

# Executive Summary

## Introduction

The City of Baltimore (City) retained MGT of America Consulting, LLC (MGT) to conduct an availability and disparity study to determine if there are any disparities between the utilization of minority-owned businesses (MBE), women-owned businesses (WBE), veteran-owned businesses (VBE), disabled owned businesses (DOBE), and lesbian, gay, transgender, bisexual, queer-owned businesses (LGBTQ) compared to the availability of these firms in the City's marketplace who are ready, willing, and able to perform work. MGT analyzed data for July 1, 2015 (FY16) through June 30, 2019 (FY19) for Construction, Architecture and Engineering, Goods, and Other Services (Including professional services).

The Study analyzed whether a disparity exists between the number of available MBEs, WBEs, VBEs, DOBEs, and LGBTQs providing goods or services in the above business categories (availability) and the number who are contracting with the City as a prime contractor or subcontractor (utilization).

## LEGAL FRAMEWORK

When local governments create affirmative action programs in government procurement, they must do so in a manner that comports with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. If a governmental program employs race-based classifications, the program must be narrowly tailored and further a compelling interest. See *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 492, 509 (1989) ("*Croson*"). Local governments have a compelling interest "in assuring those public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice." *Id.* at 492. Additionally, cities that can show they have "essentially become a 'passive participant' in a system of racial exclusion practiced by elements of the local construction industry," are able to "take affirmative steps to dismantle such a system." *Id.* If a governmental program employs gender-based classifications, in those cases the program must demonstrate an "exceedingly persuasive justification." *United States v. Virginia*, 518 U.S. 533 (1996).

The foundational case for evaluating M/WBE programs is *Croson*. *Croson* indicated what types of data might be sufficient to show that a program was narrowly tailored to further a compelling government interest. "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." *Croson*, 488 U.S. at 509. The appropriate remedy for such an inference is likely not a "rigid numerical quota," *id.* at 508, but could be a program that offers "some form of narrowly tailored racial preference," *id.* at 509.

## STUDY SCOPE AND DATA PARAMETERS

The scope of the disparity study included defining the City's market area and analyzing payment and contract data. MGT staff compiled and reconciled electronic data provided by the City to merge prime and subcontractor contract data to create a Master Utilization Database to support the needs of the study. MGT utilized the City's financial data as the primary source of the prime financial data and supplemented

that data with input from the City departments. The prime contract data was combined with the subcontractor data which was collected via a survey of the primes. Based on a common contract ID across both data sets, MGT merged the subcontractor data with the prime data to make up the Master Utilization Database.

## MARKET AREA

In determining a relevant market area, MGT abides by a 75 percent majority rule of agency spending with deference to historic programmatic considerations to prescribe an appropriate geographic boundary. To establish the appropriate geographic boundaries for the study, the “relevant” market area was isolated according to the 75 percent standard. These market areas are defined by geographic units such as counties and states, based on the following considerations: 1) the courts have accepted the use of standard geographic units in conducting equal employment opportunity and disparity studies; 2) geographic units are externally determined, so there are no subjective determinations, and 3) U.S. Census and other federal agencies routinely collect data by geographic unit.

The recommended relevant market area includes Baltimore City, Baltimore County, Anne Arundel County, Carroll County, Howard County, Queen Anne’s County, Montgomery County, and Prince George’s County, MD (“Market Area”). **Chapter 4** details the exact localities utilized.

