withheld; therefore, private sector disparities were not conducted.
- ◆ Asian American-owned firms (disparity index of 47.67) were substantially underutilized, accounting for 27.73 percent of all firms and 13.22 percent of sales.
- ◆ Hispanic American-owned firms (disparity index of 52.39) were substantially underutilized, accounting for 5.12 percent of all firms and 2.68 percent of sales.
- ◆ Nonminority Women-owned firms (disparity index of 53.25) were substantially underutilized, accounting for 46.29 percent of all firms and 24.65 percent of sales.

**TABLE 6-7.**  
**PRIVATE SECTOR CENSUS DISPARITIES**  
**NAICS CODE 81, OTHER SERVICES (EXCEPT PUBLIC ADMINISTRATION)**  
**U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,**  
**WASHINGTON-ARLINGTON-ALEXANDRIA, DC-VA-MD-WV MSA**

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS (#)	ALL FIRMS, SALES (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	61,853	\$6,503,226	6,736	\$5,055,834
African American Firms	17,664	\$449,528	387	\$152,402
Native American Firms <sup>1</sup>	560	S	32	S
Asian American Firms <sup>2</sup>	13,564	\$1,046,342	1,868	\$668,327
Hispanic American Firms	7,959	\$334,181	345	\$135,657
Nonminority Women firms <sup>3</sup>	37,062	2,001,528	3,118	1,246,255
PERCENTAGE OF MARKET AREA				
All Firms	100.00%	100.00%	100.00%	100.00%
African American Firms	28.56%	6.91%	5.75%	3.01%
Native American Firms <sup>1</sup>	0.91%	0.00%	0.48%	S
Asian American Firms <sup>2</sup>	21.93%	16.09%	27.73%	13.22%
Hispanic American Firms	12.87%	5.14%	5.12%	2.68%
Nonminority Women firms <sup>3</sup>	59.92%	30.78%	46.29%	24.65%
DISPARITY INDEX				
		ALL FIRMS		EMPLOYER FIRMS
All Firms		100.00		100.00
African American Firms		24.20		52.47
Native American Firms <sup>1</sup>		S		S
Asian American Firms <sup>2</sup>		73.37		47.67
Hispanic American Firms		39.94		52.39
Nonminority Women firms <sup>3</sup>		51.36		53.25

Source: MGT of America, Inc. conducted private sector disparities Market Area analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup> Native American consists of American Indian- and Alaska Native-owned firms.

<sup>2</sup> Asian American consists of Asian-owned and Native Hawaiian- and Other Pacific Islander-owned firms.

<sup>3</sup> Nonminority Women consists of Women-owned and Equally Women-/Male-owned firms.

S denotes findings were withheld as the estimates did not meet U.S. Census publication standards.

Sales includes total shipments, receipts, revenue, or business done by the firm.

Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

## PRINCE GEORGE'S COUNTY, MD, RELEVANT MARKET AREA<sup>211</sup>

**Tables 6-8** through **6-12** show the measures of private sector disparities based on U.S. Census, 2012 SBO data for the population of available firms in the Prince George's County, MD, Market Area by race, ethnicity, and gender for construction; wholesale trade; professional, scientific, and technical services; administrative and support and waste management and remediation services; and other services (except public administration).

Based on the analysis of the U.S. Census, 2012 SBO data, overall there remains a significant gap between the market share of M/WBE firms and their share of the Prince George's County, MD, Market Area business population, where data was available.

### NAICS CODE 23: CONSTRUCTION, PRINCE GEORGE'S COUNTY, MD, MARKET AREA

**Table 6-8** shows the availability, sales, and disparity results for construction (NAICS Code 23). There was a total of 30,873 construction firms (all firms<sup>212</sup>) in the Prince George's County, MD, Market Area in 2012, of which 63.39 percent were owned by minorities and 17.14 percent by nonminority women.

- ◆ African American-owned firms (disparity index of 16.66) were substantially underutilized, accounting for 15.34 percent of all firms and 2.56 percent of sales.
- ◆ Native American-owned firms (disparity index of 40.62) were substantially underutilized, accounting for 0.74 percent of all firms and 0.30 percent of sales.
- ◆ Asian American-owned firms (disparity index of 25.10) were substantially underutilized, accounting for 9.05 percent of all firms and 2.27 percent of sales.
- ◆ Hispanic American-owned firms (disparity index of 12.49) were substantially underutilized, accounting for 38.25 percent of all firms and 4.78 percent of sales.
- ◆ Nonminority Women-owned firms (disparity index of 40.44) were substantially underutilized, accounting for 17.14 percent of all firms and 6.93 percent of sales.

There was a total of 6,041 construction employer firms<sup>213</sup> in the Prince George's County, MD, Market Area in 2012, of which 30.71 percent were owned by minorities and 21.34 percent by nonminority women.

- ◆ African American-owned firms (disparity index of 35.99) were substantially underutilized, accounting for 6.24 percent of all firms and 2.25 percent of sales.
- ◆ Native American-owned firms (disparity index of 60.29) were substantially underutilized, accounting for 0.50 percent of all firms and 0.30 percent of sales.
- ◆ Asian American-owned firms (disparity index of 23.26) were substantially underutilized, accounting for 8.91 percent of all firms and 2.07 percent of sales.
- ◆ Hispanic American-owned firms (disparity index of 23.87) were substantially underutilized, accounting for 15.06 percent of all firms and 3.60 percent of sales.

<sup>211</sup> Based on all sectors (NAICS codes 00), there was a total of 380,251 firms (all firms) in the Prince George's County, MD Market Area compared to 567,153 for the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA. Therefore, the following results by NAICS code may present data (such as the number of firms, firm sales) lower than the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA.

<sup>212</sup> All firms include firms with and without payroll at any time during 2012.

<sup>213</sup> Employer firms include firms with payroll at any time during 2012.

- ◆ Nonminority Women-owned firms (disparity index of 31.56) were substantially underutilized, accounting for 21.34 percent of all firms and 6.73 percent of sales.

TABLE 6-8.  
PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 23, CONSTRUCTION  
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,  
PRINCE GEORGE'S COUNTY, MD, MARKET AREA

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS (#)	ALL FIRMS, SALES (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	30,873	\$31,676,787	6,041	\$30,417,432
African American Firms	4,736	\$809,587	377	\$683,223
Native American Firms <sup>1</sup>	230	\$95,854	30	\$91,076
Asian American Firms <sup>2</sup>	2,794	\$719,481	538	\$630,088
Hispanic American Firms	11,810	\$1,513,077	910	\$1,093,839
Nonminority Women firms <sup>3</sup>	5,293	2,196,121	1,289	2,048,423
PERCENTAGE OF MARKET AREA				
All Firms	100.00%	100.00%	100.00%	100.00%
African American Firms	15.34%	2.56%	6.24%	2.25%
Native American Firms <sup>1</sup>	0.74%	0.30%	0.50%	0.30%
Asian American Firms <sup>2</sup>	9.05%	2.27%	8.91%	2.07%
Hispanic American Firms	38.25%	4.78%	15.06%	3.60%
Nonminority Women firms <sup>3</sup>	17.14%	6.93%	21.34%	6.73%
DISPARITY INDEX				
		ALL FIRMS		EMPLOYER FIRMS
All Firms		100.00		100.00
African American Firms		16.66		35.99
Native American Firms <sup>1</sup>		40.62		60.29
Asian American Firms <sup>2</sup>		25.10		23.26
Hispanic American Firms		12.49		23.87
Nonminority Women firms <sup>3</sup>		40.44		31.56

Source: MGT of America, Inc. conducted private sector disparities Market Area analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup> Native American consists of American Indian- and Alaska Native-owned firms.

<sup>2</sup> Asian American consists of Asian-owned and Native Hawaiian- and Other Pacific Islander-owned firms.

<sup>3</sup> Nonminority Women consists of Women-owned and Equally Women-/Male-owned firms.

S denotes findings were withheld as the estimates did not meet U.S. Census publication standards.

Sales includes total shipments, receipts, revenue, or business done by the firm.

Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

**NAICS CODE 42: WHOLESALE TRADE, PRINCE GEORGE'S COUNTY, MD, MARKET AREA**

**Table 6-9** shows the availability, sales, and disparity results for wholesale trade (NAICS Code 42). There was a total of 5,487 wholesale trade firms (all firms) in the Prince George's County, MD, Market Area in 2012, of which 35.94 percent were owned by minorities and 31.93 percent by nonminority women.

- ◆ African American-owned firms (disparity index of 14.50) were substantially underutilized, accounting for 15.86 percent of all firms and 2.30 percent of sales.
- ◆ Data for Native American-owned firms were withheld; therefore, private sector disparities were not conducted.
- ◆ Asian American-owned firms (disparity index of 10.63) were substantially underutilized, accounting for 14.60 percent of all firms and 1.55 percent of sales.
- ◆ Hispanic American-owned firms (disparity index of 16.06) were substantially underutilized, accounting for 5.49 percent of all firms and 0.88 percent of sales.
- ◆ Nonminority Women-owned firms (disparity index of 17.04) were substantially underutilized, accounting for 31.93 percent of all firms and 5.44 percent of sales.

There was a total of 2,542 wholesale trade employer firms in the Prince George's County, MD, Market Area in 2012, of which 21.56 percent were owned by minorities and 25.61 percent by nonminority women.

- ◆ African American-owned firms (disparity index of 58.31) were substantially underutilized, accounting for 3.89 percent of all firms and 2.27 percent of sales.
- ◆ Data for Native American-owned firms were withheld; therefore, private sector disparities were not conducted.
- ◆ Asian American-owned firms (disparity index of 10.05) were substantially underutilized, accounting for 14.63 percent of all firms and 1.47 percent of sales.
- ◆ Hispanic American-owned firms (disparity index of 28.69) were substantially underutilized, accounting for 3.03 percent of all firms and 0.87 percent of sales.
- ◆ Nonminority Women-owned firms (disparity index of 21.07) were substantially underutilized, accounting for 25.61 percent of all firms and 5.40 percent of sales.



**TABLE 6-9.**  
**PRIVATE SECTOR CENSUS DISPARITIES**  
**NAICS CODE 42, WHOLESALE TRADE**  
**U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,**  
**PRINCE GEORGE'S COUNTY, MD, MARKET AREA**

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS (#)	ALL FIRMS, SALES (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	5,487	\$59,272,907	2,542	\$58,776,403
African American Firms	870	\$1,362,523	99	\$1,334,865
Native American Firms <sup>1</sup>	S	S	S	S
Asian American Firms <sup>2</sup>	801	\$919,912	372	\$864,226
Hispanic American Firms	301	\$522,306	77	\$510,790
Nonminority Women firms <sup>3</sup>	1,752	3,224,180	651	3,171,626
PERCENTAGE OF MARKET AREA				
All Firms	100.00%	100.00%	100.00%	100.00%
African American Firms	15.86%	2.30%	3.89%	2.27%
Native American Firms <sup>1</sup>	S	S	S	S
Asian American Firms <sup>2</sup>	14.60%	1.55%	14.63%	1.47%
Hispanic American Firms	5.49%	0.88%	3.03%	0.87%
Nonminority Women firms <sup>3</sup>	31.93%	5.44%	25.61%	5.40%
DISPARITY INDEX				
		ALL FIRMS		EMPLOYER FIRMS
All Firms		100.00		100.00
African American Firms		14.50		58.31
Native American Firms <sup>1</sup>		S		S
Asian American Firms <sup>2</sup>		10.63		10.05
Hispanic American Firms		16.06		28.69
Nonminority Women firms <sup>3</sup>		17.04		21.07

Source: MGT of America, Inc. conducted private sector disparities Market Area analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup> Native American consists of American Indian- and Alaska Native-owned firms.

