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# City of Richmond

Virginia Minority Business Enterprise  
2023 Disparity Study



# City of Richmond

## 2023 Disparity Study

# Table of Contents

<b>TABLE OF CONTENTS.....</b>	<b>II</b>
<b>1 INTRODUCTION .....</b>	<b>1</b>
1.1 BACKGROUND.....	1
1.2 OVERVIEW OF STUDY APPROACH .....	2
1.3 REPORT ORGANIZATION .....	3
1.4 GLOSSARY OF TERMS.....	4
<b>2 LEGAL REVIEW .....</b>	<b>7</b>
2.1 INTRODUCTION.....	7
2.2 SCRUTINY STANDARDS FOR RACE-SPECIFIC PROGRAMS .....	7
2.3 STRICT SCRUTINY ANALYSIS.....	8
2.4 NARROWLY TAILORING.....	13
2.5 DILLON RULE.....	15
2.6 CONCLUSIONS.....	16
<b>3 REVIEW OF POLICIES, PROCEDURES, AND PROGRAMS.....</b>	<b>18</b>
3.1 INTRODUCTION.....	18
3.2 METHODOLOGY AND DEFINITIONS .....	18
3.3 PROCUREMENT ENVIRONMENT AND STRUCTURE .....	24
3.4 SOURCE SELECTION .....	34
3.5 BUSINESS INCLUSION.....	40
3.6 CONCLUSIONS.....	42
<b>4 MARKET AREA AND UTILIZATION ANALYSIS .....</b>	<b>43</b>
4.1 INTRODUCTION.....	43
4.2 DATA COLLECTION AND MANAGEMENT .....	43
4.3 MARKET AREA ANALYSIS .....	46
4.4 UTILIZATION ANALYSIS .....	53
<b>5 AVAILABILITY ESTIMATES AND DISPARITY ANALYSIS .....</b>	<b>59</b>
5.1 INTRODUCTION.....	59
5.2 AVAILABILITY ESTIMATIONS .....	59
5.3 DISPARITY ANALYSES AND SIGNIFICANCE TESTING .....	62
5.4 CONCLUSIONS.....	68
<b>6 PRIVATE SECTOR ANALYSIS .....</b>	<b>70</b>
6.1 INTRODUCTION.....	70
6.2 PRIVATE SECTOR DISPARITIES IN SBO CENSUS DATA .....	71
6.3 PRIVATE SECTOR DISPARITIES IN ABS CENSUS DATA .....	83



6.4	ANALYSIS OF RACE, ETHNICITY, AND GENDER EFFECTS ON SELF- EMPLOYMENT AND EARNINGS .....	94
6.5	ACCESS TO CREDIT .....	104
6.6	CONCLUSIONS .....	107
<b>7</b>	<b>ECONOMIC IMPACT ANALYSIS ..</b>	<b>108</b>
7.1	INTRODUCTION .....	108
7.2	RICHMOND MARKET OVERVIEW .....	108
7.3	ECONOMIC OVERVIEW – LABOR MARKET ANALYSIS .....	110
7.4	ECONOMIC IMPACT ANALYSIS METHODOLOGY .....	115
7.5	PAYBACK AND RETURN ON INVESTMENT .....	121
7.6	SUMMARY .....	122
<b>8</b>	<b>QUALITATIVE DATA ANALYSIS .</b>	<b>123</b>
8.1	INTRODUCTION .....	123
8.2	QUALITATIVE BACKGROUND .....	124
8.3	METHODOLOGY .....	124
8.4	ONLINE AND TELEPHONE BUSINESS SURVEY .....	126
8.5	BUSINESS OWNERS IN-DEPTH INTERVIEWS .....	133
8.6	PROFESSIONAL ORGANIZATIONS ENGAGEMENT .....	136
8.7	SUMMARY .....	136
<b>9.</b>	<b>FINDINGS AND RECOMMENDATIONS.....</b>	<b>138</b>
9.1	INTRODUCTION .....	138
9.2	FINDINGS.....	139
9.3	ASPIRATIONAL GOALS METHODOLOGY .....	146
9.4	COMMENDATIONS AND RECOMMENDATIONS.....	146
9.4.1	RACE-NEUTRAL RECOMMENDATIONS .....	146
9.4.2	RACE–BASED RECOMMENDATIONS.	148
9.5	CONCLUSIONS .....	150



## TOC CONTINUED

### TABLES

Table 3-1. Documents Reviewed During Policy and Procedures Review .....	19
Table 4-1. Market Area Analysis, Distribution of Dollars By Business Category, City of Richmond Market Area .....	48
Table 4-2. Product Market, Distribution of Dollars By NAICS Code, Construction.....	49
Table 4-3. Product Market, Distribution of Dollars By NAICS Code, Architecture & Engineering .....	50
Table 4-4. Product Market, Distribution of Dollars By NAICS Code, Professional Services.....	50
Table 4-5. Product Market, Distribution of Dollars By NAICS Code, Other Services.....	51
Table 4-6. Product Market, Distribution of Dollars By NAICS Code, Goods .....	52
Table 4-7. Utilization Analysis By Business Ownership Classification, All Procurement Categories .....	54
Table 4-8. Utilization Analysis By Business Ownership Classification, Construction .....	55
Table 4-9. Utilization Analysis By Business Ownership Classification, Architecture & Engineering .....	55
Table 4-10. Utilization Analysis By Business Ownership Classification, Professional Services .....	56
Table 4-11. Utilization Analysis By Business Ownership Classification, Other Services .....	57
Table 4-12. Utilization Analysis By Business Ownership Classification, Goods .....	57
Table 5-1. Estimation of Available Firms, All Procurement Categories.....	61
Table 5-2. Disparity Indices and Significance Testing, All Procurement Categories .....	65
Table 5-3. Disparity Indices and Significance Testing, Construction .....	65
Table 5-4. Disparity Indices and Significance Testing, Architecture & Engineering .....	66
Table 5-5. Disparity Indices and Significance Testing, Professional Services .....	67
Table 5-6. Disparity Indices and Significance Testing, Other Services .....	67
Table 5-7. Disparity Indices and Significance Testing, Goods.....	68
Table 5-8. Disparity Analysis Summary.....	69
Table 6-1. Private Sector Census Disparities NAICS Code 23, Construction U.S. Census 2012 Survey of Business Owners, City of Richmond Marketplace.....	74
Table 6-2. Private Sector Census Disparities NAICS Code 42, Wholesale Trade U.S. Census 2012 Survey of Business Owners, City of Richmond Marketplace.....	76
Table 6-3. Private Sector Census Disparities NAICS Code 54, Professional, Scientific, and Technical Services U.S. Census 2012 Survey of Business Owners, City of Richmond Marketplace.....	78
Table 6-4. Private Sector Census Disparities NAICS Code 56, Administrative and Support/Waste Management and Remediation Services U.S. Census 2012 Survey of Business Owners, City of Richmond Marketplace .....	80



Table 6-5. Private Sector Census Disparities NAICS Code 81, Other Services (Except Public Administration) U.S. Census 2012 Survey of Business Owners, City of Richmond Marketplace.....	82
Table 6-6. Private Sector Census Disparities NAICS Code 23, Construction U.S. Census 2017 Annual Business Survey, City of Richmond Marketplace .....	85
Table 6-7. Private Sector Census Disparities NAICS Code 42, Wholesale Trade U.S. Census 2017 Annual Business Survey, City of Richmond Marketplace .....	87
Table 6-8. Private Sector Census Disparities NAICS Code 54, Professional, Scientific, and Technical Services U.S. Census 2017 Annual Business Survey, City of Richmond Marketplace.....	89
Table 6-9. Private Sector Census Disparities NAICS Code 56, Administrative and Support/Waste Management and Remediation Services U.S. Census 2017 Annual Business Survey, City of Richmond Marketplace .....	91
Table 6-10. Private Sector Census Disparities NAICS Code 81, Other Services (Except Public Administration) U.S. Census 2017 Annual Business Survey, City of Richmond Marketplace .....	93
Table 6-11. Wages Elasticities of Minority Groups Relative to Nonminority Males after Controlling for Demographic and Economic Characteristics .....	97
Table 6-12. Business Earnings Elasticities of Minority Groups Relative to Nonminority Males after Controlling for Demographic and Economic Characteristics .....	98
Table 6-13. Self-Employment Formation Rates.....	100
Table 6-14. Self-Employment Percent Differences Controlling for Demographic and Economic Characteristics .....	102
Table 6-15. Observed and Predicted Self-Employment Rates Richmond Marketplace.....	103
Table 7-1. Demographic Overview Population Analysis.....	109
Table 7-2. Demographic Overview Population Analysis.....	109
Table 7-3. Demographic Overview Educational Attainment .....	110
Table 7-4. Labor Market Analysis Population Analysis.....	111
Table 7-5. Top 25 Employers City of Richmond Marketplace .....	114
Table 7-6. MBE Total Spending Economic Impact Summary City of Richmond.....	117
Table 7-7. MBE SPENDING 2017 Economic Impact Summary City of Richmond.....	118
Table 7-8. MBE Spending 2018 Economic Impact Summary City of Richmond .....	119
Table 7-9. MBE Spending 2019 Economic Impact Summary City of Richmond .....	120
Table 7-10. MBE Spending 2020 Economic Impact Summary City of Richmond .....	120
Table 7-11. MBE Spending 2021 Economic Impact Summary City of Richmond .....	121
Table 8-1. Survey of Vendors.....	126
Table 8-2. Barriers Identified by Survey Respondents.....	127
Table 8-3. Barriers Identified by Survey Respondents.....	128
Table 8-4. Prime Contractor Survey Responses Logit.....	129
Table 8-5. Subcontractor Contractor Survey Responses Logit .....	130



Table 8-6. Primes lack of solicitation of MBE Firms on Projects without Goals.....	132
Table 8-7. MBE Firms Dropped After Project Award .....	132
Table 8-8. Discriminatory Treatment Identified by primes and Subcontractors .....	133
Table 9-1. Relevant Market Area Analysis Distribution of Dollars By Business Category, City of Richmond Market Area.....	140
Table 9-2. Utilization Analysis By Business Ownership Classification and By Procurement Categories .....	141
Table 9-3. Estimation of Available Firms .....	142
Table 9-4. Disparity Ratio Summary Analysis .....	143
Table 9-5. Proposed MBE Goals .....	142
Table 9-6. NARROWLY TAILORED M/WBE PROGRAM FEATURES .....	149

## EXHIBITS

Exhibit 3-1. City of Richmond Organization Chart .....	25
Exhibit 3-2. City of Richmond Department of Procurement Services Organization Chart.....	26
Exhibit 3-3. City of Richmond Request for Proposal – Goods and Non-Professional Services (Process Flowchart) .....	28
Exhibit 3-4. City of Richmond Request for Proposal – Professional Services (Process Flowchart) .....	29
Exhibit 3-5. City of Richmond Invitation for Bid – Goods and Non-Professional Services (Process Flowchart) .....	30
Exhibit 3-6. City of Richmond Invitation for Bid - Construction (Process Flowchart).....	31
Exhibit 3-7. City of Richmond Change Order – Construction (Process Flowchart) .....	32
Exhibit 3-8. City of Richmond Contract Renewal (Process Flowchart) .....	33
Exhibit 3-9. City of Richmond Solicitation Documents .....	34
Exhibit 3-10. Procurement Exemptions by NIGP Code .....	39
Exhibit 3-11. City of Richmond Office of Minority Business Development Organization Chart .....	41

## FIGURES

Figure 4-1. Summary of Dollars, Total Contracts (Paid) By Procurement Category, Overall Market Area.....	47
Figure 7-1. Employment Growth City of Richmond Marketplace .....	112
Figure 7-2. Unemployment Rate City of Richmond Marketplace .....	113
Figure 7-3. Gross Domestic Product City of Richmond Marketplace.....	115
Figure 7-4. Economic Impact Analysis MBE Spending Overall .....	116



## MGT Consulting Project Team

MGT is a Tampa-based research and management consulting firm exclusively working in the public sector. Since 1990, MGT has conducted over 250 disparity and disparity-related studies. The team of experts who dedicated their time, attention, and expertise to this Study includes some of the most experienced and accomplished social science experts in the field of disparity studies:

Mr. Andres Bernal, Vice President/Project Executive/Disparity Study Methodology/Legal Research  
Ms. Vernetta Mitchell, Project Director/Qualitative Research/Subcontractor Manager  
Ms. Corlisha Mitchell, Senior Consultant/Policy Research  
Dr. Fred Seamon, Executive Vice President/Qualitative Research  
Mr. Walter Benitez, Consultant/Data Collection Manager  
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## Subconsultants

**Philip Reese (MBE)** specializes in community engagement and qualitative research. Philip Reese assisted MGT with qualitative (anecdotal) interviews with businesses and professional organizations in the marketplace, and the business engagement meetings.

**Greensboro Staffing Consultants (MBE)** focuses on skilled staffing for data research and management. Greensboro Staffing provided support with conducting business surveys with area businesses.

**Customer Research International, Inc. (MBE)** is a data collection research firm. CRI has conducted thousands of research projects for a wide range of clients, including state and municipal entities, universities, and political pollsters. Administered the custom census surveys to establish estimates of MBE availability.

**ReeSources, Inc.** facilitates the development of the strategy, motivation, resourcefulness and accountability necessary for smaller businesses to thrive. ReeSources assisted MGT with qualitative (anecdotal) interviews with businesses in the marketplace.

**Transformation Consulting, LLC (WBE)** researched and created a comprehensive list of professional organizations in the marketplace.

## Acknowledgements

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# 1 Introduction

## 1.1 Background

The city of Richmond is a municipal corporation of the Commonwealth of Virginia and is the state capital. The 2021 U.S. Census Bureau reports the population of the City is 226,604, and the metropolitan area has a population of 1.3 million residents. The city of Richmond has a diverse economic base that includes research and development, manufacturing, retail, services, law, distribution, tourism, banking, and state government, all of which contribute to a stable and positive business environment. Richmond is home to the Fifth District Federal Reserve Bank, one of 12 Federal Reserve Banks, and is also home to the Fourth Circuit U.S. Court of Appeals, one of 13 U.S. Court of Appeals in the United States. Richmond has ten Fortune 1000 companies headquartered in the region, including seven Fortune 500 firms, and several higher education institutions located within the City.

### Chapter Sections

- 1.1 Background
- 1.2 Overview of Study Approach
- 1.3 Report Organization
- 1.4 Glossary of Terms

Chapter 21 of the Richmond city code includes descriptions of the creation, purpose, and duties of the Office of Minority Business Development and sets forth goals that the City has crafted to increase MBE participation for good faith efforts. The Richmond city code provides for an Office of Minority Business Development to serve as a catalyst for increasing growth and development of the minority, small, and disadvantaged business community in the City and in public procurement transactions. Such programs may be in cooperation with the Virginia Department of Small Business and Supplier Diversity, the United States Small Business Administration, and other public or private agencies.

The disparity study will be both useful and beneficial to the City as it establishes the compelling interest to continue its race- and gender-based initiatives and information from the disparity study will be useful to the City when it makes decisions about the MBE Program (e.g., MBE participation goals). The disparity study provides insights into how to improve contracting opportunities for small businesses as well as minority-owned businesses. Agencies that have successfully defended implementations of programs such as the MBE Program in court have typically relied on information from disparity studies. The study will allow the City to continue its efforts in a legally defensible manner.

The city of Richmond (City) retained MGT of America Consulting, LLC (MGT) to conduct the City's 2023 MBE Disparity Study. The goal of the disparity study is to determine if there are any disparities between the utilization of minority business enterprises (MBEs) compared to the availability of MBEs in the marketplace that are ready, willing, and able to perform work. Goals also include determining whether such disparities are consistent with the existence of discrimination and whether there is quantitative or qualitative evidence of discrimination in the private markets in which the City conducts business.



## 1.2 Overview of Study Approach

The city of Richmond's study includes procurement activity from July 1, 2016, through June 30, 2021 (FY2016 – FY2021). The objectives of this study were:

- ♦ Determine whether the city of Richmond, either in the past or currently, engages in discriminatory practices or passively operates in a discriminatory marketplace, in its soliciting and awarding contracts in construction, architecture & and engineering, professional services, and other services, and goods to MBEs.
- ♦ Determine if a legally justified need exists for the continuation of the MBE program in accordance with the guidelines set forth by the Supreme Court and relevant subsequent cases.

The Study analyzed three areas to determine if there was evidence of business discrimination toward MBEs in the City's market area. The first area consisted of analyzing contracting opportunities in the procurement categories to identify if statistical disparities existed. Additionally, data from the U.S. Census and other third-party sources was analyzed to determine the existence of business discrimination in the private sector. Finally, qualitative data was gathered and analyzed to determine the possible causes behind any disparities found and to understand the contracting experiences of the vendors in the marketplace.

MGT employed a project plan that consisted of, but was not limited to, the following major tasks:

- ♦ Establish data parameters and finalize the work plan
- ♦ Conduct a legal review
- ♦ Review the City's policies, procedures, and programs
- ♦ Determine the City's geographic and product markets
- ♦ Conduct market area and utilization analyses
- ♦ Determine the availability of qualified firms
- ♦ Analyze prime and subcontractor utilization and availability for the disparity
- ♦ Analyze disparities in the private sector
- ♦ Collect and analyze anecdotal information
- ♦ Prepare and present draft and final reports for the study

### RESEARCH QUESTIONS

These research questions are embedded in relevant chapters throughout this report.

Is there factual predicate evidence to support a race- and gender-conscious MBE program for the city of Richmond?

How does case law inform the research methodology for the city of Richmond's disparity study?

Are there disparities between the availability and utilization of MBE primes and subcontractors?

If so, what is the cause of the disparity? Is there other evidence that supports and/or explains why there is disparity?

Does the city of Richmond passively engage in private sector discrimination?



## 1.3 Report Organization

In addition to this introductory chapter, the city of Richmond’s report consists of:

<b>CHAPTER 2</b>	<b>LEGAL REVIEW</b>  <b>Chapter 2</b> presents the legal framework and an overview of the controlling legal precedents that impact remedial procurement programs with a particular concentration on the United States Court of Appeals for the Fourth Circuit.
<b>CHAPTER 3</b>	<b>REVIEW OF POLICIES, PROCEDURES, AND PROGRAMS</b>  <b>Chapter 3</b> provides MGT’s analysis of the race- and gender-neutral and race- and gender-conscious policies, procedures, and programs.
<b>CHAPTER 4</b>	<b>MARKET AREA AND UTILIZATION ANALYSES</b>  <b>Chapter 4</b> presents the methodology used to determine the City’s relevant market area and the analyses of vendor utilization by the City for the procurement of construction, architecture and engineering, professional services, other services, and goods.
<b>CHAPTER 5</b>	<b>AVAILABILITY AND DISPARITY ANALYSES</b>  <b>Chapter 5</b> presents the availability of MBEs in the City’s geographic and product markets and the disparity between the availability and utilization of MBEs by the City.
<b>CHAPTER 6</b>	<b>PRIVATE SECTOR ANALYSIS</b>  <b>Chapter 6</b> analyzes the disparities present in the private sector and the effect on MBEs. This private-sector analysis demonstrates why the City’s race and gender-conscious programs and goals are necessary to ensure it does not become a passive participant in private-sector discrimination.
<b>CHAPTER 7</b>	<b>QUALITATIVE DATA COLLECTION AND ANALYSIS</b>  <b>Chapter 7</b> contains an analysis of qualitative/anecdotal data collected from the survey of business owners, one-on-one interviews, focus groups, and business engagement meetings.
<b>CHAPTER 8</b>	<b>FINDINGS, ASPIRATIONAL GOALS METHODOLOGY, AND BEST PRACTICES</b>  <b>Chapter 7</b> summarizes the findings of the Study, aspirational goals methodology, and provides selected practices of peer programs.
<b>CHAPTER 9</b>	<b>ECONOMIC IMPACT ANALYSIS OF THE MBE PROGRAM</b>  <b>Chapter 8</b> presents the direct, indirect, and induced impact of the MBE’s contribution to the economy with regard to jobs, wages, value added, and tax income.
<b>APPENDICES</b>	The appendices contain additional analyses, supporting documentation and data, and regression analysis derived from the vendor survey.



## 1.4 Glossary of Terms

This glossary contains definitions of common terms and acronyms used throughout the City of Richmond’s 2023 Disparity Study. Additional and more detailed definitions can be found in various chapters of the report.

Anecdote	A personal account of experiences of firms doing business with or attempting to do business with the City. Anecdotal evidence was collected through surveys, interviews, and public hearings.
Aspirational Goal	A benchmark percentage of spending by an agency with a particular group over a period of time. The aspirational goal is typically an annual goal.
Anecdotal Database	A list of utilized firms, registered vendors, and certification lists developed from various sources, including Dun & Bradstreet. This list was used to develop the pool of firms to participate in anecdotal activities.
Awards	Awards reflect anticipated dollar amounts a prime contractor or vendor is scheduled to receive upon completion of a contract.
Combined Statistical Area	Combined Statistical Areas (CSAs) are geographic entities defined by the U.S. Office of Management and Budget (OMB) for use by federal statistical agencies in collecting, tabulating, and publishing federal statistics.
Contract	All types of City agreements, including direct payments and purchase orders, for the procurement of goods and services.
Custom Census	The custom census involves using Dun & Bradstreet as a source of business availability. A short survey is conducted on a random sample of firms supplied by Dun & Bradstreet, requesting specific information, i.e., ethnic and gender status, and verification of their NAICS code.
DBE	An acronym for a Disadvantaged Business Enterprise. A DBE is a small, for-profit business that is at least 51% owned and controlled by one or more socially or economically disadvantaged individuals whose personal net worth does not exceed the U.S. Department of Transportation’s current threshold.
Direct Payment	Payment made to prime contractors or vendors without the development of a contract.
Disparity Index/ Disparity Ratio	The percentage of utilization is divided by the percentage of availability for a particular demographic group and multiplied by 100. Disparities were calculated for each of the business categories and by NAICS codes.
Disparity Study	A study that determines if there are any disparities between the utilization of minority business enterprises (MBEs) compared to the availability of MBEs in the marketplace who are ready, willing, and able to perform work. The study will also determine whether such disparities are consistent with the existence



	of discrimination and whether there is quantitative or qualitative evidence of discrimination in the private markets in which the City conducts business.
Expenditures	Payments made by the City to primes and payments made by primes to subcontractors.
Good Faith Efforts	Documented evidence of the primes' efforts to meet established project goals to contract with MBE firms.
Intermediate Scrutiny	The second level of federal judicial review determines whether specific governmental policies are constitutional. This review also applies to gender-conscious programs.
Lowest Responsible, Responsive Bidder	A firm that provides the lowest price in response to the requestor's needs and has not violated statutory requirements for vendor eligibility.
MBE	An acronym for a minority-owned business enterprise. An MBE is a business that is at least 51% owned and operated by one or more individuals who are African American, Asian American, Hispanic American, or Native American.
Master Utilization Database	A database that contains records of firms that have conducted business with the City and were paid by the City for goods and services.
NAICS	North American Industry Classification System is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.
Non-MBE	An acronym for firms not identified as minority-owned.
Passive Discrimination	The act of perpetuating discrimination through the infusion of monetary funding to a discriminatory market or failure to attempt to remedy current/past discrimination in the market area.
Prima Facie	Evidence that is legally sufficient to establish a fact or a case unless disproved or rebutted.
Prime	The contractor or vendor to whom City issues a purchase order or contract.
Private Sector	The for-profit part of the national economy that is not under direct government control.
Procurement Category	The type of service or good provided under a contract awarded. The categories analyzed are construction, architecture and engineering, professional services, other services, and goods.
Project Goals/ Contract Goals	Goals placed on an individual project or contract, as opposed to aspirational goals established on overall agency spending.
Public Sector	The nonprofit part of the economy controlled by the government.



PUMS	An acronym for Public Use Microdata Sample. PUMS contains records for a sample of housing units with information on the characteristics of each unit and each person in it. PUMS files are available from the American Community Survey (ACS) and the Decennial Census.
Purchase Order	A commercial document and the first official offer issued by a buyer to a seller, indicating types, quantities, and agreed prices for products or services.
Regression Analysis	A technique for modeling and analyzing several variables when the focus is on the relationship between a dependent variable and one or more independent variables. More specifically, regression analysis helps one understand how the typical value of the dependent variable changes when any one of the independent variables is varied. In contrast, the other independent variables are held constant. For this study, a multivariate regression analysis was used to examine the influence of an owner's race and gender on gross revenues reported by firms participating in a survey of vendors administered during the study.
Relevant Geographic Market	The geographical area where the firms awarded the majority of City contract dollars are located.
Product Market	The granular commodities and services, according to the NAICS codes, that the City procured during the study period.
Sole Source	The contracting or purchasing of goods or services, without bidding, when performance or price competition for a product is not available, a needed product is available from only one source of supply, or the standardization or compatibility is the overriding consideration.
Statistically Significant	The likelihood that a result or relationship is caused by something other than mere random chance. Statistical hypothesis testing is traditionally employed to determine if a result is statistically significant or not. This provides a "p-value" representing the probability that random chance could explain the result.
Strict Scrutiny	The highest level of federal judicial review to determine whether certain governmental policies are constitutional. This review applies to race-conscious programs.
Subcontractor	A vendor or contractor providing goods or services to a prime contractor or vendor under contract with the City.
Utilization	Examination of the expenditures made to primes and subcontractors in the City's geographic and product market area for each procurement category. The utilization data is presented as the dollars spent and the percentage of the total dollars spent by racial, ethnic, and gender classification.



## 2 Legal Review

### 2.1 Introduction

The Supreme Court decisions in *Richmond v. J. A. Croson Co. (Croson)*,<sup>1</sup> and *Adarand v. Peña (Adarand III)*<sup>2</sup> established and applied the legal framework that governs race- and gender-conscious procurement programs. These cases held that strict scrutiny should be the standard by which race-conscious governmental programs should be reviewed, including programs of federal, state, and local governments. In particular, the courts held that to survive a constitutional challenge under a strict scrutiny standard, a race-conscious governmental procurement program must be (1) justified by a compelling governmental interest in remedying identified discrimination in the marketplace; and (2) narrowly tailored to remedy that discrimination. Decisions of the Fourth Circuit offer the most directly binding authority to the city of Richmond, particularly the decision involving the North Carolina Department of Transportation's (NCDOT) MBE program in *H.B. Rowe Co., Inc. v. Tippet (Rowe)*.<sup>3</sup> Other circuit court cases outside of the Fourth Circuit offer persuasive authority where the Fourth Circuit does not directly address all aspects of a legally defensible MBE program. This review also addresses the most pertinent cases outside of the Fourth Circuit.

### 2.2 Scrutiny Standards for Race-Specific Programs

#### 2.2.1 Strict Scrutiny - *Richmond v. J. A. Croson Co.* as Applied to State and Local Governments

Justice O'Connor in *Croson* established the framework for testing the validity of race-based programs in state and local governments. In 1983, the Richmond City Council (Council) adopted a Minority Business Utilization Plan (the Plan). In adopting the Plan, the Council relied on information that showed that there was, "no direct evidence of race discrimination on the part of the city" in its contracting activities and no "evidence that the city's prime contractors had discriminated against minority-owned subcontractors."<sup>4</sup>

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

J.A. Croson Company, a non-MBE mechanical plumbing and heating contractor, filed a lawsuit against the city of Richmond, alleging that the Plan was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. After a considerable record of litigation and appeals, the Fourth Circuit Court of Appeals struck down the Richmond Plan, and the

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<sup>1</sup> *Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989). It should be noted that as it relates to this analysis, *Croson* refers to the Court's opinion delivered by Justice O'Connor in Parts I, III-B, and IV. Parts II, III-A, and V were plurality opinions delivered by Justice O'Connor.

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

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

<sup>4</sup> *Croson*, 488 U.S. at 480.



Supreme Court affirmed this decision.<sup>5</sup> The Supreme Court determined that strict scrutiny was the appropriate standard of judicial review for MBE programs, which means that a race-conscious program must be based on a compelling governmental interest and be narrowly tailored to achieve its objectives. This standard requires a firm evidentiary basis for concluding that the underutilization of minorities is a product of past discrimination.<sup>6</sup>

## 2.3 Strict Scrutiny Analysis

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

### 2.3.1 Compelling Governmental Interest

*Croson* identified two necessary factors for establishing racial discrimination sufficiently to demonstrate a compelling governmental interest in establishing an MBE program. First, there needs to be identified discrimination in the relevant market.<sup>7</sup> Second, "the governmental actor enacting the set-aside program must have somehow perpetuated the discrimination to be remedied by the program,"<sup>8</sup> either actively or at least passively with "the infusion of tax dollars into a discriminatory industry."<sup>9</sup>

#### 2.3.1.1 Statistical Evidence

The Court in *Croson* indicated that the proper statistical evaluation would compare the percentage of qualified MBEs in the relevant market with the percentage of total municipal construction dollars awarded to them.<sup>10</sup> In *Croson*, Justice O'Connor recognized statistical measures of disparity that compared the number of qualified and available M/WBEs with the rate of state construction dollars actually awarded to M/WBEs to demonstrate discrimination in the local construction industry.<sup>11</sup> To meet this more precise requirement, courts, including the Fourth Circuit, have accepted the use of a disparity index.<sup>12</sup>

#### 2.3.1.2 Relevant Market Area

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

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<sup>5</sup> *Id.* at 511.

<sup>6</sup> *Id.* at 488.

<sup>7</sup> *Croson*, 488 U.S. at 492, 509-10.

<sup>8</sup> *Coral Const. Co. v. King County*, 941 F.2d 910, 916 (9th Cir. 1991).

<sup>9</sup> *Id.* at 922.

<sup>10</sup> *Croson*, 488 U.S. at 501-02.

<sup>11</sup> *Id.* at 503-04.

<sup>12</sup> *H.B. Rowe, Inc. v. Tippet*, 615 F.3d 233, 243-44 (4th Cir. 2010). *See also Engineering Contractors*, 122 F.3d at 914; *Concrete Works IV*, 321 F.3d at 962-67.



The Supreme Court has not yet established how the relevant market area should be defined, and the relevant market was not directly addressed in *H.B. Rowe*. However, the study in *Rowe* defined the relevant market as the area in which the agency spent 75 percent of the dollars with vendors in a particular procurement category.

### 2.3.1.3 Availability

MBEs are deemed to be “available” if they are ready, willing, and able to perform. In determining availability of MBEs, the approach utilized to assess the universe of available firms should neither be too overinclusive or underinclusive. The “Custom Census” approach for identifying the pool of available firms has been favorably approved by several courts. In *Northern Contracting*, the plaintiff attempted to argue that IDOT miscalculated the number of DBEs by using a custom census instead of a count of the number of DBEs registered and prequalified by IDOT. The Seventh Circuit upheld the broader custom census count of DBEs, concluding that it reflected an attempt by IDOT to arrive at more accurate numbers than what would be possible through a use of the registered vendors list.<sup>13</sup>

### 2.3.1.4 Ability

Another availability consideration is whether the firms being considered are able to perform a particular service. Those who challenge affirmative action often question whether MBE firms have the “capacity” to perform specific services. In *Rowe*, the court noted that capacity does not have the same force for relatively small subcontracts. In addition, the study for NCDOT contained a regression analysis indicating that “African American ownership had a significant negative impact on firm revenue unrelated to firm capacity or experience.”<sup>14</sup>

In *Concrete Works IV* the court noted that “MWBE construction firms are generally smaller and less experienced because of discrimination....Additionally, we do not read *Croson* to require disparity studies that measure whether construction firms are able to perform a particular contract.”<sup>15</sup>

### 2.3.1.5 Disparity Index

In the *Rowe* decision, the plaintiff noted that there was no substantial disparity when the percentage of subcontractors was used compared to their availability. However, the Fourth Circuit stated that “[t]he State pointed to evidence that prime contractors used minority businesses for low-value work in order to comply with the Department’s goals.”<sup>16</sup> Along these lines, the Fourth Circuit noted that the average subcontract awarded to nonminority male subcontractors was more than double the size of subcontracts won by MBE subcontractors.<sup>17</sup>

### 2.3.1.6 Statistical Significance in Disparity Studies

While courts have indicated that anecdotal evidence may suffice without statistical evidence, no case without statistical evidence has been given serious consideration by any circuit court. In practical effect, courts require statistical evidence. Further, the statistical evidence needs to be held to appropriate

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<sup>13</sup> *N. Contracting, Inc. v. Illinois*, 473 F.3d 715, 723 (7th Cir. 2007).

<sup>14</sup> *H.B. Rowe, Inc. v. Tippet*, 615 F.3d at 243-244.

<sup>15</sup> *Concrete Works IV*, 321 F.3d 950, 981, 983 (10th Cir. 2003).