## Key Findings

### Finding A: M/WBE Utilization *(Chapter 4, Appendix C)*

In **Table E-1**, the utilization analysis shows that non-M/WBE firms are utilized at higher rates than their M/WBE counterparts. The City’s utilization of non-M/WBE firms totaled 70.68 percent, while 29.32 percent went to M/WBE firms. Overall, the highest utilization rates among M/WBE classifications included African American firms accounting for 12.34 percent of dollars spent and nonminority females accounting for 7.52 percent of dollars spent. Nonminority female firms had the greatest utilization in Construction at 8.36 percent or \$21.69 million, followed by Asian American firms in Goods at 6.75 percent or \$42.54 million.<sup>1</sup>

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<sup>1</sup> Chapter 4, Market Area and Utilization Analyses

TABLE E-1.  
UTILIZATION ANALYSIS  
BY BUSINESS OWNERSHIP CLASSIFICATION AND BY PROCUREMENT CATEGORIES

BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	A&E	GOODS & OTHER SERVICES	PROFESSIONAL SERVICES
African American	\$416,701,494.70	\$334,094,603.56	\$16,100,181.77	\$59,789,747.02	\$6,716,962.35
Asian American	\$79,551,295.77	\$17,660,759.31	\$49,721,104.87	\$7,099,480.35	\$5,069,951.24
Hispanic American	\$207,578,560.55	\$200,939,896.03	\$1,024,797.00	\$5,235,978.52	\$377,889.00
Native American	\$32,182,827.60	\$31,758,301.17	\$63,207.79	\$361,318.64	\$0.00
Total MBE Firms	\$736,014,178.62	\$584,453,560.07	\$66,909,291.43	\$72,486,524.53	\$12,164,802.59
Non-Minority Female	\$254,079,897.55	\$152,992,599.02	\$22,000,510.63	\$67,696,423.81	\$11,390,364.09
Total M/WBE Firms	\$990,094,076.17	\$737,446,159.09	\$88,909,802.06	\$140,182,948.34	\$23,555,166.68
Non-MWBE	\$2,386,832,555.37	\$1,470,766,409.05	\$133,117,431.91	\$643,211,152.93	\$139,737,561.48
TOTAL	\$3,376,926,631.54	\$2,208,212,568.14	\$222,027,233.97	\$783,394,101.27	\$163,292,728.16
BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	A&E	GOODS & OTHER SERVICES	PROFESSIONAL SERVICES
	(%)	(%)	(%)	(%)	(%)
African American	12.34%	15.13%	7.25%	7.63%	4.11%
Asian American	2.36%	0.80%	22.39%	0.91%	3.10%
Hispanic American	6.15%	9.10%	0.46%	0.67%	0.23%
Native American	0.95%	1.44%	0.03%	0.05%	0.00%
Total MBE Firms	21.80%	26.47%	30.14%	9.25%	7.45%
Non-Minority Female	7.52%	6.93%	9.91%	8.64%	6.98%
Total M/WBE Firms	29.32%	33.40%	40.04%	17.89%	14.43%
Non-MWBE	70.68%	66.60%	59.96%	82.11%	85.57%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%

Source: Chapter 4, Market Area and Utilization Analysis.

In **Table E-2**, the utilization analysis shows the utilization of DOBE, VOBE, and LGBTQ firms. The highest utilization for VOBE firms can be found in Goods and Other Services with 0.10 percent, for DOBE firms it can be found in Construction with 0.02 percent; and LGBTQ firms did not have any identified utilization.

TABLE E-2.  
UTILIZATION ANALYSIS  
BY BUSINESS OWNERSHIP CLASSIFICATION AND BY PROCUREMENT CATEGORIES

BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	A&E	GOODS & OTHER SERVICES	PROFESSIONAL SERVICES
DOBE	\$633,564.93	\$341,249.01	\$292,315.92	\$0.00	\$0.00
VOBE	\$1,317,829.68	\$269,284.27	\$0.00	\$797,734.52	\$250,810.89
LGBTQ	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>TOTAL</b>	<b>\$1,951,394.61</b>	<b>\$610,533.28</b>	<b>\$292,315.92</b>	<b>\$797,734.52</b>	<b>\$250,810.89</b>
BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	A&E	GOODS & OTHER SERVICES	PROFESSIONAL SERVICES
	(%)	(%)	(%)	(%)	(%)
DOBE	0.02%	0.02%	0.13%	0.00%	0.00%
VOBE	0.04%	0.01%	0.00%	0.10%	0.15%
LGBTQ	0.00%	0.00%	0.00%	0.00%	0.00%

Source: Chapter 4, Market Area and Utilization Analysis.