<sup>2</sup> Asian American consists of Asian-owned and Native Hawaiian- and Other Pacific Islander-owned firms.

<sup>3</sup> Nonminority Women consists of Women-owned and Equally Women-/Male-owned firms.

S denotes findings were withheld as the estimates did not meet U.S. Census publication standards.

Sales includes total shipments, receipts, revenue, or business done by the firm.

Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

**NAICS CODE 54: PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES, PRINCE GEORGE'S COUNTY, MD, MARKET AREA**

**Table 6-10** shows the availability, sales, and disparity results for professional, scientific, and technical services (NAICS Code 54). There was a total of 86,231 professional, scientific and technical services firms (all firms) in the Prince George's County, MD, Market Area in 2012, of which 35.11 percent were owned by minorities and 41.70 percent by nonminority women.

- ♦ African American-owned firms (disparity index of 13.50) were substantially underutilized, accounting for 16.77 percent of all firms and 2.26 percent of sales.
- ♦ Native American-owned firms (disparity index of 32.13) were substantially underutilized, accounting for 0.53 percent of all firms and 0.17 percent of sales.
- ♦ Asian American-owned firms (disparity index of 57.69) were substantially underutilized, accounting for 12.23 percent of all firms and 7.05 percent of sales.
- ♦ Hispanic American-owned firms (disparity index of 26.30) were substantially underutilized, accounting for 5.58 percent of all firms and 1.47 percent of sales.
- ♦ Nonminority Women-owned firms (disparity index of 21.34) were substantially underutilized, accounting for 41.70 percent of all firms and 8.90 percent of sales.

There was a total of 18,647 professional, scientific and technical services employer firms in the Prince George's County, MD, Market Area in 2012, of which 27.08 percent were owned by minorities and 29.88 percent by nonminority women.

- ♦ African American-owned firms (disparity index of 27.64) were substantially underutilized, accounting for 7.16 percent of all firms and 1.98 percent of sales.
- ♦ Native American-owned firms (disparity index of 52.17) were substantially underutilized, accounting for 0.31 percent of all firms and 0.16 percent of sales.
- ♦ Asian American-owned firms (disparity index of 41.90) were substantially underutilized, accounting for 16.63 percent of all firms and 6.97 percent of sales.
- ♦ Hispanic American-owned firms (disparity index of 45.94) were substantially underutilized, accounting for 2.98 percent of all firms and 1.37 percent of sales.
- ♦ Nonminority Women-owned firms (disparity index of 26.57) were substantially underutilized, accounting for 29.88 percent of all firms and 7.94 percent of sales.

**TABLE 6-10.**  
**PRIVATE SECTOR CENSUS DISPARITIES**  
**NAICS CODE 54, PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES**  
**U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,**  
**PRINCE GEORGE'S COUNTY, MD, MARKET AREA**

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS (#)	ALL FIRMS, SALES (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	86,231	\$108,889,937	18,647	\$105,065,307
African American Firms	14,459	\$2,464,396	1,335	\$2,078,952
Native American Firms <sup>1</sup>	459	\$186,216	58	\$170,504
Asian American Firms <sup>2</sup>	10,546	\$7,682,134	3,101	\$7,320,127
Hispanic American Firms	4,810	\$1,597,648	556	\$1,439,041
Nonminority Women firms <sup>3</sup>	35,955	9,691,187	5,571	8,340,777
PERCENTAGE OF MARKET AREA				
All Firms	100.00%	100.00%	100.00%	100.00%
African American Firms	16.77%	2.26%	7.16%	1.98%
Native American Firms <sup>1</sup>	0.53%	0.17%	0.31%	0.16%
Asian American Firms <sup>2</sup>	12.23%	7.05%	16.63%	6.97%
Hispanic American Firms	5.58%	1.47%	2.98%	1.37%
Nonminority Women firms <sup>3</sup>	41.70%	8.90%	29.88%	7.94%
DISPARITY INDEX				
	ALL FIRMS		EMPLOYER FIRMS	
All Firms	100.00		100.00	
African American Firms	13.50		27.64	
Native American Firms <sup>1</sup>	32.13		52.17	
Asian American Firms <sup>2</sup>	57.69		41.90	
Hispanic American Firms	26.30		45.94	
Nonminority Women firms <sup>3</sup>	21.34		26.57	

Source: MGT of America, Inc. conducted private sector disparities Market Area analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup> Native American consists of American Indian- and Alaska Native-owned firms.

<sup>2</sup> Asian American consists of Asian-owned and Native Hawaiian- and Other Pacific Islander-owned firms.

<sup>3</sup> Nonminority Women consists of Women-owned and Equally Women-/Male-owned firms.

S denotes findings were withheld as the estimates did not meet U.S. Census publication standards.

Sales includes total shipments, receipts, revenue, or business done by the firm.

Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

**NAICS CODE 56: ADMINISTRATIVE AND SUPPORT AND WASTE MANAGEMENT AND REMEDIATION SERVICES, PRINCE GEORGE'S COUNTY, MD, MARKET AREA**

**Table 6-11** shows the availability, sales, and disparity results for administrative and support and waste management and remediation services (NAICS Code 56). There was a total 30,959 administrative and support and waste management and remediation services firms (all firms) in the Prince George's County, MD, Market Area in 2012, of which 68.17 percent were owned by minorities and 55.18 percent by nonminority women.

- ♦ African American-owned firms (disparity index of 25.83) were substantially underutilized, accounting for 3.79 percent of all firms and 2.09 percent of sales.
- ♦ Native American-owned firms (disparity index of 9.23) were substantially underutilized, accounting for 0.56 percent of all firms and 0.20 percent of sales.
- ♦ Asian American-owned firms (disparity index of 39.46) were substantially underutilized, accounting for 0.50 percent of all firms and 0.40 percent of sales.
- ♦ Hispanic American-owned firms (disparity index of 15.66) were substantially underutilized, accounting for 2.62 percent of all firms and 0.64 percent of sales.
- ♦ Nonminority Women-owned firms (disparity index of 32.18) were substantially underutilized, accounting for 7.61 percent of all firms and 5.14 percent of sales.

There was a total of 4,960 administrative and support and waste management and remediation services employer firms in the Prince George's County, MD, Market Area in 2012, of which 30.69 percent were owned by minorities and 30.89 percent by nonminority women.

- ♦ African American-owned firms (disparity index of 56.92) were substantially underutilized, accounting for 11.69 percent of all firms and 6.66 percent of sales.
- ♦ Data for Native American-owned firms were withheld; therefore, private sector disparities were not conducted.
- ♦ Asian American-owned firms (disparity index of 47.56) were substantially underutilized, accounting for 6.79 percent of all firms and 3.23 percent of sales.
- ♦ Hispanic American-owned firms (disparity index of 33.50) were substantially underutilized, accounting for 12.08 percent of all firms and 4.05 percent of sales.
- ♦ Nonminority Women-owned firms (disparity index of 53.54) were substantially underutilized, accounting for 30.89 percent of all firms and 16.54 percent of sales.

**TABLE 6-11.**  
**PRIVATE SECTOR CENSUS DISPARITIES**  
**NAICS CODE 56**  
**ADMINISTRATIVE AND SUPPORT / WASTE MANAGEMENT AND REMEDIATION SERVICES**  
**U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,**  
**PRINCE GEORGE'S COUNTY, MD, MARKET AREA**

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS (#)	ALL FIRMS, SALES (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	30,959	\$15,868,007	4,960	\$15,301,146
African American Firms	8,474	\$1,121,834	580	\$1,018,472
Native American Firms <sup>1</sup>	291	\$13,767	6	S
Asian American Firms <sup>2</sup>	2,735	\$553,111	337	\$494,490
Hispanic American Firms	9,605	\$770,936	599	\$619,004
Nonminority Women firms <sup>3</sup>	17,083	2,817,981	1,532	2,530,377
<b>PERCENTAGE OF MARKET AREA</b>				
All Firms	100.00%	100.00%	100.00%	100.00%
African American Firms	27.37%	7.07%	11.69%	6.66%
Native American Firms <sup>1</sup>	0.94%	0.09%	0.12%	S
Asian American Firms <sup>2</sup>	8.83%	3.49%	6.79%	3.23%
Hispanic American Firms	31.02%	4.86%	12.08%	4.05%
Nonminority Women firms <sup>3</sup>	55.18%	17.76%	30.89%	16.54%
<b>DISPARITY INDEX</b>				
		ALL FIRMS		EMPLOYER FIRMS
All Firms		100.00		100.00
African American Firms		25.83		56.92
Native American Firms <sup>1</sup>		9.23		S
Asian American Firms <sup>2</sup>		39.46		47.56
Hispanic American Firms		15.66		33.50
Nonminority Women firms <sup>3</sup>		32.18		53.54

Source: MGT of America, Inc. conducted private sector disparities Market Area analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup> Native American consists of American Indian- and Alaska Native-owned firms.

<sup>2</sup> Asian American consists of Asian-owned and Native Hawaiian- and Other Pacific Islander-owned firms.

<sup>3</sup> Nonminority Women consists of Women-owned and Equally Women-/Male-owned firms.

S denotes findings were withheld as the estimates did not meet U.S. Census publication standards.

Sales includes total shipments, receipts, revenue, or business done by the firm.

Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

### NAICS CODE 81: OTHER SERVICES (EXCEPT PUBLIC ADMINISTRATION), PRINCE GEORGE'S COUNTY, MD, MARKET AREA

**Table 6-12** shows the availability, sales, and disparity results for NAICS Code, other services (except public administration). There was a total 42,103 other services (except public administration) firms (all firms) in the Prince George's County, MD, Market Area in 2012, of which 61.14 percent were owned by minorities and 60.84 percent by nonminority women.

- ◆ African American-owned firms (disparity index of 25.28) were substantially underutilized, accounting for 35.37 percent of all firms and 8.94 percent of sales.
- ◆ Native American-owned firms (disparity index of 18.29) were substantially underutilized, accounting for 0.89 percent of all firms and 0.16 percent of sales.
- ◆ Asian American-owned firms (disparity index of 71.31) were substantially underutilized, accounting for 24.02 percent of all firms and 17.13 percent of sales.
- ◆ Hispanic American-owned firms (disparity index of 97.79) were underutilized, accounting for 0.87 percent of all firms and 0.85 percent of sales.
- ◆ Nonminority Women-owned firms (disparity index of 49.47) were substantially underutilized, accounting for 60.84 percent of all firms and 30.10 percent of sales.