<sup>16</sup> *H.B. Rowe, Inc. v. Tippet*, 615 F.3d at 243-244.

<sup>17</sup> *Id.* at 245.



professional standards.<sup>18</sup> In *Rowe*, the court noted that the NCDOT study focused on disparity ratios lower than 80 percent and conducted t-tests of statistical significance.<sup>19</sup>

### 2.3.2 Burden of Proof

The *Croson* decision imposes the original burden of proof upon the government to demonstrate that a challenged DBE program is supported by documented evidence of past discrimination or current discrimination. The plaintiff then has the burden to prove that the DBE program is unconstitutional through various methods such as the flawed methodology used by the government to show that past or present discrimination exists, the race-neutral reasons for the disparity, or the existence of controverting data.<sup>20</sup>

### 2.3.3 Staleness of Data and Time Period of Study

A few cases have addressed the issue of the quantity and currentness of the data required to satisfy strict scrutiny. There is no clear guidance from the district courts about how many years should be studied, although there is cautionary language in cases about relying on small data samples.<sup>21</sup> Concerning the age of data, the court in *Rothe* ruled that the data relied on in the disparity studies was not stale with regard to reenacting a federal program in 2006. While agencies should rely on the most current available data, other circuit courts have “relied on studies containing data more than five years old when conducting compelling interest analyses.”<sup>22</sup>

### 2.3.4 Passive Participation To Discrimination

In *Croson*, Justice O’Connor stated, “It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that *public* dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of *private* prejudice.”<sup>23</sup> *Croson* provided that the government “can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment.”<sup>24</sup> The government agency’s active or passive participation in discriminatory practices in the marketplace may show a compelling interest. Defining passive participation, *Croson* stated, “Thus, if the city could show that it had essentially become a ‘passive participant’ in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the city could take affirmative steps to dismantle such a system.”<sup>25</sup>

<sup>18</sup> *Contractors Ass’n v. City of Philadelphia*, 91 F.3d 586, 603 (3d Cir. 1996).

<sup>19</sup> *H.B. Rowe, Inc. v. Tippet*, 615 F.3d at 245.

<sup>20</sup> See, e.g., *Concrete Works of Colo. v. City & County of Denver*, 321 F.3d 950, 959 (10th Cir. 2003), citing *Wygant v. Jackson Bd. of Education*, 476 U.S. 267, 277-78 (1986) (“The ultimate burden remains with the [plaintiff] to demonstrate the unconstitutionality of an affirmative-action program”).

<sup>21</sup> See, e.g., *Associated Gen. Contrs. of Am. v. City of Columbus*, 936 F.Supp. 1363, 1393 (S.D. Ohio 1996) (*rev’d on other grounds*, 172 F.3d 411).

<sup>22</sup> *Rothe Dev. Corp. v. DOD*, 545 F.3d 1023, 1038 (Fed. Cir. 2008) (citing district court discussion of staleness in *W. States Paving Co. v. Wash. State DOT*, 407 F.3d 983 (9th Cir. 2005) and *Sherbrooke Turf, Inc. v. Minn. DOT*, 345 F.3d 964 (8th Cir. 2003)).

<sup>23</sup> *Coral Cons Co.*, 941 F.2d at 922 (citing *Croson*, 488 U.S. at 492) (emphasis added).

<sup>24</sup> *Croson*, 488 U.S. at 492; see generally Ian Ayres and Fredrick E. Vars, *When Does Private Discrimination Justify Public Affirmative Action?* 98 *Colum. L. Rev.* 1577 (1998).

<sup>25</sup> *Croson*, 488 U.S. at 492.



Relying on this language in *Croson*, several local agencies have increased their emphasis on evidence of discrimination in the private sector. This strategy has not always succeeded. Evidence of private discrimination presented in litigation was found inadequate in the Philadelphia and Miami-Dade County cases.<sup>26</sup> The Third Circuit stated, in discussing low MBE participation in a local contractors association in the city of Philadelphia, “racial discrimination can justify a race-based remedy only if the City has somehow participated in or supported that discrimination.”<sup>27</sup> Nevertheless, in *Concrete Works IV*, the Tenth Circuit upheld the relevance of data from the private marketplace to establish a factual predicate for MBE programs.<sup>28</sup> The courts mainly seek to ensure that MBE programs are based on active or passive discrimination findings in the government contracting marketplace and not simply attempts to remedy general societal discrimination.<sup>29</sup>

Courts also seek to find a causal connection between a statistical disparity and actual underlying discrimination. In *Engineering Contractors*, one component of the factual predicate was a study comparing entry rates into the construction business for M/WBEs and non-M/WBEs.<sup>30</sup> The analysis provided statistically significant evidence that minorities and women entered the construction business at rates lower than expected, given their numerical presence in the population and human and financial capital variables. The study argued that those disparities persisting after applying appropriate statistical controls were most likely the result of current and past discrimination. Even so, the Eleventh Circuit criticized this study for reliance on general census data and the lack of particularized evidence of active or passive discrimination by Miami-Dade County, holding that the district court was entitled to find that the evidence did not show compelling justification for an MBE program.<sup>31</sup>

The Seventh Circuit has perhaps set a higher bar for connecting private discrimination with government action. In the Cook County case, the trial court extensively considered evidence that prime contractors did not solicit M/WBEs as subcontractors and considered carefully whether this evidence on solicitation served as sufficient evidence of discrimination, or whether instead, it was necessary to provide further evidence that there was discrimination in hiring M/WBE subcontractors.<sup>32</sup> The Seventh Circuit held that this evidence was largely irrelevant.<sup>33</sup> Beyond being anecdotal and partial, evidence that contractors failed to solicit M/WBEs on Cook County contracts was not the same as evidence that M/WBEs were denied the opportunity to bid.<sup>34</sup> Furthermore, such activities on the part of contractors did not necessarily implicate the County as being a passive participant in such discrimination as might exist because there was no evidence the County knew about it.<sup>35</sup>

### 2.3.5 Anecdotal Evidence

Most disparity studies present anecdotal evidence along with statistical data. Justice O'Connor in *Croson* discussed the relevance of anecdotal evidence, stating: “[E]vidence of a pattern of individual

<sup>26</sup> *Contractors Ass’n*, 91 F.3d at 602; *Engineering Contrs. Ass’n v. Metropolitan Dade County*, 122 F.3d 895, 910-11 (11th Cir. 1997).

<sup>27</sup> *Contractors Ass’n*, 91 F.3d at 602; see also *Webster v. Fulton County*, 51 F. Supp. 2d 1354 (N.D. Ga. 1999).

<sup>28</sup> *Concrete Works IV*, 321 F.3d at 969.

<sup>29</sup> *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 2000).

<sup>30</sup> *Engineering Contrs. Ass’n v. Metropolitan Dade County*, 122 F.3d at 921-22.

<sup>31</sup> *Id.* at 922.

<sup>32</sup> *Builders Ass’n of Greater Chicago v. County of Cook*, 123 F. Supp. 2d 1087 (N.D. Ill. 2000).

<sup>33</sup> *Builders Ass’n of Greater Chicago v. County of Cook*, 256 F.3d 642, 645 (7th Cir. 2001).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*



discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified."<sup>36</sup>

There was evidence from a telephone survey, interviews, and focus groups in *Rowe*. The Fourth Circuit favorably cited survey evidence of a good old boys network excluding MBEs from work, double standards in qualifications, primes viewing MBEs as less qualified, dropping MBEs after contract award, and the firms changing their behavior when not required to use MBEs. This material was affirmed in interviews and focus groups. The Fourth Circuit also seemed to weigh the differences in responses between ethnic/gender groups regarding the aforementioned barriers. The Fourth Circuit concluded that "[t]he surveys in the 2004 study exposed an informal, racially exclusive network that systematically disadvantaged minority subcontractors."<sup>37</sup>

The plaintiff argued that this data was not verified, to which the Fourth Circuit responded, "a fact finder could very well conclude that anecdotal evidence need not — and indeed cannot — be confirmed because it 'is nothing more than a witness' narrative of an incident told from the witness' perspective and including the witness' perceptions.'"<sup>38</sup> The Fourth Circuit also commented favorably on the NCDOT study survey oversampling MBEs as long as the sample was random.

In *Associated General Contractors of California, Inc. v. Coalition for Economic Equity (AGCC II)*, the Ninth Circuit discussed the specificity of anecdotal evidence required by *Croson*.<sup>39</sup> Seeking a preliminary injunction, the contractors contended that the evidence presented by San Francisco lacked the specificity needed for an earlier appeal in that case and by *Croson*.<sup>40</sup> The court held that the City's findings were based on substantially more evidence than the anecdotes in the two prior cases and were "clearly based upon dozens of specific instances of discrimination that are laid out with particularity in the record, as well as significant statistical disparities in the award of contracts."<sup>41</sup>

The court also ruled that the City was under no burden to identify every instance of discriminatory practices or policies.<sup>42</sup> Reiterating the City's perspective, the court stated that the City "must simply demonstrate the existence of past discrimination with specificity; there is no requirement that the legislative findings specifically detail each instance that the legislative body ha[d] relied upon in support of its decision that affirmative action is necessary."<sup>43</sup> Not only have courts found that a municipality does not have to identify all the discriminatory practices impeding M/WBE utilization specifically, but the Tenth Circuit in *Concrete Works IV* also held that anecdotal evidence collected by a municipality does not have to be verified. "There is no merit to [the plaintiff's] argument that the witnesses' accounts must be verified to provide support for Denver's burden. Anecdotal evidence is nothing more than a witness' narrative of an incident told from the witness' perspective and including the witness' perceptions....Denver was not required to present corroborating evidence and [the plaintiff] was free to present its own witnesses to

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<sup>36</sup> *Croson*, 488 U.S. at 509.

<sup>37</sup> *H.B. Rowe*, 615 F.3d at 251.

<sup>38</sup> *Id.* at 249 (quoting *Concrete Works*, 321 F.3d at 989).

<sup>39</sup> *AGCC II*, 950 F.2d 1401, 1414-15 (9th Cir. 1991).

<sup>40</sup> *Id.* at 1415-1416.

<sup>41</sup> *Id.* at 1416. This evidence came from 10 public hearings and "numerous written submissions from the public." *Id.* at 1414.

<sup>42</sup> *Id.* at 1416 n.11.

<sup>43</sup> *Id.* at 1416.



either refute the incidents described by Denver’s witnesses or to relate their own perceptions on discrimination in the Denver construction industry.”<sup>44</sup>

## 2.4 Narrowly Tailoring

Many courts have held that even if a compelling interest for the MBE program can be found, the program can still be found not to be narrowly tailored.<sup>45</sup> The Fourth Circuit has laid out the following factors in determining whether or not a program was narrowly tailored:

(1) the necessity of the policy and the efficacy of alternative race neutral policies; (2) the planned duration of the policy; (3) the relationship between the numerical goal and the percentage of minority group members in the relevant population; (4) the flexibility of the policy, including the provision of waivers if the goal cannot be met; and (5) the burden of the policy on innocent third parties.<sup>46</sup>

In *H.B. Rowe*, the Fourth Circuit added to this list “overinclusiveness,” defined as the “tendency to benefit particular minority groups that have not been shown to have suffered invidious discrimination.”<sup>47</sup>

### 2.4.1 Race-Neutral Alternatives

Concerning race-neutral alternatives, Justice O’Connor in *Croson* concluded that a governmental entity should also evaluate the use of race-neutral means to increase minority business participation in contracting or purchasing activities. In *Rowe*, the Fourth Circuit noted that NCDOT had a Small Business Enterprise program and had undertaken all the race-neutral methods suggested by the DOT DBE program regulations. The court pointed out that the plaintiff had identified “no viable race-neutral alternatives that North Carolina has *failed* to consider and adopt”<sup>48</sup> (emphasis in the original). The Court further noted that disparities persisted despite NCDOT employing these race-neutral initiatives.

### 2.4.2 Duration of the Remedy

Concerning program duration, in *Adarand v. Peña*, the Supreme Court wrote that a program should be “appropriately limited such that it ‘will not last longer than the discriminatory effects it is designed to eliminate.’”<sup>49</sup> In *Rowe*, the Fourth Circuit stated that “the district court found two facts particularly compelling in establishing that it was narrowly tailored: the statute’s provisions (1) setting a specific expiration date and (2) requiring a new disparity study every 5 years.... We agree.”<sup>50</sup> Other appellate courts have noted possible mechanisms for limiting program duration: required termination if goals have

<sup>44</sup> *Concrete Works IV*, 321 F.3d 950, 989 (10th Cir. 2003).

<sup>45</sup> *Contractors Ass’n v. City of Philadelphia*, 91 F.3d at 605; *Engineering Contrs.*, 122 F.3d at 926-29; *Virdi v. Dekalb County Sch. Dist.*, 135 F. App’x 262 (11th Cir. 2005).

<sup>46</sup> *H.B. Rowe*, 615 F.3d at 252 (quoting *Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305, 344 (4th Cir. 2001)).

<sup>47</sup> *H.B. Rowe*, 615 F.3d at 252 (quoting *Alexander v. Estep*, 95 F.3d 312, 316 (4th Cir. 1996)).

<sup>48</sup> *H.B. Rowe*, 615 F.3d at 252.

<sup>49</sup> *Adarand Constructors v. Peña*, 515 U.S. 200, 238 (1995) (citations omitted).

<sup>50</sup> *H.B. Rowe*, 615 F.3d at 253 (citing *H.B. Rowe, Inc.*, 589 F. Supp. 2d at 597).



been met<sup>51</sup>, decertification of MBEs who achieve certain levels of success, or mandatory review of MBE certification at regular, relatively brief periods.<sup>52</sup>

### 2.4.3 Relationship of Goals to Availability

Narrow tailoring under the *Croson* standard requires that remedial goals be in line with measured availability. Setting percentages arbitrarily have played a vital part in finding programs unconstitutional, as evident with what the city of Richmond did in *Croson*. Setting goal percentages need to be based on statistical studies.<sup>53</sup>

In *H.B. Rowe*, the Fourth Circuit found that NCDOT participation goals were related to percentage MBE availability. First, the NCDOT goals were set project by project. Second, NCDOT generates a report detailing the type of work likely to be subcontracted. Third, the NCDOT goal-setting committee checks its database for availability. Finally, the Fourth Circuit noted that 10 percent of the NCDOT projects had a zero M/WBE goal.<sup>54</sup>

### 2.4.4 Flexibility

In *H.B. Rowe*, the Fourth Circuit agreed with the ruling of the federal district court in the case that the NCDOT MBE program was flexible, stating that “unlike the City of Richmond’s unconstitutional set-aside program in *Croson*, North Carolina’s statutory scheme does not mandate that specific percentages of subcontracting dollars always be apportioned to minority groups or women. Rather, the statute *prohibits* the Department from setting project-specific participation goals ‘rigidly.’”<sup>55</sup>

In contrast, the Third Circuit observed in *Contractors Association* that, “[a]s we have explained, the 15 percent participation goal and the system of presumptions, which in practice require non-black contractors to meet the goal on virtually every contract, result in a 15% set-aside for black contractors in the subcontracting market.”<sup>56</sup>

The Fourth Circuit also noted that, “*the State does not require or expect the prime contractor to accept any bid from an unqualified bidder, or any bid that is not the lowest bid. Moreover, prime contractors can bank any excess minority participation for use against future goals over the following two years*.”<sup>57</sup>

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<sup>51</sup> *Sherbrooke Turf, Inc.*, 345 F.3d at 972.

<sup>52</sup> *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1179-80 (10th Cir. 2000).

<sup>53</sup> *Contractors Ass’n v. City of Philadelphia*, 91 F.3d at 607 (“The district court also found significant that the ... Ordinance offered only one reference point for the percentages selected for the various set-asides -- the percentages of minorities and women in the general population”). See also *Builders Ass’n of Greater Chicago*, 256 F.3d at 647.

<sup>54</sup> *H.B. Rowe*, 615 F.3d at 253.

<sup>55</sup> *Id.* at 256.

<sup>56</sup> *Contractors Ass’n*, 91 F.3d at 606.

<sup>57</sup> *H.B. Rowe*, 615 F.3d at 253-54.



## 2.4.5 Burden on Third Parties

Narrow tailoring also requires minimizing the burden of the program on third parties waivers. Good faith compliance is a tool that serves the purpose of reducing the burden on third parties.<sup>58</sup> The plaintiff in *Rowe* argued that the solicitation requirements were burdensome and that it was forced to subcontract out work that could be self-performed. The Fourth Circuit noted that the solicitation requirements could be met with existing staff, and the MBE program did not require subcontracting out work that could be self-performed.<sup>59</sup>

## 2.4.6 Over-inclusion

Finally, narrow tailoring involves limiting the number and type of program beneficiaries. As noted above, there has to be evidence of discrimination to justify a group-based remedy, and over-inclusion of uninjured individuals or groups can endanger the entire program. In essence, there must be sufficient statistical evidence of discrimination to include a particular minority group in the remedial program. In *Croson*, the Court noted that “[i]f a 30% set-aside was “narrowly tailored” to compensate black contractors for past discrimination, one may legitimately ask why they are forced to share this “remedial relief” with an Aleut citizen who moves to Richmond tomorrow? The gross over inclusiveness of Richmond’s racial preference strongly impugns the city’s claim of remedial motivation”.<sup>60</sup>

Additionally, as noted above in *Rowe*, there has to be evidence of discrimination to justify a group-based remedy, and over-inclusion of uninjured individuals or groups can endanger the entire program. The statistical evidence that was evaluated by the court to determine if the Statute’s definition of minorities was determined to be overinclusive by including groups for which the 2004 disparity study did not establish sufficient evidence of discrimination. Although, the statute in question limited relief to “those racial or ethnicity classifications . . . that have been subjected to discrimination in the relevant marketplace and that have been adversely affected in their ability to obtain contracts with the Department”<sup>61</sup> lumping all minority groups together may provide preference for groups where no discrimination was found.

## 2.5 Dillon Rule

The Dillon Rule is derived from Justice John F. Dillon’s Iowa Supreme Court case opinion in *Clinton v. Cedar Rapids & M. R. R. Co.*,<sup>62</sup>. In that opinion, Justice Dillon stated the concept that local governments are considered an extension of the state and power is distributed to those local governments according to the state constitution. This opinion was reiterated by the United States Supreme Court in *Hunter v. Pittsburgh*<sup>63</sup> and became the guiding principle across the country for local governments and municipalities.

The Dillon Rule stipulates that local governments only exercise (1) powers expressly granted to them by the state, (2) powers necessarily and fairly implied from the grant of power, and (3) powers crucial to the

<sup>58</sup> 49 C.F.R. § 26.53.

<sup>59</sup> *H.B. Rowe*, 615 F.3d at 254.

<sup>60</sup> *Croson*, 488 U.S. at 506.

<sup>61</sup> N.C. Gen. Stat. § 136-28.4(c)(2).

<sup>62</sup> *Clinton v. Cedar Rapids & M. R. R. Co.*, 24 Iowa 455 (1868).

<sup>63</sup> *Hunter v. Pittsburgh*, 207 U.S. 161, 28 S. Ct. 40 (1907).



existence of local government. In the Commonwealth of Virginia (Commonwealth), the Dillon Rule is analyzed under two parts. Part 1 determines whether the local governing body is enabled under Commonwealth law to take part in said action. Part 2 determines whether the local governing body acted properly in execution of their power, if it is determined they have the power to do so. For Part 1 analysis "the Dillon Rule is applicable to determine in the first instance, from express words or by implication, whether a power exists at all. If the power cannot be found, the inquiry is at an end."<sup>64</sup> In applying the Dillon Rule, the court first examines the plain terms of the legislative enactment to determine whether the Commonwealth expressly granted a particular power to the governing body<sup>65</sup>. If the power is not expressly granted, then the court must determine whether the power is necessarily or fairly implied from the powers expressly granted by the statute in question<sup>66</sup>. "To imply a particular power from a power expressly granted, it must be found that the legislature intended that the grant of the express also would confer the implied."<sup>67</sup> Under Part 2, if a power is in fact granted by the Commonwealth and dictates how to exercise this power, a local governing body may not select another method to exercise their power<sup>68</sup>. Conversely, if the Commonwealth is silent as to the method to exercise the given local governing body power, then the choice of implementation by the local governing body will be upheld as long as the method selected is reasonable<sup>69</sup>.

Applied to supplier diversity policies, Part 1 could be satisfied under Va. Code Ann. § 15.2-1102 which states "a municipal corporation shall have and may exercise all powers which it now has or which may hereafter be conferred upon or delegated to it under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of the affairs and functions of the municipal government, the exercise of which is not expressly prohibited by the Constitution and the general laws of the Commonwealth, and which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality and the ... trade, commerce and industry of the municipality and the inhabitants thereof, and the enumeration of specific powers shall not be construed or held to be exclusive or as a limitation upon any general grant of power, but shall be construed and held to be in addition to any general grant of power. The exercise of the powers conferred under this section is specifically limited to the area within the corporate limits of the municipality, unless otherwise conferred in the applicable sections of the Constitution and general laws, as amended, of the Commonwealth." Part 2 could be satisfied under the exercise of powers that are reasonable and limited to the local governing body and as outlined under strict scrutiny which the United States Supreme Court dictates for MBE programs.

## 2.6 Conclusions

As summarized earlier, when governments develop and implement a contracting program sensitive to race and gender, they must understand the case law developed in the federal courts. These cases establish specific requirements that must be addressed so that such programs can withstand judicial review for constitutionality and prove to be just and fair. Given current trends in applying the law, local governments must engage in specific fact-finding processes to compile a thorough, accurate, and specific evidentiary foundation to determine whether there is, in fact, discrimination sufficient to justify an affirmative action

<sup>64</sup> *Marble Techs., Inc. v. City of Hampton*, 279 Va. 409, 416-17, 690 S.E.2d 84, 88 (2010).

<sup>65</sup> *City of Chesapeake v. Gardner Enters.*, 253 Va. 243, 246-47, 482 S.E.2d 812, 814-15 (1997).

<sup>66</sup> *Id.* at 247, 482 S.E.2d at 815.

<sup>67</sup> *Marble Techs., Inc. v. City of Hampton*, 279 Va. 409, 418, 690 S.E.2d 84, 88 (2010).

<sup>68</sup> *Marble Technologies v. City of Hampton*, 279 Va. 409, 421, 690 S.E.2d 84, 90 (2010).

<sup>69</sup> *Advanced Towing Company, LLC v. Fairfax County Board of Supervisors*, 280 Va. 187, 694 S.E.2d 621 (2010).



plan. Further, state and local governments must continue to update this information and revise their programs accordingly.

In creating and implementing a race-conscious contracting program, it is necessary to understand how the courts have interpreted the constitutional requirements. To satisfy strict scrutiny, agencies must provide a compelling interest for a race-conscious program.

The compelling interest begins with showing disparities, if any, between the availability and utilization of firms by demographic category. However, the disparity analysis must be supplemented by factoring in issues such as type of work, as well as firm capacity and interest in pursuing agency contracts. How subcontractors are treated in the absence of goals is also an important part of the factual predicate for a race and gender conscious program. This quantitative analysis must then be supplemented with qualitative evidence from interviews, surveys and other methods of anecdotal data collection.

If a factual predicate is found for a race- and gender conscious efforts the program still must be narrowly tailored. Critical elements of narrow tailoring include taking race neutral measures seriously, setting goals near business availability, having mechanisms for flexible program implementation, and avoiding the random inclusion of groups into the program.

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



# 3 Review of Policies, Procedures, and Programs

## 3.1 Introduction

Contracting for goods and services is an essential function in meeting the needs of City departments and of the citizens of Richmond. **Chapter 3** examines the City of Richmond's procurement and contracting policies, procedures, and programs to ensure that all interested parties have the opportunity to participate in the City's procurement and contracting. In addition, this chapter examines efforts undertaken by the City of Richmond to increase participation of Minority Business Enterprises (MBEs) and Emerging Small Businesses (ESBs).

**Chapter 3** includes an overview of the City's procurement process and examines the routine application of policies and procedures and the impact on suppliers seeking opportunities or doing business with the city of Richmond. MGT's review of policies and procedures is presented in six sections. Section 2 describes the methodology used to conduct the review of the City's procurement policies, procedures, and programs. The remaining sections summarize procurement policies and describe efforts to remove any barriers to participation in procurement. The review and examination of policies in this chapter is intended to provide the foundation for the analysis of utilization and availability in **Chapter 4** and the findings and recommendations in **Chapter 9**.

### Chapter Sections

- 3.1 Introduction
- 3.2 Methodology and Definitions
- 3.3 Procurement Environment and Structure
- 3.4 Source Selection
- 3.5 Business Inclusion
- 3.6 Conclusions

## 3.2 Methodology and Definitions

This section summarizes the steps taken to review the City's procurement policies utilizing a methodology refined over the course of over 200 disparity studies. MGT's review included developing an understanding of the City's organization structure and procurement roles and the responsibilities of various city departments. The policy review was conducted with complete cooperation of City staff that provided data, information, and assistance to MGT throughout the policy review. To conduct the policy review and to prepare this chapter, MGT's approach included collecting and reviewing procurement-related source documents.

Procurement policies and practices were also reviewed and discussed with staff to better understand procurement practices and their impact on city departments and suppliers doing business or seeking to do business with the city of Richmond. However, an overall assessment of the impact of these policies and procedures can only be made in conjunction with the statistical and anecdotal evidence contained in **Chapters 4, 5 and 8** of this report. The review of policies and procedures included the following major steps:

- ♦ Finalization of the scope and parameters of the policy review
- ♦ Collection, review, and summarization of the City's contracting and procurement policies



- ♦ Collection, review, and summarization of policies, procedures, and related information and data pertaining to the City's business inclusion efforts
- ♦ Collection and review of supplemental information and data pertinent to the policy review
- ♦ Review of applicable federal, state, and city regulations and laws pertaining to procurement
- ♦ Interviews/meetings with staff to review and discuss procurement policies and roles and responsibilities in the City's procurement process
- ♦ Navigation of the City's website and department websites to help inform areas of inquiry and to identify information and resources available to businesses seeking opportunities with the city of Richmond
- ♦ Analysis of data and information gathered throughout the policy review to develop key findings and recommendations
- ♦ Preparation of the policy review chapter for inclusion in the city of Richmond 2022 MBE Disparity Study report

Interviews and meetings were initially held with City staff in January 2022 and continued until March 2022. During this period meetings were held with staff in the Department of Procurement Services (Procurement Services), Office of Minority Business Development (OMBD), Department of Public Works, Department of Public Utilities, Office of Equitable Development Office of Equity and Inclusion, and with the Chief Administrative Officer in the Mayor's Office. Due to COVID restrictions, all meetings were conducted virtually. As needed, follow-up contacts were made to obtain additional information and insights.

MGT collected and reviewed a variety of source documents and information pertaining to the policy review. Major source documents and other information collected and reviewed are itemized in **Table 3-1**.

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

INDEX	DESCRIPTION
<b>Procurement Related Documents</b>	
1.	Chapter 43 Virginia Public Procurement Act
2.	City of Richmond Code of Ordinances
3.	City of Richmond Solicitations <ul style="list-style-type: none"> <li>- IFB 220009653 Blackwell Park Basketball Court Relocation</li> <li>- IFB 6845-6 City of Richmond Fire Station #12 Replacement</li> <li>- RFP 210015937 Annual Engineering and Construction-Related Services</li> <li>- IFB 220008112 Pulse BRT Red Pavement</li> <li>- RFP 220007057 Administration of Court Accounts</li> <li>- RFP 210016017 External Auditing Services</li> <li>- IFB 220005159 Statue Grave Pedestal Removal</li> <li>- IFB 220007683 Byrd Park Reservoir Rehabilitation</li> </ul>



INDEX	DESCRIPTION
4.	<p>Department of Procurement Services Policies</p> <ul style="list-style-type: none"> <li>- Policy No. 14 Small Purchases</li> <li>- Policy No. 17 Emergency Purchases</li> <li>- Policy No. 22 Only Practical Source Procurement</li> <li>- Policy No. 34 Construction Change Orders</li> <li>- Policy No. 37 Contract Administration</li> <li>- Policy No. 42 Procurement Review Board</li> <li>- Policy No. 43 Procurement Violations</li> <li>- Policy No. 46 Competitively Negotiated Procurements</li> <li>- Policy No. 47 Contract Security Requirements</li> <li>- Policy No. 48 Contract Renewals, Extensions, and Closeouts</li> <li>- Policy No. 49 Vendor Database Management</li> <li>- Policy No. 50</li> <li>- Policy No. 52 Construction Contractor Performance Evaluation</li> <li>- Policy No. 53 Split Purchases</li> <li>- Policy No. 55 Exemption Purchases</li> <li>- Policy No. 59 Professional Services (Competitive Negotiation)</li> <li>- Policy No. 60 Competitive Sealed Bidding</li> </ul>
5.	<p>MBE/ESB Forms</p> <ul style="list-style-type: none"> <li>- Change in Subcontractor Form</li> <li>- Past Good Faith Effort Participation Form</li> <li>- Monthly Compliance Report</li> <li>- Participation Commitment for RFQ</li> </ul>
6.	Office of Minority Business Development Policy and Procedures Manual 7/28/2021 Revision
7.	Procurement Services Forecast Calendar
8.	Procurement Services-Purchase Terms and Conditions
	<b>Other Related Documents</b>
9.	Resolution No. 2021-RO 32 City of Richmond Equity Agenda
10.	<p>Richmond City Auditor Reports</p> <ul style="list-style-type: none"> <li>- Report #2022-03 Department of Public Works Milling and Overlay Contract Audit</li> <li>- Report #2021-12 Office of Minority Business Development</li> <li>- Report #2020-05 Department of Procurement Services Purchasing Cards (P-Cards)</li> <li>- Report #2019-06 Department of Public Utilities Contract Compliance</li> <li>- Report #2019-13 Department of Procurement Services Split Purchases Audit</li> </ul>

### 3.2.1 Definitions

The section which follows includes selected definitions from the Office of Minority Business Development Policy and Procedures Manual<sup>70</sup> The definitions helped to provide context for the procurement and contracting policies reviewed by MGT.

**8(a) Program** - A Small Business Administration (SBA) program intended to provide assistance to economically and/or socially disadvantaged business owners. The initiative, which originated out of Section 8(a) of the Small Business Act, provides participants with access to a variety of business

<sup>70</sup> Office of Minority Business Development Policy and Procedures Manual



development services, including the opportunity to receive federal contracts on a sole-source or limited competition basis.

**Availability** – Ready, willing, and able MBE/ESB certified businesses in the relevant marketplace.

**Bonding** – Guarantee of performance required, either by law or consumer demand, for many businesses, most typically general contractors, temporary personnel agencies, janitorial companies, and businesses with government contracts.

**Business Directory** - Website or printed listing of information which lists all businesses within some category. Businesses can be categorized by business, location activity, or size.

**Certification** – A document that certifies a special capability or status that will help businesses compete in the marketplace. Certifications are issued by an approved certifying agency denoting legitimacy of belonging to a defined group and meeting all other requirements for the certification.

**Compliance** - A form of contract management that seeks to ensure that government agencies, contract holders, and, in some cases, grant recipients are complying with government standards regarding equal opportunity employment. These terms are different for each government agency but generally include provisions that businesses must accept applications from women and minorities, government offices must solicit bids for contract work from minority- and women-owned businesses, and organizations which receive grants from the government must follow fair hiring, retention, and promotion policies.

**Construction** – The building, altering, repairing, improving, or demolishing of any structure, building, road, street, or highway and any draining, dredging, excavation, grading, or similar work upon real property.

**Contractor** – A person, company, corporation, or partnership that participates through a contract or subcontract (at any tier) for goods and/or services.

**De-bundle** – The fragmentation of a large project activity into smaller parts.

**Disadvantaged Business Enterprise (DBE)** - For-profit small business concern that meets the following eligibility requirements:

- ♦ A company at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals.
- ♦ Management and daily business operations controlled by one or more of the socially and economically disadvantaged individuals who own it.

**Emerging Small Business (ESB)** – A certification issued by the city of Richmond's Office of Minority Business Development to a business that possesses a City license for up to seven years and meets the following eligibility requirements:

- ♦ Annual gross receipts of \$500,000 or less averaged over the last three fiscal years preceding application for the certification if engaged primarily in the construction business or of \$250,000 or less if engaged primarily in a non-construction business.



- ♦ Fewer than 10 full-time employees
- ♦ Not a subsidiary of another business and does not belong to a group of businesses owned and controlled by the same individuals
- ♦ Principal place of business entirely within the boundaries of a city of Richmond Enterprise Zone
- ♦ Possesses a City business license
- ♦ Pays personal property, real estate, and business taxes as applicable to the city of Richmond

**Goals** – The Minority Business Enterprise (MBE)/Emerging Small Business (ESB) participation goals on City contracts or City-funded (i.e., whole or partial) projects that have been deemed appropriate for minority and/or emerging small business participation based on the availability of certified and registered minority and emerging small businesses for subcontracting opportunities.

