

# City of Wilmington

## DISPARITY STUDY

February 2023

**FINAL REPORT**



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# Glossary of Terms

**Actual availability**—refers to firms that have affirmatively shown interest in doing business with the City of Wilmington in one or more of the following ways: bidding for a City contract; being awarded a City contract; or, being included on the City’s vendor or plan holder’s list. The difference between “actual availability” and “potential availability” may help identify and narrow down the area of availability that may be affected by discrimination, lack of outreach, lack of interest, lack of specific expertise required by the public entity, and lack of capacity.

**Active discrimination**—refers to any government entity which has directly discriminated against minority- and women-owned businesses through its contracting and procurement activities, or any other of its activities (e.g. employment).

**Anecdotal Interview**—interview conducted with a business owner within a particular industry, or who has contracted with a public entity, to ascertain his/her personal experiences in doing business within that industry or with that public entity.

**Annual Aspirational Goal or Annual Goal**—non-mandatory annual aspirational percentage goal for overall DBE prime and subcontract participation established by a public entity each year for the public entity’s identified industry categories.

**Annual Survey of Entrepreneurs**—A Census database that provides annual data on select economic and demographic characteristics of employer businesses and their owners by gender, ethnicity, race, and veteran status.

**Architecture and Engineering Services**—professional services of an architectural or engineering nature that are associated with research, planning, development, design, construction, alteration, or repair of real property. For the purposes of this Disparity Study, Construction Management services are included in Construction and Construction-Related Services.

**Availability**—the percentage of firms by race and gender in an industrial category and available to do business with a government entity.

**Awardees**—firms that receive a contract award from the City as reflected through contract awards, purchase orders and payments data.

**Bidders**—firms that submitted a bid or sub-bid on a City formal purchasing opportunity or submitted a quote for a the City informal procurement opportunities.

**Capacity**—a measure of additional work a firm can take on at a given point in time.

**Census**—a complete enumeration, usually of a population, but also of businesses and commercial establishments, farms, governments, and so forth.

**Certification**—process of qualifying a firm as being at least 51 percent owned, managed and controlled by minorities and/or females.

**City Certified DBE**—firms certified by the City’ Office of Economic Development as a DBE.

**Compelling Governmental Interest**—compelling reasons by a public entity to remedy past discriminatory treatment of racial or ethnic groups.

**Construction and Construction-Related Services**— Capital construction projects and contracts that cover general construction trade services.

**Contract award data**—data gleaned from the City’ bid history data and contract logs that were provided to M<sup>3</sup> Consulting in a shared folder. Access to the shared folder was provided by the City’s Point of Contact. The contract logs represent the universe of formal competitive contracts let by the City.

**Crosen Requirements**—guidelines which govern any state or local political body’s attempt to enact a minority/ female business enterprise program which uses set-asides, preferences, goals or other race-conscious measures on condition that a compelling government interest exists and that the program elements are narrowly tailored.

# Glossary of Terms (cont'd)

**Data Axle**—offers comprehensive and accurate business and consumer databases, with almost 400 distinct attributes across businesses and consumers in the United States and Canada.

**Disadvantaged Business**—new, small or local business, whether a sole proprietorship, partnership, corporation, or other entity, or any business that is at least 51 percent owned and controlled by one or more socially disadvantaged individuals who, in fact, control the management and daily business operations of that business.

**Discrete Contractor**—within the data analysis process, a contractor is counted only once, and duplicates are removed.

**Disparate Impact**—a policy or practice that, although neutral on its face, falls more harshly on a protected group. This impact may be viewed as discriminatory behavior in certain instances. The statistical analysis seeks to determine if there is any disparate impact of an agency's policy(ies) or practice(s), intended or unintended, on protected classes.

**Disparity Ratio**—ratio of the percentage of receipts received by M/WBEs from a particular public entity in a specific category of work (e.g. construction), to the percentage of firms that are M/WBEs available to do business with that public entity; also, the public entity's M/WBE utilization divided by M/WBE availability.

**Dodge Construction Data**—a construction market data resource that tracks construction activity by project and location. The data set also provides project specific information which includes owner of the project, value of project, type of project, general contractor, etc.

**Factual Predicate**—an analysis to determine whether there are any identified instances of past discrimination which must be particularized in a manner that provides guidance for the legislative body to determine the precise scope of the injury it seeks to remedy. It is utilized to determine whether a compelling governmental interest exists to support the utilization of race and gender-conscious remedies. The disparity study is utilized to

develop the factual predicate.

**Formal Purchases**—competitive purchasing is required for contracts over \$60,000. Formal purchasing at the City is done using Invitations for Bid and Requests for Proposals.

**Goods and Supplies**—those traditional purchases that are “non-service” based (computers, food, parts, equipment, furniture, fixtures, etc.)

**Informal Procurement**—purchases not requiring advertising and valued at less than \$60,000.

**Intermediate Scrutiny**—is applied to gender and age distinctions and requires the public entity to prove there is a fair and substantial relationship between the classification and the objective of the legislation.

**Local Business**—any entity with its headquarters' office or principal place of business within the city boundaries and in the tax year preceding application for certification has (1) earned at least 25 percent of its gross receipts from work performed on construction projects within the city boundaries; or (2) employed a workforce of which at least 25 percent were economically disadvantaged individuals or were residents of a targeted business development area within the city boundaries.

**Marketplace Availability**—all firms' available in the City' marketplace, as measured by Data Axle and Dodge Construction data.

**Master S/M/W/DBE List**—list of certified SBEs, MBEs, WBEs and DBEs from the City of Wilmington, State of Delaware, City of Philadelphia, Maryland Department of Transportation, New Jersey Department of Transportation, New Jersey Selective Assistance Program, and New Jersey Unified Certification program.

**Matchmaking**—efforts to bring together potential DBEs, Non-DBEs and City personnel on specific opportunities that encourages an environment of relationship building.

# Glossary of Terms (cont'd)

**Metropolitan Statistical Area (MSA)**—an area, defined by the US Census Bureau, which is an integrated economic and social unit with a population nucleus of at least 50,000 inhabitants. Each MSA consists of one or more counties meeting standards of metropolitan character. Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA (Hereinafter, Wilmington MSA), consists of the following counties: Bucks County, Burlington County, Camden County, Cecil County, Chester County, Delaware County, Gloucester County, Montgomery County, New Castle County, Philadelphia County, Salem County

**Minority Business Enterprise (MBE)**—firms that are at least 51% owned and controlled by minority individuals. Minority individuals are defined as: African Americans, Asian Americans, Native Americans, and Hispanic Americans.

**Multivariate Regression**—analyzes whether multiple variables, including race and gender, impact an outcome.

**Narrowly Tailored**—a law must be written to specifically fulfill only its intended goal. Race and gender-conscious remedial action be “narrowly tailored” to identify past or present discrimination. At least three characteristics were identified by the court as indicative of a narrowly tailored remedy:

1. The program should be instituted either after, or in conjunction with, race-neutral means of increasing minority business participation; a governmental entity does not have to enact race-neutral means if they are not feasible or conducive to remedying past discrimination;
2. The plan should avoid the use of rigid numerical quotas; and,
3. The program must be limited in its effective scope to the boundaries of the governmental entity.

**Non-DBEs**—for computation of availability, utilization and disparity tables, represents all other firms, exclusive of DBEs.

**Other Minority-owned Business**—Firms certified as a Minority-owned businesses without specific race or ethnic designations.

**Outreach**—any effort to communicate with minority or female-owned businesses regarding procurement or contracting opportunities.

**Passive Discrimination**—participating in the discriminatory or exclusive actions of other agents in the public and private sector.

**Passive Participant**—refers to any government entity which has indirectly discriminated against minority or female businesspersons by doing business with an industry or business that directly engages in discriminatory practices.

**Political Jurisdiction**—the geographical area of a political body’s power and authority.

**Potential Availability**—refers to firms present in the City’s market beyond those “actually available,” to include those that have not bid on the City work or taken other affirmative steps toward doing business specifically with the City (as opposed to other public and private sector clients) during the study period. This availability includes firms identified under both public-sector availability and marketplace availability.

**Procurement Forecasting**—an organization and its departments determine their procurement needs for a set period.

**Public Sector Availability**—Includes lists of available firms known to various public sector agencies, including, but not limited to, the City in the relevant market region. These firms are closer to RWASM, having expressed an interest in contracting opportunities with other public sector agencies with similar standards and limitations as the City.

# Glossary of Terms (cont'd)

**Pure Prime Utilization**—the value of prime contracts net of subcontract value.

**Practical Significance**—the most commonly used practical significance measure in the EEO context is the 4/5th or 80 percent rule, which indicates how large or small a given disparity is. An index less than 100 percent indicates that a given group is being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission's "80 percent" rule, that is, that a ratio less than 80 percent presents a prima facie case of discrimination.

**Procurement**—the acquisition of any good or services in the categories of A&E, construction, professional services, other services and procurement.

**PUMS (Public-Use Microdata Samples)**—contains records for a sample of housing units with information on the characteristics of each unit and each person in the unit. Files are available from the American Community Survey and the Decennial Census.

**Purchase Order**—a procurement vehicle used by a government entity to acquire goods or services by opening an order for the goods and services for a specified amount.

**Race- and Gender-Conscious**—any business development plan or program which uses race and gender as a criterion for participation.

**Race- and Gender-Neutral**—any business development plan or program in which race and gender is not among the criteria for participation.

**Rational Basis Standard**—tests economic programs that do not make distinctions based on race, ethnic origin or gender. Under this standard, the moving party is required to show that the classification is not rationally related to a valid state purpose.

**Ready, Willing and Able Availability Estimate (RWASM Estimate)**—the number of DBEs ready and willing to perform a particular scope of work and with the ability

to expand (or contract) to do the type of work required. Derived from the U.S. Supreme Court's statement that:

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.\*

The first component of the model, "ready", simply means a business exists in the market area. The second component, "willing", suggests a business understands the requirements of the work being requested, and wants to perform the work. The third component, "able", defines the group of firms with capacity to do the job.

**Relevant Market**—the geographic area reflecting a preponderance of commercial activity pertaining to an entity's contracting activity based on where bidders, vendors, or awardees are located. A typical range fitting this definition is approximately 70 percent. Relevant Market categories for the City:

- City of Wilmington
- Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA
- State of Delaware
- Nationwide

**Regression Analysis**—a statistical method that analyzes how a single dependent variable may change or vary based on values of one or more independent variables. For example, the contract dollars awarded to DBEs vary based on characteristics such as race, gender, years of experience, and gross annual receipts.

**Services**—includes any provider of services, both professional and non-professional (attorney, consultant, training, landscaper, security, transportation etc.).

\**City of Richmond v. J.A. Croson*, 109 S.Ct. 706, at 729 (1989).

# Glossary of Terms (cont'd)

**Set-Aside**—government policy in which competition for certain contracts/bid opportunities is restricted to certain firms.

**Small Business Enterprise**—an entity that has had less than \$500,000 of gross revenues in each of its last two fiscal years.

**Statistical Significance**—how large or small the disparity ratio is in comparison with the observed percentages based on the statistical confidence level; also, the likelihood that a statistic will vary from a given value by more than a certain amount due to chance.

**Strict Scrutiny Standard**—is evoked if the classification is suspect, in particular, one based on race, ethnic or alien distinctions or infringements upon fundamental rights. The strict scrutiny test is the most rigorous of the three, requiring the public entity to show compelling governmental interests for making such classifications.

**Sunset Clause**—a legal or regulatory provision that stipulates the periodic review of a government agency or program to determine the need to continue its existence. For race and gender-conscious programs, this can involve: a) a graduation program, b) a definite date to end the program; or c) an annual review of DBE program efficacy, goals, and utilization.

**Systemic Barrier**—entrenched discriminatory practices or policies that effectively prevent participation in economic opportunities.

**Technical Assistance**—the transfer of skills or information from one party or entity to another, through on-site consultation, conferences, brokering of services, training, or general dissemination of information.

**T-Test**—assesses whether the means of two groups are statistically different from each other.

**Unknown DBE**—Firms certified as a DBE business without specific race or ethnic designations.

**Utilization**—the percentage of receipts in an industrial category that are spent with a given class of firms (e.g., M/WBEs).

**Vendor**—any person or business entity who has come forth to a governmental entity and registered with the entity identifying the products and services they would like to supply/render.

**Veteran Business Enterprise Program**—A race- and gender-neutral program designed to benefit veteran-owned businesses.

**Woman-owned Business**—firms that are at least 51% owned and controlled by female individuals.



# E.1 INTRODUCTION

## E.1.1 Purpose of Disparity Study

On August 18, 2021, the City of Wilmington (the City) commissioned Miller3 Consulting, Inc. (M<sup>3</sup> Consulting) to conduct a Disparity Study (the Study). The purpose of the study was to determine if there is evidence showing that there is disparity among ready, willing and able disadvantaged businesses enterprises (DBEs) in Architecture and Engineering (A&E), Construction and Construction-Related Services, Professional Services, Non-Professional Services, and Goods & Supplies procurement and contracts issued by the City. The study period covers fiscal year (FY) 2016 to FY 2020.

## E.1.2 Overview of the City of Wilmington’s Current Race and Gender-Conscious and Race and Gender-Neutral Programs

The City of Wilmington’s DBE initiatives are governed by Part II of the Wilmington City Code, Chapter 35–Human Rights, Article IV–Equal Opportunity in Employment and City Contracts. The City began its Minority/Women-Owned Business Enterprise (M/WBE) program in 1985. The purpose of this initiative is to increase and enhance the accessibility to City contracting opportunities for DBEs. The City established goals for contracting with DBEs of Construction (20 percent), Goods & Supplies (10 percent) and Professional Services (5 percent).