There was a total of 729 other services (except public administration) employer firms in the Prince George's County, MD, Market Area in 2012, of which 38.71 percent were owned by minorities and 42.97 percent by nonminority women.

- ◆ African American-owned firms (disparity index of 44.93) were substantially underutilized, accounting for 7.08 percent of all firms and 3.18 percent of sales.
- ◆ Data for Native American-owned firms were withheld; therefore, private sector disparities were not conducted.
- ◆ Asian American-owned firms (disparity index of 47.19) were substantially underutilized, accounting for 30.25 percent of all firms and 14.27 percent of sales.
- ◆ Data for Hispanic American-owned firms were withheld; therefore, private sector disparities were not conducted.
- ◆ Nonminority Women-owned firms (disparity index of 53.99) were substantially underutilized, accounting for 42.97 percent of all firms and 23.20 percent of sales.

**TABLE 6-12.**  
**PRIVATE SECTOR CENSUS DISPARITIES**  
**NAICS CODE 81, OTHER SERVICES (EXCEPT PUBLIC ADMINISTRATION)**  
**U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,**  
**PRINCE GEORGE'S COUNTY, MD, MARKET AREA**

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS (#)	ALL FIRMS, SALES (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	42,103	\$4,083,047	4,040	\$3,003,928
African American Firms	14,890	\$365,071	286	\$95,555
Native American Firms <sup>1</sup>	373	\$6,615	19	S
Asian American Firms <sup>2</sup>	10,113	\$699,395	1,222	\$428,735
Hispanic American Firms	365	\$34,616	37	S
Nonminority Women firms <sup>3</sup>	25,617	1,228,923	1,736	696,912
PERCENTAGE OF MARKET AREA				
All Firms	100.00%	100.00%	100.00%	100.00%
African American Firms	35.37%	8.94%	7.08%	3.18%
Native American Firms <sup>1</sup>	0.89%	0.16%	0.47%	S
Asian American Firms <sup>2</sup>	24.02%	17.13%	30.25%	14.27%
Hispanic American Firms	0.87%	0.85%	0.92%	S
Nonminority Women firms <sup>3</sup>	60.84%	30.10%	42.97%	23.20%
DISPARITY INDEX				
	ALL FIRMS		EMPLOYER FIRMS	
All Firms	100.00		100.00	
African American Firms	25.28		44.93	
Native American Firms <sup>1</sup>	18.29		S	
Asian American Firms <sup>2</sup>	71.31		47.19	
Hispanic American Firms	97.79		S	
Nonminority Women firms <sup>3</sup>	49.47		53.99	

Source: MGT of America, Inc. conducted private sector disparities Market Area analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup> Native American consists of American Indian- and Alaska Native-owned firms.

<sup>2</sup> Asian American consists of Asian-owned and Native Hawaiian- and Other Pacific Islander-owned firms.

<sup>3</sup> Nonminority Women consists of Women-owned and Equally Women-/Male-owned firms.

S denotes findings were withheld as the estimates did not meet U.S. Census publication standards.

Sales includes total shipments, receipts, revenue, or business done by the firm.

Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

### 6.3.2 SBO CONCLUSION

The SBO analysis shows consistent underutilization of M/WBE firms relative to their availability in the market area, validating the overarching research question of whether these disparities exist for the broader private sector, and is compelling for the County to maintain associated remedies to avoid passive participation in discrimination, irrespective of circumstances in the public sector.

Further, each of the five procurement categories analyzed showed substantial disparity among defined M/WBE classes where sufficient data were available.

## 6.4 ANALYSIS OF RACE, ETHNICITY, AND GENDER EFFECTS ON SELF-EMPLOYMENT AND EARNINGS

This section examines further evidence regarding the over-arching research question of whether disparities exist in the private sector and addresses the two more specific questions:

2. *Are racial, ethnic, and gender minority groups less likely than nonminority males (non-M/WBEs) to be self-employed?*
3. *Do racial, ethnic, and gender status have an impact on individuals' earnings?*

This is achieved through an examination of the effects of race, ethnicity, and gender, alongside controls for individual economic and demographic characteristics, on individuals' participation in the private sector as self-employed business operators, as well as the effects of these variables on their earnings. The analysis is targeted to four categories of private sector business activity (Construction, Professional Services, Other Services, and Goods and Supplies) that generally align with the County procurement categories defined for the Study, noting that Professional Services also encompasses Architecture and Engineering, due to observations in this category being too limited in this subset to support separate analysis.

Adopting the methodology and variables employed by a city of Denver disparity study (see *Concrete Works v. City and County of Denver*<sup>214</sup>), we use Public Use Microdata Samples (PUMS) data derived from the 2011-2017 American Community Survey (ACS), to which we apply appropriate regression statistics to draw conclusions.

### 6.4.1 LINKS TO BUSINESS FORMATION AND MAINTENANCE

Research in economics consistently finds group differences by race, ethnicity, and gender in rates of business formation.<sup>215</sup> We know, for instance, that in general most minorities and women<sup>216</sup> have a lower median age than do nonminority males (ACS PUMS, 2011-2016) and that, in general, the likelihood of being self-employed increases with age (ACS PUMS, 2011-2016). An examination of these variables within the context of a disparity study, therefore, seeks to control for these other important demographic and economic variables in conjunction with race, ethnicity, and gender—since they also influence group rates of business formation—to determine if we can assert that inequities specific to minorities and women are demonstrably present to warrant consideration of public sector remedies. Questions about Market Area dynamics affecting self-employment—or, more specifically, the odds of being able to form one's own business and then to excel (i.e., generate earnings growth)—are at the heart of disparity analysis research.

### 6.4.2 STATISTICAL MODELS AND METHODS

To answer the research questions identified for this section, we employed two multivariate regression techniques, respectively: (1) logistic regression and (2) linear regression. Logistic regression is an

<sup>214</sup> *Concrete Works v. City and County of Denver*, 321 F.3 950 (10<sup>th</sup> Cir. 2003).

<sup>215</sup> See *Journal of Econometrics*, Vol. 61, Issue 1, devoted entirely to the econometrics of labor market discrimination and segregation.

<sup>216</sup> Minority groups here refers to African American, Asian Americans, Hispanic Americans and Native Americans.



econometric method that allows for analyzing dichotomous dependent variables. The results can then be translated into log likelihoods that allows for an examination of how likely one variable is to be true when compared to another variable. Linear regression is an econometric method that helps explain the linear relationship between the dependent variable and the independent variables—how substantially and in what direction each of the independent variables influence the dependent variable. This will help analyze the direct impact that being part of a specific minority or gender group has on earnings.

To understand the appropriate application of these regression techniques, it is helpful to explore in greater detail the variables inherent in these questions. There are two general categories of variables employed in the regression techniques: (1) dependent variables and (2) independent variables.

- ◆ Dependent variables are the phenomena to be explained by influences such as age, race, gender, and disability status (i.e., the independent or “explanatory” variables).
- ◆ The first dependent variable is the probability of self-employment status, which is a binary, categorical variable based on two possible values: 0 (not self-employed) versus 1 (self-employed).
  - Logistic regression is appropriately used to perform an analysis in which the dependent variable is binary and categorical, and therefore was employed for the analysis of self-employment.<sup>217</sup>
- ◆ The second dependent variable is earnings from self-employment, which is a continuous variable with many possible values.
  - Continuous variables are best explained using simple linear regression.

### 6.4.3 THE INFLUENCES OF RACE, ETHNICITY, AND GENDER ON SELF EMPLOYMENT

To derive a set of variables known to predict employment status (self-employed/not self-employed), we used the 2011-2016 U.S. Census ACS 5 percent PUMS data. Logistic regression was used to calculate the probability of being self-employed, the dependent variable, with respect to socioeconomic and demographic characteristics selected for their potential to influence the likelihood of self-employment. The sample for the analysis was limited to labor force participants who met the following criteria:

- ◆ Resident of Prince George’s County, MD, Market Area.<sup>218</sup>
- ◆ Self-employed in construction, professional services, other services, architecture and engineering,<sup>219</sup> or goods and supplies.
- ◆ Employed full-time (more than 35 hours a week).

<sup>217</sup> Logistical regression, or logit, models generate predicted probabilities that are almost identical to those calculated by a probit procedure, used in *Concrete Works v. City and County of Denver* case. Logit, however, has the added advantage of dealing more effectively with observations at the extremes of a distribution. For a complete explanation, see *Interpreting Probability Models* (T.F. Liao, Text 101 in the Sage University series).

<sup>218</sup> ACS PUMS data does not include county geographic breaks so the Prince George’s County, MD, Market Area was used as it is similar to the relevant market area.

<sup>219</sup> Due to inadequate sample size for all races in the architecture and engineering PUMS 2015 data, the architecture and engineering categories were merged with the professional services category.

- ◆ 18 years of age or older.
- ◆ Employed in the private sector.

Next, we derived the following variables<sup>220</sup> hypothesized as predictors of employment status:

- ◆ **Race and Gender:** African American, Asian American, Hispanic American, Native American, nonminority woman, nonminority male.
- ◆ **Availability of Capital:** Homeownership, home value, mortgage rate, unearned income, residual income.
- ◆ **Marital Status.**
- ◆ **Ability to Speak English Well.**
- ◆ **Disability Status:** From individuals' reports of health-related disabilities.
- ◆ **Age and Age Squared:** Squaring the age variable acknowledges the positive, curvilinear relationship between each year of age and earnings.
- ◆ **Owner's Level of Education.**
- ◆ **Number of Individuals Over the Age of 65 Living in Household.**
- ◆ **Number of Children Under the Age of 18 Living in Household.**

This analysis examined the statistical effects of these variables on the likelihood of being self-employed in the Prince George's County, MD, Market Area. From the inverse of this value, we can interpret a likelihood value of its effect on self-employment. The results are interpretable based on the inverse of the "odds ratios." For example, the "odds ratio" for an African American is 0.410 as seen in the top portion of **Table 6-13**, while the inverse of this is 2.44, as seen in the lower portion of this table. This inverse value means that a nonminority male is 2.44 times more likely to be self-employed than an African American. Comparisons are made to nonminority males as a control group, where the influence of any of the race, ethnicity, or gender variables is considered absent. In this sense, the circumstance of the nonminority male is considered to be a baseline for what might be expected for self-employment rates for this market, with race, ethnicity, or gender variables being tested for their positive or negative influence.

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<sup>220</sup> The variables used in this analysis were modeled after those incorporated in the same analysis from *Concrete Works v. City and County of Denver*.