**Good-faith efforts** - Efforts to achieve MBE/ESB goals defined by its scope, intensity, and appropriateness to the objective that can reasonably be expected to fulfill the program requirement.

**Invitation for Bid (IFB)** – An invitation to contractors or equipment suppliers through a bidding process which requires submission of a proposal on a specific to be realized or on a product or services to be finished.

**Joint venture** – A binding agreement between an MBE/ESB firm and one or more other firms to carry out a single, for-profit business enterprise for which the parties combine their property, capital, efforts, skills, and knowledge. Also, the MBE/ESB is responsible for a distinct, clearly defined portion of the work of the contract and its share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**Minority Business Enterprise (MBE)** – A business of which at least 51% is owned and controlled or 51% is minority-owned and operated by minority group members. A MBE is a business that is at least 51% owned and operated by one or more individuals who are African American, Asian American, Hispanic American, or Native American.

**Minority Individual** – An individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

*“African American”* – A person having origins in any of the original people of Africa and who is regarded as such by the community of which this person claims to be a part.

*“Asian American/Asian Indian American”* – A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including, but not limited to, Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

*“Hispanic American”* – A person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, the Caribbean Islands, or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.



*“Native American”* – A person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

**Minority-owned Business** – A business enterprise that is at least 51% owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals. Minority status includes African Americans, Hispanic Americans, Native Americans and Asian and Pacific Islander Americans.

**Principal place of business** - The business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the City's OMBD office will determine the principal place of business for the MBE program purposes.

**Race-conscious** - Measure or program that is focused specifically on assisting only minority-owned businesses.

**Race-neutral** - Measure or program that is, or can be, used to assist all small businesses

**Registration** – The process used by the OMBD for eligible minority-owned businesses. All firms that are registered as an MBE with OMBD and wish to seek contract work with the City and receive MBE/ESB credit for contract work are required to be certified as an MBE or DBE with the Virginia Department of Small Business and Supplier Diversity Department.

**Request for Proposal (RFP)** – A solicitation often made through a bidding process by an agency or company interested in procurement for a commodity or service.

**Request for Qualifications (RFQ)** – A prequalification stage of the procurement process. Only those proponents who successfully respond to the RFQ and meet the qualification criteria will be included in the subsequent request for proposal solicitation.

**Responsible bidder** – Bidder or offeror who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will ensure good faith performance and who has been prequalified, if required.

**RVA Advancing Proving Innovation Directions (RAPIDs)** – City of Richmond financial database that manages all the City's financial entries and transactions.

**Small business** - A business that is at least 51% independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.



**Small Women-owned and Minority Business (SWaM)** – A certification program created by the Commonwealth of Virginia. The purpose is to enhance procurement opportunities for SWaM businesses participating in state-funded projects.

**User Agency** – Any department, agency, bureau, board, commission, court, city jail or jail forum, or other unit in the City government requiring goods, services, insurance, or construction.

### 3.3 Procurement Environment and Structure

The authority for procurement and contracting is clearly defined in Chapter 21, Richmond Code of Ordinances, and Chapter 43, Virginia Public Procurement Act. The City's commitment to supplier diversity and inclusion is operationalized in procurement policies, initiatives, and strategies to increase utilization of diverse suppliers. Taken on the whole, City policies and initiatives recognize that, in addition to ensuring city departments can purchase needed goods and services, procurement can also be a powerful tool for growing the capacity of minority- and women-owned businesses and small businesses. MGT's experience conducting over 200 disparity studies has shown that if policies and remedies are effectively executed, they can result in significant social and economic outcomes.

The Office of Minority Business Development initiatives, the City's Equity Agenda and other community development, economic development, and quality of life initiatives currently operate with this premise in mind. It was noted that Priority Area 2-Economic Empowerment and Priority Area 3-Vibrant, Inclusive, and Mobile Communities in the Proposed Annual Plan Fiscal Year 2023 include goals and objectives related to inclusive economic development, community wealth building, and creating opportunities for greater social and economic inclusion. Discussions with staff helped to better understand the community and its economic development initiatives and the transformation taking place in Richmond which have implications for the City's future growth and development and also the growth and development of MBEs and ESBs. In addition, the current disparity study is important to the City's community and economic development and is a key indicator of the City's commitment to contracting equity and inclusion. Collectively, efforts and initiatives undertaken by the City served as an important backdrop for the policy review and the context in which the review was conducted.

**Exhibit 3-1** shows the City's organizational structure. The organizational units shown in **Exhibit 3-1** purchase a variety of goods and services for internal use and to provide essential services. To operate efficiently and effectively and provide services, procurement requires collaboration and coordination between various departments. Within this context, the organization units shown in **Exhibit 3-1** engage in procurement at varying levels and on a regular basis. **Exhibit 3-2** shows the organization structure for Procurement Services.



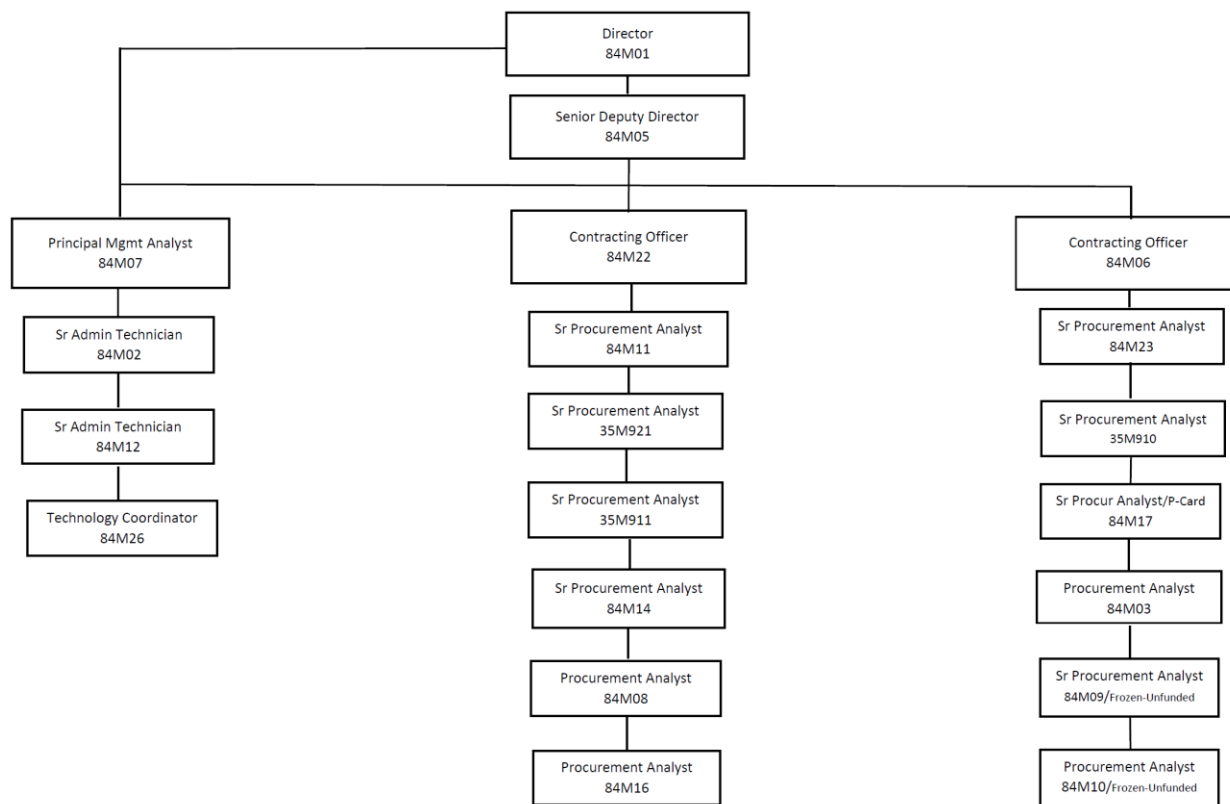
EXHIBIT 3-1.  
CITY OF RICHMOND ORGANIZATION CHART



Source: City of Richmond, Virginia, Proposed Annual Fiscal Plan 2023.



EXHIBIT 3-2.  
CITY OF RICHMOND DEPARTMENT OF PROCUREMENT SERVICES ORGANIZATION CHART



Source: Department of Procurement Services, 2022.

The Department of Procurement Services is the City's centralized purchasing entity responsible for the acquisition and procurement of goods and services according to established policies and procedures for advertisement, solicitation, and approval. According to the Procurement Services website, its mission is to, "Support the city by performing the procurement function in a customer-focused, strategic, ethical, and transparent manner while ensuring opportunities to diverse suppliers and complying with applicable governing laws and policies".<sup>71</sup> Procurement Services executes its mission through the following strategies:

- ♦ Strategic sourcing and focused training to contain costs and improve productivity
- ♦ Enabling technology that streamlines processes and empowers end-users to perform their job duties in a more efficient and effective manner
- ♦ Proactively and cooperatively engaging with end-users and suppliers to creatively solve problems in a collaborative manner<sup>72</sup>

<sup>71</sup> Department of Procurement Services website, 2022.

<sup>72</sup> Department of Procurement Services website, 2022.



Regarding executing strategies, Procurement Services follows the standards set forth by the National Institute of Governmental Purchasing (NIGP) in performing several basic functions:

- ♦ Coordination of all phases of the procurement process from identifying the need to contract award
- ♦ Procurement of goods, services, and equipment used by the City
- ♦ Coordination, support, and technical assistance to end-users in the procurement of essential goods and services
- ♦ Coordination, support, and assistance to suppliers seeking opportunities with the City

MGT's review of governing laws and related source documents in **Table 3-1** concluded that Procurement Services policies are appropriately aligned with the City's Procurement Code and the Virginia Public Procurement Act. In reviewing Procurement Services policies, particular attention was paid to the following:

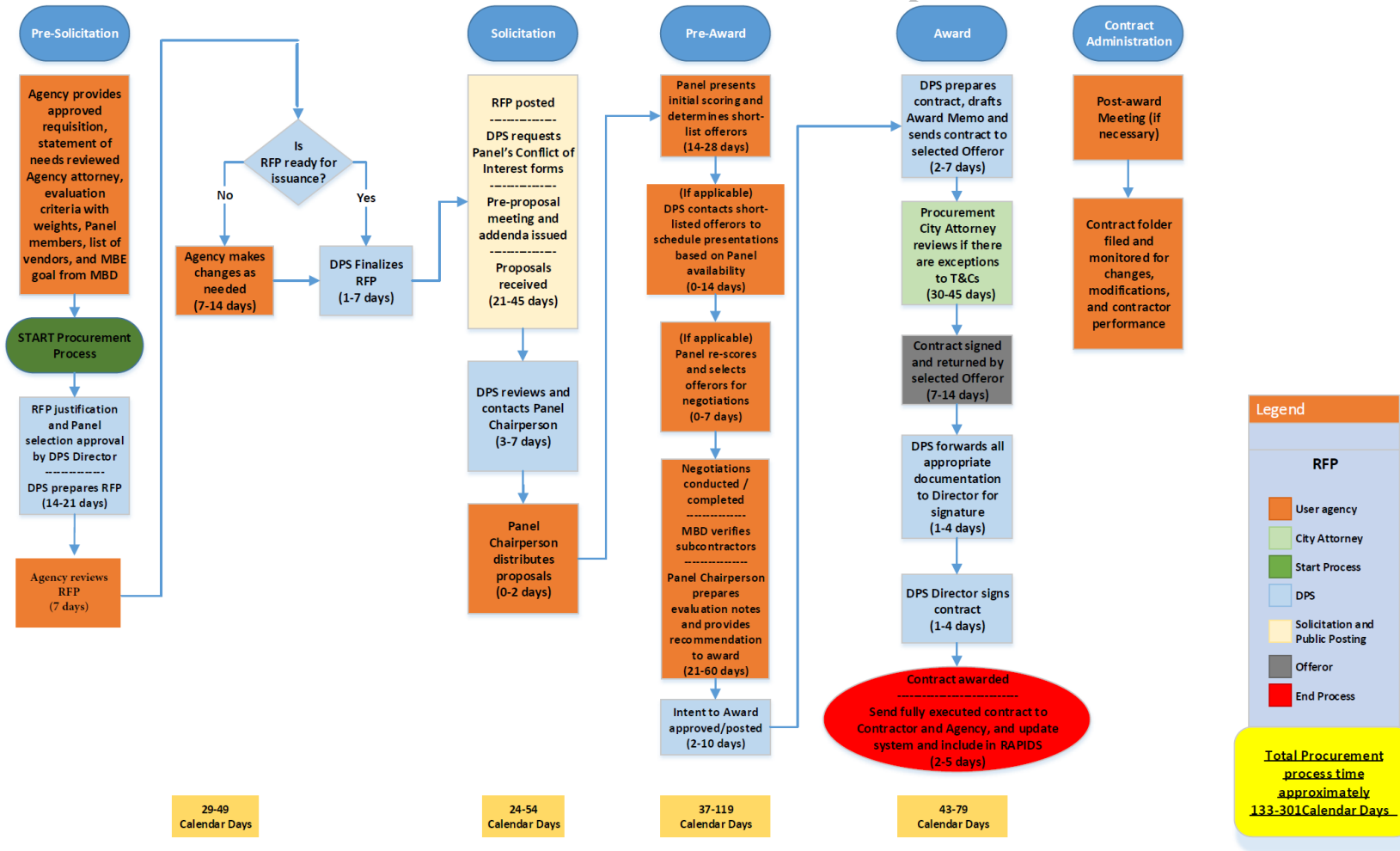
- ♦ Contract Administration
- ♦ Contract Security Requirements
- ♦ Contract Renewals and Extensions
- ♦ Design-Build and Construction Management Contracting
- ♦ Construction Change Orders
- ♦ Construction Contractor Performance Evaluation
- ♦ Competitive Sealed Bidding
- ♦ Competitively Negotiated Procurements
- ♦ Professional Services (Competitive Negotiation)
- ♦ Procurement Violations
- ♦ Emergency Purchases
- ♦ Small Purchases

Based on MGT's experience, the above policies can either inhibit or facilitate supplier participation, depending on their execution. Regarding the above policies, MGT determined the extent to which they are aligned with the procurement processes shown in **Exhibits 3-3 to 3-8** based on meetings MGT held with staff in Procurement Services, Office of Minority Business Development, Public Utilities, and Public Works. The process flowcharts were provided by city staff which is incorporated in their procurement processes. In addition, MGT also sought to determine the extent to which the policies are clearly referenced in the solicitations in **Exhibit 3-10**.

Operationalizing the processes shown in **Exhibits 3-3 to 3-8** requires coordination and collaboration among end-users, Procurement Services, and OMBD. Interviews and meetings with city staff provided insight into how the processes in **Exhibits 3-3 to 3-8** are operationalized and how city departments and suppliers are affected. Throughout the discussions with MGT staff, comments revealed sensitivity to ensuring policies are routinely followed and sensitivity to increasing participation of diverse suppliers.



EXHIBIT 3-3. CITY OF RICHMOND  
REQUEST FOR PROPOSAL – GOODS AND NON-PROFESSIONAL SERVICES (PROCESS FLOWCHART)





# EXHIBIT 3-4. CITY OF RICHMOND REQUEST FOR PROPOSAL – PROFESSIONAL SERVICES (PROCESS FLOWCHART)

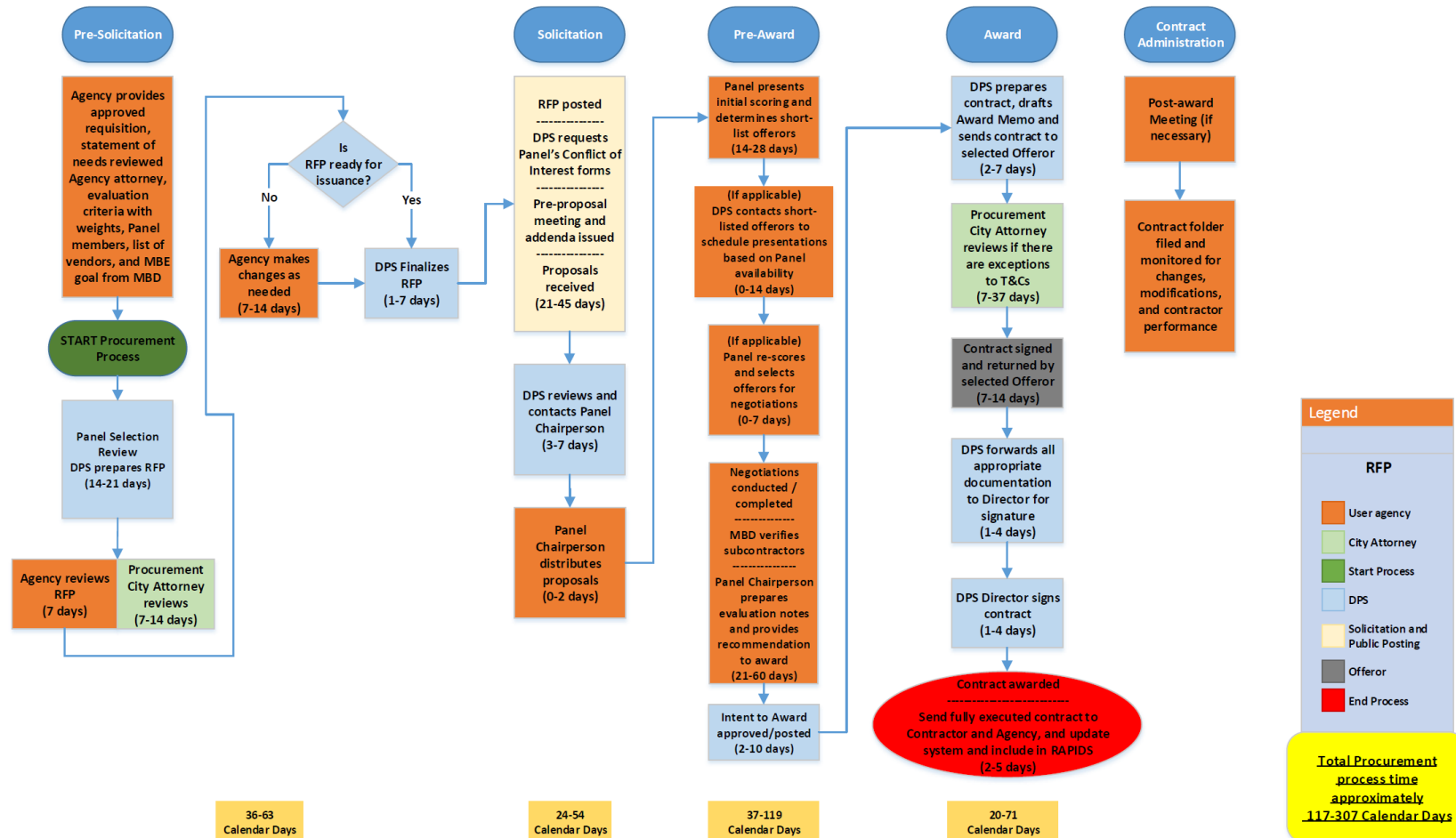




EXHIBIT 3-5. CITY OF RICHMOND  
INVITATION FOR BID – GOODS AND NON-PROFESSIONAL SERVICES (PROCESS FLOWCHART)

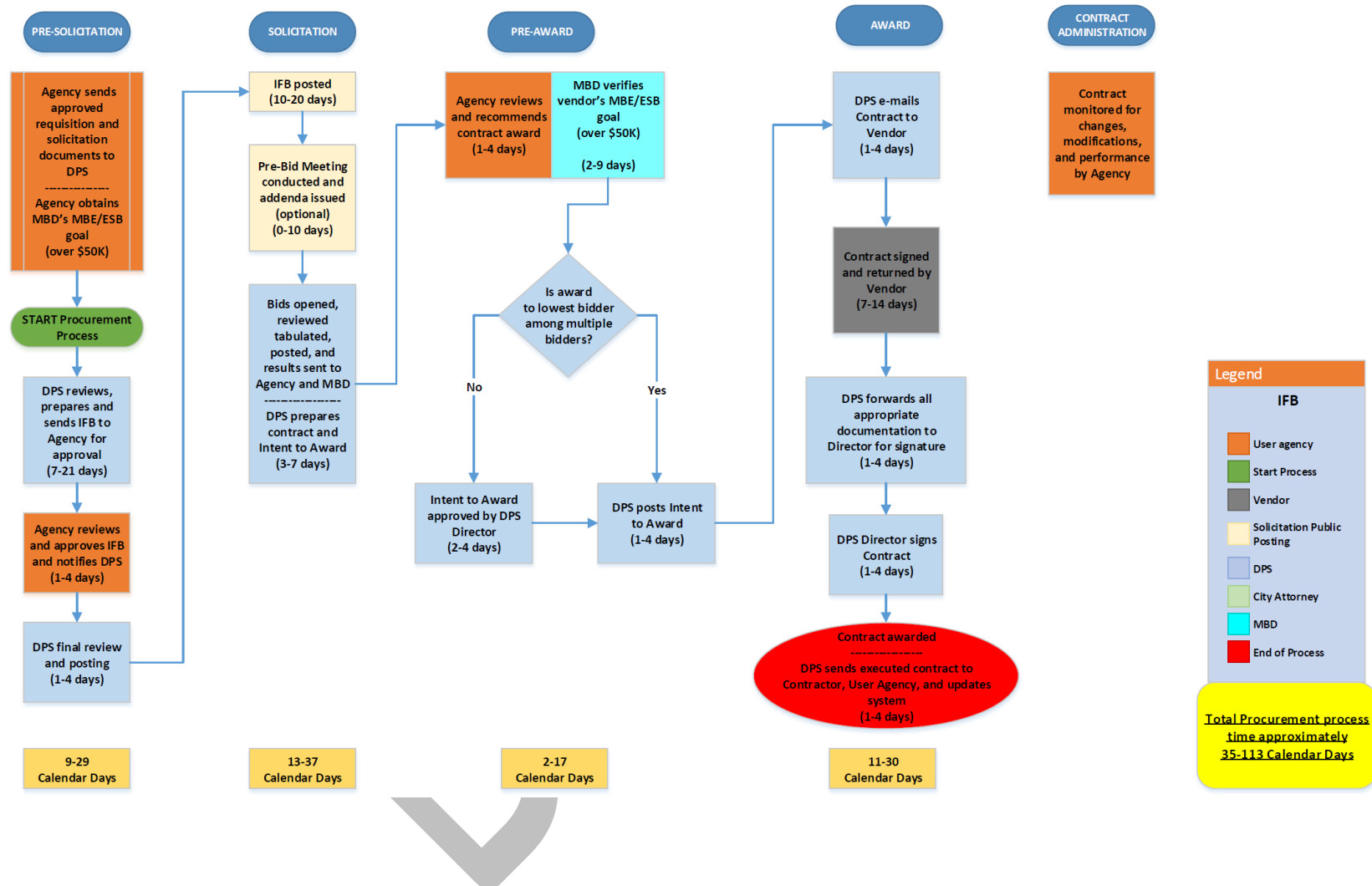




EXHIBIT 3-6. CITY OF RICHMOND  
INVITATION FOR BID - CONSTRUCTION (PROCESS FLOWCHART)

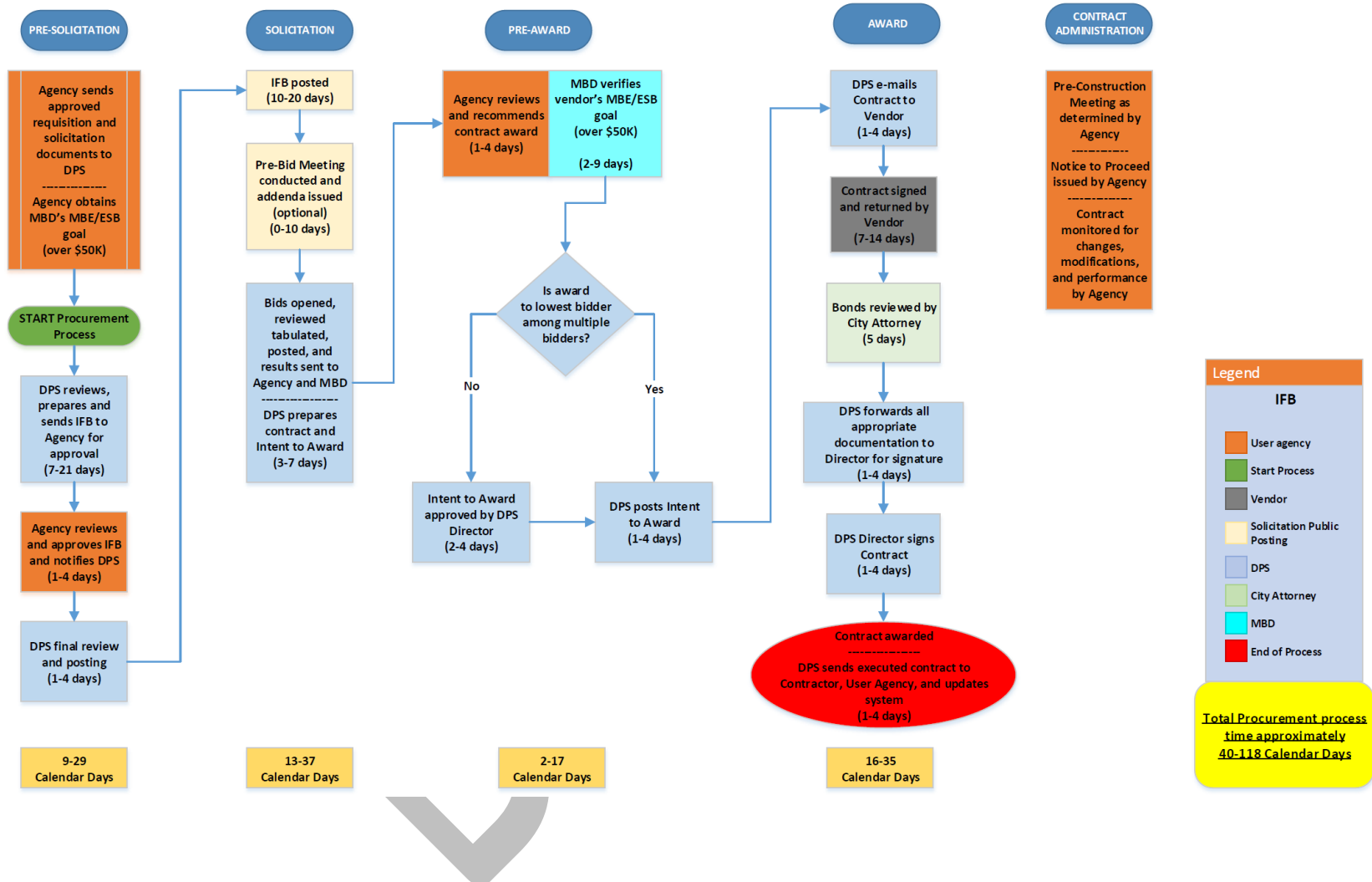




EXHIBIT 3-7. CITY OF RICHMOND  
CHANGE ORDER – CONSTRUCTION (PROCESS FLOWCHART)

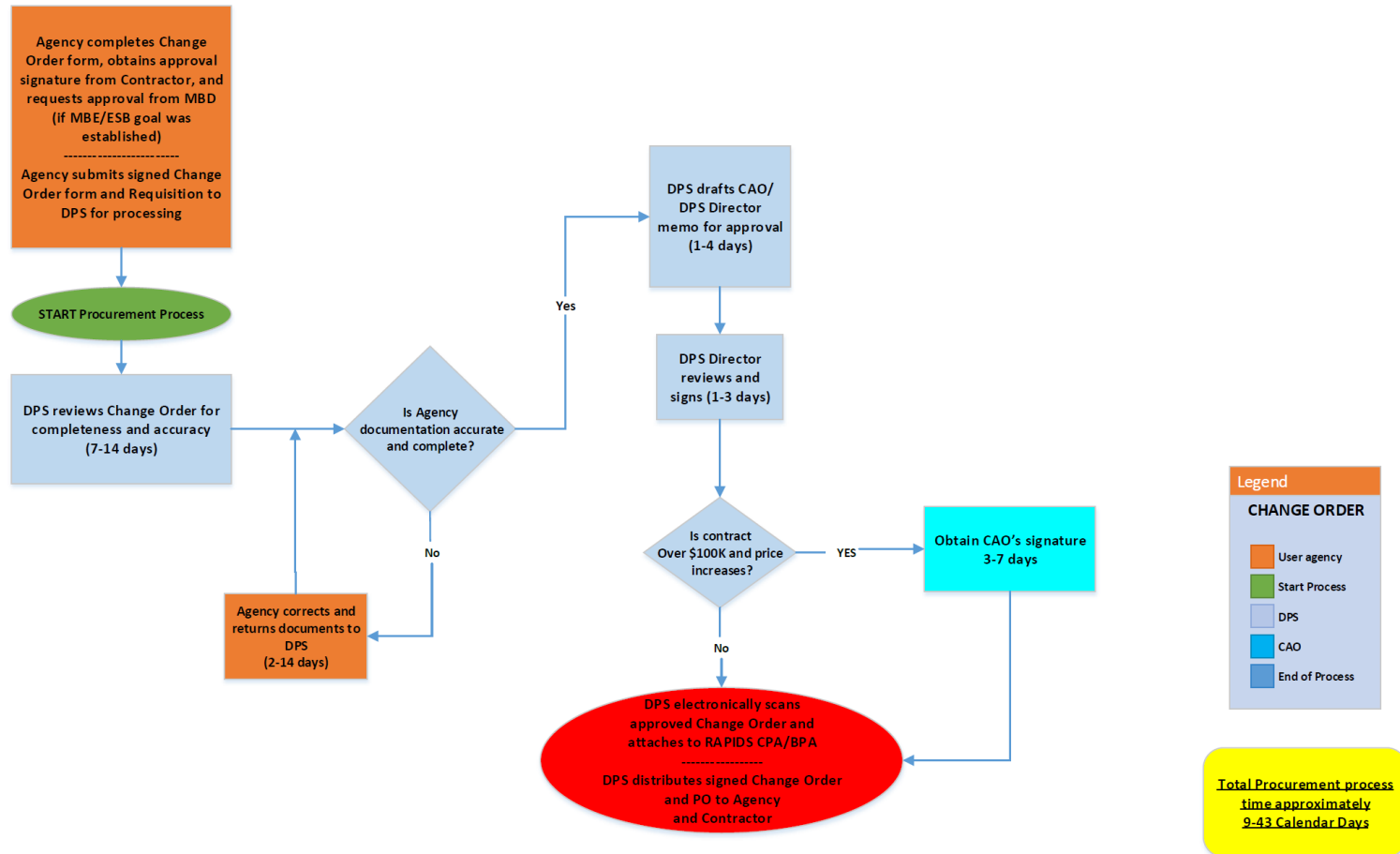
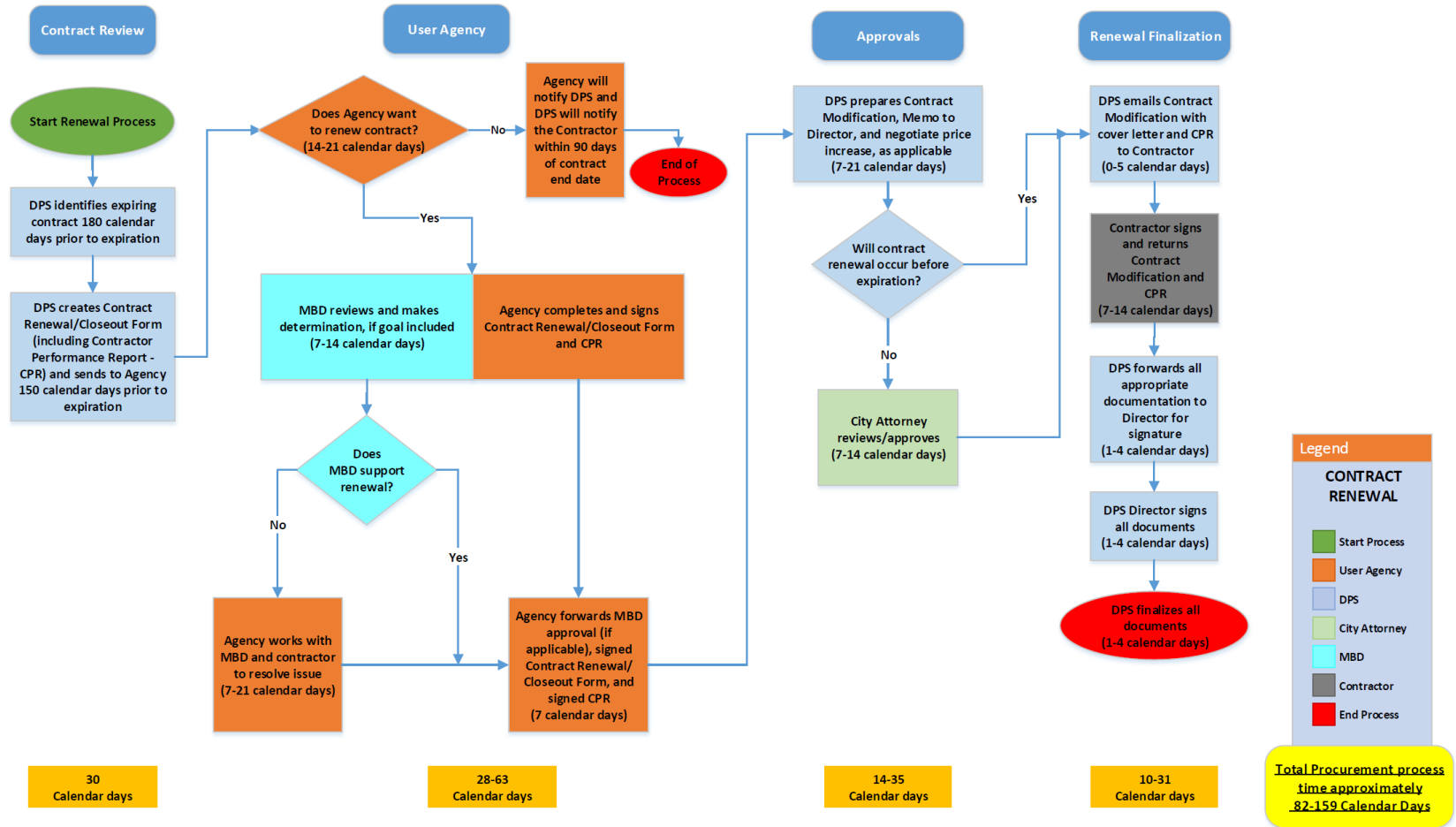




EXHIBIT 3-8. CITY OF RICHMOND  
CONTRACT RENEWAL (PROCESS FLOWCHART)





According to staff, with few exceptions, the processes shown in **Exhibit 3-3** to **3-8** are routinely followed. Procurement Services policies and OMBD policies and SOPs (Standard Operating Procedure) are embedded in the processes in accordance with federal, state, and city regulations and laws pertaining to the procurement process. For example, policies and SOPs related to the phases shown above tend to be clearly delineated. Perhaps the major variation in processes shown above, based on staff comments, is total procurement processing time which can often be longer than the procurement process time reflected in the exhibits.