## E.1.3 *Croson* and Third Circuit Standards

In *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 109 S.Ct. 706 (1989), the U.S. Supreme Court established a two-pronged “strict scrutiny” test for any governmental entity seeking to redress discrimination through race-conscious means:

- The governmental entity must demonstrate that there is a compelling governmental interest supported by a strong basis in evidence that consideration and use of race- and gender-conscious programs or policies is necessary to remedy discrimination.

- Any such race- and gender-conscious program must be narrowly tailored to remedy identified discrimination.

The requirements of the strict scrutiny test can be met by establishing a factual predicate. Disparity study evidence is a key component of such a factual predicate. The City can use the methodology, findings, conclusions and recommendations of this Study to determine whether it has a basis for using some form of a race- and gender-conscious program consistent with the U.S. Supreme Court requirements of *Richmond v. Croson*.

“Narrow tailoring” is a crucial element in crafting appropriate *Croson* remedies. Courts have struck down many M/WBE programs due to the failure of local jurisdictions to narrowly tailor their remedies. Once government policymakers have established and relied upon a factual predicate in devising M/WBE programs, post-*Croson* case law provides more detailed guidance for crafting M/WBE programs:

- Race- and gender-conscious M/WBE programs should be instituted only after, or in conjunction with, race- and gender-neutral programs.
- M/WBE programs should not be designed as permanent fixtures in a governmental purchasing system without regard to eradicating bias in standard purchasing operations, or in the private sector contracting arena in which the governmental entity is a participant. Consequently, each M/WBE program should have a sunset provision as well as provisions for regular review. Additionally, there is the implication that purchasing systems should be reformed.
- M/WBE programs should have sensible graduation provisions for M/WBEs that have largely overcome the effects of discrimination and are no longer in need of a remedy.
- Rigid numerical quotas are at considerable risk of being overturned by judicial review; flexible, rational, contract-specific goals are more legally defensible.



- Race- and gender-conscious goals should be tied to the relative M/WBE availability of qualified firms to perform a given contract and to addressing identified discrimination within an industry.
- M/WBE programs should limit their adverse impact on the rights and operations of innocent third parties.
- M/WBE programs should be limited in scope to only those group(s) and firms that suffer the ongoing effects of past or present discrimination.

*Croson* requirements were extended to federal government programs in *Adarand v. Peña*.

The Third Circuit has developed several distinctive standards as discussed above. The foundation of current Third Circuit standards was established from the *Croson* decision in 1989 through 1996 in the *Contractors I, II, III and Independent* cases. The Third Circuit's relevant standards from *Contractors I, II, III and Independent* are summarized here:

- Contractor associations have standing to challenge set-aside programs.
  - Post-enactment evidence may be considered in evaluating the legality of a program preference.
  - Any preference for any specified group must be supported by evidence of discrimination or an inference of discrimination against that particular group.
  - For equal protection analysis, the party challenging the government action bears the ultimate burden of persuasion.
  - Instances where contractors that were awarded government contracts were also members of contractor associations that discriminated against minority contractors did not amount to passive participation in private discrimination by the relevant government actors.
  - Post-enactment evidence may be sufficient as a basis for race- and gender-conscious programs but must also address other potential causes for disparity.
- A “narrowly tailored” program must correlate any race-conscious program to the identified discrimination or inferences of discrimination.
  - Any numeric goal must be supported by evidence.
  - Race-conscious initiatives can only be used after consideration of race-neutral alternatives.
  - Nondiscrimination efforts can include the use and analysis of race/sex information without being subject to *Croson* standards.
  - The factual predicate for any constitutional race-conscious relief may consist of proper statistical evidence of disparity and anecdotal evidence:
    - Proper statistical evidence of disparity for any race-conscious relief must assess the “relevant statistical pool”—the percentage of minority businesses engaged in the local construction industry.
    - Availability, for disparity purposes, is defined by the proportion of minority-owned businesses that were available or qualified to perform the contracts or work at issue.
    - Proper statistical evidence of disparity includes the “disparity index.” This index consists of the percentage of minority contractor participation in City contracts divided by the percentage of minority contractor availability in the relevant statistical pool.
    - Evidence of marketplace or private sector discrimination offered by way of general testimony of discrimination is insufficient as a basis for race-conscious relief. Generalized affidavits will not satisfy the “compelling government interest” required by *Croson*.
    - Race-neutral efforts, including any revolving loan fund, technical assistance and training, and bonding assistance, must also be assessed and considered prior to the use of race-conscious relief.



## E.2 M<sup>3</sup> CONSULTING'S APPROACH AND METHODOLOGY

M<sup>3</sup> Consulting's exclusive Study methodology includes 10 analyses, which lead to overall conclusions and recommendations..

### E.2.1 M<sup>3</sup> Consulting's 10-Part Disparity Study Methodology

M<sup>3</sup> Consulting's 10-part Study methodology provides a complete factual predicate consistent with evolving case law and the City's regulatory environment. The statistical analysis—relevant market, availability, utilization, disparity and capacity—conforms with the requirements of *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 109 S.Ct. 706 (1989); *Adarand Contractors, Inc. v. Federica Pena*, 515 U.S. 200, 115 S. Ct. 2097 (1995); and Eleventh Circuit progeny and determines if there are statistically significant disparities from which an inference of discrimination may be drawn. The remaining industry and market analysis assists in determining if organizational factors (active discrimination or exclusion) or private sector and marketplace factors (passive discrimination or exclusion) cause any disparity. Together, these findings allow the City to determine if there is a compelling governmental interest in using race- and gender-conscious remedies for any statistically significant disparity. The combined analysis also leads to a set of customized recommendations that includes race- and gender-neutral initiatives and narrowly tailored race- and gender-conscious initiatives.

## The City of Wilmington Disparity Study

INDUSTRY ANALYSIS	STATISTICAL ANALYSIS	MARKET ANALYSIS	CONCLUSIONS	RECOMMENDATIONS
<ul style="list-style-type: none"> <li>• Legal Analysis</li> <li>• Procurement and DBE Program Operational Analysis</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant Market Analysis</li> <li>• Availability Analysis</li> <li>• Utilization Analysis</li> <li>• Disparity Ratios</li> <li>• Regression and Capacity Analyses</li> </ul>	<ul style="list-style-type: none"> <li>• Anecdotal and Survey Analyses</li> <li>• Race- and Gender-Neutral Analysis</li> <li>• Marketplace Analysis</li> </ul>	<ul style="list-style-type: none"> <li>• Finding of Passive or Active Discrimination, If Any</li> <li>• Identification of Barriers to DBE Participation</li> </ul>	<ul style="list-style-type: none"> <li>• Procurement and DBE Programmatic Initiatives</li> <li>• Goal-setting</li> <li>• Nondiscrimination Initiatives</li> <li>• Management and Technical Assistance</li> </ul>

### Description of Disparity Study Components

1. **Legal Analysis** outlines the legal standards of *Richmond v. Croson*, *Adarand v. Peña* and their progeny in the Third Circuit as well as around the country. Such a legal analysis provides critical insight to current judicial opinions relevant to both DBE program design and Study analysis.
2. **Procurement and DBE Program Operational Analyses** examine the City's contracting history to determine the impact of the City's policies, procedures and practices on DBEs' ability to do business with the City and the effectiveness of the DBE operations on increasing DBE participation.
3. **Relevant Market Analysis** determines the geographic boundaries within which the City performs the substantial part (about 70 percent) of its business activities. The identification of the bounds is also guided by legal criteria that require the City to refine its efforts to impact DBE business activity in its market area.
4. **Availability Analysis** determines the available DBEs and non-DBEs that are available to do business with the City within the determined relevant market.
5. **Utilization Analysis** quantitatively examines the City's contracting history and determines the number of contracts and levels of expenditures with DBEs.
6. **Disparity Ratios** determine the difference between the availability of DBEs and their utilization by the City and if any disparity is statistically significant.
7. **Regression and Capacity Analyses** examine differences in capacity of firms based on race and gender, using established statistical methods, and examine if race, gender and ethnicity still impact the participation decision once a set of variables that represent capacity are controlled for. Further, the survey provides information on business characteristics, such as owner qualifications, years in business, capacity and credit market experiences.
8. **Anecdotal and Survey Analyses** determine the experiences of DBEs and non-DBEs attempting to do business with the City and in the business community overall.
9. **Race- and Gender-Neutral Analysis** determines the effectiveness of race- and gender-neutral programs in increasing DBE participation in both public and private sector opportunities.
10. **Marketplace Analysis** determines DBE participation in the marketplace, which consists of both public and private sector opportunities. Factors that impact business formation and self-employment are also analyzed in this analysis.

The methodology components M<sup>3</sup> Consulting deploys reflect the continuing development of case law, which has increased the level and sophistication of the statistical analysis necessary to comply with *Croson* and *Adarand* standards.

### E.2.2 Statistical Methodology

The statistical methodology below discusses in more detail relevant market, availability, utilization and disparity. It includes various definitions of availability and M<sup>3</sup> Consulting's "Ready, Willing and Able" (RWASM) model. M<sup>3</sup> Consulting has adapted this model to the specific the City data sources available for this study. Also discussed are the types of utilization analysis M<sup>3</sup> Consulting will perform. The statistical methodology section concludes by defining the disparity

ratio and significance tests, crucial for drawing conclusions regarding any disparity in the City's recent history of contracting with DBEs.

To conduct the analysis, M<sup>3</sup> Consulting collected vendor, bidder, contract award, purchase order (PO) and payments data for years FY 2016 to FY 2020

## A. Relevant Market

The *Croson* statistical analysis begins with identifying the relevant market. The relevant market establishes geographical limits to the calculation of DBE availability and utilization. Most courts and Study consultants characterize the relevant market as the geographical area encompassing most of a public entity's commercial activity. The *Croson* Court required that an MBE program cover only those groups that have been affected by discrimination within the public entity's jurisdiction.

Two methods of establishing the relevant market area have been used in disparity studies. The first uses vendor and contract awardee location of dollars expended by an entity in the relevant industry categories. In the second method, vendors and contractors from an entity's vendor or bidder list are surveyed to determine their location. The former method is based on approaches implemented under the U.S. Justice Department guidelines for defining relevant geographic markets in antitrust and merger cases. M<sup>3</sup> Consulting has developed a method for determining an entity's relevant market by combining the above methods and using an entity's bidder lists, vendor lists and awardee lists as the basic foundation for market definition.

By examining the locations of bidders, vendors and winners of contract awards, M<sup>3</sup> Consulting seeks to determine the area where most of an entity's commercial activity occurs based on its contracting activity. While case law does not indicate a specific minimum percentage of vendors, bidders or contract awardees that a relevant market must contain, M<sup>3</sup> Consulting has determined a reasonable threshold is somewhere around 70 percent each for bidders, vendors and contract award winners. Further analysis may be necessary if there are large differences in the percentages of these three measures.

## B. Availability Analysis

The fundamental comparison to be made in disparity studies is between firms owned by minorities (MBEs) and/or women (WBEs) and other firms (non-DBEs) *ready, willing and able* to perform a particular service (i.e., they are "available") and the number of such businesses actually being used by the locality or its prime contractors. This section presents a discussion of the availability estimates for DBEs that are *ready, willing and able* to perform work on contracts for the City.

Availability is the most problematic aspect of the statistical analysis of disparity. It is intrinsically challenging to estimate the number of businesses in the marketplace that are ready, willing and able to perform contracts for or provide services to a particular public entity. In addition to determining an accurate head count of firms, the accompanying issues of capacity, qualification, willingness and ability complicate the production of accurate availability estimates.

### 1. M3 Consulting Availability Model

M<sup>3</sup> Consulting employs two general approaches to measuring availability: the RWASM model and marketplace availability. The availability measures can fall into the following categories:

- **RWA<sup>SM</sup>**—Those firms that are ready, willing and able to do business with the City;
- **Public Sector Availability**—Those firms that are ready, willing and able to do business with similar public sector agencies within the City's marketplace; and
- **Marketplace Availability**—All firms available in the City's marketplace, as measured by Census, Dun & Bradstreet, Data Axle, Dodge Data & Analytics and/or business license data.

The matrix in Figure E.1 outlines M<sup>3</sup> Consulting's Availability Model. The matrix starts with the optimum availability measure of those firms ready, willing and able to do business with the City and descends to less optimum measures. Factors that determine which level of availability best suits the City's environment include quality of available data, legal environment and previous levels of inclusion of DBE in bidding and contracting activity.

This analysis requires intergovernmental cooperation between public entities providing bidder, vendor and awardee data; thus it is not performed unless such agreement is developed for individual agencies or a consortium of agencies conducted a consortium disparity study.

**Figure E.1.**  
**RWASM Availability Model**

Availability of firms ready, willing and able to do business	<b>City of Wilmington RWA<sup>SM</sup> Availability</b>
	1. Prime and sub-bidders by contract category for each year of study period
	2. Prime and sub-bidders by contract category for fewer years
	3. Prime bidders, sub-awardees, prime awardees (informal purchases) for each year of study period
	4. Prime bidders, sub-awardees, prime awardees (informal purchases) for fewer years period
	5. Prime bidders, sub-awardees, prime awardees (informal purchases) + vendors + certified DBEs for fewer years period
	<b>Public Sector<sup>SM</sup> Availability</b>
	6. City’s RWA measure + similar public entity prime and sub-bidders
	7. City’s RWA measure + similar public entity prime and sub-awardees
	8. City’s RWA measure + similar public entity prime, sub awardees and vendors + Master DBEs List
	<b>Marketplace Availability</b>
9. Census	
10. Data Axle	
11. City of Wilmington Business License	

Source: M3 Consulting, Inc.