TABLE 6-13.  
SELF-EMPLOYMENT ODDS RATIOS AND THEIR INVERSES FOR MINORITY GROUPS RELATIVE TO  
NONMINORITY MALES AFTER CONTROLLING FOR DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

BUSINESS OWNERSHIP CLASSIFICATION	ALL INDUSTRIES	CONSTRUCTION	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS & SUPPLIES
ODDS-RATIOS					
African American Firms	<b>0.410</b>	<b>0.471</b>	<b>0.184</b>	0.766	<b>0.185</b>
Hispanic American Firms	<b>0.496</b>	0.471	0.493	0.654	<b>0.339</b>
Asian American Firms	0.806	1.051	0.416	1.302	0.637
Native American Firms	0.777	1.712	0.310	0.726	1.012
Nonminority Women Firms	<b>0.481</b>	<b>0.483</b>	<b>0.158</b>	1.053	<b>0.661</b>
INVERSE OF ODDS-RATIOS					
African American Firms	<b>2.437</b>	<b>2.125</b>	<b>5.431</b>	1.305	<b>5.413</b>
Hispanic American Firms	<b>2.015</b>	2.121	2.030	1.530	<b>2.954</b>
Asian American Firms	1.241	0.952	2.401	0.768	1.571
Native American Firms	1.287	0.000	3.228	1.377	0.988
Nonminority Women Firms	<b>2.077</b>	<b>2.072</b>	<b>6.329</b>	0.949	<b>1.513</b>

Source: PUMS data from 2011-2016 American Community Survey (Prince George's County, MD, Market Area) and MGT, calculations using SPSS Statistics software. Note: Shading and **bold** indicates the estimated "odds ratio" for the group was statistically significant at 95% confidence interval<sup>221</sup>. The architecture and engineering business industry was excluded from this analysis because of the insufficient data.

Are racial, ethnic, and gender minority groups less likely than nonminority males (non-M/WBEs) to be self-employed? The findings show that racial, ethnic, and gender minority groups are nearly universally less likely than nonminority males to be self-employed. For example, nonminority males were 5.43 times more likely than African Americans to be self-employed in the Professional Services; and nonminority males were 2.07 times more likely than nonminority women to be self-employed in the Construction industry.

With respect to the over-arching research question, these findings again communicate that disparities do exist in the market. Within this circumstance and in response to the specific research question, it is also evident that racial, ethnic, and gender variables have a statistically significant negative impact on rates of self-employment after other factors are controlled for.

#### 6.4.4 THE INFLUENCES OF RACE, ETHNICITY, AND GENDER ON INDIVIDUAL EARNINGS

To explore whether there are any measurable impacts on earnings, we compared self-employed, minority, and women entrepreneurs' earnings to those of nonminority males in the Prince George's County, MD, Market Area, when the effect of other demographic and economic characteristics were controlled or neutralized. That is, we were able to examine the earnings of self-employed individuals of similar education levels, ages, etc., to permit earnings comparisons more purely by race, ethnicity, and gender.

<sup>221</sup> Statistically significant is the likelihood that a relationship between two or more variables is caused by something other than random chance. MGT incorporates the statistical 95% confidence interval. This means that if the same population is sampled on numerous occasions and interval estimates are made on each occasion, the resulting intervals would bracket the true population parameter in approximately 95% of the cases.

First, we derived a set of independent variables known to predict earnings, including:

- ◆ **Race and Gender:** African American, Asian American, Hispanic American, Native American, nonminority woman, nonminority males.
- ◆ **Availability of Capital:** Homeownership, home value, mortgage rate, unearned income, residual income.
- ◆ **Marital Status.**
- ◆ **Ability to Speak English Well.**
- ◆ **Disability Status:** From individuals' reports of health-related disabilities.
- ◆ **Age and Age Squared:** Squaring the age variable acknowledges the positive, curvilinear relationship between each year of age and earnings.
- ◆ **Owner's Level of Education.**

For the dependent variable, we used 2011-2016 wages from employment for self-employed individuals, as reported in the 5 percent PUMS data.

This analysis examined the statistical effects of these variables on income from self-employment for business owners in Prince George's County, MD, Market Area. As yielded by the linear regression analysis, each number in **Table 6-14** represents a percent change in earnings associated with the introduction of the variable (business ownership classification) in the left-hand column. For example, across all industries, the adjustment factor for an African American is -0.335, meaning that an African American would be predicted to earn 33.50 percent less than a nonminority male, all other variables considered or controlled for.

TABLE 6-14.  
EARNINGS ELASTICITIES OF MINORITY GROUPS RELATIVE TO NONMINORITY MALES AFTER  
CONTROLLING FOR DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

BUSINESS OWNERSHIP CLASSIFICATION	ALL INDUSTRIES	CONSTRUCTION	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS & SUPPLIES
African American Firms	<b>-0.335</b>	0.000	<b>-0.579</b>	-0.201	<b>-1.083</b>
Hispanic American Firms	<b>-0.337</b>	-0.417	0.046	-0.220	<b>-0.722</b>
Asian American Firms	-0.177	-0.035	<b>1.168</b>	-0.359	<b>-1.241</b>
Native American Firms	-0.358	-0.234	0.069	-0.217	-0.352
Nonminority Women Firms	<b>-0.348</b>	-0.259	-0.258	<b>-0.373</b>	<b>-0.339</b>

Source: PUMS data from 2011-2016 American Community Survey (Prince George's County, MD, Market Area) and MGT, calculations using SPSS Statistics software. Note: Shading and **bold** indicates the estimated "elasticities" for the group were statistically significant at 95% confidence interval. The architecture and engineering business industry was excluded from this analysis because of insufficient data. In terms of the regression "elasticity" means the percent change resulting by being a member of one of the M/WBE groups.

The findings provide further positive evidence that disparities exist in the private sector of the County's market area, compelling the continuation of remedies in the domain of the government's influence.

The findings also provide affirmative evidence to the more specific questions regarding impacts on earning, demonstrating that self-employed racial, ethnic, and gender minority groups earn less than their nonminority male counterparts, all variables considered.

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## 6.5 CONCLUSIONS

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Analysis of the County permits, U.S. Census 2012 SBO data, and the PUMS 2011-2016 data demonstrate, in response to the over-arching research question driving this analysis, that disparities do exist for M/WBE firms operating in the private sector within the County's market area. Thus, based on guidance offered by the courts into this domain, the County may have a compelling interest to continue its current M/WBE program to avoid becoming a passive participant to discrimination.

To the more specific research questions:

- ◆ The permits analysis presented a summary of firm utilization by racial, ethnic, and gender classification comparing M/WBE utilization for the County private sector construction projects with commercial construction projects. According to the findings from commercial construction projects, substantial M/WBE underutilization was evident in the private sector. When compared to findings from the commercial construction projects, M/WBE firms fared better on County projects.
- ◆ Findings from the U.S. Census 2012 SBO data indicate that there are substantial disparities for most M/WBE firms across industry sectors resembling the procurement categories identified for this study.
- ◆ Findings from the 2011-2016 PUMS data indicate that:
  - M/WBE firms were significantly less likely than nonminority males to be self-employed.
  - If they were self-employed, M/WBE firms earned significantly less in 2011-2016 than did self-employed nonminority males.

In light of these findings, credence may be given to the proposition established in *Croson*, which suggested a government could be a passive participant in private sector discrimination if it did not act to counter these dynamics at least within the domain of its influence. This evidence stands alongside the disparities observed in public sector contracting to illustrate the substantial inequities that continue to exist in the County's market area, underscoring its compelling interest in continuing to pursue remedies to address these extant gaps.

CHAPTER 7. ANECDOTAL ANALYSIS

Utilization and Availability Study

*Prince George's County, Maryland*



## 7.1 INTRODUCTION

This chapter examines anecdotal evidence of conditions and obstacles faced by M/WBE firms in the study market area in their experiences working with Prince George’s County (County), the County’s prime contractors, and the private sector. The collection and analysis of anecdotal data was focused on firms registered to do business with the County and helps to explain and provide context for the quantitative data analyses found in **Chapter 4, Market Area and Utilization Analyses** and **Chapter 5, Availability and Disparity Analyses**. In conjunction with the quantitative data, MGT also was able to draw inferences from the anecdotal data as to the prevalence of obstacles perceived as limiting the participation of M/WBEs and other firms in the County’s procurement transactions.

### CHAPTER SECTIONS



- 7.1 Introduction
- 7.2 Methodology
- 7.3 Demographics
- 7.4 Findings
- 7.5 Suggested Remedies from Anecdotal Participants
- 7.6 Stakeholder Interviews
- 7.7 Conclusions

Unlike conclusions derived from other types of analysis in this report, the conclusions derived from anecdotal analysis do not rely solely on quantitative data. Rather, the analysis in this chapter utilizes qualitative data to describe the context of the examined social, political, and economic environment in which all businesses and other relevant entities applicable to the study operate. Anecdotal comments in this chapter document the perceptions and opinions of individuals, and the evidentiary weight of these opinions depends on how much they are corroborated by statements of others and the quantitative data that has been compiled to substantiate these perceptions.

The collective anecdotal activities gathered input from 2,047 business owners or representatives regarding their opinions and perceptions of their experiences working with the County or on County projects as subcontractors.

## 7.2 METHODOLOGY

The blueprint for collecting and analyzing anecdotal information for this study was provided by the U.S. Supreme Court in *County of Richmond v. J.A. Croson*, 488 U.S. 469, 109 S.Ct. 706 (1989) (*Croson*). In that case, the Court held that race-conscious programs must be supported by strong documentation of discrimination, including evidentiary findings that go beyond the demographics of a community. Anecdotal information can bolster and explain whether minority business creation, growth, and retention are negatively affected by discrimination. In *Croson*, the Court indicated that anecdotal accounts of discrimination could help establish a compelling interest for a local government to institute a race-conscious remedy.<sup>222</sup> Moreover, such information can provide a local entity with a firm basis for fashioning a program that is narrowly tailored to remedy identified forms of marketplace discrimination and other barriers to M/WBE participation in contract opportunities.

<sup>222</sup> *Croson*, 488 U.S. at 509.

MGT's experience conducting disparity studies has shown that utilizing multiple methods of anecdotal data collection provides more comprehensive information than methodologies using a single-pronged approach. For this reason, MGT used a combination of surveys, community meetings, focus groups, and one-on-one interviews with businesses to collect anecdotal information to identify issues and concerns that were common to businesses in the market area. In addition to the anecdotal data collection from area businesses, MGT attempted to meet with area trade associations and business organizations to solicit perceptions on the County's procurement process and the impact of the M/WBE program to firms. However, all of the trade associations and business organizations contacted by MGT declined to participate. While the collection of these anecdotes is not required by the courts, input from advocacy and professional development organizations give a third-party perspective of M/WBE issues.

### 7.2.1 OUTREACH

To develop a database for the outreach efforts, MGT utilized a master anecdotal database of firms that incorporated data sets from the County's vendor and certification lists; membership lists provided by area trade associations and business organizations; and vendor and certification lists collected from relevant public agencies. This database was created to ensure a broad range of firms in the marketplace were notified about the qualitative data collection activities.