MGT reviewed solicitation documents shown in **Exhibit 3-9**. Examining bid solicitation documents was important because solicitations are the “starting point” in the procurement process for procurement opportunities with the City. Examining solicitation documents was also important in determining whether solicitation documents adhere to the policies and procedures reviewed by MGT. Particular attention was paid to MBE/ESB participation requirements and whether MBE/ESB participation forms were included in solicitation packets. MGT also noted the nondiscrimination language in the solicitations and references to the Richmond City Code and the Virginia Public Procurement Act. Based on MGT’s review, the solicitation documents in **Exhibit 3-9** were uniformly organized and appropriately referenced according to governing laws and policies.

**EXHIBIT 3-9.**  
**CITY OF RICHMOND SOLICITATION DOCUMENTS**

Solicitation	Type
Annual Engineering and Construction Related Services	RFP
Administration of Court Accounts	RFP
Blackwell Park Basketball Court Relocation	IFB
Byrd Park Reservoir Rehabilitation	IFB
City of Richmond Fire Station # 12 Replacement	IFB
External Auditing Services	RFP
Disparity Study, City of Richmond, Virginia	RFP
Pulse BRT Red Pavement	IFB
Statue Grace Pedestal Removal	IFB

Source: Created by MGT, 2022.

### 3.4 Source Selection

MGT’s policy review was narrowly focused on policies and practices which have a more direct impact on procurement opportunities. To evaluate the impact of policies on city departments and the impact on suppliers, meetings with staff in Procurement Services, Minority Business Development, Public and Public Utilities were very important. MGT also reviewed the policy-related documents and information listed in **Table 3-1** with a major focus on policies related to source selection including competitive sealed bidding, professional services, competitively negotiated procurements, construction related source selection, contract renewals, and small purchases. In its review MGT paid specific attention to MBE/ESB participation since the underlying premise for the City’s disparity study is increasing contracting and procurement opportunities for MBE/ESBs. Accordingly, how procurement policies are operationalized and executed to facilitate increased MBE/ESB participation was important to the policy review.



MGT's experience has shown that efficient and effective procurement processes are largely dependent upon well-defined and consistently-followed policies for advertisement, solicitation, vendor evaluation/selection, contract negotiation, and approval executed and supported by knowledgeable and skilled staff. Based upon MGT's discussions, the staff appears to be very knowledgeable about procurement processes and have a sense of urgency about supplier diversity. From the staff's perspective, the City's procurement is intended to:

- ◆ Ensure fair and open competition
- ◆ Provide equitable treatment of all vendors seeking to do business with the city;
- ◆ Increase utilization of MBEs and ESBs
- ◆ Maintain a responsive and responsible centralized procurement system
- ◆ Procure the goods, services, and construction required by the City in a cost-effective manner

## Construction

Construction is important because construction and construction related services typically provide the biggest expenditure and the most opportunities for subcontracting by minority businesses and can also result in growing the capacity of minority businesses. MBE and ESB requirements were reviewed in the construction and construction related solicitations in **Exhibit 3-9**. For example, Attachment A in the RFP for Annual Engineering and Construction Related Services contained the following MBE/ESB forms:<sup>73</sup>

- ◆ Sample Contract
- ◆ MBE/ESB-2 MBE/ESB Participation Commitment Form
- ◆ MBE/ESB-3 MBE/ESB Monthly Compliance Form
- ◆ MBE/ESB-4 MBE/ESB Good Faith Effort Form
- ◆ ACH Direct Deposit Form Payment Information
- ◆ Payment Agreement for Contractors
- ◆ Contractor Evaluation Form
- ◆ Billing Rate Proposal Form

In addition to MBE/ESB forms, requisite federal and Virginia Department of Transportation (VDOT) forms were included in Attachment B.

In reviewing policies and procedures for design-build contracting, contract security requirements, contract renewals and extensions, construction change orders, and construction contractor performance evaluation the following was noted:

- ◆ Construction is an area where "prime behavior" relative to participation and utilization of MBEs and ESBs can sometimes be an issue whether it is good faith efforts during pre-solicitation and solicitation, prompt payment of subcontractors, change orders, contract modifications, contract

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<sup>73</sup> RFP 210015937 Annual Engineering and Construction Related.



renewals, or engagement in practices that adversely impact subcontractor performance and payments.

- ◆ Bid bond, payment bond, and performance bond requirements imposed by the City are subject to the Virginia Public Procurement Act which mandates compliance with Virginia Code §2.2-4336 and Virginia Code §2.2-4337. Policy 47-6.2 requires a performance bond and a payment bond for all construction contracts with a contract value of \$100,000 or greater. Based on staff comments it was noted that bond requirements tend to inhibit some MBEs and ESBs from performing as prime contractors.
- ◆ Design-build and construction management contracting are used for certain construction projects. According to Policy 50-7.3.1, construction management contracts are typically used for construction projects in excess of \$10,000,000. Section 50-7.2.2 requires justification that a construction management contract is more advantageous than a competitive bid construction contract.
- ◆ Whether a competitive sealed bid construction contract or a construction management contract, construction projects have the potential to benefit MBEs and ESBs as prime and subcontractors. Overall, the construction related policies reviewed by MGT did not create unnecessary barriers to MBE and ESB participation in construction contracts. However, based on staff comments there are opportunities to strengthen participation by stronger compliance monitoring and by incentivizing primes to meet and/or exceed goals and by establishing penalties for not reaching MBE goals.
- ◆ In many of the disparity studies conducted by MGT, prompt payment to subcontractors on construction projects has been a huge issue. The anecdotal research conducted by MGT later in the study will determine whether this is an issue for subcontractors on the City's construction projects. If this is an issue, it will be important for the City to alleviate the practice of primes not promptly paying subcontractors.

### Competitive Sealed Bidding

Competitive sealed bidding applies to goods, nonprofessional services, and construction that exceed the small purchases threshold and are procured by IFB. MGT reviewed five IFBs in **Exhibit 3-9**, all of which were similarly formatted and organized. Policy 60-5.2 outlines 11 steps in the competitive sealed-bidding process:

- ◆ Identify the goods or services to be procured
- ◆ Prepare the invitation for bids
- ◆ Establish the procurement schedule
- ◆ Compile a list of vendors
- ◆ Issue the invitation for bids and provide public notice
- ◆ Conduct pre-bid conferences, if warranted
- ◆ Submit bids
- ◆ Receive bids



- ♦ Open bids
- ♦ Evaluate bids
- ♦ Contract award and give public notice

Key conclusions/observations are as follows:

- ♦ Policies related to competitively sealed bidding are clearly articulated and written in a manner closely aligned with the process shown in **Exhibit 3-6**.
- ♦ Collaboration and coordination between Procurement Services, OMBD, and the requesting department is critical to ensuring MBE participation based upon the MBE goal and MBE availability.
- ♦ Invitation for Bids (IFB) are awarded to the lowest responsive and responsible bidder. There may be an opportunity to increase MBE participation by allowing MBEs to have a higher price when competing for bids which would recognize that the cost of doing business for MBE firms is typically higher compared to non-MBE firms.

### Competitively Negotiated Procurements

Competitive negotiations are used in conjunction with RFPs to procure goods and non-professional services. MGT reviewed four RFPs in **Exhibit 3-9** that were similarly formatted and organized. According to Policy 46-5.2, the objective of competitive negotiations is to achieve a written contract that is fair and reasonable in all respects, including price. Key observations include the following:

- ♦ The manner in which the pre-solicitation phase is executed in terms of development and approval of the requisition, establishment of evaluation criteria and an evaluation panel, and MBE goals is an important step and opportunity for coordination to ensure MBE/ESB participation.
- ♦ Policies for competitively negotiated procurement for goods and non-professional services are clearly defined. Based on MGT's review, key provisions inherent in the policies do not limit or inhibit MBE and ESB participation.
- ♦ OMB's role, relative to goal setting and the scoring evaluation process, is critical for competitively negotiated projects that contain MBE and ESB goals.
- ♦ OMB's participation in Pre-bid and Pre-award meetings to discuss goals, registration, and certification requirements for MBE/ESB/DBE firms is essential.

### Professional Services

According to Policy 59-4.7, professional services is "work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering." Policy 59-6.0 outlines the following steps in the competitive negotiation process:

- ♦ Identify and approve evaluation panel
- ♦ Develop/approve the evaluation criteria/weights
- ♦ Develop, review, issue, and publicly post the solicitation



- ◆ Receive and independently evaluate proposals
- ◆ Finalize consensus scoring and rank offerors in panel meeting
- ◆ Develop negotiation strategy and negotiate with the top ranked offeror as determined by panel.
- ◆ Request, receive, and evaluate final proposal revisions
- ◆ Prepare the supporting documentation for the selection decision by panel
- ◆ Post Intent to Award
- ◆ Brief the principal results of the source selection decision to appropriate officials
- ◆ Identify and approve contract administrator from user agency
- ◆ Award contract

Key observations/conclusions are as follows:

- ◆ The steps in the competitive negotiation process align with the processes in **Exhibit 3-3** to **3-8** and the solicitations reviewed in **Exhibit 3-9**.
- ◆ OMB's participation in the pre-solicitation, solicitation, and pre-award phases of the process is a major factor in ensuring MBE/ESB participation.
- ◆ Incentivizing vendors to meet and/or exceed goals may be a viable strategy for increasing MBE/ESB participation in professional services contracts.

### Small Purchases

Small purchases are defined in Policy 14-2/13 as goods and services, other than professional services and non-transportation-related construction, if the aggregated is not expected to exceed \$100,000; and transportation-related construction if the aggregate is not expected to exceed \$25,000. Observations/conclusions are as follows:

- ◆ There are perceptions that MBEs and ESBs could benefit more from small purchases. Although policies require solicitation of at least one MBE/ESB there are questions whether the policy is routinely enforced or monitored which may result in limited participation in small purchases.
- ◆ According to some staff, small purchase practices tend to result in "habit buying" that significantly disadvantages MBEs and ESBs.

MGT's review concluded that the policies for the source selection methods described above provide ample guidance and are aligned with the processes in **Exhibit 3-3** to **3-8** and are also embedded in the solicitations in **Exhibit 3-9**. Overall, MGT found source selection policies and procedures to be comprehensive and helpful in guiding the procurement process and facilitating MBE and ESB participation.

### 3.4.1 Exempt Procurement

City Code §74-3 outlines procurement not subject to competitive bidding and/or defined as exempt. Exemptions comprise a variety of goods and services including advertising in publications, City-sponsored catering, books/periodicals, scientific equipment, equipment, undercover police operations, and others. **Exhibit 3-10** lists procurement exemptions found in the City Code.



EXHIBIT 3-10.  
PROCUREMENT EXEMPTIONS BY NIGP CODE

Class	Item	Abbreviated Description and City Code Section
585	00	Government-to-Government (Exempt from Procurement Act)
585	05	Art Works, Sculptures, Paintings 74-3(a)(16)
585	10	City Sponsored Catering, Banquet 74-3(a)(14)(d,e)
585	15	Advertising in Publications 74-3(a)(15)
585	20	Association Purchase of Insurance 74-3(a)(5)
585	25	Virginia Correctional Enterprises 74-3(a)(8)
585	30	Social Services Goods & Services for Individual 74-3(a)(6)
585	35	Social Services Vehicles for TANF Recipients 74-3(a)(1)
585	40	VA Dept of the Blind or Nonprofit Sheltered Workshops 74-3(a)(3)(a)
585	45	Legal Services and Expert Witnesses for the City Attorney 74-3(a)(4)
585	50	Books/ Periodicals, Drugs, Medicines 74-3(a)(10,11)
585	55	Professional Association Membership Dues 74-3(a)(13)
585	60	Goods & Services from Nonprofit Workshop 74-3(a)(3)(b)
585	65	Retirement System Investment Related 74-3(a)(19)
585	70	City Sponsored Conference Reg, Hotel 74-3(a)(14)(a,b)
585	75	Undercover Police Operations 74-3(a)(9)
585	80	Sponsorships Conferences, Registration 74-3(a)(14)(c)
585	85	Association Purchase of Electric Utility Services 74-3(a)(5)
585	90	Election Materials and Equipment 74-3(a)(7)
585	95	Scientific Equipment and Instruments 74-3(a)(10)

Source: Department of Procurement Services Policy Number 55 –Exemptions Purchases.

### 3.4.2 Emergency Purchases

Richmond City Code §21-39 and Procurement Policy 17 provide for emergency purchases of supplies, materials, equipment, and contractual services without competitive sealed bidding or competitive negotiation. The conditions that warrant emergency purchases typically include the following:

- ♦ A breakdown or failure of machinery or other equipment has occurred.
- ♦ Curtailment, diminution, or termination of an essential service is threatened.
- ♦ A dangerous condition has developed and procurement without competitive sealed bidding or competitive negotiation is needed to prevent loss of life or property.<sup>74</sup>

In accordance with Policy 17, written justification that an emergency exists must be provided and must include the following:

- ♦ A statement identifying the specific condition that is the basis of the emergency
- ♦ A detailed description of the goods or services to be purchased

<sup>74</sup> Richmond Code of Ordinances Chapter §21-39. Emergency Purchases



- ♦ Either a description of any competitive process recommended or obtained for the purchase or an explanation as to why a competitive process is not recommended
- ♦ Recommended duration for the resulting contract<sup>75</sup>

### 3.5 Business Inclusion

OMBD, **Exhibit 3-11**, plays an important and essential role in the City's commitment to increasing participation of MBEs and ESBs. The Office of Minority Business Enterprise (OMBE) was created in 1993 and was housed in the Department of Other services and merged with the Department of Economic Development before being renamed The Office of Minority Business Development (OMBD) in 2006.<sup>76</sup> The Proposed Annual Fiscal Plan<sup>77</sup> included the following objectives for OMBD:

- ♦ Increase technical assistance activities to attract, retain, and grow businesses
- ♦ Identify procurement opportunities
- ♦ Take advantage of the latest technology in order to enable opportunity and ensure diversity
- ♦ Assist in the preparation of MBEs/ESBs to qualify for lending opportunities
- ♦ Collaborate with internal/external organizations

In meeting its objectives, OMBD is responsible for the following:

- ♦ Registering MBEs that want to do business with the City
- ♦ Certifying ESBs
- ♦ Establishing MBE/ESB goals for City procurements
- ♦ Documenting whether prime contractors are meeting MBE/ESB participation goals
- ♦ Scoring RFPs and RFQs that pledged goals to use good faith efforts
- ♦ Verifying MBE/ESB participation for the lowest responsive and responsible bidders for IFBs
- ♦ Monitoring and tracking payments to MBE/ESB subcontractors<sup>78</sup>

Within the context of the above objectives and responsibilities, OMB's overall purpose is to increase the number of MBEs and ESBs in City contracts by stimulating the creation and development of MBEs and ESBs, facilitating MBE/ESB participation with prime contractors, and encouraging MBE/ESB participation in the private sector.<sup>79</sup>

OMBD works in coordination and collaboration with Procurement Services and other City departments to carry out its responsibilities in accordance with policies and SOPs in the Office of Minority Business Development Policy and Procedures Manual (Manual). Section 3 in the Manual is devoted to compliance administration policies such as registration, certification, goal setting, change orders, and contract

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<sup>75</sup> Department of Procurement Services Policy No. 17.

<sup>76</sup> Office of Minority Business Development Policy and Procedures Manual July 28, 2021.

<sup>77</sup> City of Richmond Proposed Annual Fiscal Plan Fiscal Year 2023.

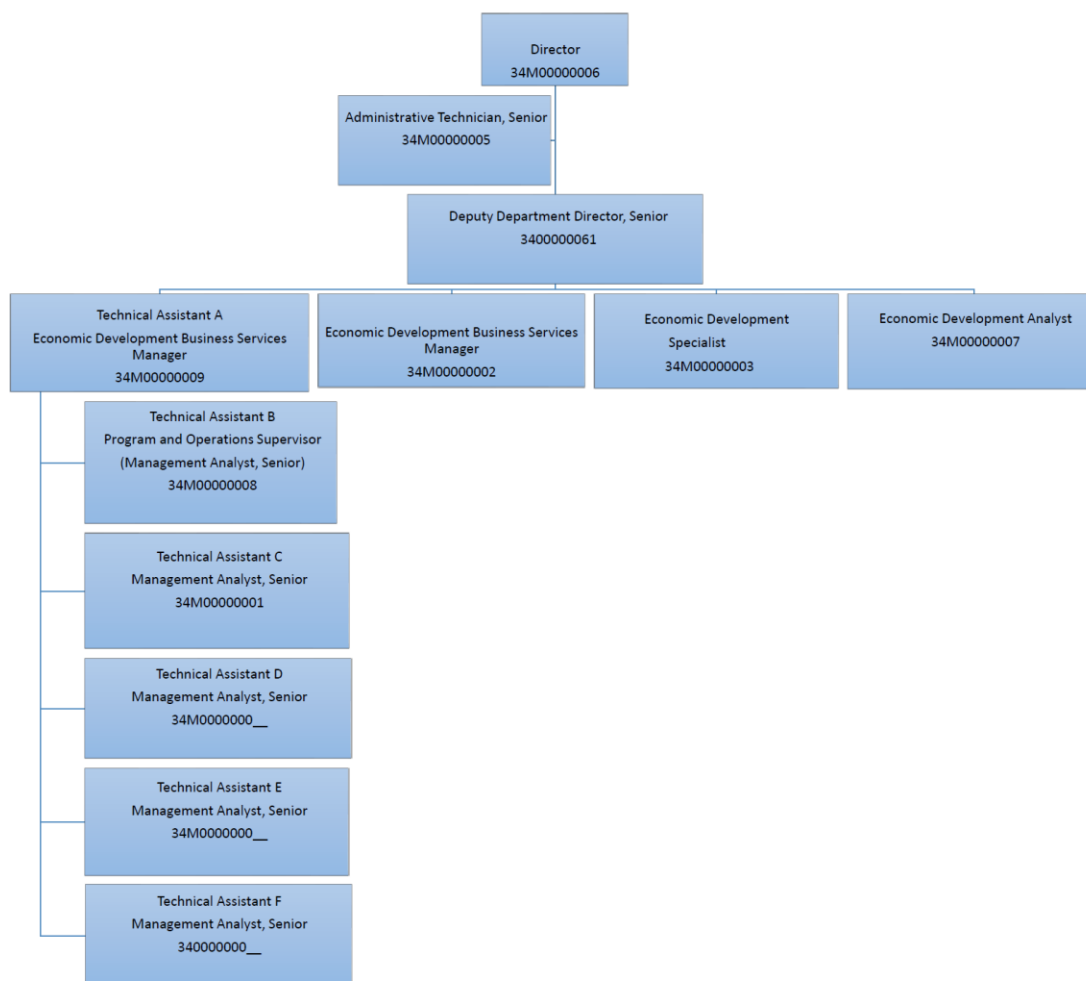
<sup>78</sup> Audit Report # 2021-12 Office of Minority Business Development March 3, 2021.

<sup>79</sup> Office of Minority Business Development Policy and Procedures Manual July 28, 2021.



modifications whereas Section 4 is devoted to SOPs for the compliance administration policies in Section 3. Based on MGT's review, the Manual is comprehensive and provides ample guidance in discharging OMBD's responsibilities.

EXHIBIT 3-11.  
CITY OF RICHMOND OFFICE OF MINORITY BUSINESS DEVELOPMENT ORGANIZATION CHART



Source: The Office of Minority Business Development.

The creation of OMBD established an organizational entity and function responsible for coordinating and collaborating with Procurement Services and other departments as well as reaching out to the MBE and ESB vendor community. Since its inception OMBD has played a critical role in advocating on behalf of the MBE/ESB community, reaching out to MBEs and ESBs to participate in City contracts, and providing support and technical assistance to MBEs and ESBs to ensure their successful participation in City contracts. Equally important, OMBD has collaborated and coordinated with Procurement Services and end-users to ensure compliance with MBE/ESB participation requirements.

In reviewing roles and responsibilities for the City's procurement process, MGT recognized the importance of the OMBD as a vital resource to the City as a whole and its commitment to increasing MBE and ESB



participation in City contracts. Keeping departments informed about MBE and ESB participation requirements and providing information and assistance are key strategies that have a significant impact on MBE and ESB participation. Both externally and internally, the goal is to increase MBE and ESB participation and minimize barriers to participation. Internal mechanisms to support participation are in place, given the policy documents and other source documents and information reviewed by MGT. In terms of policies and SOPs in place to facilitate participation, the City has far exceeded the performance of other municipalities for which MGT has conducted disparity studies in recent years

### 3.6 Conclusions

MGT's policy review focused on procurement policies, procedures, and practices to increase participation of MBEs and ESBs. MGT's review clearly shows that the City has detailed policies and procedures that govern all aspects of procurement. Based on MGT's review, policy source documents provide ample guidance to department end users and suppliers seeking procurement opportunities. MGT's policy review did not uncover any inherent or built-in barriers that intentionally restrain or constrain suppliers from participating in procurement opportunities. The City has more in place in terms of policies and initiatives related to MBE and ESB participation than other local governments MGT has worked with in recent years.

In summary, the review conducted by MGT underscored the importance of recognizing that increasing MBE and ESB must be an organization-wide responsibility and not solely the responsibility of OMBD and Procurement Services. The extent to which the City increases participation of MBEs and ESBs will be determined by the results of City-wide efforts and departments working collaboratively to increase awareness, interest, and participation in City contracting and procurement. Therefore, the following should be considered in order to realize the City's goal of increasing MBE and ESB participation:

- ◆ Opportunity Creation - Provide adequate staffing and resources to facilitate and monitor MBE and ESB growth and development
- ◆ Building Capacity - Execute intentional, coordinated efforts aimed at strengthening the operations capacity of MBEs and ESBs to perform as primes and subcontractors
- ◆ Diversity Compliance - Ensure the mechanisms and staffing resources are in place to increase participation of MBEs and ESBs through consistent and effective compliance

To fully execute the above in a deliberate and impactful manner, consideration of the following may be helpful:

- ◆ Ensure that OMBD and Procurement Services are adequately staffed and resourced
- ◆ Mandate that city departments meet annual MBE and ESB goals
- ◆ Determine whether unconscious bias training or related training needs to be mandated for staff who directly impact participation of MBEs and ESBs in City contracts
- ◆ Utilize a pricing structure that allow MBEs to have a higher price when competing for bids in recognition that the cost of doing business is typically higher for MBEs
- ◆ Integrate MBE and ESB participation into the performance evaluation/performance management process



# 4 Market Area and Utilization Analysis

## 4.1 Introduction

This chapter presents the results of MGT Consulting's (MGT) market area and utilization analyses of firms used in the City of Richmond (City) procurements during July 1, 2016, through June 30, 2021 (FY2016 – FY2021). The specific procurement categories analyzed were Construction, Architecture & Engineering, Professional Services, Other Services, and Goods.

Chapter Sections	
4.1	Introduction
4.2	Data Collection and Management

As the Supreme Court indicated in the *Croson* decision, the findings by Congress of national business discrimination in construction and similar industries was not specific enough by itself to support the City of Richmond's MBE program.<sup>80</sup> As such, the market area is essential to establishing the universe of available vendors and spending that will be considered to identify any disparate treatment of assorted classifications of firms. Utilization data are central to defining this market area. They thus are first presented as a means of identifying the market area for consideration and then are examined to assess various levels of contracting activity as the first step in the quantitative determination of disparity.

Additionally, as *Croson* prescribed, a disparity study requires the definition of a market area to ensure that a relevant pool of vendors is considered in assessments regarding which firms have been utilized versus which were available.<sup>81</sup> If these boundaries are stretched too far, the universe of vendors becomes diluted by firms with no interest or history in working with the City of Richmond. Thus, their demographics and experiences have little relevance to actual contracting activity or policy. On the other hand, a boundary set too narrowly risks the opposite circumstance of excluding a high proportion of firms who have contracted with or bid for work with the City of Richmond. It thus may also skew the prospective analyses of disparity.

## 4.2 Data Collection and Management

MGT staff compiled and reconciled electronic data provided by the City to develop a master set of prime and subcontractor contract data into a Master Utilization Database to support the needs of the Study. MGT utilized the City's financial and contracting data as the sources of prime data and a portion of the subcontractor data, and that was combined with the subcontractor data collected via a survey of the primes and data collected by the City. MGT merged the subcontractor data with the prime data to create the Master Utilization Database. To link the subcontractor data to its appropriate prime contract, a standard contract ID across both data sets was used.

MGT began the data-collecting process by submitting a detailed data query to the City. The data query asked for descriptive information regarding prime and subcontractor-level contracting data. Based on the data query, and the subsequent data provided, MGT assessed the prime and subcontractor records using payments and payment data to determine their usefulness for the Study. During the data collection and

<sup>80</sup> *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 504 (1989).

<sup>81</sup> *Id.* at 499-504.



management process, MGT decided that although City maintains many subcontracting records within its data collection system, it was necessary to conduct a prime survey to ensure the subcontracting data was complete. The prime survey included gathering both MBE and non-MBE subcontracting data. After creating the master database of prime contracts, MGT identified contracts likely to have subcontracting opportunities. The sample included larger contracts in Construction, Architecture & Engineering, and Professional Services. Other Services and Goods purchases were not included in the prime survey as they tend not to offer many or substantial subcontracting opportunities. The contracts identified that were likely to have subcontracting scopes became the universe of contracts to collect the subcontract data. MGT created a sample of contracts for which MGT collected subcontractor records; MGT sampled the largest contracts with certainty and randomly sampled the smaller projects. MGT provided each prime firm with a letter from the City, the contract forms to complete, and a list of the contracts needed for more information. MGT contacted the prime firms until the data had been collected or determined with the City that MGT would not obtain the information from that firm. The final subcontractor data collection accounted for 68% of each category's total City procurement dollars.

Once MGT completed the data collection process and entered all contract data in a master database, MGT cleaned and prepared the collected data. The data preparation included ensuring consistent firm variables such as name and address, assigning missing race and gender information, assigning primary NAICS codes, filling in missing address information, ensuring all paid dollar amounts were accurate (project and prime and subcontracting levels), and identifying significantly incomplete projects. Once this database of collected data was finalized, it was added to the database of contracts that were not included in the sampling universe and proceeded to analysis.

Final data preparation for the master database for analysis consisted of the following:

- ◆ Creating or cleaning variable names and data definitions
- ◆ Updating incorrect or missing addresses, race/gender, and certification information based on all the vendor databases collected. This included:
  - City of Richmond Vendor List
  - Small Business Administration Small Business Dynamic System Vendor List
    - Firms listed in the Richmond, VA Metropolitan Statistical Area
  - Commonwealth of Virginia Small Business & Supplier Diversity SWaM & DBE Directory
- ◆ Assigning commodity codes and types of work descriptions
- ◆ Identifying the location of firms by county and state
- ◆ Ensuring field values are consistent regarding firm name, contact information, race/gender, industry code
- ◆ Removing or reconciling duplicate records
- ◆ Excluding unnecessary records such as payments to other governments, employee reimbursements, utility payments, and other assorted expenditures that are often discovered in contracting and procurement data.



Conducting additional research on firms not located within the local area to determine whether there is an office in the local area so that firms in the potential geographic area are accurately recorded. A firm's remittance address, as opposed to the local office, is often presented in the vendor-related data obtained.

### 4.2.1 Study Period

The preliminary market area analysis is based on contract transactions from July 1, 2016, through June 30, 2021 (FY2017 – FY2021).

### 4.2.2 Procurement Categories and Exclusions

MGT analyzed the procurement categories by the City, encompassing four sectors: Construction, Architecture & Engineering, Professional Services, Other Services, and Goods. These procurement categories are defined as:

- ◆ Construction: Services provided for the construction, renovation, rehabilitation, repair, alteration, improvement, demolition, and excavation of physical structures.
- ◆ Architecture & Engineering: Services related explicitly to preparing plans and specifications for construction projects.
- ◆ Professional Services: Services that require the provider to possess specialized skills, including holding advanced degrees and exercise of independent judgment.
- ◆ Other Services: Services that do not typically require a provider to have experience in a specialized field or hold an advanced degree.
- ◆ Goods: All purchases of physical items, including but not limited to equipment and material. These purchases exclude land or a permanent interest in land.

The following types of transactions were excluded from the analysis:

- ◆ Transactions associated with non-procurement activities, for example:
  - Administrative items such as utility payments, leases for real estate, or insurance
  - Salary and fringe benefits, training, parking, or conference fees
- ◆ Transactions associated with nonprofit organizations and governmental agencies.



## 4.3 Market Area Analysis

### 4.3.1 Methodology

In determining a relevant market area, MGT abides by a 75 percent rule of agency spending with deference to historic programmatic considerations to prescribe an appropriate geographic boundary. Although there are no cases directly on point approving of a particular percentage to use, in the Fourth Circuit, the disparity study at issue in *Rowe* applied the same 75 percent rule.<sup>82</sup> In addition, The National Cooperative Highway Research Program (“NCHRP”) Report recommends this same approach for determining the relevant geographic market area which encompasses at least 75 percent of contract and subcontract dollars being spent by the governmental entity, regardless of the jurisdictional boundaries of the governmental entity.<sup>83</sup>

City of Richmond Relevant Market Area	
AMELIA COUNTY, VA	NEW KENT COUNTY, VA
CHARLES CITY, VA	PETERSBURG CITY, VA
CHESTERFIELD COUNTY, VA	POWHATAN COUNTY, VA
COLONIAL HEIGHTS CITY, VA	PRINCE GEORGE COUNTY, VA
GOOCHLAND COUNTY, VA	RICHMOND CITY, VA
HANOVER COUNTY, VA	
HENRICO COUNTY, VA	
HOPEWELL CITY, VA	
KING WILLIAM COUNTY, VA	

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 following presents the methodology used to determine the relevant market area.

- ♦ **Relevant Market Area.** Once the overall market area was established, the relevant market area was determined by examining the geographic areas where most of its purchases are procured. Based on the market area analysis results conducted for each business category, the recommended relevant market area are the 14 counties and independent cities within the City of Richmond Market Area (“Market Area”).