M<sup>3</sup> Consulting’s RWA<sup>SM</sup> Availability Model is further tailored to the robustness of the City’s specific databases available for analysis. RWA<sup>SM</sup> availability is defined at Level 2 for the years

FY 2016–FY 2020, which includes prime and sub-bidders, informal and noncompetitive awardees, and prime and sub-awardees

**Figure E.2.**  
**City of Wilmington Specific RWA<sup>SM</sup> Availability Levels**

RWA <sup>SM</sup> Availability Level	RWA <sup>SM</sup> Availability Definition
Level 1	City of Wilmington Bidders and Sub-bidders
Level 2	City of Wilmington Bidders and Sub-bidders + AP/PO firms
Level 3	The City of Wilmington Vendor Inquiry Report* + M/W/DBE Master List

Source: M3 Consulting; \* list with requisite data elements was not available for analysis



### C. Utilization Analysis

Utilization represents the contracting and subcontracting history of non-DBEs and DBEs with the City. In developing the contract database to be used as the basis for determining utilization, there are three alternative measures of utilization that can be taken in each procurement category. These are:

1. The numbers of contracts awarded;
2. The dollar value of contracts actually paid or received; and
3. The numbers of firms receiving contracts.

The current report presents two of the three measures of utilization: the number of contracts awarded and the dollar value of the contract awards. Both dollars and counts are reported to determine if there are any outliers or large single contracts that cause utilization dollar values to be at reported levels. These were preferred over the third measure, the number of firms, which is less exact and more sensitive to errors in measurement.

For instance, if one non-DBE received 30 contracts for \$5 million, and 10 African American-owned firms received one contract each worth \$100,000, measured by the number of firms (one non-DBE vs. 10 African American-owned firms), African American-owned firms would appear to be overutilized and non-DBEs underutilized. Using the number of contracts (30 contracts vs. 10 contracts) and the dollar value of contracts awarded (\$5 million vs. \$1 million), the aforementioned result would reverse, depending on relative availability.

### D. Disparity Analysis

A straightforward approach to establishing statistical evidence of disparity between the availability of DBEs and the utilization of DBEs by the City is to compare the utilization *percentage* of DBEs with their availability *percentage* in the pool of total businesses in the relevant market area. M<sup>3</sup> Consulting's specific approach, the "disparity ratio," consists of a ratio of the percentage of dollars spent with DBEs (utilization) to the percentage of those businesses in the market (availability).

Disparity ratios are calculated by actual availability measures. The following definitions are used in the M<sup>3</sup> Consulting ratio:

A = Availability proportion or percentage

U = Utilization proportion or percentage

D = Disparity ratio

N<sub>w</sub> = Number of women-owned firms

N<sub>m</sub> = Number of minority-owned firms

N<sub>t</sub> = Total number of firms

Availability (A) is calculated by dividing the number of minority- and/or women-owned firms by the total number of firms. Utilization (U) is calculated by dividing total dollars expended with minority- and women-owned firms by the total expenditures.

$A_w = N_w / N_t$

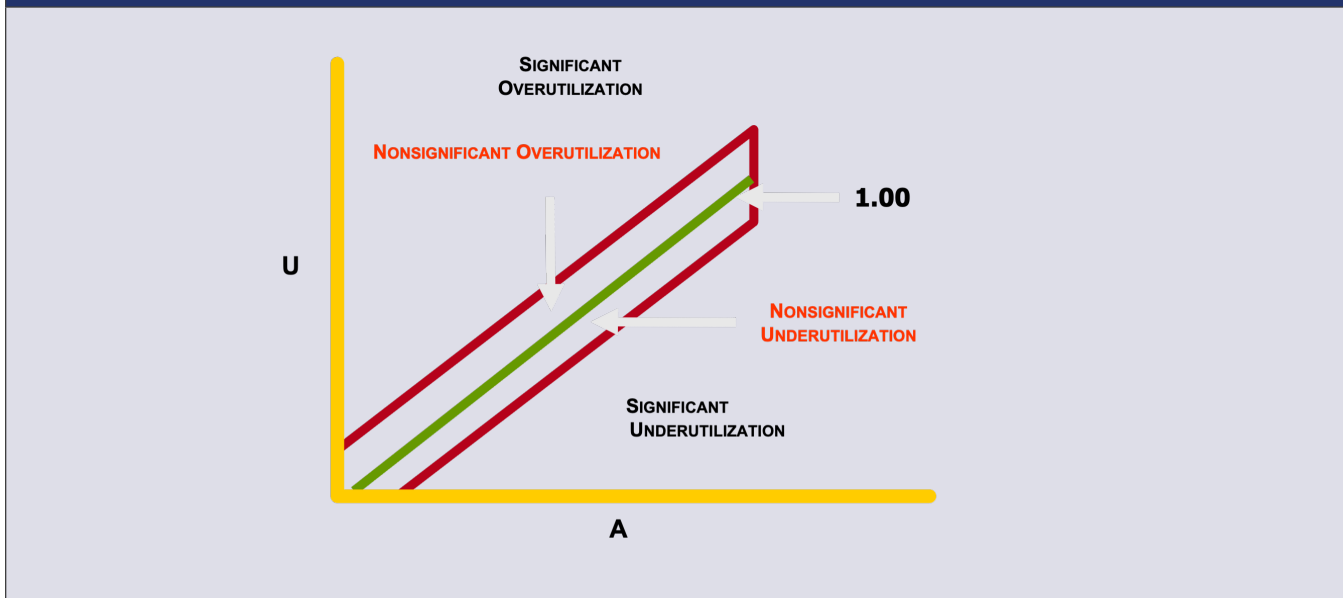
$A_m = N_m / N_t$

$D = U/A$

When D=1, there is no disparity (i.e., utilization equals availability). As D approaches zero, the implication is that utilization is disproportionately low compared to availability. As D gets larger (and greater than one), utilization becomes disproportionately higher compared to availability. Statistical tests are used to determine if the difference between the actual value of D and 1 are statistically significant (i.e., if it can be stated with confidence that the difference in values is not due to chance [see Figure E.3]).



**Figure E.3.**  
**Disparity Ratio Indicating Areas of Significant and Nonsignificant Disparity and Overutilization**



Source: M3 Consulting, Inc.

The statistical disparity ratio used in this study measures the difference between the proportion of available firms and the proportion of dollars those firms received. Therefore, as the proportion of contract dollars received becomes increasingly different from the proportion of available DBEs, an inference of discrimination can be made.

The concept of statistical significance as applied to disparity analysis is used to determine if the difference between the utilization and availability of DBEs could be attributed to chance. Significance testing often employs the t-distribution to measure the differences between the two proportions. The number of data points and the magnitude of the disparity affect the robustness of this test. The customary approach is to treat any variation greater than two standard deviations from what is expected as statistically significant.

A statistically significant outcome or result is one that is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from random chance alone. P-value is a standard measure used to represent the level of statistical significance. It states the numerical probability that the stated relationship is due to chance alone. For example, a p-value of 0.05 or 5 percent indicates that the chance a given statistical difference is due purely to chance is 1 in 20.



## E.3 FINDINGS AND CONCLUSIONS

### E.3.2 Statistical Finding Impacting Statistically Significant Disparity

#### A. Relevant Market

Based on the data provided for this study, four relevant markets were defined and are presented below in Table E.1:

- City of Wilmington;
- Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA (hereinafter, Wilmington MSA)<sup>2</sup>;
- State of Delaware; and
- Nationwide.

Table E.1. Summary of Relevant Market Determination				
	City	MSA	State	Nationwide
A&E				✓
Construction and Construction-Related Services		✓		
Professional Services				✓
Non-Professional Services		✓		
Goods & Supplies				✓

Source: M<sup>3</sup> Consulting, Wilmington Contracts Data, MUNIS Financial System PO and AP data

<sup>2</sup>Bucks County, Burlington County, Camden County, Cecil County, Chester County, Delaware County, Gloucester County, Montgomery County, New Castle County, Philadelphia County, Salem County

### B. Availability Analysis

Table E.2 summarizes the availability estimates for DBEs within the relevant market for the City of Wilmington. It also provides the source of the information. M<sup>3</sup> Consulting typically relies upon RWA<sup>SM</sup> estimates derived from bidders, sub-bidders and awardees in that order of importance. Marketplace availability measures, based on Data Axle and reflected in Table E.3, are presented as a benchmark of minority- and woman-owned firm availability and for the City of Wilmington to consider when looking for potentially available firms for outreach.

For A&E, the RWA<sup>SM</sup> availability of total MBEs was 14.06 percent, while WBE and small business enterprise (SBE) availability was only 3.13 percent, for total DBE availability of 17.09. Total DBE marketplace availability for A&E was proportionately significantly higher at 34.16 percent, which included WBEs at 27.17 percent and MBEs at 6.99 percent.

In Construction and Construction-Related Services, the DBE RWA<sup>SM</sup> pool is 117 firms, representing 31.62 percent of the total firms in the relevant market. African American-owned firms had the highest level of availability at 16.22 percent, followed by 7.84 percent WBEs, with the rest of the DBE/SBE/VBE (veteran-owned business enterprise) groups at or less than 3.5 percent of the total firms. The marketplace availability measure shows a significantly higher pool of firms (5,470) but as stated previously, had a lower representation in the marketplace of DBEs at 13.73 percent, compared to 31.62 percent for RWA<sup>SM</sup>.

For Professional Services like A&E and Construction, the RWA<sup>SM</sup> pool of firms was small, 383 firms, compared to marketplace at 11,510 firms. DBE availability based on RWA<sup>SM</sup> availability was higher at 11.49 percent, compared to the marketplace availability at 32.44 percent. For DBEs, African American-owned firms had the highest level of participation under RWA<sup>SM</sup> availability at 6.01 percent, compared to marketplace availability, which reflected WBEs with the highest percentage at 19.45 percent.

DBE availability based on RWA<sup>SM</sup> availability was 11.31 percent for Non-Professional Services, in comparison to the marketplace availability at 36.13 percent. The RWA<sup>SM</sup> pool included 844 firms; marketplace, however, reflected a pool of 25,765 firms. Under RWA<sup>SM</sup> availability, African American-owned firms reflected the highest availability at 6.67 percent, followed by WBEs at 2.60 percent. In comparison, based on marketplace availability, WBEs had the highest availability at 27.97 percent, and African American-owned firms were

barely represented, reflecting less than 1.2 percent. Hispanic American-owned firms had the highest presence in marketplace availability among MBEs at 5.09 percent, but they were barely represented within RWA<sup>SM</sup> availability, with only 11 firms, or 1.24 percent. This presents a window of opportunity for the City of Wilmington to consider potentially available Hispanic American-owned firms for outreach.

For Goods & Supplies, DBE RWA<sup>SM</sup> availability represented only 8.24 percent, while marketplace availability for DBEs was 37.97 percent. For RWA<sup>SM</sup>, African American-owned firms and WBEs represented 3.64 percent and 2.35 percent, respectively. For marketplace, DBE availability was driven by WBEs at 29.15, followed by Asian American-owned firms at 3.82 percent and Hispanic American-owned firms at 3.92 percent. As in the case of Non-Professional firms, the City of Wilmington could conduct outreach with these two groups, which are well-represented based on marketplace but have low representation in RWA<sup>SM</sup> availability.

Except for Construction, DBEs reflect a lower proportion of bidders and awardees in the City of Wilmington's procurement process, as noted in the RWA<sup>SM</sup> measures for A&E, Professional and Non-Professional Services compared to marketplace availability, largely due to high WBE representations in marketplace. These proportions change for MBEs in A&E, Construction and Non-Professional Services, where they have higher RWA<sup>SM</sup> availability than marketplace.

The marketplace shows a greater number of DBEs that do not participate in the City's procurement process, although they may potentially be available to do business. Whether these potentially available firms meet the RWA<sup>SM</sup> availability criteria and may be encouraged to participate in the City's contracting process remains to be explored.

### C. Utilization Analysis

Table E.4 summarizes utilization of DBEs by the three utilization measures: POs, accounts payable and contract awards. Table E.5 reflects POs by race and gender breakdowns.

Overall, utilization of DBEs is highest in Construction and Construction-Related Services at 29.13 percent for POs, 44.06 percent for payments and 26.19 percent for contract awards. WBEs showed higher rates in POs (27.23 percent) and payments (41.60 percent), which reflects prime-level dollars only, while MBEs reflected a higher rate based on contract awards (13.83 percent) when subcontractors are included. Of the MBEs, African American-owned firms had the highest level of participation at 11.65 percent. All other MBEs had 1 percent

<b>Table E.2.</b> <b>Summary Table – RWA<sup>SM</sup> Level 2 Availability Percentage Participation</b> <b>City of Wilmington</b> <b>Relevant Market; FY 2016–FY 2020</b>													
Ethnicity	A&E <sup>1</sup>		Construction and Construction-Related Services <sup>2</sup>		Professional Services <sup>1</sup>		Non-Professional Services <sup>2</sup>		Goods & Supplies <sup>1</sup>		Total Firms <sup>1</sup>		
	#	%	#	%	#	%	#	%	#	%	#	%	
<b>Non-DBE</b>	<b>50</b>	<b>78.13</b>	<b>238</b>	<b>64.32</b>	<b>332</b>	<b>86.68</b>	<b>766</b>	<b>86.65</b>	<b>843</b>	<b>90.16</b>	<b>2,276</b>	<b>56.35</b>	
African American	6	9.38	60	16.22	23	6.01	59	6.67	34	3.64	122	6.75	
Asian American	1	1.56	8	2.16	5	1.31	3	0.34	4	0.43	19	0.44	
Hispanic American	1	1.56	13	3.51	6	1.57	11	1.24	10	1.07	30	0.60	
Native American	-	0.00	1	0.27	-	0.00	1	0.11	-	0.00	4	0.04	
Other MBEs	1	1.56	6	1.62	2	0.52	3	0.34	7	0.75	25	1.16	
<i>Total MBE</i>	9	14.06	88	23.78	36	9.40	77	8.71	55	5.88	200	7.71	
WBEs	2	3.13	29	7.84	8	2.09	23	2.60	22	2.35	68	12.49	
Unknown DBE	-	-	-	-	-	-	-	-	-	-	-	0.92	
<b>Total DBE</b>	<b>11</b>	<b>17.19</b>	<b>117</b>	<b>31.62</b>	<b>44</b>	<b>11.49</b>	<b>100</b>	<b>11.31</b>	<b>77</b>	<b>8.24</b>	<b>268</b>	<b>10.34</b>	
SBE	2	3.13	11	2.97	4	1.04	14	1.58	11	1.18	37	21.00	
VBE	1	1.56	4	1.08	3	0.78	4	0.45	4	0.43	12	0.24	
<b>Grand Total</b>	<b>64</b>	<b>100</b>	<b>370</b>	<b>100</b>	<b>383</b>	<b>100</b>	<b>884</b>	<b>100</b>	<b>935</b>	<b>100</b>	<b>2,593</b>	<b>100</b>	

Source: M<sup>3</sup> Consulting; Wilmington Contracts Data; MUNIS PO and AP data; Wilmington Vendor data; Other Minority is a firm identified as MBE with no specific race/ethnicity identified; Unknown DBE is a firm identified as DBE, with no specific race/ethnicity/gender identified.