## Finding B: Availability Estimates (Chapter 5, Appendix C)

A reliable estimation of the number of firms *willing* and *able* to provide each of the respective services is an essential element in the determination of disparity. Post-*Croson* case law has not prescribed a single approach to deriving firm availability, and agencies have used various means to estimate pools of available vendors that have withstood legal scrutiny.

MGT calculates availability based on a “custom census” approach. This approach is the most accurate for calculating availability at its most granular level. An in-depth explanation of this approach is provided in **Chapter 4**. Detailed availability results by business category and 4-digit NAICS code are provided in **Appendix C**. The availability estimates by procurement category are illustrated in **Table E-3**.

MGT estimated the availability of IWDBE, VOB, and SDVOB firms directly from the custom census survey to determine the percentage of available firms in the marketplace.

TABLE E-3.  
ESTIMATION OF AVAILABLE FIRMS

	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	MBE	NON-MINORITY FEMALE	M/WBE
CONSTRUCTION	9.70%	2.25%	5.64%	0.36%	17.94%	21.50%	39.44%
A&E	10.19%	6.27%	5.74%	0.81%	23.01%	25.45%	48.46%
PROFESSIONAL SERVICES	14.62%	12.14%	3.38%	0.91%	31.05%	16.36%	47.41%
GOODS & SERVICES	12.17%	3.95%	2.48%	1.51%	20.11%	23.02%	43.13%
Total	10.54%	3.39%	4.80%	0.68%	19.41%	21.87%	41.28%

Source: Chapter 4, Market Area and Availability Analysis.

### Finding C: Disparity (Chapter 5)

This section includes the results of the disparity ratios calculated in **Chapter 5**. MGT’s disparity index methodology yields an easily calculable value, understandable in its interpretation, and universally comparable. A disparity in utilization within the minority- and female-owned firms can be assessed concerning the utilization of nonminority- and male-owned firms.

These overall results show that among M/WBE firms there is disparity in all categories. Only in Goods do you find no disparity for Hispanic American firms. Additionally, as a total M/WBE classification, all procurement categories find substantial and statistically significant disparity. Detailed disparity results by business category and 4-digit NAICS code are provided in **Appendix C**. Additionally, there was substantially significant disparity for IWDBE, VOB, and SDVOB firms throughout all of the procurement categories except IWDBE firms in Services.

TABLE E-4.  
DISPARITY RATIO SUMMARY ANALYSIS

Procurement Category	All	Architecture & Engineering	Construction	Professional Services	Goods & Services
African Americans	No Disparity	Disparity	No Disparity	Disparity	Disparity
Asian Americans	Disparity	No Disparity	Disparity	Disparity	Disparity
Hispanic Americans	No Disparity	<b>Disparity</b>	No Disparity	Disparity	Disparity
Native Americans	No Disparity	Disparity	No Disparity	Disparity	Disparity
Total MBE Firms	No Disparity	No Disparity	No Disparity	<b>Disparity</b>	Disparity
Nonminority Females	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	Disparity	<b>Disparity</b>
Total M/WBE Firms	<b>Disparity</b>	Disparity	Disparity	<b>Disparity</b>	<b>Disparity</b>
Non-MWBE Firms	No Disparity	No Disparity	No Disparity	No Disparity	No Disparity

**BOLD** indicates substantial statistically significant disparity.

## Commendations

The City of Baltimore is commended for investing the resources and providing the guidance, direction, and support to ensure the delivery of a study that is legally supportable and actionable. The disparity study conducted by MGT resulted in identifying several initiatives currently in place to increase access and opportunities for the City’s diverse community of minority- and women-owned businesses.

Taken overall, the 2022 Disparity Study and efforts being undertaken are significant and important indicators of the City’s commitment to increasing access and opportunities for diverse businesses.

## Recommendations

The following recommendations are based on multiple findings and do not necessarily tie to one finding.