The dollars paid were summarized by city or county according to the location of each firm and by the services they provided to the City: construction, architecture & engineering, professional services, other

<sup>82</sup> *H.B. Rowe Co., Inc. v. Tippet*, 615 F.3d 233 (4th Cir. 2010) and 2004 MGT’s North Carolina Department of Transportation Second Generation Disparity Study page 4-10.

<sup>83</sup> Wainwright and Holt (2010), *Guidelines For Conducting A Disparity And Availability Study For The Federal DBE Program* (2010) [“NCHRP Report”], pg. 29 (courts in the 7<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup> Circuits have also upheld programs based on disparity studies using approximately 75 percent as the appropriate standard for geographic market definition). The NCHRP Report presents guidelines to conduct a legally defensible Disparity or Availability study for the DBE program.



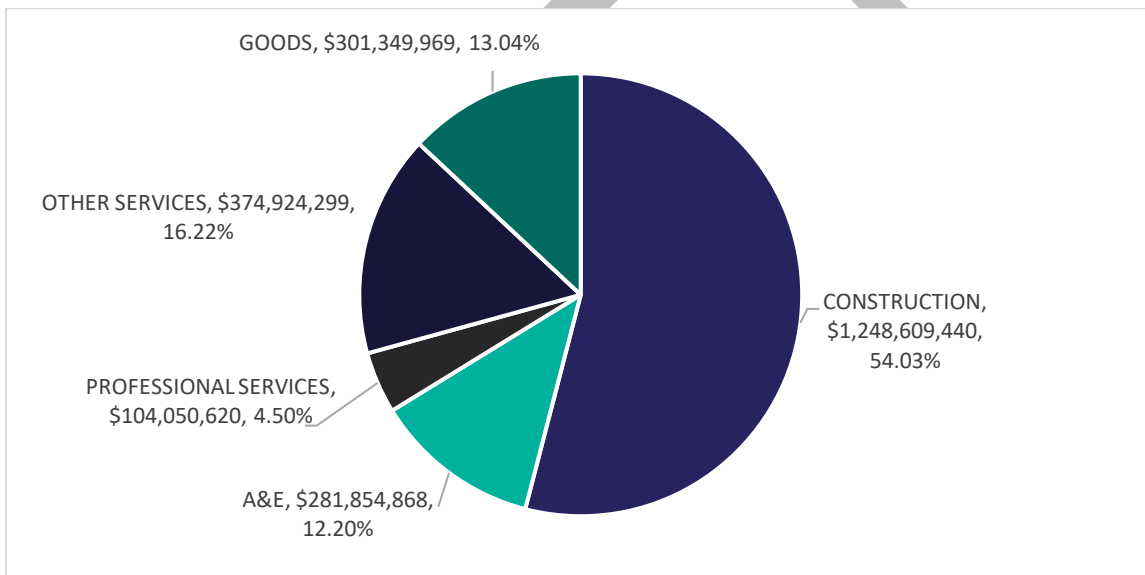
services, and goods. Corresponding market area analyses showing the dollars paid by the city or county within each procurement category are presented in **Appendix B**.

### 4.3.2 Analysis and Identification of Relevant Market Area

An overall market area was first established to account for all relevant City of Richmond payments. More specific regions were analyzed to arrive at a relevant market area to support the Study's goals. This report presents detailed information supporting this market area analysis in **Appendix B** and **Appendix C**.

**Figure 4-1** shows that \$2.310 billion were paid to firms within the overall market area between July 1, 2016, and June 30, 2021.

FIGURE 4-1. SUMMARY OF DOLLARS,  
TOTAL CONTRACTS (PAID) BY PROCUREMENT CATEGORY,  
OVERALL MARKET AREA



Source: MGT developed a Master Utilization File based on the City of Richmond's data collected between July 1, 2016, through June 30, 2021.



Narrowing the geographic scope, **Table 4-1** shows that firms located within the relevant market area accounted for 79.99 percent of payments across all procurement categories. When broken down by procurement categories, firms located within the relevant market area accounted for:

- ♦ 85.28 percent of the dollars paid in Construction;
- ♦ 89.13 percent of the dollars paid in Architecture & Engineering;
- ♦ 60.16 percent of the dollars paid in Professional Services;
- ♦ 70.85 percent of the dollars paid in Other Services; and
- ♦ 67.69 percent of the dollars paid in Goods.

**TABLE 4-1. MARKET AREA ANALYSIS,  
DISTRIBUTION OF DOLLARS BY BUSINESS CATEGORY,  
CITY OF RICHMOND MARKET AREA**

<b>CONSTRUCTION</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside MARKET AREA</i>	\$ 1,064,860,580.59	85.28%
Outside MARKET AREA	\$ 183,748,859.80	14.72%
<b>CONSTRUCTION, TOTAL</b>	<b>\$ 1,248,609,440.39</b>	<b>100.00%</b>
<b>ARCHITECTURE &amp; ENGINEERING</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside MARKET AREA</i>	\$ 251,222,499.61	89.13%
Outside MARKET AREA	\$ 30,632,368.53	10.87%
<b>ARCHITECTURE &amp; ENGINEERING, TOTAL</b>	<b>\$ 281,854,868.14</b>	<b>100.00%</b>
<b>PROFESSIONAL SERVICES</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside MARKET AREA</i>	\$ 62,602,024.27	60.16%
Outside MARKET AREA	\$ 41,448,595.47	39.84%
<b>PROFESSIONAL SERVICES, TOTAL</b>	<b>\$ 104,050,619.74</b>	<b>100.00%</b>
<b>OTHER SERVICES</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside MARKET AREA</i>	\$ 265,650,630.05	70.85%
Outside MARKET AREA	\$ 109,273,668.78	29.15%
<b>OTHER SERVICES, TOTAL</b>	<b>\$ 374,924,298.83</b>	<b>100.00%</b>
<b>GOODS</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside MARKET AREA</i>	\$ 203,973,321.68	67.69%
Outside MARKET AREA	\$ 97,376,646.92	32.31%
<b>GOODS, TOTAL</b>	<b>\$ 301,349,968.60</b>	<b>100.00%</b>
<b>ALL BUSINESS CATEGORIES</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside MARKET AREA</i>	\$ 1,848,309,056.20	79.99%
Outside MARKET AREA	\$ 462,480,139.50	20.01%
<b>ALL BUSINESS CATEGORIES, TOTAL</b>	<b>\$ 2,310,789,195.70</b>	<b>100.00%</b>

Source: MGT developed a Master Utilization File based on the City of Richmond's data collected between July 1, 2016 through June 30, 2021.



Corresponding market area analyses showing the dollars paid by the city or county for each procurement category are presented in **Appendix B**.

### 4.3.3 Analysis and Identification of Product Market

Based on the major categories and description of work on each contract, MGT assigned NAICS codes to each of the payments for both primes and subcontractors. MGT assigned both NAICS code industry groups (4-digit level) and NAICS industries (6-digit level). **Table 4-2** through **Table 4-5** shows the payments and their associated weights for Construction, Architecture & Engineering, Professional Services, Other Services, and Goods. **Appendix C** shows the NAICS industries (4-digit level) for the five procurement categories.

Overall, the City's procurements occur in 342 NAICS industry groups. In Construction, City procurements occur in 105 NAICS industry groups. In Architecture & Engineering, City procurements occur in 50 NAICS industry groups. In Professional Services, City procurements occur in 78 NAICS industry groups. In Other Services, city procurements occur in 107 NAICS codes. Goods & Services, city procurements occur in 158 NAICS industry groups.<sup>84</sup>

**Table 4-2** shows that for Construction, over 93.79 percent of the payments are distributed among 12 industry groups, with most of the payments occurring in one industry group (237110).

TABLE 4-2. PRODUCT MARKET,  
DISTRIBUTION OF DOLLARS BY NAICS CODE,  
CONSTRUCTION

NAICS CODE	NAICS DESCRIPTION	MGT_NET SPEND	PERCENT
237110	Water and Sewer Line and Related Structures Construction	\$355,270,905.74	28.45%
236220	Commercial and Institutional Building Construction	\$238,023,439.63	19.06%
237310	Highway, Street, and Bridge Construction	\$176,394,556.02	14.13%
237120	Oil and Gas Pipeline and Related Structures Construction	\$118,165,647.68	9.46%
238110	Poured Concrete Foundation and Structure Contractors	\$52,064,407.95	4.17%
238990	All Other Specialty Trade Contractors	\$50,941,267.09	4.08%
237130	Power and Communication Line and Related Structures Construction	\$40,649,833.00	3.26%
237990	Other Heavy and Civil Engineering Construction	\$40,385,561.25	3.23%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$36,580,843.58	2.93%
238910	Site Preparation Contractors	\$26,939,382.61	2.16%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$18,872,694.08	1.51%
236210	Industrial Building Construction	\$16,731,453.69	1.34%

<sup>84</sup> NAICS codes can align in various industry categories.



In the industry of Architecture & Engineering, **Table 4-3** shows that nearly all of the payments occurred in two industry groups (541330 and 541310).

TABLE 4-3. PRODUCT MARKET,  
DISTRIBUTION OF DOLLARS BY NAICS CODE,  
ARCHITECTURE & ENGINEERING

NAICS CODE	NAICS DESCRIPTION	MGT_NET SPEND	PERCENT
541330	Engineering Services	\$219,681,688.46	77.94%
541310	Architectural Services	\$54,488,853.34	19.33%

**Table 4-4** shows that for Professional Services, over 95 percent of the payments are distributed among only 22 industry groups, with a majority of the payments occurring in one industry group (541511).

TABLE 4-4. PRODUCT MARKET,  
DISTRIBUTION OF DOLLARS BY NAICS CODE,  
PROFESSIONAL SERVICES

NAICS CODE	NAICS DESCRIPTION	MGT_NET SPEND	PERCENT
541511	Custom Computer Programming Services	\$19,524,082.23	18.76%
541512	Computer Systems Design Services	\$9,984,938.49	9.60%
622110	General Medical and Surgical Hospitals	\$9,723,891.41	9.35%
541990	All Other Professional, Scientific, and Technical Services	\$9,261,782.60	8.90%
541620	Environmental Consulting Services	\$9,046,781.16	8.69%
541690	Other Scientific and Technical Consulting Services	\$8,091,761.70	7.78%
541612	Human Resources Consulting Services	\$6,930,700.68	6.66%
532412	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing	\$6,623,149.07	6.37%
532310	General Rental Centers	\$4,889,713.73	4.70%
532112	Passenger Car Leasing	\$2,850,160.50	2.74%
523930	Investment Advice	\$2,731,436.10	2.63%
541110	Offices of Lawyers	\$2,489,634.73	2.39%
541611	Administrative Management and General Management Consulting Services	\$2,059,372.00	1.98%
541618	Other Management Consulting Services	\$1,770,442.08	1.70%
541211	Offices of Certified Public Accountants	\$1,310,034.25	1.26%
541513	Computer Facilities Management Services	\$1,090,339.74	1.05%
541380	Testing Laboratories	\$982,584.74	0.94%
541519	Other Computer Related Services	\$772,026.99	0.74%
541930	Translation and Interpretation Services	\$730,633.81	0.70%
541820	Public Relations Agencies	\$470,800.00	0.45%
624190	Other Individual and Family Services	\$451,891.50	0.43%



NAICS CODE	NAICS DESCRIPTION	MGT_NET SPEND	PERCENT
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	\$409,993.15	0.39%

For Other Services, **Table 4-5** shows that 92.46 percent of the payments are distributed among only 19 industry groups, with a majority of the payments occurring in one industry group (812930).

TABLE 4-5. PRODUCT MARKET,  
DISTRIBUTION OF DOLLARS BY NAICS CODE,  
OTHER SERVICES

NAICS CODE	NAICS DESCRIPTION	MGT_NET SPEND	PERCENT
561311	Employment Placement Agencies	\$43,507,095.83	11.60%
561990	All Other Support Services	\$41,105,446.88	10.96%
561720	Janitorial Services	\$35,332,917.44	9.42%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	\$33,518,233.70	8.94%
562111	Solid Waste Collection	\$29,325,433.61	7.82%
812930	Parking Lots and Garages	\$27,556,218.12	7.35%
811111	General Automotive Repair	\$25,245,665.01	6.73%
561612	Security Guards and Patrol Services	\$20,960,708.32	5.59%
511210	Software Publishers	\$14,321,503.05	3.82%
561320	Temporary Help Services	\$13,974,307.04	3.73%
561730	Landscaping Services	\$13,098,339.74	3.49%
722310	Food Service Contractors	\$10,154,436.61	2.71%
811198	All Other Automotive Repair and Maintenance	\$8,742,653.64	2.33%
811219	Other Electronic and Precision Equipment Repair and Maintenance	\$7,073,743.81	1.89%
488490	Other Support Activities for Road Transportation	\$5,700,150.00	1.52%
562212	Solid Waste Landfill	\$4,771,340.96	1.27%
518210	Data Processing, Hosting, and Related Services	\$4,471,753.13	1.19%
812331	Linen Supply	\$4,280,589.50	1.14%
561621	Security Systems Services (except Locksmiths)	\$3,502,401.89	0.93%



For Goods, **Table 4-6** shows that 87.93 percent of the payments are distributed among only 20 industry groups, with a majority of the payments occurring almost evenly between two industry groups (423720 and 424690).

TABLE 4-6. PRODUCT MARKET,  
DISTRIBUTION OF DOLLARS BY NAICS CODE,  
GOODS

NAICS CODE	NAICS DESCRIPTION	MGT_NET SPEND	PERCENT
424690	Other Chemical and Allied Products Merchant Wholesalers	\$51,913,665.54	17.23%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	\$49,481,293.17	16.42%
423840	Industrial Supplies Merchant Wholesalers	\$24,572,620.15	8.15%
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	\$21,938,802.75	7.28%
323111	Commercial Printing (except Screen and Books)	\$17,171,604.92	5.70%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	\$13,398,617.21	4.45%
441310	Automotive Parts and Accessories Stores	\$11,141,952.63	3.70%
423830	Industrial Machinery and Equipment Merchant Wholesalers	\$10,545,808.59	3.50%
423490	Other Professional Equipment and Supplies Merchant Wholesalers	\$10,522,090.23	3.49%
444190	Other Building Material Dealers	\$10,368,585.00	3.44%
333992	Welding and Soldering Equipment Manufacturing	\$8,748,554.48	2.90%
334111	Electronic Computer Manufacturing	\$5,155,783.70	1.71%
423420	Office Equipment Merchant Wholesalers	\$4,976,495.40	1.65%
333120	Construction Machinery Manufacturing	\$4,864,531.01	1.61%
446110	Pharmacies and Drug Stores	\$4,780,905.53	1.59%
325320	Pesticide and Other Agricultural Chemical Manufacturing	\$3,487,250.49	1.16%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	\$3,230,346.75	1.07%
332994	Small Arms, Ordnance, and Ordnance Accessories Manufacturing	\$3,028,013.25	1.00%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	\$2,832,527.28	0.94%
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	\$2,827,368.60	0.94%

#### 4.3.4 Market Area Conclusions

Based on the 75 percent rule discussed earlier, the 15-County and Independent City Market Area represents a majority of the City of Richmond's procurement activity, with over 79 percent of the payments to vendors within this market area. Architecture and Engineering represent a majority of the City's procurement activity at 89.13 percent within the corresponding categories and Professional Services with the smallest at 60.16 percent. The definition of the relevant market area allows for detailed examinations of contracting activity with local vendors.



The product market shows that for the City, there are a number of industry groups that make up all payments across the five procurement categories. The associated weights seen in the tables will be used to calculate estimates in the availability analysis.

## 4.4 Utilization Analysis

The utilization analysis presents a summary of payments within the scope of the study and an initial assessment of the effectiveness of initiatives in promoting the inclusion of MBEs in the City's contracting and procurement activities.

The utilization analysis is based on payments made to both primes and subcontractors. Analysis of the payment data is broken down by the procurement categories of Construction, Architecture & Engineering, Professional Services, Other Services, and Goods and encompasses payments between July 1, 2016 through June 30, 2021.

### 4.4.1 Classification of Firms

According to the definitions provided below, firms included in the utilization analysis have been assigned to business owner classifications.<sup>85</sup>

- ♦ **MBE Firms.** In this study, businesses classified as minority- firms (MBE) are at least 51 percent owned and controlled by members of one of five groups: African Americans, Asian Americans, Hispanic Americans, or Native Americans. These groups were defined according to the United States (U.S.) Census Bureau as follows:
  - **African Americans:** U.S. citizens or lawfully admitted permanent residents having an origin in any of the black racial groups of Africa.
  - **Asian Americans:** U.S. citizens or lawfully admitted permanent residents from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
  - **Hispanic Americans:** U.S. citizens or lawfully admitted permanent residents of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese cultures or origins regardless of race.
  - **Native Americans:** U.S. citizens or lawfully admitted permanent residents who originate from North America's original peoples and maintain cultural identification through tribal affiliation or community recognition.
- ♦ **Non-MBE Firms.** Firms identified as nonminority male or women-owned majority-owned were classified as non-MBE firms. After a thorough review of available vendor databases containing race, ethnicity, and gender information, if there was no indication of business ownership, these firms were also classified as non-MBE firms.

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<sup>85</sup> Business ownership classification was based on the race, ethnicity, and gender classification of the owner during the study period.



## 4.4.2 Overall Utilization

**Table 4-7** shows that MBE utilization amounted to 3.43 percent of total payments. Corresponding detailed analyses showing the utilization of firms by business ownership classification are presented in **Appendix C**.

TABLE 4-7. UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,  
ALL PROCUREMENT CATEGORIES

BUSINESS OWNERSHIP CLASSIFICATION	ALL PROCUREMENT CATEGORIES	
	Dollars (\$)	Percent (%)
African Americans	\$33,054,539.75	1.43%
Asian American	\$4,638,238.39	0.20%
Hispanic Americans	\$40,796,845.94	1.77%
Native Americans	\$744,541.20	0.03%
<b>Total MBE Firms</b>	<b>\$79,234,165.28</b>	<b>3.43%</b>
Non-MBE Firms	\$2,231,555,030.42	96.57%
<b>TOTAL</b>	<b>\$2,310,789,195.70</b>	<b>100.00%</b>

Source: MGT developed a Master Utilization File based on the City of Richmond's data collected between July 1, 2016, through June 30, 2021.

## 4.4.3 Utilization by Procurement Category

The next series of tables shows the summary results of MGT's utilization analysis of each procurement category. Corresponding detailed analyses showing the utilization of firms by business ownership classification for each procurement category are presented in **Appendix C**.

Beginning with an examination of **Construction, Table 4-8**. The utilization of MBE firms was 1.68 percent. African Americans represent the largest percentage of utilization across all MBEs with 1.64 percent. Utilization for specific classifications was:

- ♦ 1.64 percent for African American firms;
- ♦ 0.02 percent for Asian American firms;
- ♦ 0.03 percent for Hispanic American firms;
- ♦ 0.00 percent for Native American firms;
- ♦ 1.68 percent for MBE firms; and
- ♦ 98.32 percent for Non-MBE firms



TABLE 4-8. UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,  
CONSTRUCTION

BUSINESS OWNERSHIP CLASSIFICATION	CONSTRUCTION	
	Dollars (\$)	Percent (%)
African Americans	\$20,415,038	1.64%
Asian American	\$206,238	0.02%
Hispanic Americans	\$334,689	0.03%
Native Americans	\$2,719	0.00%
<b>Total MBE Firms</b>	<b>\$20,958,684</b>	<b>1.68%</b>
Non-MBE Firms	\$1,227,650,756	98.32%
<b>TOTAL</b>	<b>\$1,248,609,440</b>	<b>100.00%</b>

Source: MGT developed a Master Utilization File based on City of Richmond's data collected between July 1, 2016, through June 30, 2021.

Table 4-9 shows the utilization of MBE firms in **Architecture & Engineering** was 3.54 percent. In the MBE classification African American firms represent the largest percentage of utilization with 3.11 percent. Comparing MBEs together, African American and Native American firms are the two largest classifications. Otherwise, utilization for specific classifications was:

- ♦ 3.11 percent for African American firms;
- ♦ 0.13 percent for Asian American firms;
- ♦ 0.04 percent for Hispanic American firms;
- ♦ 0.26 percent for Native American firms;
- ♦ 3.54 percent for MBE firms; and
- ♦ 96.46 percent for Non-MBE firms.

TABLE 4-9. UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,  
ARCHITECTURE & ENGINEERING

BUSINESS OWNERSHIP CLASSIFICATION	ARCHITECTURE & ENGINEERING	
	Dollars (\$)	Percent (%)
African Americans	\$8,753,176	3.11%
Asian American	\$361,848	0.13%
Hispanic Americans	\$119,276	0.04%
Native Americans	\$741,822	0.26%
<b>Total MBE Firms</b>	<b>\$9,976,123</b>	<b>3.54%</b>
Non-MBE Firms	\$271,878,745	96.46%
<b>TOTAL</b>	<b>\$281,854,868</b>	<b>100.00%</b>

Source: MGT developed a Master Utilization File based on City of Richmond's data collected between July 1, 2016, through June 30, 2021.



**Table 4-10** shows the utilization of MBE firms was 3.74 percent in **Professional Services**. Asian American firms had the largest percentage of spend within the MBE category with 3.29 percent. Individually, the MBE utilization was:

- ◆ 0.46 percent for African American firms;
- ◆ 3.29 percent for Asian American firms;
- ◆ 0.00 percent for Hispanic American firms;
- ◆ 0.00 percent for Native American firms;
- ◆ 3.74 percent for MBE firms; and
- ◆ 96.26 percent for Non-MBE firms.

**TABLE 4-10. UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION, PROFESSIONAL SERVICES**

BUSINESS OWNERSHIP CLASSIFICATION	PROFESSIONAL SERVICES	
	Dollars (\$)	Percent (%)
African Americans	\$474,945	0.46%
Asian American	\$3,421,141	3.29%
Hispanic Americans	\$0.00	0.00%
Native Americans	\$0.00	0.00%
<b>Total MBE Firms</b>	<b>\$3,896,086</b>	<b>3.74%</b>
Non-MBE Firms	\$100,154,533	96.26%
<b>TOTAL</b>	<b>\$104,050,620</b>	<b>100.00%</b>

Source: MGT developed a Master Utilization File based on the City of Richmond's data collected between July 1, 2016, through June 30, 2021.

**Table 4-11** shows the utilization of MBE firms was 11.78 percent in **Other Services**. Hispanic American firms represent the largest MBE percentage of utilization with 10.76 percent followed by African American with 0.87 percent of the dollars. Individually, the MBE utilization was:

- ◆ 0.87 percent for African American firms;
- ◆ 0.16 percent for Asian American firms;
- ◆ 10.76 percent for Hispanic American firms;
- ◆ 0.00 percent for Native American firms;
- ◆ 11.78 percent for MBE firms; and
- ◆ 88.22 percent for Non-MBE firms.



TABLE 4-11. UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,  
OTHER SERVICES

BUSINESS OWNERSHIP CLASSIFICATION	OTHER SERVICES	
	Dollars (\$)	Percent (%)
African Americans	\$3,245,399	0.87%
Asian American	\$595,597	0.16%
Hispanic Americans	\$40,342,881	10.76%
Native Americans	\$0.00	0.00%
<b>Total MBE Firms</b>	<b>\$44,183,877</b>	<b>11.78%</b>
Non-MBE Firms	\$330,740,422	88.22%
<b>TOTAL</b>	<b>\$374,924,299</b>	<b>100.00%</b>

Source: MGT developed a Master Utilization File based on the City of Richmond's data collected between July 1, 2016 through June 30, 2021.

**Table 4-12** shows the utilization of MBE firms was 0.07 percent in **Goods**. African American firms represent the largest percentage of spending across all MBEs with 0.06 percent. Individually, the MBE utilization was:

- ♦ 0.06 percent for African American firms;
- ♦ 0.02 percent for Asian American firms;
- ♦ 0.00 percent for Hispanic American firms;
- ♦ 0.00 percent for Native American firms;
- ♦ 0.07 percent for MBE firms; and
- ♦ 99.93 percent for Non-MBE firms.

TABLE 4-12. UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,  
GOODS

BUSINESS OWNERSHIP CLASSIFICATION	GOODS	
	Dollars (\$)	Percent (%)
African Americans	\$165,981	0.06%
Asian American	\$53,414	0.02%
Hispanic Americans	\$0.00	0.00%
Native Americans	\$0.00	0.00%
<b>Total MBE Firms</b>	<b>\$219,395</b>	<b>0.07%</b>
Non-MBE Firms	\$301,130,574	99.93%
<b>TOTAL</b>	<b>\$301,349,969</b>	<b>100.00%</b>

Source: MGT developed a Master Utilization File based on the City of Richmond's data collected between July 1, 2016, through June 30, 2021.



#### 4.4.4 Utilization Conclusions

The utilization analysis shows that MBE firms are utilized at significantly lower rates than their non-MBE counterparts. Overall, 3.43 percent of the City's payments were paid to MBE primes and subcontractors, while 96.57 percent went to non-MBE primes and subcontractors. While MBE utilization is low throughout the views on utilization that have been presented in this chapter, understanding the proportion of firms willing and able to provide services to the City of Richmond is critical in any determination of disparity. Availability estimates and resulting disparity ratios are presented in **Chapter 5**, which follows, to provide more definitive conclusions in this respect.

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# 5 Availability Estimates and Disparity Analysis

## 5.1 Introduction

This chapter presents the results of MGT’s analyses regarding **availability** and **disparity**. Availability estimates measure the numbers and proportions of vendors willing and able to work with an agency. At the same time, the disparity is an observed statistically significant difference between the utilization of minority firms (as discussed in **Chapter 4**) relative to their respective availability. Consistent with previous chapters, this analysis focuses on procurements in the categories of construction, architecture & engineering, professional services, other services, and goods sectors between July 1, 2016, through June 30, 2021 (FY2017 – FY2021).

### CHAPTER SECTIONS

- 5.1 Introduction
- 5.2 Availability Estimations
- 5.3 Disparity Analyses and Significance Testing
- 5.4 Conclusions

## 5.2 Availability Estimations

The sections that follow are descriptions of the approach and methodology used by MGT to estimate availability, followed by the data collection and estimation process results.

### 5.2.1 Availability Methodology

Justice O’Connor in *Croson* wrote,

*“Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise.”<sup>86</sup>*

**Courts define availability** as to whether a firm is **willing and able** to work with the agency in question as a method of constructing the universe of firms that might be considered in that agency’s procurement activities.

- ♦ **Willing** is reasonably presumed via the vendors’ active pursuit of registration to work with any public (government) agency or a registration in Dun & Bradstreet with a NAICS code utilized by the public sector entity.
- ♦ **Able**, or capability to perform work (capacity), is more loosely defined due to two obscuring factors: (1) the scalable nature of firms that may reasonably add capacity to handle jobs beyond previous performance, and (2) the inherent concern that discrimination may have influenced the historic or existing scale of operation of the firms within the market.

<sup>86</sup> *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 509 (1989).



In disparity studies, terms such as capacity or ability are not well defined statistically. The question always remains, “what qualifies a vendor to have the capacity to do work for a public entity?” Is a firm qualified based on its annual firm revenues, employment size, bonding limits, or the number of contracts bid on or awarded? Does capable or able mean that they possess some sort of business license, certain years of training, specific work experience, or the number of contracts they can perform at a given time? Further, what combination of these business attributes accurately reflects capacity? From where would a researcher even reliably gather this data? For argument’s sake, even if the researcher can overcome these statistical limitations, there remains the issue of these factors being influenced by discrimination towards MBE firms. The entire reason for having a supplier diversity program is to remedy past or current discrimination in the relevant business market. A statistical method for estimating availability should not improperly limit the availability measure by incorporating factors that are themselves impacted by discrimination, such as firm age, annual individual firm revenues, bonding limits, or the number of employees. Limiting the availability pool by factors that are themselves influenced by discrimination risks negating the remedial nature of any program based on the data.

Thus, this study appropriately measures the “ability/capacity” by analyzing industry affiliation (NAICS code), geographic location, and labor market experience (utilization weights).

With this in mind, a reliable estimation of the number of firms *willing* and *able* to provide each of the respective services under the examination scope is a significant element in determining disparity. Post-*Croscon* case law has not prescribed a single approach to deriving vendor availability, and agencies have used various means to estimate pools of available vendors.

Among the array of methods utilized, what is known as a “custom census” is currently the most accurate apples-to-apples approach to determine availability and has been favorably reviewed by the courts that have examined it<sup>87</sup>. It provides the most consistent and rigorous apples-to-apples comparison between establishments in the availability numerator and those in the denominator; it adheres with the remedial nature of most MBE policies by measuring overall MBE availability in the relevant market area as opposed to only those businesses currently certified by an agency; and, as discussed above, is less likely to be tainted by the effects of past and present discrimination than other methods. The steps used to calculate availability are as follows:

1. Create a database of the City of Richmond contracts to identify utilization.
2. Identify the relevant geographic market based on the utilization data.
3. Identify the relevant product markets based on the utilization data.
4. Count all businesses in those relevant markets.
5. Identify listed minority-owned businesses in those markets.
6. Verify the ownership status of listed minority-owned businesses (misclassification).
7. Verify the ownership status of all other firms (non-classification).

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<sup>87</sup> *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d 964 (8th Cir. 2003), *cert. denied*, 541 U.S. 1041 (2004); *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7th Cir. 2007); *Builders Ass’n of Greater Chicago v. City of Chicago*, 298 F.Supp. 2d 725 (N.D. Ill. 2003); *Midwest Fence Corp. v. United States Department of Transportation, et al.*, 84 F.Supp. 3d 705 (N.D. Ill. 2015), *aff’d*, 2016 U.S App. LEXIS 19959 (7th. Cir. November 4, 2016).



MGT's data assessment and evaluation of alternative methods for measuring the numbers of firms of the types and classifications available to work with the City confirmed that a version of a custom census of firms in the relevant market area would provide the most accurate representation of available firms. The custom census approach used by MGT in this instance required the development of representative samples of firms within each of the four procurement categories identified for the study, each of which had to cover the defined 15-county geographic boundaries of the relevant market area.

First, an intensive examination of the City's procurements was required to define the appropriate characteristics of the universe of prospective vendors regarding the types of goods and services offered. The City procurements were assigned North American Industry Classification System (NAICS) codes that Dun & Bradstreet uses to classify firms' primary lines of business. These industry selections were then used to establish weighting criteria in random samples of vendors to be surveyed. Target response thresholds were selected for each industry and NAICS code subsector to ensure a 95 percent confidence interval and +/-5 percent margin of error for findings. Second, a survey was designed and administered to sampled firms by telephone and email to verify the ownership status of listed minority-owned businesses (misclassification) or verify the ownership status of all other firms (non-classification).

The survey results were then extrapolated to the full scale of the applicable universe to estimate available firms by ethnicity/gender classification and procurement category.

## 5.2.2 Availability Analysis

Following the methodology prescribed in the previous section, MGT derived estimates for the proportions of available firms for the racial, ethnic, and gender ownership classes and four defined procurement categories. Corresponding detailed analyses showing the availability of firms by race, ethnicity, and gender are presented in [Appendix D](#).

**Table 5-1** presents availability estimates spanning all procurement categories.

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

RACE-ETHNICITY	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS	TOTAL
AFRICAN AMERICAN	25.50%	8.21%	8.54%	19.37%	3.73%	18.79%
ASIAN AMERICAN	2.94%	8.19%	3.33%	2.22%	0.72%	3.19%
HISPANIC AMERICAN	3.19%	2.03%	2.61%	2.07%	0.68%	2.51%
NATIVE AMERICAN	0.01%	0.00%	1.55%	0.37%	0.08%	0.15%
MBE	31.63%	18.44%	16.03%	24.03%	5.21%	24.64%
NON-MBE	68.37%	81.56%	83.97%	75.97%	94.79%	75.36%
Grand Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Source: Custom Census Analysis. Due to rounding, it may not add up to 100%



Higher availability estimates are seen with African American firms in construction at 21.37 percent and other services at 16.20 percent. The Native American availability estimates follow similar patterns of low availability as observed in other disparity studies performed by MGT.

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## 5.3 Disparity Analyses and Significance Testing

Building on our understanding of the City’s vendor utilization (**Chapter 4**) and the availability estimates presented in the previous section of this chapter (**Section 5.2**), we can use this information to identify potential disparities in the City’s procurement. A summary of the approach is provided in **Section 5.3.1**, followed by the results of these disparity calculations and associated statistical significance testing in **Section 5.3.2**.