<sup>1</sup>Nationwide

<sup>2</sup>Wilmington MSA Area

Table E.3. Data Axle Availability Wilmington MSA, 2021													
	A&E		Construction and Construction-Relat- ed Services		Professional Services		Non-Professional Services		Goods & Supplies		Total Firms		
	#	%	#	%	#	%	#	%	#	%	#	%	
<b>Non-DBE</b>	<b>933</b>	<b>65.84</b>	<b>4,719</b>	<b>86.27</b>	<b>7,776</b>	<b>67.56</b>	<b>16,455</b>	<b>63.87</b>	<b>9,617</b>	<b>62.03</b>	<b>39,500</b>	<b>66.20</b>	
African American	25	1.76	36	0.66	135	1.17	285	1.11	165	1.06	646	1.08	
Asian American	35	2.47	34	0.62	649	5.64	490	1.90	592	3.82	1,800	3.02	
Hispanic American	38	2.68	192	3.51	702	6.10	1,311	5.09	608	3.92	2,851	4.78	
Native American	1	0.07	1	0.02	9	0.08	17	0.07	3	0.02	31	0.05	
Other MBEs	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	
<b>Total MBE</b>	<b>99</b>	<b>6.99</b>	<b>263</b>	<b>4.81</b>	<b>1,495</b>	<b>12.99</b>	<b>2,103</b>	<b>8.16</b>	<b>1,368</b>	<b>8.82</b>	<b>5,328</b>	<b>8.93</b>	
WBEs	385	27.17	488	8.92	2,239	19.45	7,207	27.97	4,520	29.15	14,839	24.87	
Unknown DBE	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	-	0.00	
<b>Total DBE</b>	<b>484</b>	<b>34.16</b>	<b>751</b>	<b>13.73</b>	<b>3,734</b>	<b>32.44</b>	<b>9,310</b>	<b>36.13</b>	<b>5,888</b>	<b>37.97</b>	<b>20,167</b>	<b>33.80</b>	
SBE	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	-	0.00	
VBE/DVOBE	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	-	0.00	
<b>Grand Total</b>	<b>1,417</b>	<b>100</b>	<b>5,470</b>	<b>100</b>	<b>11,510</b>	<b>100</b>	<b>25,765</b>	<b>100</b>	<b>15,505</b>	<b>100</b>	<b>59,667</b>	<b>100.00</b>	

Source: Data Axle, 2021; M<sup>3</sup> Consulting

**Table E.4.**  
**DBE Utilization in Percent of Dollars of POs, Payments and Contract Awards**  
**City of Wilmington**  
**Summary of DBE Utilization; FY 2016–FY 2020**  
**By Relevant Market**

Procurement Category	DBE Utilization Based on POs (in percent)			DBE Utilization Based on Accounts Payable (in percent)			DBE Utilization Based on Contract Dollars (in percent)		
	MBE	WBE	DBE <sup>4</sup>	MBE	WBE	DBE <sup>4</sup>	MBE	WBE	DBE <sup>4</sup>
<b>A&amp;E<sup>1</sup></b>	15.44	3.06	18.50	18.08	0.78	19.65	4.22	0.00	4.22
<b>Construction and Construction-Related Services<sup>2</sup></b>	1.89	27.23	29.13	2.46	41.60	44.06	13.83	12.36	26.19
<b>Professional Services<sup>1</sup></b>	6.67	0.55	7.22	5.84	0.47	6.31	33.89	16.94	50.83
<b>Non-Professional Services<sup>2</sup></b>	4.11	7.85	11.97	4.25	7.33	11.58	4.84	0.18	5.02
<b>Goods &amp; Supplies<sup>1</sup></b>	3.95	1.64	5.59	4.11	0.91	5.02	0.16	1.27	1.43

Source: M<sup>3</sup> Consulting, Wilmington Contracts Data, MUNIS PO and AP data, Wilmington Vendor data

<sup>1</sup>Nationwide

<sup>2</sup>Wilmington MSA

<sup>3</sup>State of Delaware

<sup>4</sup>Includes unknown DBEs

or less of Construction and Construction-Related Services’ pure prime plus subcontractor dollars.

A&E follows with the next highest DBE utilization, 18.50 percent based on POs and 19.65 percent based on payments. At 15.44 percent, MBEs were uses more than WBEs at 3.06 percent. African American-owned firms had the highest participation among MBEs at 10.68 percent, followed by Hispanic American-owned firms at 3.44 percent, based on POs.

In Professional Services, MBE utilization is higher than WBE utilization for the three measures, with 6.67 percent based on POs, 5.84 percent based on payments and 33.89 percent based on contract awards. WBEs had about 0.50 percent based on both POs and payments. Among MBEs, African American-owned firms had 3.35 percent of Professional Services dollars based on POs, followed by Asian American-owned firms at 2.42 percent. Hispanic American-owned firms garnered less than 1 percent at 0.84 percent.

Non-Professional Services show a higher utilization of WBEs than MBEs, with DBEs procuring close to 12 percent of POs and payments. Based on POs, WBEs had 7.85 percent, while African American-owned firms had 2.93 percent. All other MBEs had less than 1 percent of POs.

Goods & Supplies shows a very small percentage of DBE utilization, with 5.59 percent in POs and 5.02 percent in payments. Most of the DBE PO dollars went to African American-owned firms at 2.83 percent and WBEs with 1.64 percent. All other MBEs had less than 1 percent of POs.

### D. Disparity Analysis

Table E.6 summarizes the disparity ratios discussed in this chapter for each procurement category at the race/ethnic/gender group level for Wilmington procurements for the period FY 2016–FY 2020. Based on the foregoing analysis and the summary below, findings of statistically significant



<b>Table E.5. Total Utilization POs—Dollars City of Wilmington Nationwide, FY 2016–FY 2020</b>													
Race/Ethnicity/Gender	A&E <sup>1,4</sup>		Construction and Construction-Related Services <sup>2,3</sup>		Professional Services <sup>1,4</sup>		Non-Professional Services <sup>1,4</sup>		Goods & Supplies <sup>1,4</sup>				
	\$	%	\$	%	\$	%	\$	%	\$	%			
<b>Non-DBE</b>	<b>12,082,287</b>	<b>78.42</b>	<b>47,144,472</b>	<b>72.61</b>	<b>59,881,684</b>	<b>92.32</b>	<b>183,668,168</b>	<b>86.51</b>	<b>74,808,258</b>	<b>93.26</b>			
African American	1,645,543	10.68	7,563,006	11.65	2,172,511	3.35	6,227,337	2.93	2,269,949	2.83			
Asian American	70,000	0.45	418,591	0.64	1,572,509	2.42	1,756,159	0.83	88,264	0.11			
Hispanic American	529,600	3.44	660,429	1.02	545,600	0.84	368,754	0.17	278,145	0.35			
Native American	-	0.00	163,000	0.25	-	0.00	-	0.00	-	0.00			
Other MBE	133,635	0.87	172,730	0.27	32,969	0.05	374,072	0.18	532,827	0.66			
Total MBE	2,378,778	15.44	8,977,756	13.83	4,323,588	6.67	8,726,321	4.11	3,169,185	3.95			
WBE	471,603	3.06	8,023,950	12.36	358,501	0.55	16,675,418	7.85	1,314,074	1.64			
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00			
<b>Total DBE</b>	<b>2,850,380</b>	<b>18.50</b>	<b>17,001,706</b>	<b>26.19</b>	<b>4,682,089</b>	<b>7.22</b>	<b>25,401,739</b>	<b>11.97</b>	<b>4,483,259</b>	<b>5.59</b>			
SBE	473,697	3.07	621,907	0.96	106,250	0.16	3,064,312	1.44	826,199	1.03			
VBE	-	0.00	155,950	0.24	196,403	0.30	163,895	0.08	94,518	0.12			
<b>Grand Total</b>	<b>15,406,365</b>	<b>100.00</b>	<b>64,924,034</b>	<b>100.00</b>	<b>64,866,425</b>	<b>100.00</b>	<b>212,298,114</b>	<b>100.00</b>	<b>80,212,234</b>	<b>100.00</b>			

Source: Wilmington Contracts Data, Wilmington MUNIS data, M<sup>3</sup> Consulting

<sup>1</sup>Nationwide

<sup>2</sup>Wilmington MSA

<sup>3</sup>Contract Awards

<sup>4</sup>POs

**Table E.6.**  
**Summary Disparity Ratios by Race, Ethnicity and Gender**  
**Utilization vs. RWA<sup>SM</sup> Availability Level 2**  
**City of Wilmington**  
**Nationwide, FY 2016–FY 2020**

Ethnicity	A&E		Construction and Construction-Related Services <sup>2,3</sup>		Professional Services <sup>1,4</sup>		Non-Professional Services <sup>1,4</sup>		Goods & Supplies <sup>1,4</sup>	
	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
<b>Non-DBE</b>	<b>1.00</b>	<b>NS</b>	<b>1.13</b>	<b>S</b>	<b>1.00</b>	<b>NS</b>	<b>1.06</b>	<b>S</b>	<b>1.03</b>	<b>S</b>
African American	1.14	NS	0.72	NS	0.44	S	0.56	S	0.78	S
Asian American	0.29	NS	0.30	NS	2.44	S	1.86	S	0.26	S
Hispanic American	2.20	S	0.29	S	0.14	S	0.54	S	0.32	S
Native American	0.00	S	0.93	NS	0.00	S	0.00	S	0.00	S
Other MBE	0.56	NS	0.16	NS	0.52	S	0.10	S	0.89	NS
<i>Total MBE</i>	<i>1.10</i>	<i>NS</i>	<i>0.58</i>	<i>S</i>	<i>0.47</i>	<i>S</i>	<i>0.71</i>	<i>S</i>	<i>0.67</i>	<i>S</i>
WBE	0.98	NS	1.58	S	3.02	S	0.26	S	0.70	S
Unknown DBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
<b>Total DBE</b>	<b>1.08</b>	<b>NS</b>	<b>0.83</b>	<b>NS</b>	<b>1.06</b>	<b>NS</b>	<b>0.63</b>	<b>S</b>	<b>0.68</b>	<b>S</b>
SBE	0.98	NS	0.32	NS	0.91	NS	0.16	S	0.88	NS
VBE	0.00	S	0.22	NS	0.17	S	0.39	S	0.28	S

Source: Wilmington Contracts Data, MUNIS PO and AP data, M<sup>3</sup> Consulting  
 -Ratio is less than 1—underutilization; ratio is greater than 1—overutilization  
 -Significance is S and ratio is less than 1—statistically significant underutilization or disparity; significance is S and ratio is greater than 1—statistically significant overutilization  
 -Significance is NS and disparity ratio is less than 1—disparity but not statistically significant; significance is NS and ratio is greater than 1—overutilized but not statistically significant

disparity are made for the following groups in the following procurement categories:

- A&E—None;
- Construction and Construction-Related Services—Hispanic American-owned firms;
- Non-Professional Services—African American-owned firms, Hispanic American-owned firms;
- Professional Services—African American-owned firms, Hispanic American-owned firms, WBEs; and
- Goods & Supplies—African American-owned firms, Asian American-owned firms, Hispanic American-owned firms, WBEs.

### E. Capacity Analysis

As disparities in procurement and contracting are often attributed to differences in capacity of non-DBEs and DBEs, the capacity analysis sought to examine if there were any differences in capacity of firms based on race or gender that impact disparity outcomes and that could hinder firms from being actually and potentially available to the City. The purpose of this analysis is to determine if there are any differences in the capacity of race, gender and ethnic groups and, after accounting for any differences in the capacity of firms, if race and gender are contributing factors to any disparities found.

#### Capacity Based on Census Annual Survey of Entrepreneurs

If number of firms with paid employees was to be used as a measure of capacity, for Construction, total M/WBEs represented 12.21 percent of the firms with paid employees in the MSA. Minority-owned firms accounted for 7.96 percent, WBEs 3.94 percent and VBEs 6.43 percent, respectively, of the total firms in Construction within the MSA. Moreover, other than Hispanic American-owned firms and WBEs, other M/WBE firms did not have any paid employees.