### RACE- AND GENDER-NEUTRAL:

#### A: STAFF TRAINING ON BUSINESS FORMATION

To understand common business barriers the City staff that interacts with businesses should understand the functions of business operations from how bidding is completed for each industry to the capital needed for different industries.

## B: IMPROVE PAYMENT TERMS ON CITY CONTRACTS

The City should be commended for mandating the prompt payment of 30 days with an approved invoice. However, firms that work on City contracts are frustrated with the processing time of submitted invoices. M/WBE subcontracts are experiencing the direct impact of slow payment cycles by the City because that slower cycle means that subcontractors must wait longer for their payment.

## C: IMPLEMENT A CONTRACT COMPLIANCE SOFTWARE SYSTEM

The City should be commended on acquiring a contract compliance system. We recommend that in its implementation all vendors are required to utilize the system to report all subcontract utilization and payments. This system should be utilized by all City departments to enter and monitor their contracts.

## D: REORGANIZING THE MINORITY AND WOMEN'S BUSINESS OPPORTUNITY OFFICE

The M/WBE ordinance should be amended to place the Minority and Women's Business Opportunity Office ("MWBOO") under the Office of the Mayor as a standalone agency. The office is currently a small division of the City Law Department, which is and has been a limiting factor with regards to funding.

The Mayor's Office of Minority and Women-Owned Business Development ("MWBD") should be placed in the MWBOO and report directly to the Chief. MWBD should continue its outreach and advocacy functions. The two offices with similar names but different functions have always been a source of confusion for businesses and individuals seeking to do business with the City of Baltimore, and particularly those with M/WBE questions. Combining the two offices will result in a more efficient use of scarce resources

## RACE- AND GENDER-BASED

### A: M/WBE PREQUALIFICATION REQUIREMENTS

1. The Office of Boards and Commissions ("OBC") should be made a unit within MWBOO. OBC is responsible for prequalifying all construction-related contractors and design consultants seeking to perform services of \$50,000 or greater on Baltimore City contracts. Questions about an M/WBE's technical capability and financial capacity to perform satisfactory work for the City as a prime, and as a subcontractor on certain contracts, can be readily determined if the databases of the two offices are combined. Certification and prequalification of contractors should be a centralized activity.

### B: NETWORKING AND PROCUREMENT EVENTS

2. Realizing that the COVID-19 pandemic suspended M/WBE outreach and engagement, the City should create and host events that will provide upcoming procurement opportunities in all industries, not just construction. The City should partner with technical or professional organizations in the area to offer instruction for M/WBEs seeking to scale their business

## C: ADOPT ANNUAL ASPIRATIONAL GOALS

Estimates of M/WBE availability in the City's market area provide the starting point for citywide annual aspirational goals for contracting across all industry categories. As the City continues to review its achievement toward the annual aspirational goals, it should assess whether race- and gender-based remedies are necessary for all industry categories. Proposed goals are recommended at 25 percent for MBE firms and 15% for WBE firms. The proposed goals are based on a weighted average of utilization and availability. Aspirational goals are based on an accumulation of all spending within the City and should not be applied rigidly to every individual procurement. Future adjustments to citywide aspirational goals should be based on relative availability and adjusted as needed.

## D: CONTINUE THE M/WBE PROGRAM SUNSET REVIEW PROCESS

The City of Baltimore should continue to require the review of the Program to determine if an evidentiary basis to continue every five years and that it should be continued only if there is strong evidence that discrimination continues to disadvantage M/WBEs in the relevant market area.

## Conclusion

The City of Baltimore 2022 Disparity Study provides legally supportable factual predicate evidence for a narrowly tailored Supplier Diversity Program. As documented throughout the entirety of the study, disparities throughout the utilization, private sector, and qualitative analyses were ascertained for minority-owned businesses (MBE), and women-owned businesses (WBE) in the City's business markets. There was not enough data to identify disparity of VOB, DOBE, and LGBTQ businesses in the market. Any program efforts must be narrowly tailored to rectify the issues identified in this report.