Next, MGT worked with the County to identify various outreach methods geared to inform and encourage community involvement and engagement for the anecdotal data collection activities. One such method was the creation of a disparity study website that informed the community of the project objectives, work tasks, anecdotal activities, frequently asked questions, and general information about the initiative. The website allowed businesses to submit online comments directly to MGT about their experiences doing business or attempting to do business with the County. Additional outreach methods included:

- ◆ MGT and the County identified area trade associations and business organizations, referred to as stakeholders for purposes of this report, whose insights would be valuable to understanding the dynamics and perceptions of the vendor community. The stakeholders were notified via e-mail blasts and/or phone calls of public meetings and asked to encourage their members to participate.
- ◆ Use of social media, i.e., Twitter, Facebook, LinkedIn, to encourage engagement. Announcements for the public meetings were also posted on the County's Supplier Diversity and Development Division's (SDDD) website.
- ◆ Email blasts to the business community to increase awareness and engagement.
- ◆ Printed and digital ads (included in various ethnic media publications).

### 7.2.2 SAMPLING

MGT's sampling methodology for the focus groups, in-depth interviews, and survey was to randomly select firms from the master vendor database. Each sample pulled included M/WBE and non-M/WBE firms in each procurement category studied in this report. To avoid contacting businesses multiple times, the database was cross referenced with previous extractions to ensure that firms did not participate in more than one anecdotal activity.



### 7.2.3 CUSTOM CENSUS BUSINESS SURVEY

The business surveys provide information on business ownership, demographics, and structure; work bid or performed as prime contractors with the County; work bid or performed as subcontractors to County prime contractors; work, bid, or performed in the private sector; and any perceived barriers to doing business with the County or its primes experienced during the study period. The survey was administered via telephone to a randomly selected list of firms.

Disparity study survey analyses are commonly plagued by sample size limitations, especially where the size of the minority business population is insufficient to permit a valid and representative sample. This problem is compounded when analyses are stratified further by business category. Insufficient sample size can pose problems for the statistical confidence of the results. MGT attempted to collect data in proportion to the distribution of M/WBEs and non-M/WBEs in the relevant market area. Although MGT's goal is to report data that can satisfy the 95 percent confidence level,<sup>223</sup> this does not mean that data should not be reported because of slightly reduced confidence intervals, especially when extreme due diligence has been exercised in attempting to meet the 95 percent standard. For this reason, our conclusions from the responses received do not reflect a statistical finding for Native American firms in the anecdotal findings. The questionnaire for the survey of vendors is included in this report as **Appendix F, Custom Census Business Survey Instrument**.

The data from the survey responses were analyzed to determine the types of firms represented in the findings included within this chapter. These survey demographics are included as **Appendix D, Analysis of Custom Census Business Survey**.

### 7.2.4 COMMUNITY MEETINGS

Area businesses were invited to attend one of five community meetings. Prior to collecting comments, attendees were provided a presentation outlining the study's objectives and work tasks. Following the presentation, attendees who wanted to provide comments did so individually.

The Community Meetings were held as follows:

- ◆ April 29, 2015 (2 meetings): Southern Regional Technology & Recreation Complex, Fort Washington
- ◆ July 16, 2015: Prince George's County Administrative Building, 1801 McCormick Drive, Largo
- ◆ August 20, 2016: Prince George's County Administrative Building, 1801 McCormick Drive, Largo
- ◆ June 21, 2017: Prince George's Community College, Rennie Forum, 301 Largo Rd, Largo

MGT developed and executed a community outreach plan to guide the outreach efforts as described in **Section 7.2.1**. Elements of the outreach plan included the development of a disparity study website, press releases, and email blasts to the business community, trade associations, and business organizations.

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<sup>223</sup> A 95 percent confidence interval is an industry standard for social science research and communicates the likelihood of the observation falling within the bounds of the margin of error, for which the industry standard is +/- 5 percent. This has been validated in court decisions including *H.B. Rowe Co., Inc. v. Tippett* (See 615 F.3d 233, 250, 4th Cir. 2010).

Since the community meetings were open to the public, firms that participated in the community meetings may have been randomly selected for other anecdotal activities.

### 7.2.5 IN-DEPTH INTERVIEWS

In-depth one-on-one interviews were conducted with business owners or representatives to gather demographic and business operations information and perceptions about the firms' experiences in attempting to do and conducting business with the County (both directly as a prime and/or as a subcontractor). The in-depth interviews were conducted using a structured interview guide (**Appendix G**) to solicit input unique to the respondents' experiences. The interviewer made no attempt to prompt or guide responses from the participants, although follow-up questions were asked to obtain further clarification or information as necessary and appropriate. Before the interviews began, each participant attested that their responses were given freely and were true and accurate reflections of their experience with the County or its prime contractors.

### 7.2.6 FOCUS GROUPS

The focus groups were structured by industry to allow for discussions comparable to the industry bidding or proposal and contract practices. The industries were divided in construction (both primes and subcontractors), architecture and engineering, professional services, other services, and goods and supplies. Firms were randomly selected and contacted to participate in their appropriate focus group and facilitated using the **Focus Group Guide** found in **Appendix H**.

### 7.2.7 STAKEHOLDER OUTREACH

Outreach to stakeholders (trade associations and business organizations) was beneficial to the outreach efforts because their assistance extended communication efforts to inform and engage the business community in anecdotal activities. Stakeholders were asked to disseminate community meeting notices and anecdotal data collection information to their members or constituents.

Stakeholders were also asked to provide MGT with a copy of membership or vendor lists which were used to help build the master vendor database used for outreach. As an alternative to providing their membership or vendor lists, an online form was provided to allow individual members to submit their business information directly to the consultant team.

As mentioned, stakeholders were contacted to participate in interviews and meetings to gather their input, perceptions, and experiences on the effectiveness of the M/WBE Program and barriers firms face when contracting or attempting to contract with the County or its primes.

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## 7.3 DEMOGRAPHICS

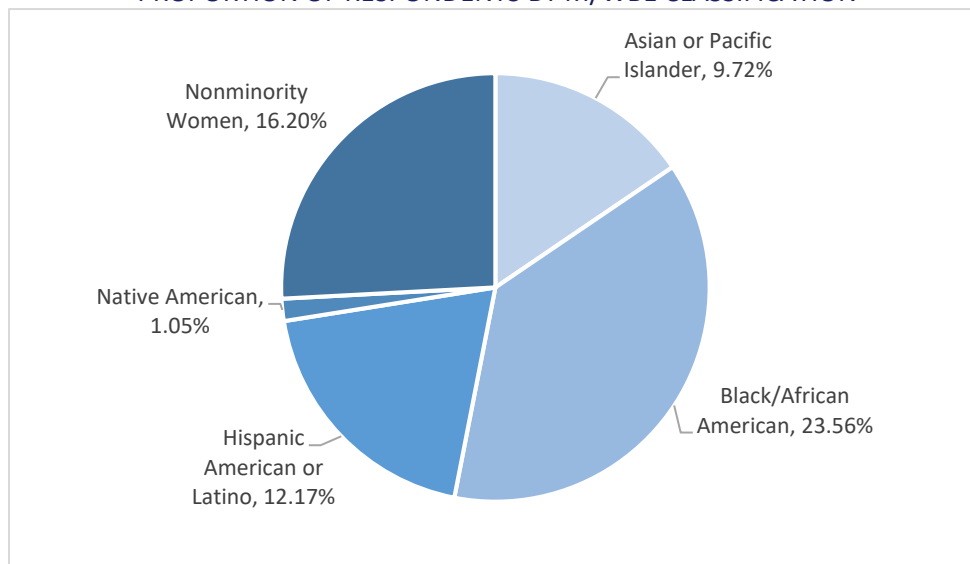
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The self-reported demographic characteristics of anecdotal participants by data collection activity type are presented in the sections below.

### 7.3.1 CUSTOM CENSUS BUSINESS SURVEYS

This survey collected 1,867 responses from business owners and representatives in the County’s relevant market area. **Figure 7-1** provides the race, ethnicity, and gender of respondents interested in doing business with the County. M/WBE firms accounted for 38.4 percent of the total respondents with African American firms making up 23.56 percent of those who participated followed by Nonminority Women firms at 16.20 percent, Hispanic Americans at 12.17 percent, Asian Americans at 9.72 percent, and Native Americans at 1.05 percent. In total, 716 M/WBEs responded they were interested in doing business with the County. The remaining 725 respondents were not interested in doing business with the County.

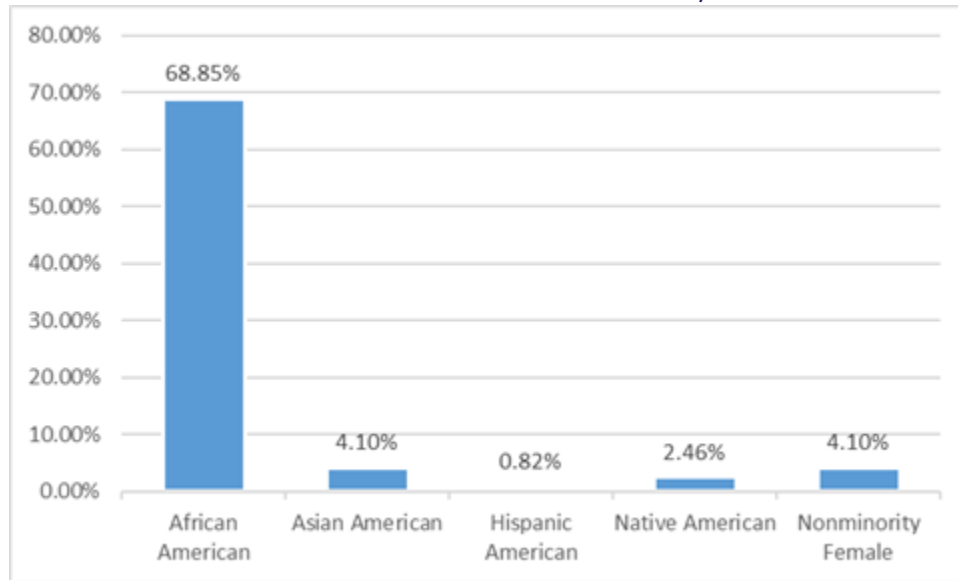
**FIGURE 7-1. BUSINESS SURVEY DEMOGRAPHICS:  
PROPORTION OF RESPONDENTS BY M/WBE CLASSIFICATION**



### 7.3.3 COMMUNITY MEETINGS

Five community meetings were held, and 122 business owners and representatives attended representing varying industries, including construction, supplies, engineering, information technology, financial services, educational consulting, and environmental consulting. Attendees completed a questionnaire to gather their business or individual demographics. Official comments were received and recorded from 58 attendees. The racial, ethnic, and gender compositions of the attendees were as follows in **Figure 7-2**.