With 18.20 percent of firms with paid employees, Asian American-owned firms have the highest capacity among M/WBEs for Goods & Supplies, followed by WBEs at 11.62 percent. Among M/WBEs in Non-Professional Services, Asian American-owned firms, African American-owned firms and WBEs represented 13.96 percent, 3.01 percent and 14.23 percent, respectively, of firms with paid employees. In Professional Services, WBEs had 6,115 firms with paid employees,

which represented 18.28 percent of the total, while there were 4,813 MBEs that represent 14.39 percent of firms with paid employees.

#### Capacity Based on Data Axle

In the MSA, to compare capacity of firms measured by the number of employees, there are close to 25,000 M/WBE firms with 1–19 employees. Nearly 18,000 of these are WBEs, nearly 7,000 are MBEs and over 43,000 are Non-M/WBE firms. As capacity (number of employees) increases, the number of M/WBE firms remains lower than the Non-M/WBE firms. For capacity measured as 500–1,000 employees, there are only four MBEs and 28 WBEs compared to 46 Non-M/WBE firms. This slightly evens out for firms with 5,000–9,999 employees, where there are four Non-M/WBE firms and two M/WBE firms.

In A&E, most firms were in the 1–19 employee range, with Non-M/WBEs representing about 33 percent of firms, compared to M/WBEs at 17.46 percent, the majority of which (14.18 percent) are WBEs. In the highest range, 5,000–9,999 employees, there were only two Non-M/W/SBEs, and there were also two WBE firms with 500–999 employees.

For Construction, only one Non-M/WBE was represented in the 500–999 range. Non-M/WBEs represented about 37–54 percent in other lower ranges. African American-owned firms were the only ones represented in the 500–999 employee range among M/WBEs, and no other M/WBEs were in any of the higher employee ranges.

Most Goods & Supplies companies have 1,000 employees. Only four Non-M/WBEs firms and 10 of unknown/multiethnic-owned firms have over 1,000 employees. WBEs and unknown/multiethnic firms were most consistently represented across all ranges in Non-Professional Services. In Professional Services, Non-M/WBEs firms reflect between 20–35 percent across all employee ranges, and WBEs represented 11–18 percent across all ranges. No MBEs had 1,000 or more employees in Professional Services.

If capacity were based on sales revenues, in A&E, only Non-M/WBE, WBE and unknown/multiethnic-owned firms are represented in every revenue range until \$500 million. In Construction, Non-M/WBEs based on sales volume range up to \$100 million, along with WBEs and Asian American-owned firms. All firms showed capacity in Goods & Supplies, up to \$50 million; only Non-M/WBEs, WBEs and those with unknown racial ethnicity show capacity up to \$1 billion. There are firms in all race/gender groups with capacity up

to \$50 million in sales volume, except for Native American-owned firms with capacity up to \$10 million and African American-owned firms up to \$20 million in the case of Non-Professional Service firms. Among Professional Service firms, only WBEs reflected capacity up to \$1 billion, although one unknown/multiethnic-owned firm and Non-M/WBEs are shown for the revenue range over \$1 billion.

### Capacity Based on Survey Regressions

Based on the results from the survey:

- Start-ups in the MSA were primarily self-funded, particularly among minority- and women-owned businesses compared to White-male-owned businesses. White-male-owned businesses were more likely to have been funded by a financial institution compared to minority-owned businesses.
- Of the respondents, White-male-owned businesses are more likely to have contracted with various entities in the past five years than minority- and women-owned businesses overall in the public and private sector. Perhaps as a result, in 2021 White-male-owned businesses had higher average gross receipts, in part due to a higher number of businesses with gross receipts totaling \$10 million or more.
- Minority- and women-owned businesses are more likely to have used small business loan programs to get help with financing in the past five years. Women-owned businesses are less likely than male-owned businesses to have applied for either a loan/line of credit or bond.
- White-male-owned businesses were more likely to provide a quote or bid as a prime contractor in the past two years than minority-owned businesses for both private sector companies and public sector agencies within and outside of the State of Delaware.

Using a log-linear model, we determine whether gross revenue differences are attributable to discrimination between the M/WBEs and Non-M/WBE groups or simply due to other factors, such as experience or education. Explanatory factors such as the number of full-time employees, age of business, principal's prior public and private business experience, and the average past two-year bid size for each company were included to explain the differences in gross revenue. Using the Blinder-Oaxaca (BO) decomposition method for

estimating the extent of discriminating between different groups, we find that Non-M/WBEs received 8.87 percent ( $\exp(0.08494)-1$ ) **greater** total gross receipts from all sources in 2021 than can be accounted for based on the relevant explanatory variables. In addition, accounting for all relevant factors, the M/WBE group received 3.23 percent ( $\exp(-0.03283)-1$ ) **less than** they should have in gross revenues had discrimination not occurred.

### Capacity Based on Public Use Microdata Sample

Using a binary logistic regression model and the Public Use Microdata Sample (PUMS) 2019 American Community Survey (ACS) five-year database for the State of Delaware, M3 Consulting attempted to examine the impact of economic and demographic characteristics on the self-employment decision and whether there are differences in the probability of self-employment among the different races/ethnicities and genders. Additionally, M3 Consulting analysed the factors that impact self-employment income and whether self-employment income is impacted by race or gender.

- Comparing similarly situated individuals, a White male is more than 1.86 times more likely to be self-employed compared to an African American and 1.2 times more likely than a Hispanic American. Also, White males are 1.5 times more likely than White females to be self-employed.
- Additionally, based on the regression, African Americans and White females are significantly less likely to be self-employed, whereas being Asian Americans increases the likelihood of being self-employed in Delaware.
- Age increases the likelihood of self-employment, but this decreases as one gets older. People with advanced degrees are more likely to start their own business. In addition, greater property value increases the likelihood of self-employment because it can be used as collateral to access capital, while the opposite holds true for those on food stamps.
- Those in the Construction industry are highly likely to be self-employed, as are those in Goods & Supplies and Non-Professional Services in Delaware.

M3 Consulting uses a linear regression analysis to estimate the impact of race and gender on self-employment earnings, controlling for economic and demographic characteristics. A summary of the results are as follows:

If all other variables are kept constant, a self-employed African American will earn about \$27,765 less than a similarly situated nonminority; a self-employed Hispanic American will earn about \$19,529 less, and a White female will earn about \$27,361 less. A female who is self-employed in the State of Delaware will earn \$28,143 less than a self-employed male.

A disabled individual who is self-employed earns about \$16,702 less than a non-disabled individual, whereas a person with a bachelor's degree will earn \$14,454 more being self-employed and one with an advanced degree will earn \$47,336 more in self-employment earnings in Delaware.

Among the industries, individuals in Construction, Non-Professional Services and Goods & Supplies are less likely to earn more in self-employment.

### E.3.3 Qualitative Findings Impacting Statistically Significant Disparity

#### A. Procurement and DBE Program Analysis

The City has developed procurement policies and procedures and DBE policies and procedures that are extensive and detailed in many respects. However, in consideration of the aforementioned discussion, analysis, and findings, M<sup>3</sup> Consulting asserts that the City's Procurement and DBE program policies, procedures and practices contain aspects that may negatively impact the ability of DBEs to participate in the City's procurement and contracting opportunities.

#### Limited Knowledge and Staff Training Related to Inclusive Procurement and DBE Program

The small- and minority-business development manager who works out of the City's Office of Economic Development (OED) is relatively new, having been in his position for less than a year. Based on interviews, there does not appear to be a structured process of knowledge transfer to the new manager. As a result, there appears to be limited historical knowledge and responsibility for developing and implementing inclusive procurement strategies. Staff interviews indicated that the City is not currently offering any technical assistance resources itself but continues to reach out to partner organizations. When asked about training regarding the City's DBE program and inclusion within its procurement processes, staff responses often indicated that the training was minuscule or nonexistent. The City's Procurement Review Committee (PRC), whose role and responsibility includes the dissemination of procurement policy and procedural information for enforcement purposes, is not operationally

engaged. The City's individual departments drive its procurement process, with the Procurement Department serving as administrative support in lieu of assuming an ombudsman posture. As such, the lack of staff training provides avenues for participation impediments, both for the City's internal staff and the diverse business community.

#### Limited and Inconsistent Implementation of Policies/Strategies

While the City appears to have clearly defined DBE policies, the implementation of these policies is hampered by Item A. above, the lack of clear lines of responsibility and accountability between OED and Procurement for the DBE program, and the decentralized procurement process. These limitations reduce the City's ability to be collaborative, responsive and inclusive within real-time procurement operations. As such, there are missed opportunities in play for DBE inclusion, for which the Procurement and OED staff should be responsible.

#### Overuse of Bid Waiver

Anecdotal staff feedback indicated that bid waivers historically have been justified by simply relaying that they did not have time to secure quotes, could not obtain the needed quotations, had a compressed time schedule for the work, or a particular person/firm was desired. This practice reduces competition, transparency and opportunities for DBEs to bid on small projects for which they have capacity and City staff has more discretion to select them.

#### Repeated Use of Same Vendors at Informal Level

Staff interviews also indicated that many staff engage the firms they know best. This has resulted in the same companies being repeatedly awarded the same small contracting opportunities. Limited contract compliance, tracking and reporting significantly decreases the visibility of these practices and accountability of staff.

#### Enterprise-wide Ownership of DBE Program Policies and Procedures

No department takes full responsibility for the DBE program and its implementation overall or within their respective departments. While Chapter 35 delineates responsibilities between OED and Procurement, demarcation lines of program responsibility were not embraced. Departmental staff interviews reflected inconsistent views on the department's internal responsibility for DBE program policies and procedures.



The City's Equal Opportunity Contract Compliance (EOCC) review board has not met for more than 10 years and is currently inoperable. As a result, there is no active compliance board in the current administration with code-mandated representation from the mayor's office, city council, and the OED as provided for via Wilmington Ordinances Code Section 35-113.

Without this clarity in a decentralized procurement environment and some accountability mechanisms, the City is challenged to ensure a procurement process that is open, fair, transparent and inclusive in a manner that can be monitored and tracked beyond DBE participation statistics.

Additionally, there are a number of observations that were born out of the 2018 Audit Report as it relates to the City's Disadvantaged Business Enterprise Program. Among the many observations, the auditor found that code sections were outdated and provided little daily operational guidance for the DBE program. The code did not capture the current role of the mayor's OED within the overall DBE program process. There were no documented policies and procedures that provide daily operational guidance on program administration. Finally, the Economic Opportunity Plan (EOP) that requires the submission of an EOP for developers that receive City funds or in-kind contributions in excess of \$200K does not identify which office or board is responsible for monitoring departments' compliance with this provision or enforcing the penalty for noncompliance. There is no indication in the documents provided for this analysis that the issues identified in the 2018 audit relative to Sections 35-111 through 35-115 and 35-131 through 35-135 have been addressed. All of these issues negatively impact the DBEs' ability to successfully navigate the City's procurement processes.

### Vendor Registration

Vendor registration procedures are not codified in the provided City Code sections of procurement procedures. Vendor registries identify those businesses who have expressed interest in doing business with the City. Without this vendor registry, identification and solicitation of vendors is solely at the discretion of departments, thereby increasing the potential for repeated use of the same vendors.

### Inconsistent and Limited Reporting

The City's current aspirational diversity inclusion goals are 20 percent on Construction Contracts, 10 percent on Goods & Supplies, and 5 percent on Professional Services. No staff could confirm that there is a specific responsible depart-

ment or person cross-checking utilization of DBEs against the commitments as represented in the executed contract agreements. Some departments reported that they do use coordinators to make sure that the subcontractors listed on the contract agreements (regardless of race/gender) are the same ones used during contract execution. The function, however, is done from the standpoint of contract adherence as opposed to DBE participation commitment compliance auditing. Some departments reported that they do not regularly send over any DBE spend data for inclusion in an annual report, nor for ad-hoc report requests to the mayor or city council. Therefore, because of this limited reporting transparency, the City will be less likely to identify and eliminate issues of favoritism and discrimination.

### Limited Forecasting and Notification of Opportunities

The City engages in limited forecasting of upcoming opportunities at both the informal and formal procurement levels. Furthermore, informal procurements, similar to many other public agencies, are not required to be advertised using any source (e.g., newspaper, website). There is no indication that budgeting and forecasting is a coordinated, enterprise-wide process to determine upcoming procurement needs. There is also no indication that the departments engage in any efforts to analyze capital project solicitations to break down the scopes into the different trade categories to support outreach and matchmaking with diverse vendors—including SBEs and VBEs. The M/WBE Office indicated that they do not participate in any forecasting function or trade analysis exercises with other departments. This lack of forecasting has implications for the ability of the diverse contracting community to properly prepare to compete for upcoming contracting opportunities. Limited forecasting and notification reduce transparency as it relates to opportunities where DBEs have the capacity to perform. It also limits the time DBEs have to complete all the requirements to ensure that once a solicitation is released, they are ready, willing and able to participate.

### Limited Diversity Firm Outreach and Matchmaking

Document analysis and interview feedback revealed that there is no consistent or enterprise-wide philosophy and approach to DBE or diverse firm outreach and matchmaking. Some departments report that they rely on the Procurement Department and the OED to execute all outreach, while other departments try to use the vendor list for outreach (when a list is available). The M/WBE Office reported that there has been a precipitous decrease in outreach, matchmaking and



“how to do business” engagements with the diverse business community in part due to the Covid-19 pandemic, but it should be noted that outreach activity was sparse even before the pandemic.