### 5.3.1 Disparity Analysis Methodology

MGT’s disparity index methodology yields a value that is easily calculable, understandable in its interpretation, and universally comparable such that a disparity in utilization within the minority-owned firms can be assessed by comparing the utilization of nonminority- and male-owned firms. The disparity index gives the evidence necessary to infer that discrimination in the marketplace has occurred. *Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise*<sup>88</sup>. The inference of discrimination need not be proven correct by the government. As noted by the Tenth Circuit, and cited by the Fourth Circuit in *Rowe*, in upholding Denver’s MBE Program, strong evidence supporting Denver’s determination that necessary remedial action need not have been based upon “irrefutable or definitive” proof of discrimination. It was sufficient that the statistical evidence created an inference of discriminatory motivation, and evidence of marketplace discrimination was properly used to meet strict scrutiny. It is not the government’s burden but rather the plaintiff who must prove by a preponderance of the evidence that such proof does not support those inferences<sup>89</sup>.

Disparity, in this context, is the analysis of the differences between the utilization of minority-owned firms (as presented in **Chapter 4**) and the respective availability of those firms (**Section 5.2**). Thus, MGT calculated disparity indices to examine whether minority-owned firms received a proportional share of dollars based on the respective availability of minority-owned firms located in the study’s defined relevant market area (as presented in **Chapter 4**) and determine if there was an inference of discrimination in the marketplace.

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<sup>88</sup> *Croson*, 488 U.S. at 509; see *Webster*, 51 F.Supp.2d at 1363, 1375.

<sup>89</sup> *Concrete Works of Colo. v. City & Cnty. of Denver*, 321 F.3d 950, 971 (10th Cir. 2003). See also *H.B. Rowe Co., Inc. v. Tippet*, 615 F.3d 233, 241 (4th Cir. 2010).



The **disparity index** is a simple proportional calculation that divides utilization rates (percent of dollars awarded to firms by subcategory) by their associated availability (percent of firms available to work within that same class) and multiplies this value by 100. Thus, a disparity index value of zero (0.00) indicates absolutely no utilization and, therefore, absolute disparity. A disparity index of 100 indicates that utilization is perfectly proportionate to availability, indicating the absence of disparity (all things being equal). Alternately, firms are considered **underutilized** if the disparity indices are less than 100.

$$\text{Disparity Index} = \frac{\%U_{m,p_i}}{\%A_{m,p_i}} \times 100$$

$U_{m,p_i}$  = utilization of minorities- and female-owned firms<sub>i</sub> for procurement<sub>i</sub>

$A_{m,p_i}$  = availability of minorities- and female-owned firms<sub>i</sub> for procurement<sub>i</sub>

MGT utilizes the “80 percent rule” in determining the indication of discrimination in procurement. MGT’s methodology to measure disparity or indication of discrimination, if any exists, is based on the Equal Employment Opportunity Commission’s (EEOC) “80 percent rule.”<sup>90</sup> An employment disparity index below 80 indicates a “substantial disparity”. The Fourth Circuit has accepted the use of the “80 percent rule” as an indicator of discrimination in *Rowe*.<sup>91</sup> Therefore, following a similar pattern, firms are considered substantially underutilized (substantial

disparity) if the disparity indices are 80 or less.

Aside from the disparity index calculation, MGT also calculates standard deviations or statistical significance for the disparity index results. Standard deviation tests or testing for **statistical significance**, in this context, is the analysis to determine the significance of the difference between the utilization of minority-owned firms and the availability of those firms. This analysis can determine whether the disparities are statistically significant, which lends further statistical support to a finding of discrimination.

Standard deviation measures the probability that a result is a random deviation from a predicted outcome. The greater the number of standard deviations, the lower the probability that the result is random.

<sup>90</sup> Equal Employment Opportunity Commission, *Uniform Guidelines on Employee Selection Procedures*, Section 4, Part D, “Adverse impact and the ‘four-fifths rule.’”

<sup>91</sup> *H.B. Rowe Co., Inc. v. Tippett*, 615 F.3d 233, 244 (4th Cir. 2010).



Regarding the use of statistical significance in the disparity study context, the National Cooperative Highway Research Program Report 644<sup>92</sup> notes that:

- ♦ “. . . for statistical disparities to be taken as legally dispositive in the discrimination context, they should be (a) statistically significant and (b) “substantively” significant. Substantive significance is taken to mean, for example, a DBE utilization measure that is less than or equal to 80% of the corresponding DBE availability measure.”

Note that p-values are used to determine whether the differences between two populations feature legitimate differences (that would be sustained if we continued to collect more observations) or if the variation between them is simply a product of normal random variation between observations that would be washed out if we collected more data. The Fourth Circuit approved using the t-test to calculate p-values for disparity indices in *H.B. Rowe v. Tippet*, 615 F.3d 233, 244-45 (4<sup>th</sup> Cir 2010).

Thus, MGT applies two accepted tests to determine statistical significance: (1) whether the disparity index is less than or equal to 80 percent of respective MBE availability, which is labeled “substantial disparity,” and (2) whether the disparity index passes the t-test determination of statistical significance.

### Statistical Significance Testing

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

t = the t-statistic

$u$  = the ratio of minorities- and female-owned firms' dollars compared to total dollars  
 $a$  = the ratio of M/W/DBE firms to all firms  
 $c_i$  = the dollar amount.

## 5.3.2 Disparity Analyses and Statistical Significance Testing

This section includes inputs and calculations of disparity indices and significance testing for each of the procurement categories and ownership classifications. Corresponding detailed analyses showing the disparity analysis of firms by race, ethnicity, and gender are presented in **Appendix E**. Analysis of disparities across all procurement categories in **Table 5-2** reveals:

- ♦ African American firms were underutilized with a substantial and statistically significant disparity index of 7.61;
- ♦ Asian American firms were underutilized with a substantial and statistically significant disparity index of 6.29;
- ♦ Hispanic American firms were substantially underutilized, with a disparity index of 70.27;
- ♦ Native American firms were substantially underutilized, with a disparity index of 22.16;
- ♦ MBE firms were underutilized, with a substantial and statistically significant disparity index of 13.92.

<sup>92</sup> Transportation Research Board of the National Academies, National Cooperative Highway Research Program Report 644, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program* (2010), pages 49-50.



TABLE 5-2. DISPARITY INDICES AND SIGNIFICANCE TESTING,  
ALL PROCUREMENT CATEGORIES

Race/Ethnic Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
African Americans	<b>1.43%</b>	<b>18.79%</b>	<b>7.61</b>	Underutilization	***	Disparity
Asian Americans	<b>0.20%</b>	<b>3.19%</b>	<b>6.29</b>	Underutilization	***	Disparity
Hispanic Americans	1.77%	2.51%	70.27	Underutilization		Disparity
Native Americans	0.03%	0.15%	22.16	Underutilization		Disparity
Total MBE Firms	<b>3.43%</b>	<b>24.64%</b>	<b>13.92</b>	Underutilization	***	Disparity
Non-MBE Firms	96.57%	75.36%	128.15	Overutilization	***	

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability. “\*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “\*\*” indicates the disparity is significant at a 10% level or better (90% confidence). “\*\*\*” indicates significance at a 5% level or better (95% confidence). **BOLD** indicates substantial statistically significant disparity.

Disparity indices and significance testing for **Construction** appear in **Table 5-3**. Noteworthy observations include:

- ♦ African American firms were underutilized, with a substantial and statistically significant disparity index of 6.41;
- ♦ Asian American firms were underutilized, with a substantial and statistically significant disparity index of 0.56;
- ♦ Hispanic American firms were underutilized, with a substantial and statistically significant disparity index of 0.84;
- ♦ Native American firms were substantially underutilized, with a substantial and statistically significant disparity index of 2.39;
- ♦ MBE firms were substantially underutilized, with a substantial and statistically significant disparity index of 5.31.

TABLE 5-3. DISPARITY INDICES AND SIGNIFICANCE TESTING,  
CONSTRUCTION

Race/Ethnic Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
African Americans	<b>1.64%</b>	<b>25.50%</b>	<b>6.41</b>	Underutilization	***	Disparity
Asian Americans	<b>0.02%</b>	<b>2.94%</b>	<b>0.56</b>	Underutilization	***	Disparity
Hispanic Americans	<b>0.03%</b>	<b>3.19%</b>	<b>0.84</b>	Underutilization	***	Disparity
Native Americans	<b>0.00%</b>	<b>0.01%</b>	<b>2.39</b>	Underutilization	**	Disparity
Total MBE Firms	<b>1.68%</b>	<b>31.63%</b>	<b>5.31</b>	Underutilization	***	Disparity
Non-MBE Firms	98.32%	68.37%	143.81	Overutilization	***	

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability. “\*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “\*\*” indicates the disparity is significant at a 10% level or better (90% confidence). “\*\*\*” indicates significance at a 5% level or better (95% confidence). **BOLD** indicates substantial statistically significant disparity.



The calculation of disparity indices and significance testing for the **Architecture & Engineering** procurement category are depicted in **Table 5-4**. Relevant findings include:

- ♦ African American firms were underutilized, with a substantial and statistically significant disparity index of 37.81;
- ♦ Asian American firms were underutilized, with a substantial and statistically significant disparity of 1.57;
- ♦ Hispanic American firms were substantially underutilized, with a substantial and statistically significant disparity of 2.08;
- ♦ Native American firms were overutilized, with a substantial and statistically significant disparity of +100;
- ♦ MBE firms were underutilized, with a substantial and statistically significant disparity index of 19.20.

**TABLE 5-4. DISPARITY INDICES AND SIGNIFICANCE TESTING,  
ARCHITECTURE & ENGINEERING**

Race/Ethnic Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
<b>African Americans</b>	<b>3.11%</b>	<b>8.21%</b>	<b>37.81</b>	<b>Underutilization</b>	<b>**</b>	<b>Disparity</b>
<b>Asian Americans</b>	<b>0.13%</b>	<b>8.19%</b>	<b>1.57</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
Hispanic Americans	0.04%	2.03%	2.08	Underutilization		Disparity
Native Americans	0.26%	0.00%	+100	Overutilization	<b>**</b>	
<b>Total MBE Firms</b>	<b>3.54%</b>	<b>18.44%</b>	<b>19.20</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
Non-MBE Firms	96.46%	81.56%	118.27	Overutilization	<b>***</b>	

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability. “\*\*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “\*\*\*” indicates the disparity is significant at a 10% level or better (90% confidence). “\*\*\*\*” indicates significance at a 5% level or better (95% confidence). **BOLD** indicates substantial statistically significant disparity.

Disparity indices and significance testing for the **Professional Services** sector are presented in Error! Not a valid bookmark self-reference.. Some findings include that:

- ♦ African American firms were underutilized, with a substantial and statistically significant disparity index of 5.34;
- ♦ Asian American firms were underutilized, with a disparity index of 98.61;
- ♦ Hispanic American firms were substantially underutilized, with a substantial disparity index of 0.00;
- ♦ Native American firms were substantially underutilized, with a disparity index of 0.00;
- ♦ MBE firms were underutilized, with a substantial and statistically significant disparity index of 23.46.



TABLE 5-5. DISPARITY INDICES AND SIGNIFICANCE TESTING,  
PROFESSIONAL SERVICES

Race/Ethnic Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
<b>African Americans</b>	<b>0.46%</b>	<b>8.54%</b>	<b>5.34</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
Asian Americans	3.29%	3.33%	98.61	Underutilization		Disparity
Hispanic Americans	0.00%	2.61%	0.00	Underutilization		<b>Disparity</b>
Native Americans	0.00%	1.55%	0.00	Underutilization		Disparity
<b>Total MBE Firms</b>	<b>3.74%</b>	<b>16.03%</b>	<b>23.36</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
Non-MBE Firms	96.26%	83.97%	114.63	Overutilization	<b>***</b>	

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability. “\*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “\*\*\*” indicates the disparity is significant at a 10% level or better (90% confidence). “\*\*\*\*” indicates significance at a 5% level or better (95% confidence). **BOLD** indicates substantial statistically significant disparity.

**African American** firms were underutilized, with a substantial and statistically significant disparity index of 4.47;

- ♦ Asian American firms were underutilized, with a substantial disparity index of 7.16;
- ♦ Hispanic American firms were overutilized, with a statistically significant disparity index of +100;
- ♦ Native American firms were substantially underutilized, with a disparity index of 0.00;
- ♦ MBE firms were underutilized, with a substantial and statistically significant disparity index of 49.05.

Table 5-6 presents disparity indices and significance testing for the **Other Services** sector.

- ♦ African American firms were underutilized, with a substantial and statistically significant disparity index of 4.47;
- ♦ Asian American firms were underutilized, with a substantial disparity index of 7.16;
- ♦ Hispanic American firms were overutilized, with a statistically significant disparity index of +100;
- ♦ Native American firms were substantially underutilized, with a disparity index of 0.00;
- ♦ MBE firms were underutilized, with a substantial and statistically significant disparity index of 49.05.

TABLE 5-6. DISPARITY INDICES AND SIGNIFICANCE TESTING,  
OTHER SERVICES

Race/Ethnic Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
<b>African Americans</b>	<b>0.87%</b>	<b>19.37%</b>	<b>4.47</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
Asian Americans	0.16%	2.22%	7.16	Underutilization		Disparity
<b>Hispanic Americans</b>	<b>10.76%</b>	<b>2.07%</b>	<b>+100</b>	<b>Overutilization</b>	<b>***</b>	
Native Americans	0.00%	0.37%	0.00	Underutilization		Disparity
<b>Total MBE Firms</b>	<b>11.78%</b>	<b>24.03%</b>	<b>49.05</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
Non-MBE Firms	88.22%	75.97%	116.12	Overutilization	<b>***</b>	



Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability. “\*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “\*\*” indicates the disparity is significant at a 10% level or better (90% confidence). “\*\*\*” indicates significance at a 5% level or better (95% confidence). **BOLD** indicates substantial statistically significant disparity.

**African American** firms were underutilized, with a substantial and statistically significant disparity index of 4.47;

- ♦ Asian American firms were underutilized, with a substantial disparity index of 7.16;
- ♦ Hispanic American firms were overutilized, with a statistically significant disparity index of +100;
- ♦ Native American firms were substantially underutilized, with a disparity index of 0.00;
- ♦ MBE firms were underutilized, with a substantial and statistically significant disparity index of 49.05.

Table 5-6-7 presents disparity indices and significance testing for the **Goods** sector.

- ♦ African American firms were underutilized, with a substantial and statistically significant disparity index of 1.48;
- ♦ Asian American firms were underutilized, with a substantial and statistically significant disparity index of 2.46;
- ♦ Hispanic American firms were underutilized, with a substantial and statistically significant disparity index of 0.00;
- ♦ Native American firms were substantially underutilized, with a substantial and statistically significant disparity index of 0.00;
- ♦ MBE firms were underutilized, with a substantial and statistically significant disparity index of 1.40.

TABLE 5-7. DISPARITY INDICES AND SIGNIFICANCE TESTING,  
**GOODS**

Race/Ethnic Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
<b>African Americans</b>	<b>0.06%</b>	<b>3.73%</b>	<b>1.48%</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
<b>Asian Americans</b>	<b>0.02%</b>	<b>0.72%</b>	<b>2.46%</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
<b>Hispanic Americans</b>	<b>0.00%</b>	<b>0.68%</b>	<b>0.00%</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
<b>Native Americans</b>	<b>0.00%</b>	<b>0.08%</b>	<b>0.00%</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
<b>Total MBE Firms</b>	<b>0.07%</b>	<b>5.21%</b>	<b>1.40%</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
Non-MBE Firms	99.93%	94.79%	105.41%	Overutilization	***	

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability. “\*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “\*\*\*” indicates the disparity is significant at a 10% level or better (90% confidence). “\*\*\*” indicates significance at a 5% level or better (95% confidence).

**BOLD** indicates substantial statistically significant disparity.



## 5.4 Conclusions

The calculations of availability and disparity within this chapter and the preceding depiction of utilization serve as part of the evidentiary foundation for the future of the City’s MBE program. These analyses provide part of the quantitative legal justification for any current or future remedies to assist MBEs within the market. In tandem with the results of the qualitative and private sector analyses, these results provide the evidence necessary to infer that discrimination in the marketplace has occurred. As summarized in the table below (**Table 5-88-8**), disparities between utilization and availability have been observed for most procurement and MBE categories included within the scope of the study, both in terms of the order of magnitude (disparity indices less than or equal to 80) and statistical significance, and thus an inference of discrimination in the marketplace can be derived. Where individual race, ethnicity, and gender categories were not statistically significant alone,<sup>93</sup> it’s important to understand that they are part of the MBE and MBE total categories that were overall substantial and statistically underutilized, and an inference of discrimination can be made where those categories saw substantial individual disparities.

TABLE 5-88. DISPARITY ANALYSIS SUMMARY

Procurement Category	All	Construction	Architecture & Engineering	Professional Services	Other Services	Goods
African Americans	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>
Asian Americans	<b>Disparity</b>	Disparity	<b>Disparity</b>	Disparity	Disparity	<b>Disparity</b>
Hispanic Americans	Disparity	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	No Disparity	<b>Disparity</b>
Native Americans	Disparity	Disparity	No Disparity	Disparity	Disparity	<b>Disparity</b>
MBE Firms	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>

**BOLD** indicates substantial statistically significant disparity.

<sup>93</sup> This could be attributed to the small number of contracts awarded to these firms or the small actual number of firms in the marketplace.



# 6 Private Sector Analysis

## 6.1 Introduction

The **Legal Framework** presented in **Chapter 2** explains that a government entity must have evidence of active or passive discrimination to permit the institution of a minority- and woman-owned business enterprise (MBE) program. Courts require a *compelling interest* analysis showing a connection between the government or agency and the public or private discrimination that may exist within their jurisdiction. This chapter focuses on the overarching question:

- ◆ ***Does evidence of discrimination in the private sector marketplace support the city of Richmond's (City) continuance of its MBE program to avoid becoming a passive participant in discrimination?***

*Passive discrimination* describes a circumstance where a public entity resides in a market with measurable discrimination in the public and private sectors but fails to take proactive actions to implement remedies. Courts have favorably looked upon private sector analyses as support to determine *compelling interest* in MBE programs:

- ◆ Defining passive participation, Justice O'Connor in *Croson* stated, "if the city could show that it had essentially become a 'passive participant' in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the city could take affirmative steps to dismantle such a system."<sup>94</sup>
- ◆ In *Adarand*, the Tenth Circuit favorably cited evidence of capital market discrimination as relevant in establishing the factual predicate for the federal DBE program.<sup>95</sup>
- ◆ *Concrete Works IV* found that barriers to business formation were relevant insofar as the evidence demonstrated that MBEs were "precluded from the outset from competing for public construction contracts."<sup>96</sup>
- ◆ In *Adarand*, the courts concluded a compelling interest for a government Disadvantaged Business Enterprise (DBE) program in part on evidence of private-sector discrimination.<sup>97</sup>
- ◆ Along related lines, a court found regression analysis of census data to be relevant evidence showing barriers to MBE formation.<sup>98</sup>

### Chapter Sections

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

<sup>94</sup> *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 492 (1989).

<sup>95</sup> *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-70 (10th Cir. 2000).

<sup>96</sup> *Concrete Works of Colo. v. City & Cnty. of Denver*, 321 F.3d 950, 977 (10th Cir. 2003).

<sup>97</sup> *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 2000).

<sup>98</sup> *Concrete Works IV*, 321 F.3d 950, 967-69 (10th Cir. 2003).



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

These court decisions support an investigation into the existence of discrimination in the private sector to determine whether or not evidence exists warranting MBE programs. This chapter provides evidence for whether the City has a continued compelling interest in maintaining its MBE program based on discriminatory circumstances observed in the private sector. Three sources of data can help to answer the overarching research question regarding disparities in the private sector:

- ◆ **2012 Census Survey of Business Owners (SBO) and 2017 Census Annual Business Survey (ABS) data**, which are used to determine:
  1. *Do marketplace disparities exist in the private sector regarding revenue within similar City of Richmond procurement categories for firms owned by minorities?*
- ◆ **2016-2020 Census American Community Survey (ACS) Public Used Microdata Sample (PUMS) data**, which is used to determine whether, even after controlling for a number of relevant factors, there are disparities between minority- and women-owned firms on the one hand, and nonminority, non-women owned firms on the other hand. Among the questions this data allows us to answer are:
  1. *Does racial, ethnic, and gender status impact individual wages even after controlling for differences among firms?*
  2. *Does racial, ethnic, and gender status impact business owner earnings even after controlling for differences among firms?*
  3. *Are racial, ethnic, and gender minority groups less likely than nonminority males (non-MBEs) to be self-employed after controlling for differences? If so, does race, ethnicity, or gender have a role in the disparity?*
  4. *If minority -owned business enterprises (MBEs) and nonminority male-owned firms shared similar traits and marketplace "conditions" (i.e., similar "rewards" in terms of capital, wages, earning, etc.), what would be the effect on rates of self-employment by race, ethnicity, and gender?*

## 6.2 Private Sector Disparities in SBO Census Data

To answer the overarching research question regarding the existence of disparities in the private sector, as well as the specific question of whether these disparities exist in procurement categories relevant to the City's contracting domain, MGT obtained and analyzed the U.S. Census Bureau's 2012 Survey of Business Owners (SBO) data.<sup>99</sup> SBO provides data on economic and demographic characteristics for businesses and business owners by geography (such as states and metropolitan areas), categorized by industries defined by North American Industry Classification System (NAICS) codes, and supporting information, including firm receipts (sales),<sup>100</sup> firm employment size, and business ownership

<sup>99</sup> These represent the most recent available data provided through the SBO program and were released in 2016.

<sup>100</sup> Sales includes total shipments, receipts, revenue, or business done by the firm.



classification. The survey has been administered every five years since 1972 as part of the economic census.

The SBO gathers and reports data on (1) firms with paid employees, including workers on the payroll (employer firms), (2) firms without paid employees, including sole proprietors and partners of unincorporated businesses that do not have any other employees on the payroll (nonemployer firms), as well as (3) in aggregate across employer and nonemployer firms (all). MGT calculated private sector disparity indices to examine whether MBE firms in any of these categories received a proportionate share of firm sales based on the availability of MBE firms. Disparity indices were reviewed for all firms and employer firms. It should be noted that all of the disparity indices in the SBO tables are statistically significant within a **95 percent** confidence interval.

The following NAICS codes<sup>101</sup> were analyzed because they align with the procurement categories used for the City's utilization analysis:

- ◆ NAICS Code 23, Construction
- ◆ NAICS Code 42, Wholesale Trade
- ◆ NAICS Code 54, Professional, Scientific, and Technical Services
- ◆ NAICS Code 56, Administrative and Support and Waste Management and Remediation Services
- ◆ NAICS Code 81, Other Services (Except Public Administration)

### 6.2.1 Results of Analysis

This private sector analysis presents disparity results based on the City of Richmond's geographic marketplace. The City's marketplace contains the same localities as those identified in the geographic market area chapter.

### 6.2.2 City of Richmond Marketplace

**Tables 6-1** through **6-5** show the measures of private sector disparities based on U.S. Census 2012 SBO data for the population of available firms in the City of Richmond marketplace by race, ethnicity, and gender for construction; wholesale trade; professional, scientific, and technical services; administrative and support and waste management and remediation services; and other services (except public administration). These disparities are calculated similarly to how the disparities are calculated for the City's utilization and availability. In the private sector analysis, they are calculated by dividing the percentage of either All Firms or Employer Firms by All Firms Sales or Employer Firms Sales to get a disparity.

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<sup>101</sup> The two-digit NAICS code level was utilized as those codes are the most prevalent level across all the 2012 SBO data.



Based on the U.S. Census 2012 SBO data analysis, overall, there remains a significant gap between the market share of MBE firms and their share of the City of Richmond business population, as identified in the SBO data, where data was available.

### NAICS Code 23: Construction, City of Richmond Marketplace

**Table 6-1** shows the construction availability, sales, and disparity results (NAICS Code 23).

There was a total of 73,389 construction firms (all firms<sup>102</sup>) in the City of Richmond marketplace in 2012.

- ◆ African American firms (disparity index of 11.19) were substantially underutilized, accounting for 1.25 percent of all firms and 0.14 percent of sales.
- ◆ American Indian and Alaska Native firms (disparity index of 13.20) were substantially and significantly underutilized, accounting for 0.08 percent of all firms and 0.01 percent of sales.
- ◆ Asian American firms (disparity index of 41.70) were substantially and significantly underutilized, accounting for 0.09 percent of all firms and 0.04 percent of sales.
- ◆ Hispanic American firms (disparity index of 2.63) were substantially and significantly underutilized, accounting for 1.06 percent of all firms and 0.03 percent of sales.
- ◆ Native Hawaiian and Pacific Islander firm data did not allow for a proper analysis.

There were 21,756 construction employer firms<sup>103</sup> in the City of Richmond marketplace in 2012.

- ◆ African American firms (disparity index of 29.51) were substantially and significantly underutilized, accounting for 0.34 percent of all firms and 0.10 percent of sales.
- ◆ American Indian and Alaska Native firms (disparity index of 0.00) were substantially and significantly underutilized, accounting for 0.06 percent of all firms and 0.00 percent of sales.
- ◆ Asian American firms (disparity index of 103.38) were overutilized, accounting for 0.03 percent of all firms and 0.03 percent of sales.
- ◆ Hispanic American firms (disparity index of 0.00) were substantially and significantly underutilized, accounting for 0.25 percent of all firms and 0.00 percent of sales.
- ◆ Native Hawaiian and Pacific Islander firm data did not allow for a proper analysis.

<sup>102</sup> All firms include firms with and without payroll at any time during 2012.

<sup>103</sup> Employer firms include firms with payroll at any time during 2012.



TABLE 6-1. PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 23, CONSTRUCTION  
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,  
CITY OF RICHMOND MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS <sup>1</sup> (#)	ALL FIRMS, SALES <sup>2</sup> (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	73,389	40,355,354	21,756	37,482,562
Nonminority Male	70,149	40,088,390	21,092	37,263,676
African American	915	56,326	73	37,114
American Indian and Alaska Native	59	4,283	13	0
Asian	68	15,593	7	12,468
Hispanic <sup>4</sup>	778	11,235	55	0
Native Hawaiian and Other Pacific Islander	0	0	0	0
PERCENTAGE OF MARKETPLACE				
All Firms	100.00%	100.00%	100.00%	100.00%
Nonminority Male	95.59%	99.34%	96.95%	99.42%
African American	1.25%	0.14%	0.34%	0.10%
American Indian and Alaska Native	0.08%	0.01%	0.06%	0.00%
Asian	0.09%	0.04%	0.03%	0.03%
Hispanic <sup>4</sup>	1.06%	0.03%	0.25%	0.00%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%	0.00%	0.00%
DISPARITY RATIOS <sup>3</sup>				
All Firms		100.00		100.00
Nonminority Male		103.93		102.55
African American		11.19		29.51
American Indian and Alaska Native		13.20		0.00
Asian		41.70		103.38
Hispanic <sup>4</sup>		2.63		0.00
Native Hawaiian and Other Pacific Islander		-		-

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup>Firms include employer and nonemployer firms since nonemployer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

<sup>2</sup>Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup>Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup>Hispanic firms are considered an ethnicity in this Census data and, therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.



## NAICS Code 42: Wholesale Trade, City of Richmond Marketplace

**Table 6-2** shows wholesale trade availability, sales, and disparity results (NAICS Code 42).

There was a total of 18,669 wholesale trade firms (all firms) in the City of Richmond marketplace in 2012.

- ◆ African American firms (disparity index of 0.03) were substantially and significantly underutilized, accounting for 0.74 percent of all firms and less than 0.01 percent of sales.
- ◆ American Indian and Alaska Native marketplace firm data did not allow for a proper analysis.
- ◆ Asian American firms (disparity index of 11.89) were substantially and significantly underutilized, accounting for 0.35 percent of all firms and 0.04 percent of sales.
- ◆ Hispanic American firms (disparity index of 0.00) were substantially and significantly underutilized, accounting for 0.43 percent of all firms and 0.00 percent of sales.
- ◆ Native Hawaiian and Pacific Islander marketplace firm data did not allow for a proper analysis.

There was a total of 10,302 wholesale trade employer firms in the City of Richmond marketplace in 2012.

- ◆ African American marketplace firm (disparity index of 0.00) were substantially and significantly underutilized, accounting for 0.27 percent of all firms and less than 0.01 percent of sales.
- ◆ American Indian and Alaska Native marketplace firm data did not allow for a proper analysis.
- ◆ Asian American firms (disparity index of 16.30) were substantially and significantly underutilized, accounting for 0.25 percent of all firms and 0.04 percent of sales.
- ◆ Hispanic American (disparity index of 0.00) were substantially and significantly underutilized, accounting for 0.04 percent of all firms and less than 0.01 percent of sales.
- ◆ Native Hawaiian and Pacific Islander marketplace firm data did not allow for a proper analysis.



TABLE 6-2. PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 42, WHOLESALE TRADE  
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,  
CITY OF RICHMOND MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS <sup>1</sup> (#)	ALL FIRMS, SALES <sup>2</sup> (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	18,669	135,828,209	10,302	135,368,140
Nonminority Male	17,746	135,282,846	9,990	134,833,898
African American	138	308	28	0
American Indian and Alaska Native	0	0	0	0
Asian	66	57,071	26	55,699
Hispanic <sup>4</sup>	81	0	4	0
Native Hawaiian and Other Pacific Islander	0	0	0	0
PERCENTAGE OF MARKETPLACE				
All Firms	100.00%	100.00%	100.00%	100.00%
Nonminority Male	95.06%	99.60%	96.97%	99.61%
African American	0.74%	0.00%	0.27%	0.00%
American Indian and Alaska Native	0.00%	0.00%	0.00%	0.00%
Asian	0.35%	0.04%	0.25%	0.04%
Hispanic <sup>4</sup>	0.43%	0.00%	0.04%	0.00%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%	0.00%	0.00%
DISPARITY RATIOS <sup>3</sup>				
All Firms		100.00		100.00
Nonminority Male		104.78		102.72
African American		0.03		0.00
American Indian and Alaska Native		-		-
Asian		11.89		16.30
Hispanic <sup>4</sup>		0.00		0.00
Native Hawaiian and Other Pacific Islander		-		-

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup>Firms include employer and nonemployer firms since nonemployer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

<sup>2</sup>Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup>Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup>Hispanic firms are considered an ethnicity in this Census data and therefore may be double counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.



## NAICS Code 54: Professional, Scientific and Technical Services, City of Richmond Marketplace

**Table 6-3** shows the availability, sales, and disparity results for professional, scientific, and technical services (NAICS Code 54).

There was a total of 108,094 professional, scientific, and technical services firms (all firms) in the Richmond marketplace in 2012.

- ◆ African American firms (disparity index of 23.80) were substantially and significantly underutilized, accounting for 0.89 percent of all firms and 0.21 percent of sales.
- ◆ American Indian and Alaska Native data was minimal and therefore did not allow for a proper analysis.
- ◆ Asian American firms (disparity index of 9.18) were substantially and significantly underutilized, accounting for 0.50 percent of all firms and 0.05 percent of sales.
- ◆ Hispanic American firms (disparity index of 46.94) were substantially and significantly underutilized, accounting for 0.29 percent of all firms and 0.15 percent of sales.
- ◆ Native Hawaiian and Pacific Islander firm data did not allow for a proper analysis.

There was a total of 24,977 professional, scientific, and technical services employer firms in the City of Richmond marketplace in 2012.

- ◆ African American firms (disparity index of 28.94) were substantially and significantly underutilized, accounting for 0.42 percent of all firms and 0.12 percent of sales.
- ◆ American Indian and Alaska Native data was minimal and therefore did not allow for a proper analysis.
- ◆ Asian American firms (disparity index of 7.24) were substantially and significantly underutilized, accounting for 0.68 percent of all firms and 0.05 percent of sales.
- ◆ Hispanic American firms (disparity index of 64.76) were substantially and significantly underutilized, accounting for 0.18 percent of all firms and 0.12 percent of sales.
- ◆ Native Hawaiian and Pacific Islander marketplace firm data did not allow for a proper analysis.



TABLE 6-3.  
PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 54, PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES  
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,  
CITY OF RICHMOND MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS <sup>1</sup> (#)	ALL FIRMS, SALES <sup>2</sup> (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	108,094	38,130,778	24,977	34,704,384
Nonminority Male	100,780	37,410,338	23,726	34,122,664
African American	966	81,089	106	42,617
American Indian and Alaska Native	0	0	0	0
Asian	542	17,552	170	17,110
Hispanic <sup>4</sup>	313	51,828	45	40,493
Native Hawaiian and Other Pacific Islander	0	0	0	0
PERCENTAGE OF MARKETPLACE				
All Firms	100.00%	100.00%	100.00%	100.00%
Nonminority Male	93.23%	98.11%	94.99%	98.32%
African American	0.89%	0.21%	0.42%	0.12%
American Indian and Alaska Native	0.00%	0.00%	0.00%	0.00%
Asian	0.50%	0.05%	0.68%	0.05%
Hispanic <sup>4</sup>	0.29%	0.14%	0.18%	0.12%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%	0.00%	0.00%
DISPARITY RATIOS <sup>3</sup>				
All Firms		100.00		100.00
Nonminority Male		105.23		103.51
African American		23.80		28.94
American Indian and Alaska Native		-		-
Asian		9.18		7.24
Hispanic <sup>4</sup>		46.94		64.76
Native Hawaiian and Other Pacific Islander		-		-

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup>Firms include employer and nonemployer firms since nonemployer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

<sup>2</sup>Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup>Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup>Hispanic firms are considered an ethnicity in this Census data and therefore may be double counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.