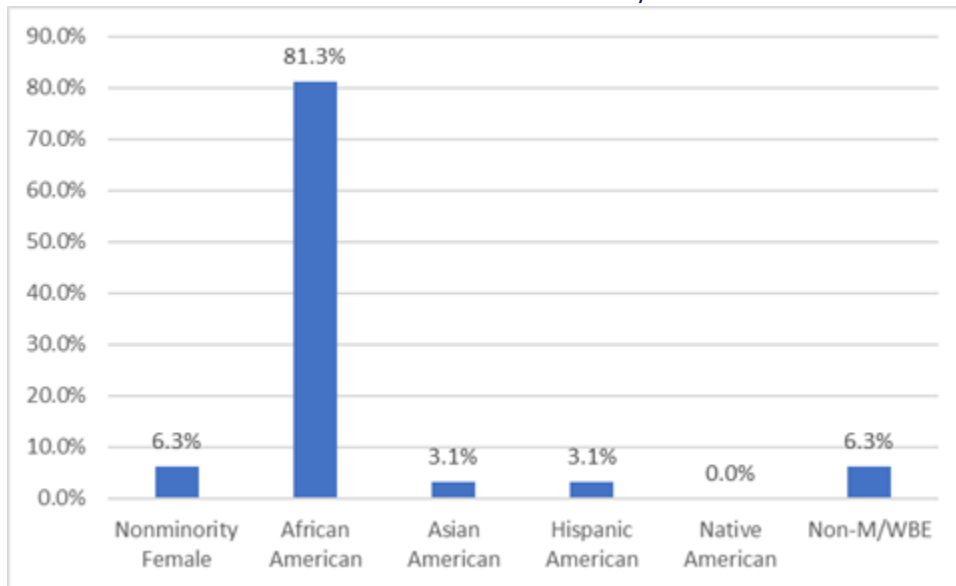
FIGURE 7-2. COMMUNITY MEETINGS DEMOGRAPHICS: M/WBE CLASSIFICATION



### 7.3.5 FOCUS GROUPS

MGT conducted four focus groups with area business owners that provide construction, services, or goods that the County procures. The racial, ethnic, and ownership composition of the 32 firms that attended the focus groups are illustrated in **Figure 7-3**.

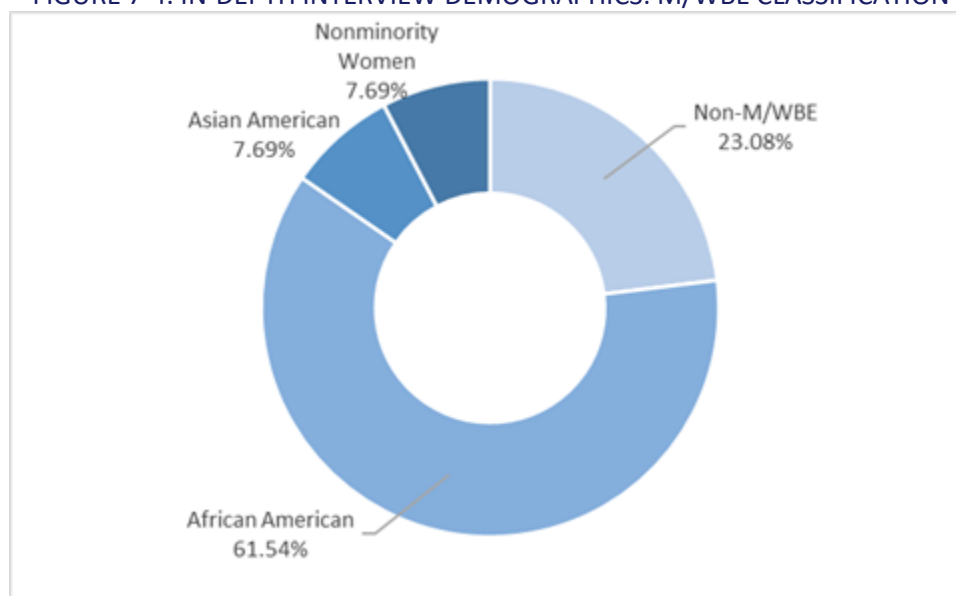
FIGURE 7-3. FOCUS GROUP DEMOGRAPHICS: M/WBE CLASSIFICATION



### 7.3.7 IN-DEPTH FIRM INTERVIEWS

The in-depth interviews were conducted with randomly selected firms extracted from the master anecdotal database and located in the County's relevant market area.<sup>224</sup> MGT cross referenced the list of firms for the interviews to ensure they were not previously selected for other anecdotal activities. In total, 26 firms were interviewed. The racial and ethnic composition of the firms that completed an interview is illustrated in **Figure 7-4**.

FIGURE 7-4. IN-DEPTH INTERVIEW DEMOGRAPHICS: M/WBE CLASSIFICATION



## 7.4 FINDINGS

The findings below reflect the opinions and perceptions of individuals who provided input about their experiences doing business or attempting to do business with the County and include an array of viewpoints regarding work with the County or its primes.

In the sections which follow, findings are generally organized around themes of concerns expressed by vendors and organized into (1) items identified through qualitative input from anecdotal research participants (interviews, focus groups, and public meetings) and (2) quantitative summaries of perceptions collected through the survey of vendors. In some cases, content is limited to one category of findings or the other based on the scope of information collected through either medium.

### 7.4.1 PROCUREMENT PROCESS ISSUES AND CHALLENGES OF M/WBES

Procurement process issues and challenges are frequent issues of concern among vendors in many markets. The County is not an exception. The perception of fair and equal opportunity to bid or propose

<sup>224</sup> See **Chapter 4, Market Area and Utilization Analyses**.

on County contracts is critical to the growth and success of all firms, and particularly those of disadvantaged social or economic circumstances, such as M/WBEs. The most common themes within this category elicited from participants were:

- A. Difficulty responding to the County's request for proposals because they require responses that are irrelevant to the scope of work or qualification of the firm proposing.
- B. Bids or proposals submitted are not easily tracked on who won or what the bid results were.
- C. Frustration that the County uses the same firms repeatedly.

Included below is a sampling of comments from participants reflecting specific instances of these barriers:

- ◆ An African American male owner of a professional services firm stated the County procurement process is not easy to understand.

*"I have done a lot of business for the federal government and District of Columbia. The requirements for County solicitations are identical to work that I am qualified to do; however, the County continues to use large, out-of-state companies."*

- ◆ A Native American male owner of a supply firm stated that there is no feedback on submitted bids.

*"Several weeks after I submitted a bid for supplies, I contacted the County to find out the results and review the bid tabs. I was told that the bid tabs were not available and to come back. I went back several times and the County told me each time that they did not have the results. It seems as if my bid went into a black hole."*

- ◆ An African American female other services firm owner stated that responding to solicitations is difficult.

*"I have to hire someone to complete proposals from the County because they are too cumbersome. Often the County asks for the same information multiple times in the same solicitation. I quite doing business with the County and did not renew my MBE certification because it wasn't worth the trouble. I will continue to do work in the District of Columbia."*

- ◆ An African American female owner of a supply firm indicated that no one in the County is monitoring Pcard spending with small businesses.

*"The County has dozens of employees that can use Pcards to purchase my products. When I asked the County who is monitoring Pcards spend with small, local firms I was told no one is monitoring because it's too many to monitor."*

- ◆ An African American male owner of a professional services firm faces challenges trying to work with the County.

*"The County lacks transparency in what contracts are available, who wins the contracts, and how to find out about future contracts. All bids, regardless of size, should be posted on some site. In an age of technology, there is no reason this information should not be accessible. Also, the County*

*should keep data on contracts awarded over several years so vendors can see trends of spending with local businesses.”*

- ◆ An African American female owner of a professional services firm sees no benefit attending procurement fairs.

*“The County hosts procurement fairs to meet with buyers. I have attended many of these events and never give a return phone call from buyers.”*

#### **7.4.2 PRIME CONTRACTING BEHAVIOR**

Subcontracting is often the gateway to M/WBE firms growing their businesses. Primes that unfairly treat, assess, and deal with M/WBE firms impacts the County’s program as well as the economic vitality of M/WBEs as they try to grow their businesses. Specific issues and challenges noted in this area include:

- A. Primes are not held accountable for outreach to subcontractors or maintaining participation throughout the life of the contract.
- B. Frustration with prime contractors that use M/WBE firms as part of their bid packages, only to limit their participation or payment once the project is won.
- C. Subcontractors must invest time and materials in helping to win bids, but then are subject to the whims of the primes upon contract award, including exclusion from the contract.
- D. Desire for more opportunities to network with prime firms to increase their opportunities for subcontract work.

Included below is a sampling of comments on this barrier.

- ◆ An African American male owner of a consulting firm stated that subcontractors are at the mercy of primes when it comes to providing information about projects.

*“Primes will do the easiest thing to win a project or get the project done. So the easiest thing to do is use their people.”*

- ◆ A Hispanic American female owner of a general contracting firm indicated that primes are not serious about utilizing M/WBE firms.

*“Many contracts call for minimum requirements for MBE/WBE utilization but have waivers that prime vendors can use to avoid using an MBE/WBE by claiming they reached out to MBE/WBE companies and they supposedly did not respond to their requests or were not qualified.”*



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## **7.5 SUGGESTED REMEDIES FROM ANECDOTAL PARTICIPANTS**

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While collecting anecdotal data, participants provided their ideas and recommendations for improving the procurement process and M/WBE program to increase M/WBE participation. A few recurring ideas and/or suggested remedies provided by participants are summarized below:

- ◆ The County’s procurement process should be standardized across all departments. There is a need to hold departments accountable for meeting the objectives of the M/WBE program in all lines of service.
- ◆ The County should publicly release the results of all contracts awards, large and small, to increase transparency. This information should be uploaded to the website immediately after the contract is awarded.
- ◆ After the contract is awarded the County should monitor M/WBE participation more closely.
- ◆ To assist M/WBEs in understanding how to be more competitive, the County should offer debriefings on why an M/WBE firm did not win a contract.
- ◆ The County needs a centralized procurement process.

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## **7.6 CONCLUSIONS**

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The primary concerns of firms that participated in the anecdotal data collection were 1) solicitation documents are too cumbersome; 2) the County utilizes the same firms repeatedly; and 3) there is no consistent process to monitor departmental utilization of M/WBEs. Almost all of the firms that participated were firms looking to do business with the County directly and did not indicate that their lack of doing business was due to disparate treatment.

CHAPTER 8. FINDINGS AND  
RECOMMENDATIONS

Utilization and Availability Study

*Prince George's County, Maryland*



## 8.1 INTRODUCTION

Prince George's County (County) contracted MGT of America Consulting, LLC (MGT), to conduct the 2019 Utilization and Availability Study (Study). The objective of this Study was to conduct a disparity analysis of the utilization of M/WBEs in County procurement activity, compared to the availability of M/WBEs in the relevant market area.

The Study's findings are presented in detail in **Chapters 2** through **7** of this report and the supporting appendices. This chapter will summarize the evidence that address the overarching research question: *is there factual predicate evidence for the continuation of the County's M/WBE program?* MGT found sufficient evidence of disparity and recommends that the County continue its M/WBE program to address identified disparities.