### Impact of Decentralized Process

Decentralization is not inherently a negative choice. However, the manner in which it is operationalized determines whether this choice provides negative consequences for small firms and DBEs attempting to do business with the City. The procurement manager does not act as the City’s ombudsman or watchdog for enterprise-wide procurement. Adequate systems and databases are not in place to monitor and ensure an inclusive procurement environment (including, but not limited to, DBE program requirements), which would allow for real-time reporting. Transparency and accountability for procurement transactions is limited at the department level. Oversight committees are not functioning. These actions suggest that the City’s sourcing strategy to ensure efficient and effective procurement operations overall is limited. As such, procurement is effectively relegated to an administrative function. Therefore, the key elements used to actualize the mayor and city council’s community economic development objectives are not visible to City leadership or the community they serve.

M<sup>3</sup> Consulting reiterates that the execution and implementation of a public entity’s community economic development objectives commences with the procurement process. Public entity achievement of its community economic development objectives through procurement begins with a public policy approach to procurement and community economic development, supported by project execution, as opposed to purely employing a cost-, schedule-, and project efficiency-based approach.

The City has a reasonable overall organizational structure and numerous clearly written policies and procedures in place. However, the City has areas in its policies, procedures and practices that may create barriers to the ability of DBEs to participate in the City’s contracting and procurement opportunities. If these areas are not appropriately addressed, the City risks exposure to claims of inherent, unintentional/intentional, exclusionary, and/or discriminatory practices in its procurement program.

### B. Anecdotal Analysis

After analyzing the anecdotal evidence collected from 20 business owners and representatives in the State and the tri-

state area, the following observations illustrate the possible barriers that interviewees perceive to exist for minority and women business owners as they attempt to transact business with the City.

- DBE certifications, although useful with the State of Delaware, are not useful in securing contracts with the City.
- Several participants found OED staff and the M/WBE program insufficient in supporting and enforcing the inclusion of DBEs in the City’s contracting. These participants were frustrated by:
  - Lack of accountability;
  - Lack of enforcement of aspirational goals and other DBE requirements;
  - Lack of outreach and notifications of opportunities; and
  - Insufficient experience to do the job.
- A few participants shared their longstanding business presence within the City but no work with the City itself. However, they did work with private and public sector agencies across the country.
- Several participants shared the following comments about the City’s procurement and contracting department and process:
  - Inability to get “through the door” and gain access to the right people in procurement to learn about opportunities;
  - Lack of notice of small-dollar contracts and how to secure them;
  - Lack of visibility of Professional Services opportunities;
  - Repeated use of the same vendors; and
  - Not bidding on formal A&E contracts and choosing who the City wants.
- Some participants believed that prime contractors sometimes use them on bids with no intention of awarding them opportunities.

- Some participants found fronts to be an issue; one participant shared an experience of being solicited to be a front for the primary controlling agent.
- Several participants had an issue with long payment terms.
- Some participants found there is an unwillingness of prime contractors to utilize DBEs in the private sector or in the absence of goals.
- Several participants desired increased communication from the City on upcoming and current opportunities and opportunities to showcase their capabilities.

### C. Marketplace Analysis

The marketplace analysis examined various activities to determine DBE participation levels in the private sector and other public sector opportunities. To understand factors that impact the participation of DBEs with the City and the potential opportunities for capacity building that may limit participation of DBEs with the City, the role of the marketplace in which these firms operate is critical.

The demographic configuration may in part explain the differences in the market availability and utilization of DBEs. The City has a large African American population while White Americans make up a smaller proportion of the City's population. This trend reverses if the MSA is considered.

Taking a gauge of the civilian labor force, 67.6 percent of Whites, 57.7 percent of African Americans, 64.9 percent of Hispanic Americans and 76.7 percent of Asian Americans are part of the labor force in the City. While White and Asian Americans see a drop in the percentage within the MSA and the State, the rest of the MBEs see a higher participation in the State and somewhat lower percentage in the MSA.

The Equal Employment Opportunity (EEO) occupational breakdown provides a picture of Construction and Professional opportunities in the marketplace. In the City, construction and excavation occupations are dominated by African American, Hispanic American and White males, while Production occupations include more White, African American and Hispanic American females. A majority of apprenticeable construction operations are dominated by White male-owned firms, thus limiting the capacity of DBEs to gain experience in other construction operations.

In Professional Services occupations, the City shows management, business and financial occupations even across gender for all race and ethnic groups. In Computer Engineering and Science occupations, there is a greater tilt toward males, but this is less among MBEs. Health care participants observe a greater proportion of women participants and technical occupations see a greater proportion of MBEs.

Dodge, which surveys construction-related activity, is used as a source to examine DBE participation in marketplace construction activity. For the State, the data indicates that, except in General Contracting, other areas of Construction include very little DBE penetration.

A comparison of bid activity and ranking of bidders across private and public owners of projects is presented. Within the MSA, less than 7 percent of DBEs were ranked number 1 (winner), while 16 WBEs (4.41 percent) were ranked number 1 in public sector projects. While non-DBEs win about 95 percent of all private sector bids in the MSA, four WBEs, three African American-owned firms, three Hispanic American-owned firms and four other-owned MBEs did win private sector bids in FY2021.

Building permits are an additional indicator of potential contracting activity. Based on the count of commercial building permits, MBEs had a distinctly greater percentage of the public sector contracts compared to private sector contracts (18.38 percent versus 7.68 percent). For WBEs, the count and the dollars awarded in the private sector was much larger (\$56.1 million, or 6.6 percent) compared to the public sector (\$713,979, or 0.21 percent). MBEs, however, won greater value in public commercial building permits (\$16.5 million, or 4.78 percent) compared to private sector building permits (\$7.03 million, or 0.83 percent). Furthermore, the largest value of building permits by MBEs are in the \$1-million to \$5-million range, whereas WBEs include contractors with permits in the greater than \$10-million range.

### D. Race Neutral

There are a significant number of race-neutral programs that provide assistance and support to DBEs in the City's MSA. M3 Consulting reviewed the offerings of over 41 organizations in the categories of:

- Goal-Based and Other Targeted Procurement Programs;
- Management and Technical Assistance Providers;
- Financial Assistance Providers;

- Community and Economic Development Organizations;
- Chambers of Commerce;
- Trade Organizations and Business Associations; and
- Other Advocacy Groups.

M3 Consulting also interviewed executive directors of nine organizations to determine their experiences working with small, minority- and women-owned businesses. The executive directors identified the following issues impacting the S/DBEs that they service:

- Importance and availability of capital (funding);
- Insufficient access to information, communication, and/or technology;
- Need for improved City commitment to and processes supporting M/W/DBEs;
- Need for training and education on bid process, running a business, and/or goal-based program requirements;
- Need for improved engagement with the Hispanic community and other “non-English as a first language” communities; and
- Lack of parity, inclusiveness, diversity, and/or discrimination.

Though race-neutral programs have made some progress in improving DBEs’ management skills, access to capital, and greater exposure to the larger business community within the City and throughout the State, DBEs still face some difficulty in gaining access to public- and private sector contracting opportunities.

The results of the program review and interviews revealed that, while race-neutral efforts may have contributed in some degree to increased capacity and participation in contract awards, race-neutral programs alone have not been fully effective in increasing availability, capacity or utilization of DBEs or eliminating disparity.

Given this result, the provision of management, finance and technical assistance via race-neutral programs in and of itself does not appear to adequately address all issues and barriers faced by DBEs in the City.



## E.4 RECOMMENDATIONS

In light of the findings discussed above, M<sup>3</sup> Consulting is providing the following recommendations to the City. The recommendations contain both race/gender-neutral and race/gender-conscious elements. These recommendations consist of a listing of pertinent options from which the City may select in tailoring its efforts to the findings of this report. The options combine agency-specific and best practices recommendations that are legally defensible based on the factual findings of this study. The City should consider adoption of those recommendations considered most appropriate in terms of cost, resources, likely effectiveness, community acceptance and organizational feasibility.

### E.4.1 Identification of Race/Gender-Conscious Goal Possibilities

The actual setting of legally defensible DBE goals is a policy decision that requires action by the City. The City can establish overall DBE policy goals that then may be used by employees with buying authority. The City can then develop an action plan that specifies procedure, program and goal improvements that will be made, and the timeline allocated for those tasks.

#### **Establishment of Race/Gender-Conscious Goals**

In certain categories and for certain groups, race/gender-conscious means are supportable activities toward the achievement of established goals, based on the findings of statistically significant disparity, reflected in Table E.7 below.

M<sup>3</sup> Consulting draws an inference of discrimination against the following race, ethnicity, and gender groups:

**Table E.7.**  
**Findings of Statistically Significant Disparity**  
**By Race/Ethnicity/Gender**  
**By Procurement Type**

	A&E (POs)	Construction & Construction-Related Services (Contract Awards)	Non-Professional Services (POs)	Professional Services (POs)	Goods & Supplies (POs)
<b>African American</b>	No Disparity	Disparity	Disparity*	Disparity*	Disparity*
<b>Asian American</b>	Disparity	Disparity	No Disparity*	No Disparity*	Disparity*
<b>Hispanic American</b>	No Disparity*	Disparity*	Disparity*	Disparity*	Disparity*
<b>Native American</b>	No Disparity	Disparity	No Disparity	No Disparity	No Disparity
<b>WBE</b>	Disparity	No Disparity*	No Disparity*	Disparity*	Disparity*

Source: M<sup>3</sup> Consulting  
 \*Statistically significant

As significant disparity is eliminated in the race/gender-conscious categories, the utilization of race/gender-neutral means in attaining the established goals should be increased. However, in all instances where race/gender-neutral means are utilized, if significant disparity reemerges, then race/gender-conscious techniques can be utilized on a nonpermanent basis to correct identified disparities.

While the City should utilize race/gender-neutral means to address participation of groups where there is no statistically significant disparity, that does not mean or condone passive or no outreach to these groups, as significant disparity can emerge (or reemerge) with a lack of focus by the City to be inclusive. The City should continuously focus on an inclusive procurement environment that considers DBEs and SBEs and narrow the focus, when necessary, based on meeting established goals.

Availability, utilization and disparity measures should be tracked on an annual basis and annual goals set as discussed above, as the recommendations below are implemented.<sup>3</sup> RWA<sup>SM</sup> availability is significantly impacted by bidding patterns and practices. If the bidding patterns of the City vendors are altered, due to internal adjustments within the City or marketplace factors, the impact of those changes should be captured.

## E.4.2 Enhancements to Procurement and DEB Procedures and Practices

Below are recommendations to the City for organizational, cultural, structural and programmatic changes that will lead to transformative and sustainable change in the City’s procurement operations and that will bring the City into regulatory compliance and alignment with best practices.

### A. Change Inclusion Focus from Programmatic (Compliance with DBE Regulations) to Organizational (Commitment to Inclusive Procurement Environment)

Much of the focus of the City has been on DBE goals for its race/gender-conscious efforts. These efforts, while important to the issues of inclusion, are programmatic (related to operation of a specific program) and functional (focused on departmental function) in nature. They are not focused on organizational and City-wide enhancements. These programmatic efforts alone do not have a transformative impact on procurement and contracting operations that will lead to real and sustained change in organizational culture and practices as it relates to doing business with DBEs. Furthermore, the effectiveness of these programmatic efforts will not be maximized until underlying organizational issues impacting the inclusiveness of the City’s procurement operations are addressed.

<sup>3</sup>Annual goals should be set only as benchmarks that provide guidance in assessing how well the program is working on an annual basis, and that help the agency determine whether it needs to be more or less aggressive in the kinds of tools and efforts it is undertaking to remedy the ongoing effects of discrimination.



Many of the recommendations below focus on City-wide organizational enhancements that can lead to the transformation of the City's procurement system to become more inclusive, whether or not the City employs race/gender-conscious or race/gender-neutral programmatic initiatives. To do so, the City should be able to "track" its procurement- and contracting-related decision-making points to more effectively determine if the City's current practices in any way promote active or passive discrimination or other exclusionary practices.

The importance of leadership's commitment and organization-wide implementation cannot be underestimated in either a race/gender-conscious or race/gender-neutral environment. The degree of responsiveness of the City's vendors often correlates to the public entity's degree of commitment to inclusion in which these firms are pursuing contracting opportunities with the City.

### **B. Address Decentralized Nature of the City Procurement Process and Impact on DBE Participation**

M<sup>3</sup> Consulting does not advocate for either a centralized or decentralized procurement process. We seek to determine the impact of either process on the ability of DBEs to contract with a public entity. Without appropriate infrastructure, management and operational support, an unwieldy bureaucracy can be created that serves as a de facto barrier to DBEs. The City currently operates in a decentralized procurement environment that has the overall effect of decreasing accountability and transparency regarding DBE participation, resulting from a lack of robust infrastructure and integration, coordination and delegation. As such, the City should ensure that the Procurement Department has the authority and ability to:

1. Report to the mayor and city council on the way the City's annual procurement spend has assisted in achieving the objective of increasing DBE participation.
2. Report to the mayor and city council, in conjunction with the M/WBE manager, on whether and the manner in which the City has met stated DBE targets at both the prime and subcontractor levels across procurement categories, inclusive of change orders and work plans, as well as other inclusive procurement initiatives; and,

3. Make recommendations for the utilization of procurement techniques and contracting vehicles that best meet the mayor and city council's objectives as it relates to community economic development and inclusive procurement, as well as User Department needs.

While the Procurement Department should have the authority necessary to achieve the recommendations above, based on the City's decentralized system, the Procurement Department will need to work collaboratively with the defunct PRC, which would be critical to procurement planning, budgeting and forecasting, utilization of appropriate contract vehicles, opportunity identification at prime and subcontractor levels, unbundling, contracting plan and goal setting. Further, the PRC would also monitor issues identified in Chapter 3: Procurement Analysis, such as overuse of bid waivers, repeated use of the same vendors and ensuring enterprise-wide ownership of the DBE program.

The City's PRC will also be responsible for developing the City's action plan in response to the recommendations contained herein.