## NAICS Code 56: Administrative and Support and Waste Management and Remediation Services, City of Richmond Marketplace

**Table 6-4** shows the availability, sales, and disparity results for administrative, support, waste management, and remediation services (NAICS Code 56).

There were 65,423 administrative and support and waste management and remediation services firms (all firms) in the City of Richmond marketplace in 2012.

- ◆ African American firms (disparity index of 12.10) were substantially and significantly underutilized, accounting for 3.80 percent of all firms and 0.46 percent of sales.
- ◆ American Indian and Alaska Native firms (disparity index of 87.08) were underutilized, accounting for 0.05 percent of all firms and 0.04 percent of sales.
- ◆ Asian American firms (disparity index of 28.33) were substantially and significantly underutilized, accounting for 0.36 percent of all firms and 0.10 percent of sales.
- ◆ Hispanic American firms (disparity index of 10.94) were substantially and significantly underutilized, accounting for 1.07 percent of all firms and 0.12 percent of sales.
- ◆ Native Hawaiian and Pacific Islander marketplace firm data did not allow for a proper analysis.

There were 9,924 administrative and support and waste management and remediation services employer firms in the Richmond marketplace in 2012.

- ◆ African American firms (disparity index of 23.06) were substantially and significantly underutilized, accounting for 1.35 percent of all firms and 0.31 percent of sales.
- ◆ American Indian and Alaska Native firms (disparity index of 0.00) were substantially and significantly underutilized, accounting for 0.01 percent of all firms and 0.00 percent of sales.
- ◆ Asian American firms (disparity index of 0.00) were substantially and significantly underutilized, accounting for 0.13 percent of all firms and 0.00 percent of sales.
- ◆ Hispanic American firms (disparity index of 0.00) were substantially and significantly underutilized, accounting for 0.12 percent of all firms and 0.00 percent of sales.
- ◆ Native Hawaiian and Pacific Islander marketplace firm data did not allow for a proper analysis.



TABLE 6-4.  
PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 56, ADMINISTRATIVE AND SUPPORT/WASTE MANAGEMENT AND REMEDIATION SERVICES  
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,  
CITY OF RICHMOND MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS <sup>1</sup> (#)	ALL FIRMS, SALES <sup>2</sup> (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	65,423	12,992,608	9,924	11,955,617
Nonminority Male	58,157	12,587,592	9,366	11,643,376
African American	2,488	59,798	134	37,234
American Indian and Alaska Native	31	5,361	1	0
Asian	234	13,163	13	0
Hispanic <sup>4</sup>	697	15,143	12	0
Native Hawaiian and Other Pacific Islander	0	0	0	0
PERCENTAGE OF MARKETPLACE				
All Firms	100.00%	100.00%	100.00%	100.00%
Nonminority Male	88.89%	96.88%	94.38%	97.39%
African American	3.80%	0.46%	1.35%	0.31%
American Indian and Alaska Native	0.05%	0.04%	0.01%	0.00%
Asian	0.36%	0.10%	0.13%	0.00%
Hispanic <sup>4</sup>	1.07%	0.12%	0.12%	0.00%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%	0.00%	0.00%
DISPARITY RATIOS <sup>3</sup>				
All Firms		100.00		100.00
Nonminority Male		108.99		103.19
African American		12.10		23.06
American Indian and Alaska Native		87.08		0.00
Asian		28.33		0.00
Hispanic <sup>4</sup>		10.94		0.00
Native Hawaiian and Other Pacific Islander		-		-

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup>Firms include employer and nonemployer firms since nonemployer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

<sup>2</sup>Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup>Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup>Hispanic firms are considered an ethnicity in this Census data and therefore may be double counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.



## NAICS Code 81: Other Services (Except Public Administration), City of Richmond Marketplace

**Table 6-5** shows the availability, sales, and disparity results for NAICS Code other services (except public administration) (NAICS Code 81).

There were a total of 94,467 other services (except public administration) firms (all firms) in the Richmond marketplace in 2012.

- ◆ African American firms (disparity index of 17.74) were substantially and significantly underutilized, accounting for 4.09 percent of all firms and 0.72 percent of sales.
- ◆ American Indian and Alaska Native firms (disparity index of 0.00) were substantially and significantly underutilized, accounting for 0.05 percent of all firms and 0.00 percent of sales.
- ◆ Asian American firms (disparity index of 34.00) were substantially and significantly underutilized, accounting for 1.40 percent of all firms and 0.47 percent of sales.
- ◆ Hispanic American firms (disparity index of 14.84) were substantially and significantly underutilized, accounting for 0.66 percent of all firms and 0.10 percent of sales.
- ◆ Native Hawaiian or Pacific Islander marketplace firm data did not allow for a proper analysis.

There were 12,219 other services (except public administration) employer firms in the City of Richmond marketplace in 2012.

- ◆ African American firms (disparity index of 22.35) were substantially and significantly underutilized, accounting for 0.87 percent of all firms and 0.19 percent of sales.
- ◆ American Indian and Alaska Native firms (disparity index of 0.00) were substantially and significantly underutilized, accounting for 0.02 percent of all firms and 0.00 percent of sales.
- ◆ Asian American firms (disparity index of 27.63) were substantially and significantly underutilized, accounting for 23.90 percent of all firms and 10.64 percent of sales.
- ◆ Hispanic American firms (disparity index of 30.97) were substantially and significantly underutilized, accounting for 1.25 percent of all firms and 0.35 percent of sales.
- ◆ Native Hawaiian or Pacific Islander marketplace firm data did not allow for a proper analysis.



TABLE 6-5.  
PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 81, OTHER SERVICES (EXCEPT PUBLIC ADMINISTRATION)  
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,  
CITY OF RICHMOND MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS <sup>1</sup> (#)	ALL FIRMS, SALES <sup>2</sup> (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	94,467	8,740,835	12,219	6,919,623
Nonminority Male	81,866	8,370,271	11,285	6,764,631
African American	3,859	63,342	106	13,415
American Indian and Alaska Native	50	0	2	0
Asian	1,318	41,460	153	23,942
Hispanic <sup>4</sup>	628	8,625	42	7,630
Native Hawaiian and Other Pacific Islander	0	0	0	0
PERCENTAGE OF MARKETPLACE				
All Firms	100.00%	100.00%	100.00%	100.00%
Nonminority Male	86.66%	95.76%	92.36%	97.76%
African American	4.09%	0.72%	0.87%	0.19%
American Indian and Alaska Native	0.05%	0.00%	0.02%	0.00%
Asian	1.40%	0.47%	1.25%	0.35%
Hispanic <sup>4</sup>	0.66%	0.10%	0.34%	0.11%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%	0.00%	0.00%
DISPARITY RATIOS <sup>3</sup>				
All Firms		100.00		100.00
Nonminority Male		110.50		105.85
African American		17.74		22.35
American Indian and Alaska Native		0.00		0.00
Asian		34.00		27.63
Hispanic <sup>4</sup>		14.84		32.08
Native Hawaiian and Other Pacific Islander		-		-

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup>Firms include employer and nonemployer firms since nonemployer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

<sup>2</sup>Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup>Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup>Hispanic firms are considered an ethnicity in this Census data and therefore may be double counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.



### 6.2.3 SBO Conclusion

The SBO analysis shows consistent underutilization of MBE firms relative to their availability in the marketplace. The results suggest disparities exist in the broader private sector where the City conducts business and supports the idea that the City should maintain remedies to avoid passive participation in discrimination, irrespective of circumstances in the public sector.

Furthermore, the five procurement categories analyzed showed substantial and statistically significant disparities among defined MBE classes where sufficient data were available.

## 6.3 Private Sector Disparities in ABS Census Data

As described above, SBO data is a vital resource in helping to answer the overarching research question regarding the existence of disparities in the private sector and the specific question of whether these disparities exist in procurement categories relevant to the City contracting domain. A limitation of the SBO data is, of course, its age. In 2017, the Census Bureau replaced the SBO data with the American Business Survey (ABS). Essentially this dataset is the same as the SBO with one caveat. ABS data no longer provides information for all firms, only employer firms. This data is still valuable for determining more recent private sector disparities, but it excludes a sector usually dominated by smaller businesses that are the beneficiary of any MBE program.

As with the SBO data, ABS gathers and reports data on firms with paid employees, including workers on the payroll (employer firms). MGT calculated private sector disparity indices to examine whether MBE firms in any of these categories received a proportionate share of sales based on the availability of MBE firms. Disparity indices were reviewed for employer firms. It should be noted that all of the disparity indices in the ABS tables are statistically significant within a **95 percent** confidence interval. The same NAICS codes as the SBO analysis were analyzed for the ABS data and the same marketplace.

### 6.3.1 Results of Analysis

**Tables 6-6 through 6-10** show the measures of private sector disparities based on U.S. Census 2017 ABS data for the population of available firms in the City of Richmond marketplace by race, ethnicity, and gender for construction; wholesale trade; professional, scientific, and technical services; administrative and support and waste management and remediation services; and other services (except public administration). These disparities, as those calculated in the SBO analysis, are calculated similarly to how the disparities are calculated for the City's utilization and availability. In the private sector analysis, they are calculated by dividing the percentage of either All Firms or Employer Firms by All Firms Sales or Employer Firms Sales to get a disparity.

Based on the analysis of the U.S. Census, 2017 ABS data, overall, there remains a significant gap between the market share of MBE firms and their share of the City of Richmond marketplace business population, where data was available.



## NAICS Code 23: Construction, City of Richmond Marketplace

**Table 6-6** shows the construction availability, sales, and disparity results (NAICS Code 23).

There were 18,317 construction employer firms<sup>104</sup> in the City of Richmond marketplace in 2017.

- ◆ African American firms (disparity index of 60.39) were substantially underutilized, accounting for 2.56 percent of all firms and 1.54 percent of sales.
- ◆ American Indian and Alaska Native firms (disparity index of 45.49) were substantially and significantly underutilized, accounting for 0.29 percent of all firms and 0.13 percent of sales.
- ◆ Asian American firms (disparity index of 45.47) were substantially and significantly underutilized, accounting for 3.23 percent of all firms and 1.47 percent of sales.
- ◆ Hispanic American firms (disparity index of 30.68) were substantially and significantly underutilized, accounting for 11.78 percent of all firms and 3.61 percent of sales.
- ◆ Native Hawaiian and Pacific Islander firm data did not allow for a proper analysis.

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<sup>104</sup> Employer firms include firms with payroll at any time during 2017.



TABLE 6-6.  
PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 23, CONSTRUCTION  
U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,  
CITY OF RICHMOND MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	18,317	63,140,001
Nonminority Male	12,614	54,562,202
African American	468	974,283
American Indian and Alaska Native	53	83,101
Asian	592	927,958
Hispanic <sup>4</sup>	2,158	2,282,485
Native Hawaiian and Other Pacific Islander	0	0
PERCENTAGE OF MARKETPLACE		
All Firms	100.00%	100.00%
Nonminority Male	68.86%	86.41%
African American	2.56%	1.54%
American Indian and Alaska Native	0.29%	0.13%
Asian	3.23%	1.47%
Hispanic <sup>4</sup>	11.78%	3.61%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
DISPARITY RATIOS <sup>3</sup>		
All Firms		100.00
Nonminority Male		125.48
African American		60.39
American Indian and Alaska Native		45.49
Asian		45.47
Hispanic <sup>4</sup>		30.68
Native Hawaiian and Other Pacific Islander		-

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

<sup>1</sup> Employer firms include firms with payroll at any time during 2017.

<sup>2</sup> Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup> Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup> Hispanic firms are considered an ethnicity in this Census data and therefore may be double counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.



## NAICS Code 42: Wholesale Trade, City of Richmond Marketplace

**Table 6-7** shows wholesale trade availability, sales, and disparity results (NAICS Code 42).

There were 4,831 wholesale trade employer firms in the City of Richmond’s marketplace in 2017.

- ◆ African American firms (disparity index of 64.94) were substantially and significantly underutilized, accounting for 1.43 percent of all firms and 0.93 percent of sales.
- ◆ American Indian and Alaska Native firm data did not allow for a proper analysis.
- ◆ Asian American firms (disparity index of 19.96) were substantially and significantly underutilized, accounting for 9.42 percent of all firms and 1.88 percent of sales.
- ◆ Hispanic American firm data did not allow for a proper analysis.
- ◆ Native Hawaiian and Pacific Islander firm data did not allow for a proper analysis.



TABLE 6-7.  
PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 42, WHOLESALE TRADE  
U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,  
CITY OF RICHMOND MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	4,831	89,512,950
Nonminority Male	3,351	82,219,088
African American	69	830,270
American Indian and Alaska Native	0	0
Asian	455	1,683,060
Hispanic <sup>4</sup>	0	0
Native Hawaiian and Other Pacific Islander	0	0
PERCENTAGE OF MARKETPLACE		
All Firms	100.00%	100.00%
Nonminority Male	69.36%	91.85%
African American	1.43%	0.93%
American Indian and Alaska Native	0.00%	0.00%
Asian	9.42%	1.88%
Hispanic <sup>4</sup>	0.00%	0.00%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
DISPARITY RATIOS <sup>3</sup>		
All Firms		100.00
Nonminority Male		132.42
African American		64.94
American Indian and Alaska Native		-
Asian		19.96
Hispanic <sup>4</sup>		-
Native Hawaiian and Other Pacific Islander		-

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

<sup>1</sup> Employer firms include firms with payroll at any time during 2017.

<sup>2</sup> Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup> Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup> Hispanic firms are considered an ethnicity in this Census data and therefore may be double counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.



## NAICS Code 54: Professional, Scientific, and Technical Services, City of Richmond Marketplace

**Table 6-8** shows the availability, sales, and disparity results for professional, scientific, and technical services (NAICS Code 54).

There was a total of 45,338 professional, scientific, and technical services employer firms in the City of Richmond marketplace in 2017.

- ◆ African American firms (disparity index of 54.71) were substantially and significantly underutilized, accounting for 4.05 percent of all firms and 2.21 percent of sales.
- ◆ American Indian and Alaska Native firms (disparity index of 50.33) were substantially and significantly underutilized, accounting for 0.42 percent of all firms and 0.21 percent of sales.
- ◆ Asian American firms (disparity index of 57.61) were substantially and significantly underutilized, accounting for 11.45 percent of all firms and 6.60 percent of sales.
- ◆ Hispanic American firms (disparity index of 66.52) were substantially and significantly underutilized, accounting for 2.32 percent of all firms and 1.55 percent of sales.
- ◆ Native Hawaiian and Pacific Islander firm data not allow for a proper analysis.



TABLE 6-8.  
PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 54, PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES  
U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,  
CITY OF RICHMOND MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	23,014	33,107,606
Nonminority Male	22,700	33,006,024
African American	1,834	3,871,042
American Indian and Alaska Native	191	370,908
Asian	5,191	11,538,899
Hispanic <sup>4</sup>	1,053	2,702,714
Native Hawaiian and Other Pacific Islander	0	0
PERCENTAGE OF MARKETPLACE		
All Firms	100.00%	100.00%
Nonminority Male	61.74%	80.95%
African American	4.05%	2.21%
American Indian and Alaska Native	0.42%	0.21%
Asian	11.45%	6.60%
Hispanic <sup>4</sup>	2.32%	1.55%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
DISPARITY RATIOS <sup>3</sup>		
All Firms		100.00
Nonminority Male		131.11
African American		54.71
American Indian and Alaska Native		50.33
Asian		57.61
Hispanic <sup>4</sup>		66.52
Native Hawaiian and Other Pacific Islander		-

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

<sup>1</sup> Employer firms include firms with payroll at any time during 2017.

<sup>2</sup> Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup> Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup> Hispanic firms are considered an ethnicity in this Census data and therefore may be double counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.



## NAICS Code 56: Administrative and Support and Waste Management and Remediation Services, City of Richmond Marketplace

**Table 6-9** shows the availability, sales, and disparity results for administrative and support and waste management and remediation services (NAICS Code 56).

There were 12,150 administrative and support and waste management and remediation services employer firms in the City of Richmond marketplace in 2017.

- ◆ African American firms (disparity index of 75.11) were substantially and significantly underutilized, accounting for 5.65 percent of all firms and 4.24 percent of sales.
- ◆ American Indian and Alaska Native firms (disparity index of 17.60) were substantially and significantly underutilized, accounting for 0.63 percent of all firms and 0.11 percent of sales.
- ◆ Asian American firms (disparity index of 78.30) were substantially and significantly underutilized, accounting for 3.27 percent of all firms and 2.56 percent of sales.
- ◆ Hispanic American firms (disparity index of 51.00) were substantially and significantly underutilized, accounting for 8.95 percent of all firms and 4.56 percent of sales.
- ◆ Native Hawaiian and Pacific Islander marketplace firm data did not allow for a proper analysis.



TABLE 6-9.  
PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 56, ADMINISTRATIVE AND SUPPORT/WASTE MANAGEMENT AND REMEDIATION SERVICES  
U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,  
CITY OF RICHMOND MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	12,150	33,094,401
Nonminority Male	7,493	24,948,748
African American	686	1,403,376
American Indian and Alaska Native	76	36,427
Asian	397	846,652
Hispanic <sup>4</sup>	1,087	1,510,001
Native Hawaiian and Other Pacific Islander	0	0
PERCENTAGE OF MARKETPLACE		
All Firms	100.00%	100.00%
Nonminority Male	61.67%	75.39%
African American	5.65%	4.24%
American Indian and Alaska Native	0.63%	0.11%
Asian	3.27%	2.56%
Hispanic <sup>4</sup>	8.95%	4.56%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
DISPARITY RATIOS <sup>3</sup>		
All Firms		100.00
Nonminority Male		122.24
African American		75.11
American Indian and Alaska Native		17.60
Asian		78.30
Hispanic <sup>4</sup>		51.00
Native Hawaiian and Other Pacific Islander		-

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

<sup>1</sup> Employer firms include firms with payroll at any time during 2017.

<sup>2</sup> Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup> Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup> Hispanic firms are considered an ethnicity in this Census data and therefore may be double counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.



## NAICS Code 81: Other Services (Except Public Administration), City of Richmond Marketplace

**Table 6-10** shows the availability, sales, and disparity results for NAICS Code other services (except public administration) (NAICS Code 81).

There were 13,744 other services (except public administration) employer firms in the City of Richmond marketplace in 2017.

- ◆ African American firms (disparity index of 55.43) were substantially and significantly underutilized, accounting for 3.30 percent of all firms and 1.83 percent of sales.
- ◆ American Indian and Alaska Native marketplace firm data was minimal and therefore did not allow for a proper analysis.
- ◆ Asian American firms (disparity index of 74.35) were substantially and significantly underutilized, accounting for 16.28 percent of all firms and 12.10 percent of sales.
- ◆ Hispanic American firms (disparity index of 55.87) were substantially and significantly underutilized, accounting for 3.56 percent of all firms and 1.99 percent of sales.
- ◆ Native Hawaiian or Pacific Islander marketplace firm data did not allow for a proper analysis.



TABLE 6-10.  
PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 81, OTHER SERVICES (EXCEPT PUBLIC ADMINISTRATION)  
U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,  
CITY OF RICHMOND MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	13,744	9,240,153
Nonminority Male	7,366	6,148,649
African American	454	169,178
American Indian and Alaska Native	0	0
Asian	2,237	1,118,173
Hispanic <sup>4</sup>	489	183,687
Native Hawaiian and Other Pacific Islander	0	0
PERCENTAGE OF MARKETPLACE		
All Firms	100.00%	100.00%
Nonminority Male	53.59%	66.54%
African American	3.30%	1.83%
American Indian and Alaska Native	0.00%	0.00%
Asian	16.28%	12.10%
Hispanic <sup>4</sup>	3.56%	1.99%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
DISPARITY RATIOS <sup>3</sup>		
All Firms		100.00
Nonminority Male		124.16
African American		55.43
American Indian and Alaska Native		-
Asian		74.35
Hispanic <sup>4</sup>		55.87
Native Hawaiian and Other Pacific Islander		-

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

<sup>1</sup> Employer firms include firms with payroll at any time during 2017.

<sup>2</sup> Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup> Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup> Hispanic firms are considered an ethnicity in this Census data and therefore may be double counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.



### 6.3.2 ABS Conclusion

Like the SBO analysis, the ABS analysis shows consistent underutilization of MBE firms relative to their availability in the marketplace. These results provide evidence that disparities exist in the broader private sector, thus supporting the need for the City of Richmond to maintain remedies to avoid passive participation in discrimination, irrespective of circumstances in the public sector.

As with the SBO results, the ABS results for each of the five procurement categories analyzed showed substantial disparity among defined MBE classes where sufficient data were available.

## 6.4 Analysis of Race, Ethnicity, and Gender Effects on Self-Employment and Earnings

This section examines further evidence regarding the overarching research question of whether business discrimination exists in the private sector and addresses three more specific questions:

1. *Does racial, ethnic, and gender status impact individual wages even after controlling for differences among firms?*
2. *Does racial, ethnic, and gender status impact business owner earnings even after controlling for differences among firms?*
3. *Are racial, ethnic, and gender minority groups less likely than nonminority males (non-MBEs) to be self-employed after controlling for differences? If so, does race, ethnicity, or gender have a role in the disparity?*
4. *If minority-owned business enterprises (MBEs) and nonminority male-owned firms shared similar traits and marketplace “conditions” (i.e., similar “rewards” in terms of capital, wages, earning, etc.), what would be the effect on rates of self-employment by race, ethnicity, and gender?*

Answers to these questions are achieved by examining the effects of race, ethnicity, and gender, alongside controls for individual economic and demographic characteristics, on individuals’ participation in the private sector as self-employed business operators and the effects of these variables on individuals’ wages and business-owner earnings. Any negative and statistically significant effects by race, ethnicity, and gender found in the model after individual economic and demographic characteristics are controlled for would be consistent with business-related discrimination. The analysis is targeted to five categories of private sector business activity (Construction, Architecture & Engineering, Professional Services, Goods & Services, and all categories combined) that generally align with City’s procurement categories defined for the study.

Adopting the methodology and variables employed by a City of Denver disparity study (see *Concrete Works v. City and County of Denver*<sup>105</sup>), MGT used Public Use Microdata Samples (PUMS) data derived from the 2016-2020 American Community Survey (ACS) to which MGT applied appropriate regression statistics to draw conclusions. The ACS is an ongoing survey covering the same type of information collected in the decennial census. The ACS is sent to approximately 3.5 million addresses annually, including housing units in all counties within the 50 States and the District of Columbia. The PUMS file from the ACS contains

<sup>105</sup> *Concrete Works of Colo. v. City & Cnty. of Denver*, 321 F.3d 950, 967 (10th Cir. 2003).



records for a subsample of the full ACS. The data used for the regression analyses are the multi-year estimates combining 2016 through 2020 ACS PUMS records. The combined file contains over six million person-level records. The 2016-2020 ACS PUMS data provides a full range of population and housing information collected in the annual ACS and the decennial census.

### 6.4.1 Links to Business Formation and Maintenance

Economics research consistently finds group differences by race, ethnicity, and gender in business formation rates.<sup>106</sup> MGT knows, for instance, that most minorities have a lower median age than nonminority males (ACS PUMS, 2016-2020). In general, the likelihood of being self-employed increases with age (ACS PUMS, 2016-2020). Examining these variables within the context of a disparity study seeks to control for these other important demographic and economic variables in conjunction with race, ethnicity, and gender – since they also influence group rates of business formation. Through the analyses, MGT can determine whether inequities specific to minorities are demonstrably present to warrant consideration of public sector remedies. Questions about marketplace dynamics affecting self-employment— or, more specifically, the odds of forming one’s own business and then excelling (i.e., generate earnings growth)— are at the heart of disparity analysis research.

### 6.4.2 Statistical Models and Methods

MGT employed two multivariate regression techniques to answer the research questions identified for this section: (1) logistic regression and (2) linear regression. Logistic regression is an econometric method that allows for analyzing dichotomous dependent variables. The results can then be translated into log-likelihoods that examine how likely one variable is to be true compared to another variable. Linear regression is an econometric method that helps explain the linear relationship between the dependent and independent variables – how substantially and in what direction each independent variable influences the dependent variable. This will help analyze the direct impact of being part of a specific minority or gender group on earnings.

To understand the appropriate application of these regression techniques, it is helpful to explore the variables inherent in these questions in greater detail. Two general categories of variables are employed in the regression techniques: (1) dependent variables and (2) independent variables.

- ◆ Dependent variables are the phenomena to be explained by influences such as age, race, gender, and disability status (i.e., the independent or “explanatory” variables).
- ◆ The first dependent variable is individual wages, a continuous variable with many possible values. A simple linear regression is used to analyze this variable.
- ◆ The second dependent variable is self-employment business earnings, a continuous variable with many possible values. A simple linear regression is used to analyze this variable.
- ◆ The third dependent variable is the probability of self-employment status, which is a binary, categorical variable based on two possible values: 0 (not self-employed) versus 1

<sup>106</sup> See Journal of Econometrics, Vol. 61, Issue 1, devoted entirely to the econometrics of labor market discrimination and segregation.



(self-employed). Logistic regression is appropriately used to perform an analysis in which the dependent variable is binary and categorical. This technique was employed to analyze self-employment.<sup>107</sup>

- ◆ For each analysis, several specifications were conducted. The first specification looked at the impact of race, ethnicity, and gender on individuals from the national level. The second and third specifications examined whether race, ethnicity, and gender significantly impacted individuals in the Richmond market more than at the national level. The results presented in this chapter are specific to the City of Richmond marketplace. Full specification results can be found in **Appendix D**.

### 6.4.3 The Influences of Race, Ethnicity, and Gender on Individual Wages

To explore whether there are any measurable impacts on wages, MGT compared minority nonbusiness owner wages to those of nonminority males in the City of Richmond marketplace when the effect of other demographic and economic characteristics was controlled. Holding all other personal characteristics constant, if minority wage earners cannot achieve comparable wages due to discrimination as their nonminority counterparts, then they are not able to save the necessary capital to start their own businesses. MGT was able to examine the wages of individuals of similar education levels, ages, etc., to permit comparisons more purely by race, ethnicity, and gender.

First, MGT derived a set of independent variables known to predict wages, including:

- ◆ **Race and Gender:** African American, Asian American, Hispanic American, Native American, nonminority woman, nonminority males.
- ◆ **Availability of Capital:** Homeownership, home value, mortgage rate, unearned income, residual income.
- ◆ **Marital Status.**
- ◆ **Ability to Speak English Well.**
- ◆ **Disability Status:** From individuals' reports of health-related disabilities.
- ◆ **Age and Age Squared:** Squaring the age variable acknowledges the positive, curvilinear relationship between each year of age and earnings.
- ◆ **Owner's Level of Education.**
- ◆ **Residing in the Richmond Marketplace.**

MGT used 2016-2020 wages from employment for the dependent variable, as reported in the 5 percent PUMS data.

This analysis examined the statistical effects of these variables on wages for nonbusiness employees in the City of Richmond marketplace. As the linear regression analysis yielded, each number in **Table 6-11**

<sup>107</sup> Logistical regression, or logit, models generate predicted probabilities that are almost identical to those calculated by a probit procedure, used in *Concrete Works v. City and County of Denver* case. Logit, however, has the added advantage of dealing more effectively with observations at the extremes of a distribution. For a complete explanation, see *Interpreting Probability Models* (T.F. Liao, Text 101 in the Sage University series).



represents a percent change in earnings associated with introducing the variable (business ownership classification) in the left-hand column. For example, across all industries, the adjustment factor for an African American is -0.353, meaning that an African American would be predicted to earn 35 percent less than a nonminority male, all other variables considered or controlled for. Complete results of linear regression outputs can be found in **Appendix D**. Specifically:

- ◆ In construction, the negative disparity differences ranged from -11 percent for Hispanic Americans to -28 percent for African Americans.
- ◆ In architecture & engineering, the negative disparity differences ranged from -12 percent for Other races to -17 percent for Native Americans.
- ◆ In professional services, the negative disparity differences ranged from -22 percent for Asians to -35 percent for African Americans.
- ◆ In goods & services, the negative disparity differences ranged from -22 percent for Hispanic Americans to -34 percent for African Americans.

The findings provide further positive evidence that disparities exist in the private sector of Richmond's marketplace, compelling the continuation of remedies in the domain of the government's influence. The findings also provide affirmative evidence to the more specific questions regarding impacts on wages, demonstrating that racial, ethnic, and gender minority groups earn less wages than their nonminority male counterparts, all variables considered.

TABLE 6-11.

WAGES ELASTICITIES OF MINORITY GROUPS RELATIVE TO NONMINORITY MALES AFTER CONTROLLING FOR DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

WAGES	TOTAL	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	GOODS & SERVICES
AFRICAN AMERICAN	-34%***	-28%***	-18%***	-35%***	-34%***
ASIAN AMERICAN	-27%***	-22%***	-16%***	-22%***	-34%***
HISPANIC AMERICAN	-24%***	-11%***	-15%***	-32%***	-21%***
NATIVE AMERICAN	-24%***	-16%***	-27%***	-27%***	-26%***
MBE	-26%***	-21%***	-23%***	-36%***	-26%***

Source: PUMS data from 2016-2020 American Community Survey (City's marketplace) and MGT Consulting Group, LLC, calculations using SPSS Statistics software.

\*\*\* indicates a significant adverse disparity at the 15% level or better (85% confidence). \*\* indicates the disparity is significant at a 10% level or better (90% confidence). \*\*\*\* indicates significance at a 5% level or better (95% confidence).

The regression "elasticity" means the percent change resulting from being a member of one of the MBE groups.

## 6.4.4 The Influences of Race, Ethnicity, and Gender on Business Owner Earnings

To explore whether there are any measurable impacts on business owner earnings, MGT compared minority business owner earnings to those of nonminority males in the Richmond marketplace when the effect of other demographic and economic characteristics was controlled or neutralized. Holding all other personal characteristics constant, if minority business owners cannot achieve comparable earnings from their businesses as similarly situated nonminorities because of discrimination, then failure rates for MBEs



will naturally be higher, and MBE formation rates will be lower. MGT was able to examine the earnings of business owners of similar education levels, ages, etc., to permit comparisons more purely by race, ethnicity, and gender.

MGT utilized the same model specifications as outlined for wages in this linear regression model. MGT used the dependent variable's 2016-2020 earnings from business owners, as reported in the 5 percent PUMS data.

This analysis examined the statistical effects of the controlled variables on earnings for business owners in the Richmond marketplace. As the linear regression analysis yielded, each number in **Table 6-12** represents a percent change in earnings associated with introducing the variable (business ownership classification) in the left-hand column. For example, across all industries, the adjustment factor for an Asian American is -0.206, meaning that an Asian American would be predicted to earn 21 percent less than a nonminority male, all other variables considered or controlled for. Specifically:

- ◆ In construction, the negative disparity differences ranged from -17 percent for African Americans to -24 percent for Asian Americans.
- ◆ In architecture & engineering, the negative disparity differences ranged from -6 percent for Hispanic Americans to -23 percent for Asian Americans.
- ◆ In professional services, the negative disparity differences ranged from -19 percent for Hispanic Americans to -31 percent for African Americans.
- ◆ In goods & services, the negative disparity differences ranged from -10 percent for Native Americans to -17 percent for Hispanic Americans.

As with individual wages, business owner earnings overall in the Richmond marketplace provide consistent evidence that disparities exist in the private sector, indicating marketplace discrimination against MBEs when all other variables are controlled for.

TABLE 6-12.

BUSINESS EARNINGS ELASTICITIES OF MINORITY GROUPS RELATIVE TO NONMINORITY MALES AFTER CONTROLLING FOR DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

BUSINESS EARNINGS	TOTAL	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	GOODS & SERVICES
AFRICAN AMERICAN	-17%***	-17%***	-19%***	-30%***	-14%***
ASIAN AMERICAN	-21%***	-24%***	22%***	-30%*	-15%***
HISPANIC AMERICAN	-18%***	-19%***	-12%***	-19%***	-17%***
NATIVE AMERICAN	-17%***	-22%***	-6%***	-29%***	-10%***
MBE	-31%***	-22%***	-26%***	-31%***	-42%***

Source: PUMS data from 2016-2020 American Community Survey (The City marketplace) and MGT Consulting Group, LLC, calculations using SPSS Statistics software.