### CHAPTER SECTIONS



- 8.1 Introduction
- 8.2 Summary of Findings
- 8.3 Recommendations
- 8.4 Conclusion

## 8.2 SUMMARY OF FINDINGS

### FINDING A: RELEVANT MARKET AREA (CHAPTER 4, APPENDIX B)

Based on the market area analysis of the County's procurement activity (**Chapter 4**) it was determined that the five areas encompassing Prince George's County, District of Columbia, Fairfax County, City of Fairfax, and Montgomery County as the market area. The spending in the relevant geographic market area was \$2,088,941,617 billion within the overall market area between fiscal years July 1, 2010, and June 30, 2018.

TABLE 8-1.  
INSIDE/OUTSIDE PRINCE GEORGE'S COUNTY ESTABLISHED MARKET AREA

CONSTRUCTION	Amount	Percent
<i>Inside Prince George's County Relevant Market Area</i>	\$514,349,875.99	91.72%
Outside Prince George's County <i>Relevant</i> Market Area	\$46,451,178.66	8.28%
<b>CONSTRUCTION, TOTAL</b>	<b>\$560,801,054.65</b>	<b>100.00%</b>
ARCHITECTURE & ENGINEERING	Amount	Percent
<i>Inside Prince George's County Relevant Market Area</i>	\$ 118,863,186.70	85.27%
Outside Prince George's County <i>Relevant</i> Market Area	\$ 20,536,370.85	14.73%
<b>A&amp;E, TOTAL</b>	<b>\$ 139,399,557.55</b>	<b>100.00%</b>
PROFESSIONAL SERVICES	Amount	Percent
<i>Inside Prince George's County Relevant Market Area</i>	\$ 252,223,006.69	90.24%
Outside Prince George's County <i>Relevant</i> Market Area	\$ 27,271,644.74	9.76%
<b>PROFESSIONAL SERVICES, TOTAL</b>	<b>\$ 279,494,651.43</b>	<b>100.00%</b>
OTHER SERVICES	Amount	Percent
<i>Inside Prince George's County Relevant Market Area</i>	\$890,180,021.60	96.18%
Outside Prince George's County <i>Relevant</i> Market Area	\$35,321,951.50	3.82%
<b>OTHER SERVICES, TOTAL</b>	<b>\$925,501,973.10</b>	<b>100.00%</b>

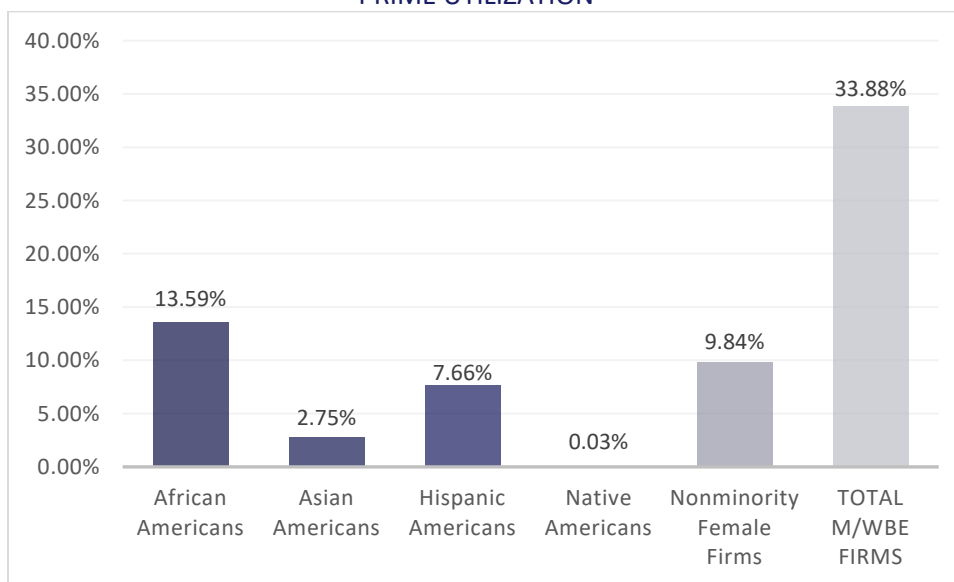
GOODS & SUPPLIES	Amount	Percent
<i>Inside Prince George’s County Relevant Market Area</i>	\$ 313,325,526.94	88.33%
Outside Prince George’s County <i>Relevant Market Area</i>	\$ 41,390,033.48	11.67%
<b>GOODS &amp; SUPPLIES, TOTAL</b>	<b>\$ 354,715,560.42</b>	<b>100.00%</b>
ALL BUSINESS CATEGORIES	Amount	Percent
<i>Inside Prince George’s County Relevant Market Area</i>	\$2,088,941,617.92	92.43%
Outside Prince George’s County <i>Relevant Market Area</i>	\$170,971,179.23	7.57%
<b>ALL BUSINESS CATEGORIES, TOTAL</b>	<b>\$2,259,912,797.15</b>	<b>100.00%</b>

Source: See **Chapter 4** of this report.

**FINDING B: M/WBE PRIME UTILIZATION (CHAPTER 4, APPENDIX C)**

In **Figure 8-1**, the prime M/WBE utilization amounted to 33.88 percent of \$2,088 billion during the study period within the relevant market area; 13.59 percent for African American firms, 9.84 percent to Nonminority Women firms, 7.66 percent for Hispanic American firms, 2.75 percent for Asian American firms, and 0.03 percent for Native American firms. Detailed analyses showing the utilization of firms by business ownership classification and year are presented in **Appendix C**. *Note: The award calculations in the County’s CB30 reports do not align with how utilization was calculated for the disparity study.*

FIGURE 8-1.  
PRIME UTILIZATION



Source: See **Chapter 4** of this report.

**FINDINGS C: M/WBE SUBCONTRACTOR UTILIZATION**

**Table 8-2** illustrates an analysis of subcontracting utilization based on estimated subcontracting. MGT used “2012 Census of Construction – Geographic Area Summary Findings” to estimate the cost of construction work subcontracted out over an average in the state of Maryland, Commonwealth of Virginia, and District of Columbia. The estimated cost of construction subcontracting was 27 percent.

TABLE 8-2.  
SUBCONTRACTOR UTILIZATION ESTIMATES ANALYSIS  
BY BUSINESS OWNERSHIP CLASSIFICATION AND BY PROCUREMENT CATEGORIES

BUSINESS OWNERSHIP CLASSIFICATION	CONSTRUCTION
African Americans	\$ 16,400,684.31
Asian Americans	\$ 20,934,001.34
Hispanic Americans	\$ 8,056,540.56
Native Americans	\$ -
<b>TOTAL MINORITY FIRMS</b>	<b>\$ 45,391,226.20</b>
Nonminority Women Firms	\$ 2,284,009.25
<b>TOTAL M/WBE FIRMS</b>	<b>\$ 47,675,235.46</b>
TOTAL NON-M/WBE FIRMS	\$ 91,199,231.06
<b>TOTAL FIRMS</b>	<b>\$ 138,874,466.52</b>
BUSINESS OWNERSHIP CLASSIFICATION	CONSTRUCTION
African Americans	11.81%
Asian Americans	15.07%
Hispanic Americans	5.80%
Native Americans	0.00%
<b>TOTAL MINORITY FIRMS</b>	<b>32.69%</b>
Nonminority Women Firms	1.64%
<b>TOTAL M/WBE FIRMS</b>	<b>34.33%</b>
TOTAL NON-M/WBE FIRMS	65.67%

Source: See **Chapter 4** of this report.

#### FINDINGS D: M/WBE AVAILABILITY (CHAPTER 5)

A reliable estimation of the number of firms *willing* and *able* to provide each of the respective services under the scope of examination is an incumbent element in the determination of disparity. MGT uses the availability estimates for primes to calculate aspirational goals proposed later in this chapter. Therefore, the availability estimates are illustrated in **Table 8-3**.

TABLE 8-3. AVAILABILITY ANALYSIS SUMMARY

BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS & SUPPLIES
AFRICAN AMERICAN FIRMS	18.15%	23.21%	15.66%	15.27%	20.02%	7.79%
ASIAN AMERICAN FIRMS	3.69%	6.72%	5.24%	2.81%	2.35%	2.62%
HISPANIC AMERICAN FIRMS	4.91%	3.64%	5.54%	5.34%	5.80%	3.85%
NATIVE AMERICAN FIRMS	0.59%	0.00%	0.33%	0.56%	1.04%	0.39%
<b>TOTAL MINORITY FIRMS</b>	<b>27.33%</b>	<b>33.57%</b>	<b>26.76%</b>	<b>23.99%</b>	<b>29.21%</b>	<b>14.65%</b>
NONMINORITY WOMEN FIRMS	7.04%	9.38%	6.51%	5.06%	6.18%	7.45%
<b>TOTAL M/WBE FIRMS</b>	<b>34.37%</b>	<b>42.94%</b>	<b>33.27%</b>	<b>29.05%</b>	<b>35.39%</b>	<b>22.10%</b>
NON-M/WBE FIRMS	65.63%	57.06%	66.73%	70.95%	64.61%	77.90%
<b>TOTAL</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: See **Chapter 5** of this report.

**FINDING E: PRIME DISPARITIES IN COUNTY PROCUREMENT (CHAPTER 5)**

Included in this section are inputs and calculations of disparity ratios and significance testing for primes of each procurement category and ownership classifications by race, ethnicity, and gender. Analysis of disparities across all procurement categories in **Table 8-4** reveals:

- ◆ African American-owned firms were substantially underutilized, with a substantial and statistically significant disparity ratio of 74.88;
- ◆ Asian American-owned firms were substantially underutilized, with a substantial disparity ratio of 74.72;
- ◆ Hispanic American-owned firms were overutilized, with a substantial and statistically significant disparity ratio of 156.02;
- ◆ Native American-owned firms were substantially underutilized, with a substantial and statistically significant disparity ratio of 5.73;
- ◆ Nonminority Women-owned firms were overutilized, with a statistically significant disparity ratio of 139.74; and
- ◆ M/WBEs were underutilized, with a disparity ratio of 98.56.

**TABLE 8-4. DISPARITY ANALYSIS SUMMARY**

BUSINESS OWNERSHIP CLASSIFICATION	UTILIZATION	AVAILABILITY	DISPARITY INDEX	DISPARITY IMPACT	STATISTICAL SIGNIFICANCE	DISPARITY CONCLUSION
AFRICAN AMERICAN FIRMS	13.59%	18.15%	74.88	Underutilization	Yes	Disparity
ASIAN AMERICAN FIRMS	2.75%	3.69%	74.72	Underutilization	No	Disparity
HISPANIC AMERICAN FIRMS	7.66%	4.91%	156.02	Overutilization	Yes	No Disparity
NATIVE AMERICAN FIRMS	0.03%	0.59%	5.73	Underutilization	No	Disparity
<b>TOTAL MINORITY FIRMS</b>	<b>24.04%</b>	<b>27.33%</b>	<b>87.95</b>	<b>Underutilization</b>	<b>Yes</b>	<b>Disparity</b>
NONMINORITY WOMEN FIRMS	9.84%	7.04%	139.74	Overutilization	Yes	No Disparity
<b>TOTAL M/WBE FIRMS</b>	<b>33.88%</b>	<b>34.37%</b>	<b>98.56</b>	<b>Underutilization</b>	<b>No</b>	<b>Disparity</b>
NON-M/WBE FIRMS	<b>66.12%</b>	<b>65.63%</b>	<b>100.76</b>	Overutilization	No	No Disparity

Source: See **Chapter 5** of this report.