### **C. Identify Community Economic Development and Inclusive Procurement Objectives**

The Procurement Department and the M/WBE Office must operate in a manner that is both consistent with the policy objectives established by the mayor and city council and programmatically sound. The City can do so through striving toward inclusive procurement, which focuses on continuously working to ensure that all vendors—regardless of race, ethnicity, gender, national origin, sexual orientation or disability—have the opportunity to bid and perform on the City's procurement and contracting prime and subcontracting opportunities, thereby participating in the economic prosperity of the Wilmington area, as well as the MSA. An inclusive procurement environment will incorporate the following elements:

- **Mission Driven**—The Procurement Department and the M/WBE Office objectives are tied directly to the overall vision, mission and goals of the City.
- **Opportunity Driven**—The M/WBE Office and the Procurement Department are driven by the City's opportunities—identifying them, understanding them, managing them and communicating them.



- **Relationship Driven**—With the foundation that being opportunity driven provides, the M/WBE Office and the City will be in the relationship development business. The Procurement Department and M/WBE Office will know which businesses are capable of doing the City’s work and ask the business community to share its goal of inclusive economic development.
- **Data Driven**—Sound data and fully integrated systems will provide senior management with the information it needs to report on successfully meeting its objectives and maximizing economic development, equity, organizational performance and the other objectives established by the mayor and city council.

### D. Training and Development

Many organizations engage their staff in diversity training and sensitivity training. However, skills-based training is needed to create an inclusive procurement environment. It must emphasize that inclusivity is an integral part of an efficient procurement process. As such, to create a baseline of knowledge, the following training should occur:

- All Procurement, OED and other appropriate department staff should be provided basic training on procurement operations as well as DBE operations. If feasible, some staff members in OED should become certified buyers through organizations such as the National Institute of Government Purchasing and certified compliance officers through organizations such as the American Contract Compliance Association.
- All Procurement staff and departmental staff engaged in procurement activity should attend a seminar on the components of the DBE program and create strategies for achieving established objectives.

Once Procurement, OED and other appropriate departmental staff have baseline training, the procurement director and the OED director are then positioned to train on higher level negotiating strategies and tactics in the various procurement categories. They can also train for the particular types of goods and services that can be deployed, consistent with the tenets of sound procurement laws and regulations at both the formal and informal levels.

### E. Full Implementation of M/WBE Programmatic Initiatives

Since the 1990s, the City has established sound DBE policies, consisting of both race/gender-conscious and race/gender-neutral components, and made some efforts to implement this program.

But it does not appear that full and aggressive implementation has ever occurred, based on a 2018 audit of the City’s DBE program and M<sup>3</sup> Consulting analysis. The City needs to first work to implement its currently established initiatives before making programmatic adjustments. This can only be done sufficiently when Items A. through C. listed above are addressed. The City’s current DBE programs require Procurement Department, M/WBE Office and department staff who are well-grounded in procurement, M/W/DBE programs and supplier diversity to achieve the programs’ outlined objectives. Otherwise, these programs and initiatives become no more than subcontractor goal programs, supported by insufficient certification efforts and redundant outreach. In a subcontractor-focused program, the responsibility of inclusion is passed on to the City’s prime contractors. The City should seek to have direct relationships with diverse businesses at the prime contractor level.

### F. Culture Audit

M<sup>3</sup> Consulting recommends that the City conduct a culture audit to assist it in moving toward an organizational culture that will more readily support a more inclusive procurement process. The culture audit will allow examination and explanation of the common rules of behavior and underlying beliefs of the City that drives its organization, and the way people approach their work. It will also assist in determining whether the City’s current organizational culture is an asset or liability in achieving its vision and mission and provide actual evidence for establishing the appropriate direction for the City.

### G. Address Data Capture Issues

Critical to creating an inclusive procurement operation for the City is an efficient and integrated procurement data infrastructure. M<sup>3</sup> Consulting recommends that the City address the following data issues outlined below to support transparent monitoring, tracking and reporting. Once these changes are implemented, M<sup>3</sup> Consulting recommends that the City update the statistical portion of the Study to capture FY2016–FY2020 data to provide both a more accurate reflection of DBE utilization at prime and subcontractor levels and as a test case for its DBE data capture process.

1. **Expand data capture on vendor portal**—The City should require all firms interested in doing business with the City to register through an online vendor portal, including certified DBEs of which the City has identified from outreach and matchmaking efforts. Additionally, the City should consider the best means of uploading certified DBEs into the vendor portal, such that project availability and project/contract-based goals can be established in real time and inclusive notifications, solicitations and outreach can easily occur.
2. **Assign commodity codes to bids**—By assigning National Institute of Governmental Purchasing (NIGP) codes to bids or quotes, the City will increase the accuracy of commodity code tracking, which is essential to reporting DBE participation in specific areas. Further, prime bidders should assign NIGP codes to their sub-bids.
3. **Consider using e-procurement or online bid portal to capture bid and quote information**—Several online programs allow for the online solicitation of quotes and bids (not simply filing PDFs). Proposals can also be uploaded. This process reduces workloads while simultaneously increasing detailed information available to the City on both bids and quotes.
4. **Consider using an off-the-shelf DBE tracking system**—Several off-the-shelf software packages have been developed for DBE tracking, monitoring and reporting. These systems should integrate with MUNIS, the City's vendor portal, and the City's chosen bid portal—to the degree that current systems can be maximized.
5. **Develop computerized formats for evaluation score sheets**—The City should digitalize its evaluation score sheets, such that the City is positioned to determine that these evaluations are scored in a fair and nondiscriminatory manner and that the decision-making process is transparent. By digitalizing evaluation score sheets, the City is also able to assess the fairness of its selection process over time.
6. **Track awards, commitments and payments separately**—Decisions made at the point of award can change before a contract is executed or after contract execution due to change orders and other

contractual adjustments. As such, the City should ensure that it has the ability to track awards and commitments separately, as well as payments, at both the prime and subcontractor level. This detailed tracking also allows the City to ensure that any changes to agreements between the City and its prime and subcontractors and vendors is executed in a nondiscriminatory fashion.

7. **Appropriate access**—A dashboard would be very useful in ensuring staff's ability to respond in real time to DBE participation. As the City accesses appropriate systems and software packages to utilize, decision makers should be sure that these systems accommodate appropriate access by staff in Procurement, Finance, M/WBE Office and User Departments.

### H. Budgeting, Forecasting and Scheduling

On an annual basis, the City should develop a budgeting and forecasting process appropriate for each procurement category that provides project information necessary for planning its activities as it relates to DBE participation. With budgeting and forecasting information, the City can begin to (a) provide maximum opportunities for outreach, match-making, partnering and bidding; (b) project the impact of the City's purchases on economic, business and employment growth in the Wilmington area; and (c) identify areas where local capacity is needed among both DBEs and non-DBE firms and begin pre-bid capacity-building efforts.

### I. Monitor Contracts for Issue of Concentration

The City should continuously review its contracts to ensure that (1) the same non-DBEs are not securing a significant percentage of the City's contracts, and (2) the same DBEs are not accounting for a significant percent of the City's DBE participation.

### E.4.3 Long-Term Availability and Capacity-Building Initiatives

The recommendations in this section are focused on how the City can utilize both its resources and opportunities to contribute to the growth and development of DBEs. To increase opportunities for DBEs, the City must start with the consideration of available firms.

### A. Increasing Pipeline of DBEs

#### 1. The Starting Point: Youth Entrepreneurship

Entrepreneurship requires a certain skill set that is cultivated over time. Young people with no access to education and training are less likely to obtain these skill sets on their own. By the time these young people may have an opportunity to obtain these skills, they are close to adulthood and well behind young people who have access to parents with entrepreneurial and/or managerial skill sets.

The City is in an invaluable position to impact values, behaviors and attitudes toward discrimination and bias, and cultivate a culture of youth entrepreneurship. Collaborating with local school systems to work to invest in students early allows communities previously excluded based on race and gender to expand social capital. Furthermore, it allows the Wilmington community to begin to change the narrative of the historical, social and economic factors that have ultimately stunted the natural growth and development of entrepreneurs in these communities.

Efforts can include:

- Youth entrepreneurship and financial literacy programs;
- Mentorship and apprenticeship programs with City and other public and private sector vendors/contractors/consultants;
- Targeted entrepreneurship career tracks, in conjunction with local technical colleges; and
- Expanded access to entrepreneurship and financial literacy programs to students' parents/family members.

Ultimately, these efforts will provide graduates of local school systems who become entrepreneurs access to the City's opportunities through Small/Micro programs, such as set-asides, sheltered markets and mentor/protégé. As long as they are available to all students, initiatives focused on students that have matriculated in schools in the Wilmington area would be considered race/gender-neutral, with a desired outcome of promoting economic and social development.

These initiatives should be combined with strong diversity initiatives. The focus should not simply be on anti-bias, but multiculturalism efforts that build social capital as well.

#### 2. Refocus Certification and Pre-Qualification Efforts to Identification of Qualified Firms

Currently, certification is focused on identifying the race/gender/ethnicity of firms eligible to participate in its race/gender-conscious programs. This process has resulted in only 95 DBE firms certified, an insufficient pipeline of available firms. Pre-qualification is also used on a selective basis, particularly by Public Works. These processes can be exclusive and limit the number of available firms. Currently, when the City staff and prime vendors search for "available" minority- and women-owned businesses, they are searching the City-certified DBE list, not the list of available firms. Before proceeding to other initiatives of certification and pre-qualification, the M/WBE Office should:

- Consider participating in a unified certification process that allows the City to accept certifications performed by other agencies.
- Review a compiled list with community organizations, Chambers of Commerce and Management and Technical Assistance (M&TA) providers to determine whether firms of which they are aware are listed in this "phone book." Organizations with private membership lists should also be encouraged to participate to construct the most exhaustive list of firms.
- Conduct survey of firms on the list that are not certified by the City or another certifying agency to obtain data on type of goods and services provided and level of interest in doing business with the City.
- Measure the City's progress in increasing the number of firms certified and number of firms pre-qualified against this list of identified firms.
- Work to include as many available firms as possible that do not meet DBE and pre-qualification requirements on the City vendor registry and in the City's Small/Micro programs, then develop the race/gender-neutral goals and initiatives accordingly.

While an unintended consequence, certification can become an exclusive process and limit competition, particularly in jurisdictions that do not have unified certification.

### B. Expanding Competition

Due to policies (such as pre-qualification) and practices (such as awarding contracts to a few firms in certain instances), the

City has limited competition on its opportunities. The City may expand competition and potentially increase the award of contracts to DBEs in the following ways.

### 1. Deeper Dive of Bid, Request for Proposal and Selection and Evaluation Process

The City should consider a deeper dive into bid, request for proposal (RFP), and selection and evaluation results to ensure that the outcomes reflected in the Availability and Utilization chapters reflect a procurement process that is open, fair, transparent and inclusive. This deeper dive to review actual practices would include a review by an independent party of bid and award documents for individual opportunities. These documents include vendor solicitation, bid tabulations, inclusiveness of persons chosen for selection committee, evaluation score sheets, GMP negotiation documents (if utilized), prime contractor selection and evaluation score sheets for subcontractors, and/or prime contractor solicitation list for subcontractors.

This deeper dive would also provide greater insight into the competitiveness of different race/gender/ethnic groups and provide the M/WBE Office with additional information on which to target and customize its support efforts.

### 2. Goal Setting and Other DBE Tools Applied by Threshold

M3 Consulting's threshold utilization analysis suggests that, where capacity is not an issue, certain race/ethnic/gender groups are still reflecting disparity. The threshold utilization analysis was based on PO data. We acknowledge that some POs that appear "small" may be part of a requirements contract awarded to one or more vendors. As such, a deeper spend analysis is required before goal setting is conducted.

In conducting this spend analysis, the City should obtain a greater understanding of the individual opportunities and the dollar values associated with them. The spend analysis allows the City to review these individual opportunities by size. This process is different from unbundling, where the organization starts with the larger contracts and attempts to unbundle them. For example, for projects under \$60K, there is no need to unbundle contracts. Instead, the City should utilize other techniques, such as small business set-asides, to increase participation levels of DBEs.

When individual opportunities are sorted by size, appropriate programmatic efforts by the M/WBE Office can be established. Furthermore, there is more transparency in contracts awarded, particularly on contracts where more firms are

fully capable of competing.

### 3. Assess Performance of Personnel with Buying Authority

At the end of the day, increasing DBE participation in the City falls to the City personnel making the buy decision. When new e-procurement systems are implemented, the City should be able to track the performance of individuals with buying authority to determine the degree to which they are making inclusive purchasing decisions. The individual track record can be considered in annual or semiannual performance evaluations.

## E.4.4 Expanded DBE Initiatives

Based on the outcomes of the disparity analysis, the procurement analysis and anecdotal/race-neutral testimony, the M/WBE Office should consider the following.

### A. Promoting DBE Participation at the Prime Contractor Level

To ensure that the responsibility for DBE participation is shared by both the City and its prime vendors, the City should take steps to ensure that DBEs are involved in the City's procurement opportunities at the prime levels. Below is a listing of those efforts that the City can undertake:

- Identify prime-level procurement opportunities where a significant pool of DBEs is available.
- Establish prime-level participation targets to ensure that the City is focused on securing participation at the prime level as well as subcontracting level.
- Improve procurement forecasting to allow for inclusive planning and outreach.
- Utilize race/gender-conscious initiatives, such as goals, evaluation factors, joint venture incentives, price preferences, and/or targeted solicitation.
- Utilize SBE sheltered market opportunities, where SBE availability supports doing so.
- Provide notice of small business opportunities (below \$60K) and ensure that DBEs are included in the pool of firms being solicited.
- Review pool of DBE sub-bidders and subcontractors consistently to determine those that have done a significant level of subcontracting with the City

and/or other public agencies, thereby building a track record to support prime-level awards.