Disparity Index: under 80 represents substantial underutilization.

“Yes” represents statistical significance at 95% confidence interval

**FINDING F: CONSTRUCTION SUBCONTRACTING DISPARITIES (CHAPTER 5)**

In construction subcontracting, there is disparity for all business ownership classifications. The MBE disparity index is 71.53 and the Nonminority Women disparity index is 14.65. See **Table 8-5** below.

**TABLE 8-5. CONSTRUCTION SUBCONTRACTOR DISPARITY ANALYSIS SUMMARY**

BUSINESS OWNERSHIP CLASSIFICATION	UTILIZATION	AVAILABILITY (%)	DISPARITY INDEX	DISPARATE IMPACT	DISPARITY CONCLUSION
AFRICAN AMERICAN FIRMS	11.81%	23.24%	50.82	Underutilization	Disparity
ASIAN AMERICAN FIRMS	15.07%	15.93%	94.65	Underutilization	Disparity
HISPANIC AMERICAN FIRMS	5.80%	6.27%	92.58	Underutilization	Disparity
NATIVE AMERICAN FIRMS	0.00%	0.26%	0.00	Underutilization	Disparity
<b>TOTAL MINORITY FIRMS</b>	<b>32.69%</b>	<b>45.69%</b>	<b>71.53</b>	<b>Underutilization</b>	<b>Disparity</b>
NONMINORITY WOMEN FIRMS	1.64%	11.23%	14.65	Underutilization	Disparity
<b>TOTAL M/WBE FIRMS</b>	<b>34.33%</b>	<b>56.92%</b>	<b>60.31</b>	<b>Underutilization</b>	<b>Disparity</b>
TOTAL NON-M/WBE FIRMS	65.67%	43.08%	152.43	Overutilization	No Disparity

Source: See **Chapter 5** of this report.

Disparity Index: under 80 represents substantial underutilization.

**FINDING G: ANECDOTAL EVIDENCE (CHAPTER 7)**

Using multi-faceted qualitative data collection methods, MGT gathered perceptions, experiences, and proposed options to enhance the contracting experience from the business community, particularly among M/WBE firms (**Chapter 7**). The examination of anecdotal evidence reveals the barriers that M/WBEs faced in accessing County procurement, including procurement process issues, identification of contract opportunities, and monitoring of the M/WBE program. These findings provide anecdotal corroboration and illustration for the statistical evidence of disparities found by the Study.

**FINDING H: DISPARITIES IN PRIVATE SECTOR (CHAPTER 6)**

Analysis of the private sector presented demonstrates disparities that exist for M/WBE firms operating in the private sector within the County's market area.

- ◆ The permits analysis presented a summary of firm utilization by racial, ethnic, and gender classification comparing M/WBE utilization for the County private sector construction projects with commercial construction projects. According to the findings from commercial construction projects, substantial M/WBE underutilization was evident in the private sector. When compared to findings from the commercial construction projects, M/WBE firms fared better on County projects.
- ◆ Findings from the U.S. Census 2012 Survey of Business Owners (SBO) data indicate that there are substantial disparities for most M/WBE firms across industry sectors resembling the procurement categories identified for this Study.
- ◆ Findings from the 2011-2016 PUMS data indicate that:
  - M/WBE firms were significantly less likely than nonminority males to be self-employed.

- If they were self-employed, M/WBE firms earned significantly less in 2011-2016 than did self-employed nonminority males.

This evidence stands alongside the disparities observed in public sector contracting to illustrate the substantial inequities that continue to exist in the County's marketplace.

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## 8.3 RECOMMENDATIONS

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In developing the Study's recommendations, MGT focused on addressing policies that will strengthen the County's efforts to increase utilization of M/WBEs in its procurement.

### **RECOMMENDATION A: RACE- AND GENDER-BASED PROGRAM**

This Study's findings support the establishment of a M/WBE program within the relevant market area. Based on the statistical analyses undertaken in the Study, there is a quantitatively significant disparity between utilization of M/WBEs and their availability in the marketplace. The findings presented in the anecdotal analysis provide additional corroboration of the barriers that M/WBEs face in participating in the County's procurement process. Furthermore, the evidence from the private sector analysis illustrates the substantial inequities that exist in the County's marketplace, underscoring its compelling interest in continuing to pursue remedies to address these extant gaps.

### **RECOMMENDATION B: PROGRAM EXPANSION**

The results of the Study provide evidence for expansion of the current race- and gender-neutral program. This recommendation should be incorporated into any race- and gender-neutral program the County establishes. The County should consider the following program changes:

- ♦ Monitor the use of purchasing card (Pcard) spending across the County.
- ♦ Monitor and provide compliance on all contracts awarded by the County.

### **RECOMMENDATION C: PROJECT GOAL SETTING**

The Study provides support for the County to establish project specific goals for utilization for M/WBEs, in all procurement categories analyzed in this Study to further address disparities based on M/WBE availability for project scopes.

### **RECOMMENDATION D: PROGRAM COMPLIANCE**

The County should increase efforts to ensure all contracts with M/WBE goals are subject to ongoing monitoring of subcontracting participation to make sure that prime contractors are making sufficient progress and complying with project goals.

- ♦ The M/WBE goals should continue to be stated in all applicable solicitations for bids and proposals. Solicitation documents should also detail the requirements for outreach efforts to M/WBEs.
- ♦ The County should invest in an online tracking and compliance information management system. The system should have the capability to notify subcontractors when payments are made to



primes, and subcontractors should be able to verify their payments. We also recommend the County make efforts to track contracts awarded by direct subcontractors to indirect subcontractors.

- ◆ The County should further invest in the enforcement of contractual obligations for program compliance.
- ◆ County M/WBE program representatives should continue to regularly meet with the County's prime contractors to discuss their performance on past and active contracts, as well as efforts those firms might make to improve their utilization of M/WBEs.
- ◆ The County's M/WBE oversight and procuring agencies should have the staff resources to ensure that the M/WBE program objectives and administrative procedures can be met, and that the County can uniformly implement best practice recommendations or program improvements.
- ◆ The County should include language in contracts that require firms to maintain contract documents to include subcontractor information for a period of time in the event the County needs to audit records.

#### **RECOMMENDATION E: REMOVING BARRIERS TO PARTICIPATION**

This section focuses on recommendations that may lower barriers to participation.

- ◆ The County should continue efforts to streamline procurement processes to make it easier for small businesses, including M/WBEs, to participate in County contracting.
- ◆ The County should consider an online bid platform that will allow the electronic submission of bids and proposals. In addition to making it easier for vendors to bid on contract opportunities, centralized electronic tracking of bids could also facilitate the County's efforts to help M/WBEs that are bidding regularly but not successfully.
- ◆ The County should encourage departments to promote early engagement of M/WBEs to ensure these firms are well-apprised of upcoming procurements.
- ◆ The County should consider measures for expediting payments to contractors.
- ◆ The County should continue to collaborate with its certifying partners to facilitate M/WBEs' access to County certification and determine if adjustments to the County certification is necessary.

#### **RECOMMENDATION F: NARROWLY TAILORED M/WBE PROGRAM**

Developments in court cases involving federal disadvantaged business enterprise (DBE) programs provide important insight into the design of local M/WBE programs. Federal courts found have consistently found DBE regulations in 49 CFR 26 to be narrowly tailored.<sup>225</sup> The federal DBE program has the features in **Table 8-6** that contribute to this characterization as a narrowly tailored remedial procurement preference program. The County should adopt these features in any new M/WBE program.

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<sup>225</sup> *Adarand v. Slater*, 228 F.3d 1147 (10<sup>th</sup> Cir. 2000), *Gross Seed. v. State of Nebraska*, 345 F.3d 968 (8<sup>th</sup> Cir. 2003); cert denied, 158 L.Ed. 2d 729 (2004).

TABLE 8-6. NARROWLY TAILORED M/WBE PROGRAM FEATURES

	NARROWLY TAILORED GOAL-SETTING FEATURES	DBE REGULATIONS
1.	The County should not use M/WBE quotas.	49 CFR 26(43)(a)
2.	The County should use race- or gender-conscious set-asides only in extreme cases.	49 CFR 26(43)(b)
3.	The County should meet the maximum amount of M/WBE goals through race-neutral means.	49 CFR 26(51)(a)

Source: Suggested features in a proposed narrowly tailored M/WBE program based on USDOT 49 CFR 26.

### RECOMMENDATION G: DATA MANAGEMENT

The County should implement data systems and processes to monitor and track progress on key performance indicators (KPIs) and establish solid processes to collect and analyze M/WBE and County-based business utilization data to monitor goal attainment. Data collection should:

- ◆ Require primes (both M/WBE and non-M/WBE) to report subcontractor and supplier utilization.
- ◆ Validate subcontractor and supplier utilization using compliance reporting.
- ◆ Document M/WBE bidders on all County contracts.

### RECOMMENDATION H: USE OF AREA RESOURCES

The County has in its market area multiple third-party agencies that provide professional development for small, minority, and women firms. The County should coordinate memorandums of understanding with available resources within the market area to assist in capacity building, and professional and technical assistance.

## 8.4 CONCLUSION

This Study provides factual predicate evidence for continuation of a narrowly tailored M/WBE program. Disparity was identified in most procurement categories and business ownership classifications. No disparity was found for African Americans in Other Services, Hispanic Americans in Construction, and Asian Americans in Architecture and Engineering, Professional Services and Goods and Supplies, and Non-Minority Women in Other Services, as illustrated in **Table 8-7**. This evidence is based on quantitative and qualitative data from public and private sources. Any program efforts must be narrowly tailored to rectify the issues identified in this report.

TABLE 8-7. DISPARITY ANALYSIS SUMMARY

PROCUREMENT CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NONMINORITY WOMEN	MBE	M/WBE FIRMS
CONSTRUCTION	Disparity	Disparity	<b>No Disparity</b>	*	Disparity	<b>No Disparity</b>	Disparity
CONSTRUCTION SUBCONTRACTORS	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
ARCHITECTURE & ENGINEERING	Disparity	<b>No Disparity</b>	Disparity	Disparity	Disparity	Disparity	Disparity
PROFESSIONAL SERVICES	Disparity	<b>No Disparity</b>	Disparity	Disparity	Disparity	Disparity	Disparity
OTHER SERVICES	<b>No Disparity</b>	Disparity	Disparity	Disparity	<b>No Disparity</b>	Disparity	<b>No Disparity</b>
GOODS & SUPPLIES	Disparity	<b>No Disparity</b>	Disparity	Disparity	Disparity	Disparity	Disparity

Study Period: July 1, 2010, through June 30, 2018.

\*No utilization or availability, therefore disparity could not be determined.