- Utilize bid rotation on IDIQs.
- Unbundle contracts into commercially viable units.
- Optimize joint ventures, develop and encourage mentor/protégé program, and recognize prime opportunities for distributors (see also Recommendation N.).
- Review and revise all technical specifications to exclude proprietary language that may discourage DBEs from bidding; and,
- Develop evaluation mechanisms for measuring City senior management commitment and staff's efforts toward DBE participation in City contracting opportunities.

### B. Develop DBE Program That Addresses Requirements of Large Construction and Development Projects

Utilizing the Seven Phases of a Development Project<sup>SM</sup> defined by M<sup>3</sup> Consulting will allow the City to meet its planning, procurement and DBE needs across the life cycle of the development project.

Along with possible opportunities (list not intended to be exhaustive), the Seven Phases of a Development Project<sup>SM</sup> at each stage are:

- **Planning**—Opportunities exist in the acquisition of right-a-way; acquisition of property; legal services; environmental studies; land use studies; geotechnical studies; and feasibility studies.
- **Financing**—Opportunities may include investment banking, lobbyists, grant proposers and legal services.
- **Designing**—Design services include both architectural and engineering services, with other additional services that may be required such as geotechnical services and environmental services. Design services may also include the development of a bulk purchasing plan.
- **Constructing**—These services include prime contractor/subcontractor activities including construc-

tion managers, general contractors, tradesmen and soil testing.

- **Equipping**—This involves the furnishing of facilities and buildings.
- **Maintaining**—This involves the maintenance of equipment, facilities and buildings.
- **Operating**—This covers the provision of those services that contribute to the overall continued function of the facility and buildings.

When DBE participation is viewed within the construct of the phases of a development project, unbundling becomes a natural part of the project-planning process.

### C. Implement Small Business Set-Asides and Sheltered Market Projects

To maximize utilization of and inclusion of DBEs in small business set-asides and sheltered market projects, the City should:

- Establish DBE goals consistently, with an anticipated race-neutral portion on federal projects and small business set-asides, goals and sheltered market projects on non-federal projects.
- Forecast and publish annual list of anticipated small business purchases on website, based on current and historical purchases to minimize small business need to consistently check for upcoming bids.
- Ensure that small businesses are registering on the vendor portal. This should also facilitate buyers' ability to quickly connect with small vendors on informal purchase opportunities.
- Ensure that the City has strong relationships with MT&A providers who are in constant communication with DBEs.
- Provide notice of small business opportunities on its website.
- Allow for online submission of quotes and bids.
- Work collaboratively with and provide incentive to prime vendors (where allowable) to refer small businesses capable of performing small prime contracting opportunities.



### D. Address Concerns about Slow Payments

Some firms expressed concerns about slow payments from the City and from prime contractors. The M/WBE Office should further investigate these claims and determine whether a DBE payment monitor is needed. This investigation may also assist the City to determine whether the M/WBE Office needs additional contract compliance support internally.

### E. Bonding and Insurance Program Related to Project-Based Procurement Process

#### Bonding

Four approaches may be taken to remove the barrier that bonding requirements can sometimes represent. The efficacy of these programs must be reviewed considering bonding requirements from the State. The approaches include waiving bonding requirements, removing customary bonding stipulations at the subcontract level, reducing bonding and phasing bonding. Each is described below:

- **Waiving bonding requirements**—While bonding may be required by local, state or federal statute in particular instances, all governmental entities have some latitude in requiring a bond in the first place. Typically, small-dollar-value contracts are not required to have bonds. An honest assessment of the actual risk involved to the owner ought to be performed before deciding to require a bond on every job. In addition, bonds can be required within a certain number of days after bid submittal, rather than with the bid submittal, so that only low bidders (not unsuccessful bidders) must obtain them.
- **Removing bonding stipulations at subcontract level**—Typically, on larger construction jobs, the owner requires bonds of the prime contractor. This essentially means the total job is bonded. The practice of requiring bonds of subcontractors is just that, a practice. It is not required by the owner. Therefore, the owner may develop a policy that does not permit a prime's requirement of a subcontract bond to constitute a barrier to DBE participation. Both the owner and the prime contractor should be willing to undertake special activities to monitor subcontractors' performance and lend technical assistance, if necessary.
- **Reducing bonding**—Rather than requiring a 100-percent payment and performance bond, consideration also can be given to reducing the dollar coverage of the bond. For example, a 50-percent bond can be required, thus reducing the size and cost of bonding. In this way, a company's bonding capacity is not reached so quickly, and bonding is made more affordable. The owner benefits by still being protected by a bond and in the form of lower bids since the cost of bonding is built into contractors' bids.
- **Phasing bonding**—This technique can be used in instances where bonding cannot be waived but where there are limitations that keep a low bidder from obtaining a full bond. For example, the owner can divide the job into three phases, each requiring a separate notice to proceed. The successful bidder is then required to obtain a bond for each phase. Upon completion of the first phase of the work, the bond is released, and the contractor is required to provide a second bond in a like amount. This process is then repeated for a third time. The owner thereby accommodates a DBE, SB or M/WBE firm that might not otherwise qualify, the owner is still protected from risks, and the contractor builds a track record of completing work under three bonds, thereby building bonding capacity and lowering the cost of bonding.

In addition to the above, several governmental bodies across the country have worked with local banking and other financial institutions to create bonding programs underwritten by the local government. A key to the success of such programs is establishing a contractor performance-monitoring function to provide an early warning for any problems encountered by covered contractors. The monitors are empowered to mobilize necessary assistance to ensure completion of the work and to minimize financial and other risks to the underwriter.

#### Wrap-Up Insurance

This represents an approach to affording all contractors the necessary insurance to perform public work, while guaranteeing the owner that needed insurance coverage is in place in all critical areas of contracting. Under a wrap-up insurance plan, the owner establishes a subsidiary organization, usually made up of a consortium of insurance brokers.



Insurers are normally eager to compete for this business and will offer competitive rates to secure it. The arrangement also represents an excellent opportunity to involve DBEs in this business. Once in place, the owner offers blanket insurance coverage to all its contractors through the wrap-up program.

### F. Joint Ventures, Mentor/Protégé Programs, and Distributorships

The City should develop specific procedures for verifying, counting and tracking the participation of DBEs in:

- Joint Ventures;
- Mentor/Protégé Programs; and
- Distributorships.

The M/WBE manager should review and sign off on any teaming arrangements where the team anticipates receiving DBE participation credit.

### G. Effective Matchmaking and Outreach Programs

#### 1. Matchmaking

Matchmaking is fundamental to a successful inclusive procurement program, whether race/gender-conscious or race/gender-neutral. Central to matchmaking is advance notice of the universe of upcoming contracting opportunities, as determined during forecasting, budgeting and scheduling.

Currently, the City has taken some steps toward matchmaking through its pre-bid matching sessions. However, a full matchmaking process has not been implemented. Matchmaking programs must be tailored to the dynamics of a particular procurement operation. We emphasize that the matchmaking session is not for the purpose of steering vendors to buyers. The City's Procurement and M/WBE personnel will be required to have detailed knowledge of the capabilities of certified DBEs to fully maximize the matchmaking process. The matching sessions should include the following:

- Coordinate matchmaking sessions with a forecast release and/or solicitation schedule. In many instances, matchmaking sessions follow pre-bid conferences. Matchmaking sessions can also be utilized to identify available firms for projects in planning stages. While not called matching sessions, the federal government often allows vendors to provide

qualification information in pre-bid research to determine the level of competitiveness it can expect once the bid is let.

- Focus on commodity areas in the five procurement categories, such that vendors specializing in particular goods and services will have the opportunity to meet with buyers responsible for those commodities.
- Provide the necessary procurement projections buyers and contract specialists should have such that they can discuss specific upcoming opportunities and the requirements and procurement mechanisms that will be utilized to procure the good or service. This specificity is the key factor that distinguishes matchmaking sessions from outreach and vendor fairs.
- Identify informal and formal opportunities during the matching session so that vendors can determine where they have the greatest likelihood of successfully marketing to the City.

**Matchmaking at the subcontractor level**—Matchmaking takes on a team-building dynamic at this level. Prime contractors/consultants have the opportunity to identify potential DBE team members on upcoming opportunities to be let by the City. To be most effective, City personnel will be required to have an in-depth knowledge of the capabilities of the pool of certified DBEs. M/WBE staff also need to have strong business development skills. The matchmaking session should focus on a particular project, either in planning or prior to bid. It is critical to success that matchmaking occur as early in the planning process as possible. Prime contractors, construction managers and large consultants' planning processes begin well in advance of the actual Invitation to Bid or RFP. As such, at the time of bid letting, prime contractors and contract managers have often already identified team members to address commercially viable opportunities at the subcontractor level that build a firm's capacity and portfolio. Conformance to DBE requirements often does not produce quality and high-level DBE participation, because these firms are an "appendage" to the team already developed.

In addition to establishing matchmaking initiatives planned around the City's capital budgets, the City's legal counsel should consider the legality of including responsiveness to matchmaking efforts as a factor of good faith. Often, prime vendors may attend a matchmaking session, but thereafter

prime vendors do not communicate with or make themselves available to DBEs after the session. As a result, opportunities for these groups do not often materialize.

**2. Outreach**

The City should thus focus its outreach efforts on expanding the total vendor and bidder pools to include potentially available firms from sources, such as other agency-certified lists and business lists such as Data Axle or Dun & Bradstreet. Furthermore, the inclusive outreach should pay special attention to ensuring that firms capable of bidding on informal contracts, small contracts and sheltered market opportunities are included in the vendor/bidder pool.

**H. Monitoring and Tracking Reports—Overall and Project-by-Project**

As suggested previously under Recommendation A., the City should always be able to determine that procurement and contracting decision-making is executed in a nondiscriminatory manner. We believe it is useful to view RWA<sup>SM</sup> tracking from the standpoint of statistical data supporting applicant flow and compliance reporting.

In annual reporting on the achievement of DBE efforts to the mayor and city council, procurement and M/WBE manager reports should also include the degree to which the City’s efforts have:

- Promoted and strengthened economic prosperity in the Wilmington area;
- Enhanced competition;

- Expanded business capacity; and,
- Removed barriers and reduced or eliminated disparities.

**I. Post-Award Compliance Responsibilities**

The City should review the degree to which User Departments are performing contract compliance functions and reporting their efforts to the procurement director and M/WBE manager. Post-award utilization responsibilities should minimally include:

- Confirming utilization of DBE subcontractors listed on prime contractor’s winning bid and executed contract through compliance monitoring, on-site monitoring and reporting; and,
- While reviewing invoices, confirming that DBE subcontractors are receiving timely payments and uploading spreadsheet invoice data into appropriate tracking software.

**J. Partnerships with Technical Assistance Providers**

Partnering with existing technical assistance providers for capacity building should not simply be focused on bonding and insurance. The City should develop a process of referral to the appropriate technical assistance provider and follow up with some assistance for potential DBEs who could bid on the City’s contracts. A firm assessment tool should be developed to determine firms that are:

Figure E.4 RWA <sup>SM</sup> Tracking	
EEO Applicant Flow	RWA <sup>SM</sup> and Disparity Analysis Equivalent
Labor Force	Potential availability from Data Axle firms, firms receiving building permits and/or business licenses, certified DBE firms, non-certified DBE firms, trade organization membership; yellow pages
Potential Applicants	Registered vendors, plan holders, pre-qualified vendors
Actual Applicants	Bidders and sub-bidders (inclusive of quotes)
Actual Hires	Awardees and payees
Actual Promotions	Difference between prime and subcontracting opportunities; vendor performance
Actual Terminations	Contract terminations, for convenience and for cause; substitutions

Source: M<sup>3</sup> Consulting

- Start-up;
- Emerging; and
- Mature.

By developing a full technical assistance program and utilizing existing service providers with expertise in different areas, the City should be able to maximize its dollars while also providing technical assistance. Doing both can lead to increased contracts on City opportunities at the informal and formal prime levels, in SBE set-asides and sheltered market contracts, and as subcontractors. Working collaboratively allows the City to focus on its core strategic mission and objective while providing DBEs the support they need.

### **K. Working Capital Loans, Paymaster<sup>4</sup> Programs and Prompt Pay Requirements**

Staff noted that a hindrance to DBEs' success on City projects is the management and financial systems infrastructure requirement. The City should consider working with minority-owned banks and financial assistance providers to serve as paymasters for small qualifying firms. This should provide the City with assurances that financial management issues will not negatively impact contractor performance. The City may also work with these financial institutions to develop working capital loan programs on executed contracts. Working with a paymaster that is a banking institution may also strengthen the DBEs' ability to obtain loans and lines of credit. When financial assistance providers serve as the paymaster, they often become a spokesperson/intermediary for the small businesses to work through discriminatory or exclusionary banking practices.

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<sup>4</sup>A paymaster is authorized by the firm to handle the firm's receipts and payment of expenses, including payroll and subcontractor payments.



## E.5 SUMMARY

In summary, Miller<sup>3</sup> Consulting, Inc. found that the City's purchasing activities suggest that DBEs continue to have some difficulties obtaining significant contracts with the City. In submitting specific findings within the Study for the City, M<sup>3</sup> Consulting formulated recommendations that allow the City to rely upon race/gender-conscious means when necessary to address ongoing hindrances to eliminate disparities, while also addressing DBE participation through race/gender-neutral efforts. Our economic and statistical utilization analyses could serve as part of the policy- and procedure-making decisions needed to ensure enhanced and legally defensible DBE participation in the City's purchasing processes and opportunities.