“\*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “\*\*\*” indicates the disparity is significant at a 10% level or better (90% confidence). “\*\*\*\*” indicates significance at a 5% level or better (95% confidence).

The regression “elasticity” means the percent change resulting from being a member of one of the MBE groups.



## 6.4.5 The Influences of Race, Ethnicity, and Gender on Self-Employment

As noted in the wages and business earnings analyses, discrimination that negatively affects the wages and entrepreneurial earnings of minorities and women will negatively affect the number of businesses formed by these groups as well. MGT used the 2016-2020 U.S. Census ACS 5 percent PUMS data to derive a set of variables known to predict employment status (self-employed/not self-employed). Logistic regression was used to calculate the probability of being self-employed (the dependent variable) based on selected socioeconomic and demographic characteristics with the potential to influence the likelihood of self-employment. The sample for the analysis was limited to labor force participants who met the following criteria:

- ◆ A resident of the Richmond marketplace.
- ◆ Self-employed in construction, architecture & engineering, professional services, or goods and services.
- ◆ Employed full-time (more than 35 hours a week).
- ◆ Eighteen years of age or older.
- ◆ Employed in the private sector.

Next, MGT derived the following variables<sup>108</sup> hypothesized as predictors of employment status:

- ◆ **Race and Gender:** African American, Asian American, Hispanic American, Native American, nonminority woman, nonminority male.
- ◆ **Availability of Capital:** Homeownership, home value, mortgage rate, unearned income, residual income.
- ◆ **Marital Status.**
- ◆ **Ability to Speak English Well.**
- ◆ **Disability Status:** From individuals' reports of health-related disabilities.
- ◆ **Age and Age Squared:** Squaring the age variable acknowledges the positive, curvilinear relationship between each year of age and earnings.
- ◆ **Owner's Level of Education.**
- ◆ **Number of Individuals Over the Age of 65 Living in Household.**
- ◆ **Number of Children Under the Age of 18 Living in Household.**

**Table 6-13** summarizes the business ownership formation rates in the United States and in the Richmond marketplace by race, ethnicity, and gender. Additionally, it compares the differences in formation rates of MBEs to non-MBEs. For example, African Americans in the Richmond marketplace have a formation rate of 1.60 percent compared to 7.33 percent for their non-MBE counterparts. Thus

<sup>108</sup> The variables used in this analysis were modeled after those incorporated in the same analysis from *Concrete Works v. City and County of Denver*.



the formation rate for African Americans in the Richmond marketplace is 78.14 percent lower than non-MBEs  $((1.60 - 7.33)/7.33)$ .

TABLE 6-13.  
SELF-EMPLOYMENT FORMATION RATES

TOTALS			
	US	RICHMOND	DIFFERENCE FROM NON-MBE (RICHMOND)
AFRICAN AMERICAN	5.42%	1.60%	-78.14%
ASIAN AMERICAN	6.72%	6.57%	-10.33%
HISPANIC AMERICAN	11.00%	11.80%	61.10%
NATIVE AMERICAN	9.13%	0.00%	-100.00%
MBE	7.83%	3.01%	-58.87%
CONSTRUCTION			
	US	RICHMOND	DIFFERENCE FROM NON-MBE (RICHMOND)
AFRICAN AMERICAN	16.68%	12.31%	-6.79%
ASIAN AMERICAN	23.78%	32.84%	148.62%
HISPANIC AMERICAN	17.98%	14.22%	7.64%
NATIVE AMERICAN	18.96%	22.35%	69.18%
MBE	18.16%	15.13%	14.51%
A&E			
	US	RICHMOND	DIFFERENCE FROM NON-MBE (RICHMOND)
AFRICAN AMERICAN	5.97%	3.82%	-50.51%
ASIAN AMERICAN	6.25%	2.66%	-65.53%
HISPANIC AMERICAN	8.09%	5.64%	-26.98%
NATIVE AMERICAN	5.76%	0.00%	-100.00%
MBE	6.99%	3.89%	-49.69%



PROFESSIONAL SERVICES			
	US	RICHMOND	DIFFERENCE FROM NON-MBE (RICHMOND)
AFRICAN AMERICAN	4.92%	1.70%	-75.21%
ASIAN AMERICAN	5.49%	2.82%	-58.84%
HISPANIC AMERICAN	9.91%	8.52%	24.44%
NATIVE AMERICAN	5.80%	0.00%	-100.00%
MBE	6.77%	2.53%	-62.99%
GOODS & SERVICES			
	US	RICHMOND	DIFFERENCE FROM NON-MBE (RICHMOND)
AFRICAN AMERICAN	3.33%	0.82%	-81.48%
ASIAN AMERICAN	4.78%	9.26%	109.41%
HISPANIC AMERICAN	11.40%	16.11%	264.22%
NATIVE AMERICAN	8.49%	0.00%	-100.00%
MBE	6.35%	2.62%	-40.82%

Source: PUMS data from 2016-2020 American Community Survey (Richmond marketplace) and MGT Consulting Group LLC, calculations using SPSS Statistics software.

To test the impact that race, ethnicity, and gender have on the self-employment rates, the logistics regression analysis examined the statistical effects of these variables on being self-employed in the Richmond marketplace. The results in **Table 6-14** indicate the percentage difference between the probability of business ownership for a given race, ethnicity, or gender group compared to similarly situated nonminority males. For example, African Americans in the construction industry have a business formation rate of 51 percent lower than expected in a race-, ethnicity-, and gender-neutral market area. The results in the following tables present rates for the groups after variables such as age and education have been controlled for. Results of logistic regression can be found in **Appendix D**.



TABLE 6-14.  
SELF-EMPLOYMENT PERCENT DIFFERENCES CONTROLLING FOR  
DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

SELF-EMPLOYMENT PERCENT CHANGES	TOTAL	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	GOODS & SERVICES
AFRICAN AMERICAN	-69%***	-51%***	-37%***	-96%***	-97%***
ASIAN AMERICAN	-42%***	-46%***	-44%***	-67%***	-29%***
HISPANIC AMERICAN	-56%***	-53%***	-12%***	-68%***	-77%***
NATIVE AMERICAN	-64%***	-62%***	-8%	-91%***	-47%***
MBE	-56%***	-53%***	-25%***	-80%***	-87%***

Source: PUMS data from 2016-2020 American Community Survey (Richmond marketplace) and MGT Consulting Group, LLC, calculations using SPSS Statistics software.

“\*” indicates a significant adverse disparity at the 15% level or better (85% confidence). “\*\*\*” indicates the disparity is significant at a 10% level or better (90% confidence). “\*\*\*\*” indicates significance at a 5% level or better (95% confidence).

These findings demonstrate that minorities and women, in general, are statistically significantly less likely to own their businesses than expected based upon their observable demographic characteristics, including age, education, geographic location, industry, and trends over time. Additionally, as with wage and business earnings, these groups are at a significant disadvantage to nonminority males whether they work as wage and salary employees or as entrepreneurs. These findings are consistent with results that would be observed in a discriminatory market area.

#### 6.4.6 Disparities in Rates of Self-Employment

The analyses of self-employment rates and 2016-2020 ACS self-employment earnings revealed general disparities, consistent with business market discrimination, between minority and nonminority self-employed individuals whose businesses were located in the Richmond marketplace. **Table 6-15** presents the results of observed formation rates vs. expected formation rates from the logistics regression. Column A presents the observed rates as seen in **Table 6-13**. Column B is calculated using the regression results and adjusting the observed rates accordingly. For example, for a Hispanic American in professional services, the percentage difference compared to a nonminority male controlling for all other variables is 68 percent, indicating that the expected self-employment rate for a Hispanic American should be 68 percent higher than what is observed (8.52 percent) or 14.30 percent. Column C is the disparity ratio between observed rates and expected rates.



TABLE 6-15.  
OBSERVED AND PREDICTED SELF-EMPLOYMENT RATES  
RICHMOND MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	OBSERVED SELF-EMPLOYMENT RATES (A)	EXPECTED SELF-EMPLOYMENT RATES (B)	DISPARITY RATIO (C)
Overall			
African American Firms	1.60%	2.71%	59
Asian American Firms	6.57%	5.64%	
Hispanic American Firms	11.80%	18.37%	64
Native American Firms	0.00%	0.00%	
MBE Firms	3.01%	4.33%	70
Construction			
African American Firms	4.89%	7.40%	66
Asian American Firms	21.61%	31.60%	68
Hispanic American Firms	37.87%	57.81%	65
Native American Firms	0.00%	0.00%	
MBE Firms	7.80%	11.64%	67
Architecture & Engineering			
African American Firms	3.82%	5.21%	73
Asian American Firms	2.66%	3.82%	70
Hispanic American Firms	5.64%	6.30%	90
Native American Firms	0.00%	0.00%	
MBE Firms	3.89%	5.07%	77
Professional Services			
African American Firms	1.70%	3.32%	51
Asian American Firms	2.82%	4.69%	60
Hispanic American Firms	8.52%	14.30%	60
Native American Firms	0.00%	0.00%	
MBE Firms	2.53%	4.57%	55
Goods & Services			
African American Firms	0.82%	1.61%	51
Asian American Firms	9.26%	2.84%	
Hispanic American Firms	16.11%	9.79%	
Native American Firms	0.00%	0.00%	
MBE Firms	2.62%	3.37%	78

Source: PUMS data from 2016-2020 American Community Survey (Richmond marketplace) and MGT Consulting Group, LLC, calculations using SPSS Statistics software.

The findings provide evidence that for MBEs, discriminatory barriers exist to achieving the same level of self-employment rates as their non-MBE counterparts. The results further show that discriminatory marketplace factors are the cause of these differences in several instances.



## 6.5 Access to Credit

As noted throughout this chapter, discrimination occurs when different outcomes occur for individuals of different races, ethnicities, and gender after holding all of the personal characteristics constant. This might happen in private and public labor markets when equally productive individuals in similar jobs are paid different wages because of their race, ethnicity, or gender. In credit markets, it might occur when loan approvals differ across racial or gender groups with otherwise similar financial backgrounds. In this chapter, MGT examined whether there is evidence consistent with the presence of discrimination in the private sector against MBE businesses. Discrimination in the credit market against MBEs can significantly affect the likelihood that they will form and succeed, negatively impacting the business's size and longevity.

This section summarizes some national analyses about credit disparities and thus offers illustrative evidence of MBE firms' barriers to accessing credit. This information provides guidance to the results provided throughout the private-sector analysis.

### 6.5.1 Minority Business Development Agency

The U.S. Department of Commerce, Minority Business Development Agency published a report in January 2010 entitled, *"Disparities in Capital Access between Minority and Non-Minority-Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs."* Findings highlighted that access to affordable credit remains one of the main impediments to minority-owned firm growth.

General findings show that minority-owned businesses: pay higher interest rates on loans, are more likely to be denied credit, and are less likely to apply for loans because they fear their applications will be rejected.

- ◆ Among high sales firms, 52% of nonminority firms received loans compared with 41% of minority firms.
- ◆ The average loan amount for all high sales minority firms was \$149,000. The nonminority average was more than twice this amount at \$310,000.
- ◆ Among firms with gross receipts under \$500,000, loan denial rates for minority firms were about three times higher, at 42%, compared to those of non-minority-owned firms, at 16%.
- ◆ Among firms with gross receipts under \$500,000, 33% of minority firms did not apply for loans because of fear of rejection compared to 17% of nonminority firms.
- ◆ For all firms, minority firms paid 7.8% on average for loans compared with 6.4% for nonminority firms.



## 6.5.2 The Federal Reserve Small Business Credit Survey

The Small Business Credit Survey (SBCS) is a national collaboration of the 12 Reserve Banks of the Federal Reserve System<sup>109</sup>. This survey has been conducted annually since 2015. Survey responses are collected from firms throughout the United States. While statistics are provided regarding how many responses are from each census region and division<sup>110</sup>, the data provided online does not report race by division. The reports vary somewhat from year to year. For example, the 2016 reports include specific reports for minority; and the 2018 reports included one regarding disaster-affected firms. Overall, each year's report documents that minority-owned firms, particularly Black-owned firms, have less access to credit and pay more for credit than similarly situated white-owned firms. Data from four consecutive years documents the continuing challenge that minority-owned firms, particularly Black-owned firms, face regarding access to, and cost of, credit. Summary information from reports for employer firms is provided below.<sup>111</sup>

### SBCS 2016

#### Report on Minority-Owned Firms

The 2016 SBCS fielded in Q3 and Q4 2016 yielded 7,916 responses from employer firms with race/ethnicity information in 50 states and the District of Columbia.

- ◆ Black-owned firm application rates for new funding are ten percentage points higher than White-owned firms, but their approval rates are 19 percentage points lower.
- ◆ 40% of Black-owned firms did not apply for financing because they were discouraged (i.e., they did not think they would be approved), compared with 14% of White-owned firms.
- ◆ Looking at just firms approved for at least some financing, when comparing minority- and nonminority-owned firms with good credit scores, 40% of minority-owned firms received the total amount sought compared to 68% of nonminority-owned firms.
- ◆ Black-owned firms report more credit availability challenges (58% vs. 32%) and difficulty obtaining funds for expansion (62% vs. 31%) than White-owned firms.

### SBCS 2017

#### Report on Employer Firms

Fielded in Q3 and Q4 2017, the survey yielded 8,169 responses from small employer firms in the 50 states and the District of Columbia.

- ◆ Minority-owned firms report higher rates of financial challenges in the previous 12 months due to lack of credit availability than White-owned firms.
  - For firms with revenues less than \$1M, Black-owned firms (58%) reported financial challenges at twice the rate of white-owned firms (32%) (Asian 42%, Hispanic 45%).

<sup>109</sup> The survey methodology provides for sample weighting to adjust for any sampling biases; race, ethnicity, and gender imputation by using statistical models to capture missing data; comparisons and adjustments to past reports; and credibility intervals to aide in survey estimates.

<sup>110</sup> Census regions and divisions are areas delineated for the purposes of statistical analysis and presentation.

<sup>111</sup> Source: Small Business Credit Survey, Federal Reserve Banks.



- MGT sees the same ratio for firms with revenues at more than \$1M: Black-owned firms, 49%, and White-owned firms, 24% (Asian 38%, Hispanic 34%).
- ◆ Rates of firms receiving at least some of the financing requested: for Black-owned firms, 61%, and White-owned firms 80% (Asian 73%, Hispanic 74%).
- ◆ For low credit risk firms, 85% of nonminority-owned firms received at least some of the financing requested compared with only 75% for similarly situated minority-owned firms.
- ◆ For low credit risk firms receiving total financing, 68% of nonminority-owned firms were approved compared to only 40% of minority-owned firms.

## SBCS 2018

### Report on Employer Firms

There were 8,072 responses received for this survey from firms throughout the United States.

- ◆ Minority-owned firms report higher rates of financial challenges in the prior 12 months due to credit availability than white-owned firms. Rates were: Black-owned firms, 50%; Asian, 33%; Hispanic, 41%; and White-owned firms, 28%.
- ◆ Rates of firms receiving at least some of the financing requested ranged from a high of 80% for White-owned firms to a low of 59% for Black-owned firms.
- ◆ Rates of firms receiving the total amount requested ranged from a high of 49% for White-owned firms to a low of 23% for Black-owned firms.
- ◆ 38% of Black-owned firms did not apply for financing because they were discouraged (i.e., they did not think they would be approved), compared with 12% of White-owned firms.

## SBCS 2019

### Report on Minority-Owned Firms & Report on Employer Firms

The annual survey of businesses was fielded in the third and fourth quarters of 2018 and generated 6,614 responses from employer firms.

- ◆ Minority-owned firms report higher rates of financial challenges in the prior 12 months due to credit availability than white-owned firms. Rates were: Black-owned firms, 51%; Asian, 36%; Hispanic, 40%; and White-owned firms, 30%.
- ◆ Rates of firms receiving at least some of the financing requested ranged from a high of 80% for White-owned firms to a low of 62% for Black-owned firms.
- ◆ Rates of firms receiving the total amount requested ranged from a high of 49% for White-owned firms to a low of 31% for Black-owned firms.
- ◆ 28% of Black-owned firms did not apply for financing because they were discouraged (i.e., they did not think they would be approved), compared with 13% of White-owned firms.
- ◆ On average, Black- and Hispanic-owned firm applicants received approval for smaller shares of the financing they sought than White-owned small businesses that applied for financing.



- ◆ Larger shares of Black- and Hispanic-owned firm applicants did not receive any financing they applied for—38% and 33%, respectively—compared to 20% of White-owned business applicants.
- ◆ White-owned business applicants received approval for all the financing they applied for: 49%, compared to 39% of Asian-, 35% of Hispanic-, and 31% of Black-owned firm applicants.

## 6.6 Conclusions

Analysis of the U.S. Census 2012 SBO data, 2017 ABS data, and the PUMS 2016-2020 data demonstrate, in response to the overarching research question driving this analysis, that marketplace discrimination exists for MBE firms operating in the private sector within The City's marketplace. Thus, based on the courts' guidance in this domain, The City has a compelling interest in continuing its current MBE program.

To the more specific research questions:

- ◆ Findings from the U.S Census 2012 SBO and 2017 ABS data indicate substantial disparities for most MBE firms across industry sectors resembling the procurement categories identified for this study.
- ◆ Findings from the 2016-2020 PUMS data indicate that:
  - Minority and women wages were significantly less in 2016-2020 than those of nonminority males, holding all other variables constant.
  - MBE firms were significantly less likely than nonminority males to be self-employed.
  - If they were self-employed, most MBE firms earned significantly less in 2016-2020 than self-employed nonminority males, holding all other variables constant.
  - Analysis of observed vs. predicted self-employment rates show that marketplace discrimination impacted these rates. Further, this analysis indicates that holding all factors consistent, race, ethnicity, and gender play a role in the lower level of self-employment for MBEs.

A review of access to credit indicates that minorities tend to receive less than the requested amount of credit when they are approved than nonminority men; they are approved for credit less frequently than nonminority males, and credit costs them more than nonminority males.

In light of these findings, credence may be given to the proposition established by Justice O'Connor in *Croson*, which suggested a government could be a passive participant in private-sector discrimination if it did not act to counter these dynamics within the domain of its influence. This evidence stands alongside the disparities observed in public sector contracting to illustrate the substantial discriminatory inequities that continue to exist in the City of Richmond marketplace, underscoring its compelling interest in continuing to pursue remedies to address these gaps.



# 7 Economic Impact Analysis

## 7.1 Introduction

Municipalities that administer minority business enterprise (MBE) programs tend to quantify the impact of the program by the amount of spending that MBEs receive. While achieving aspirational goals and maximizing the amount of spending with MBE's is the program's goal, the program's impact can go far beyond the spend. An economic impact analysis (EIA) can be used to obtain a more comprehensive measurement of an MBE program's impact.

An EIA is a type of analysis that examines the economic effects of a particular event, policy, or project. The analysis calculates how an economic event ripples through a given geography.

The Perryman Group conducted an economic impact analysis of the Business Diversity Program at Dallas-Fort Worth Airport<sup>112</sup>. The study calculated that firms in the Business Diversity Program (MBEs, DBEs, and SBEs) contributed over \$1 billion per year to the Dallas-Fort Worth economy. In a recent study, National Minority Supplier Diversity<sup>113</sup> Council calculated the economic impact of diverse firms in all 50 states and Puerto Rico. This study found that spending with MBEs in the Commonwealth of Virginia created and/or supported over 10,000 jobs.

An EIA is used to calculate the total economic impact of the City of Richmond's spending with MBEs. Our analysis will illustrate the number of jobs created or supported by MBE spending, the amount of labor income created, the amount of economic activity generated, and the amount of tax revenue generated. This analysis will be done for each calendar year from 2017 to 2021. Finally, we will use the tax impact calculations to analyze the fiscal return on investment of Richmond's MBE program.

## 7.2 Richmond Market Overview

The Richmond, Virginia Metropolitan Statistical Area (MSA)<sup>114</sup> is the 45<sup>th</sup> largest MSA in the nation at 1.3 million people. The population has grown at 0.4% annually from 2010-21, compared to 0.6% for the nation. Richmond's population is older than the other comparable cities in the country. The 39.2-year median age is higher than the 38.3 years for the nation. **Table 7-1** illustrates the population growth by age for calendar year 2020 and 2021.

### Chapter Sections

- 7.1 Introduction
- 7.2 Richmond Market Overview
- 7.3 Economic Overview – Labor Market Analysis
- 7.4 Economic Impact Analysis Methodology
- 7.5 Payback and Return on Investment
- 7.6 Summary

<sup>112</sup> The Perryman Group, "The Economic Benefits of the Activity Associated with Contracts and Expenditures Arising from Business Diversity Programs at Dallas/Fort Worth International Airport," 2016.

<sup>113</sup> NMSDC, "Minority Business Economic Impact Report," 2021. <https://nmsdc.org/wp-content/uploads/2022/05/NMSDC-2021-MinorityBusinessesEconomicImpactReport.pdf>

<sup>114</sup> Defined by the Office of Management and Budget



TABLE 7-1. DEMOGRAPHIC OVERVIEW  
POPULATION ANALYSIS

Richmond Population Growth By Age			
Age Group	2010	2021	Growth Rate
Under 5 years	78,880	74,052	-0.6%
5 to 9 years	78,706	75,265	-0.4%
10 to 14 years	83,469	83,694	0.0%
15 to 19 years	91,132	81,045	-1.1%
20 to 24 years	84,626	79,156	-0.6%
25 to 34 years	163,370	188,412	1.3%
35 to 44 years	177,076	178,909	0.1%
45 to 54 years	193,040	163,309	-1.5%
55 to 59 years	85,427	85,406	0.0%
60 to 64 years	72,527	89,006	1.9%
65 to 74 years	86,045	136,416	4.3%
75 to 84 years	47,235	60,367	2.3%
85 years and over	19,784	22,488	1.2%
<b>Total Population</b>	<b>1,261,317</b>	<b>1,317,525</b>	<b>0.4%</b>

Source: American Community Survey

Racial composition data in Richmond's MSA, as illustrated in [Table 7-2](#), indicates that diversity has increased since 2010. While the white population has seen its percentage decrease since 2010, other racial groups (save African Americans) have increased as a percentage of the total population. People claiming two or more races went from 1.9% of the population in 2010 to 4.3% of the population in 2021.

TABLE 7-2. DEMOGRAPHIC OVERVIEW  
POPULATION ANALYSIS

Richmond Racial Decomposition		
Racial Group	2010	2021
White alone	59.7%	55.4%
Black or African American alone	29.9%	28.1%
American Indian and Alaska Native alone	0.2%	0.2%
Asian alone	3.0%	4.1%
Native Hawaiian and Other Pacific Islander alone	0.0%	0.2%
Some other race alone	0.1%	0.6%
Two or more races	1.9%	4.3%
Hispanic or Latino (of any race)	5.0%	7.1%

Source: American Community Survey



Richmond’s educational attainment has increased since the 2010 data point. **Table 7-3** shows that a smaller percentage of Richmond’s population is dropping out of high school, stopping at a high school education, and attending college before dropping out. Moreover, a higher percentage of Richmond’s population are obtaining associate’s, bachelor’s, and graduate degrees.

TABLE 7-3. DEMOGRAPHIC OVERVIEW  
EDUCATIONAL ATTAINMENT

Richmond Educational Attainment		
	2010	2021
Less than 9th grade	5.1%	3.6%
9th to 12th grade, no diploma	9.0%	5.2%
High school graduate (includes equivalency)	27.1%	24.4%
Some college, no degree	21.0%	18.9%
Associate degree	6.2%	7.7%
Bachelor's degree	20.5%	23.8%
Graduate or professional degree	11.2%	16.4%
Percent high school graduate or higher	86.0%	91.2%
Percent bachelor's degree or higher	31.7%	40.2%

Source: American Community Survey

## 7.3 Economic Overview – Labor Market Analysis

The Richmond MSA’s labor market (**Table 7-4**) is dominated by its three largest employment sectors. Over 50% of Richmond’s labor market is comprised of its three largest sectors. In fact, Richmond’s labor market is overweight in professional and business services and government compared to the nation. The professional and business service sector comprises 14.8% of the nation's labor market. That figure is 17.6% for Richmond. In addition, while the government sector comprises 14.4% of the nation’s labor market, that figure stands at 16.3% for Richmond.



TABLE 7-4. LABOR MARKET ANALYSIS  
POPULATION ANALYSIS

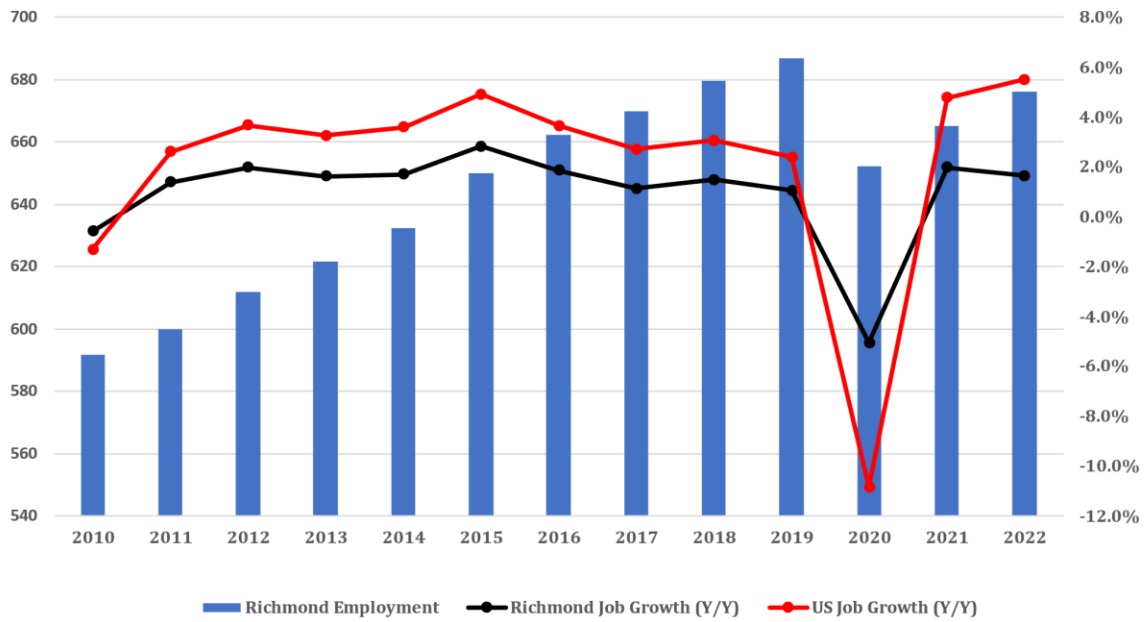
Richmond Employment Snapshot (2022)	
	Jobs
Trade, Transportation, and Utilities	123.1
Professional and Business Services	119.1
Government	110.3
Education and Health Services	99.5
Leisure and Hospitality	67.1
Financial Activities	51.0
Mining, Logging, and Construction	39.0
Manufacturing	31.4
Other Services	30.5
Information	6.3

Source: Bureau of Labor Statistics  
Jobs in thousands

The Richmond MSA has averaged 1.0% annual employment growth from 2010-22. This is compared to 1.1% for the US. While the average annual employment growth rates are close, the trend analysis reveals the differences. Richmond's employment growth rate is historically below the US rate. Moreover, while the recession did not affect Richmond's employment as deeply as other areas of the country, the U.S. has seen a stronger rebound. Finally, Richmond's employment has still not returned to pre-pandemic levels as illustrated in [Figures 7-1](#) and [7-2](#).



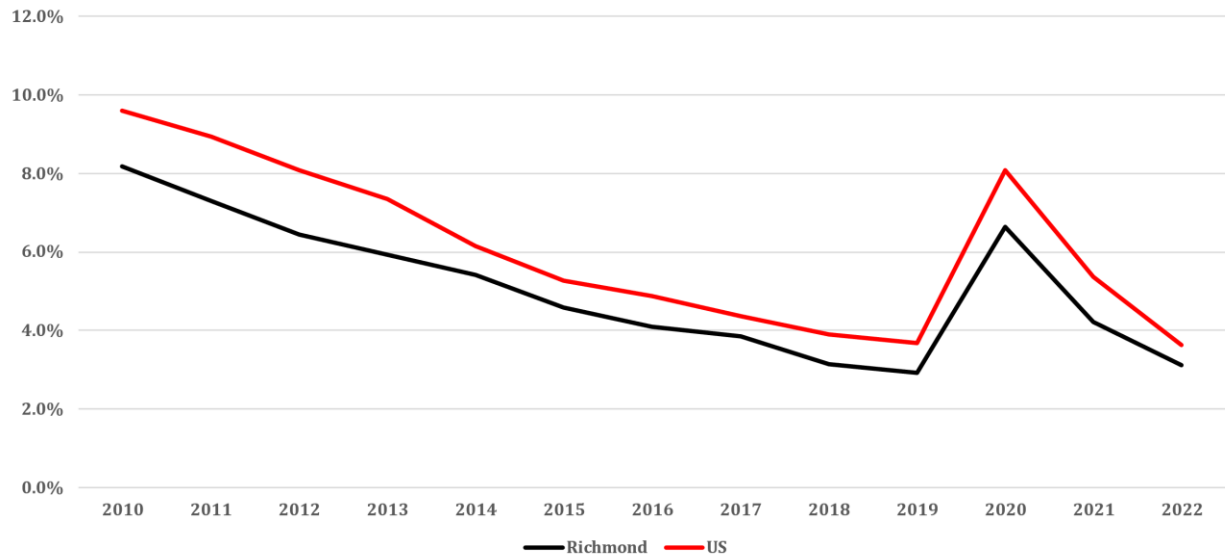
FIGURE 7-1.  
EMPLOYMENT GROWTH  
CITY OF RICHMOND MARKETPLACE



Source: Bureau of Labor Statistics



FIGURE 7-2.  
UNEMPLOYMENT RATE  
CITY OF RICHMOND MARKETPLACE



Source: Bureau of Labor Statistics



Richmond's list of top employers contains several Fortune 500 companies. A look at the top 10 employers shows that healthcare has a strong presence in Richmond economy. Also, banking, and financial services are also represented in the top 10. Finally, all of the companies on the top 25 list that have HQs on the Richmond MSA are Fortune 500 companies.

TABLE 7-5.  
TOP 25 EMPLOYERS  
CITY OF RICHMOND MARKETPLACE

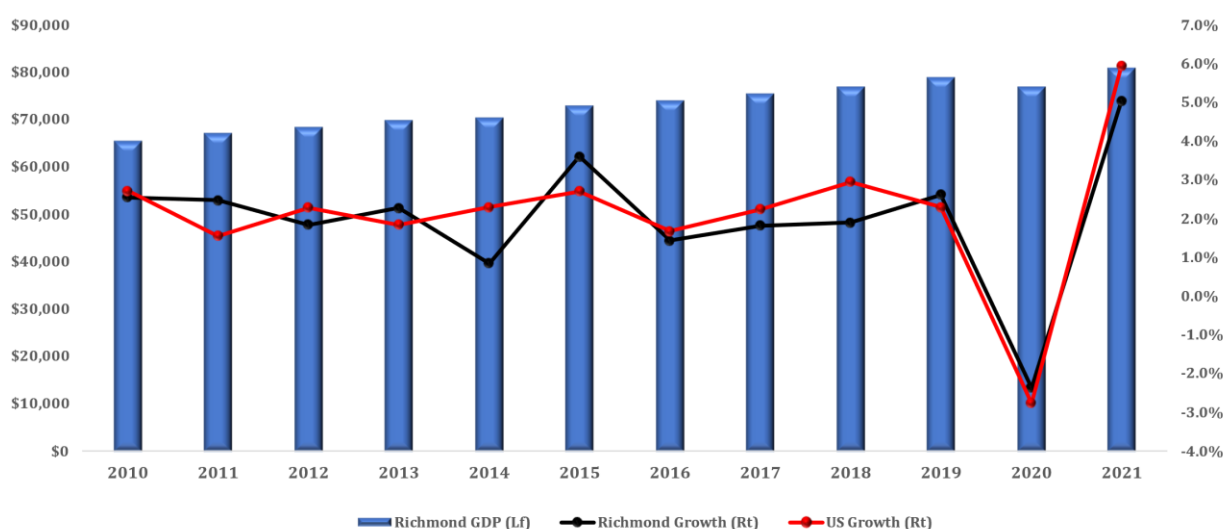
Richmond MSA Top 25 Employers			
Company	Industry	Location	Number of Employees
Virginia Commonwealth Univ Health System	Health care	Richmond City	13,500
Capital One Financial	Financial services, call center	Goochland	13,000
HCA Virginia Health System	Health care	Chesterfield	11,000
Bon Secours Richmond	Health care	Henrico	8,416
Virginia Commonwealth University	Public four-year university	Richmond City	7,832
Dominion Energy	Corporate HQ and energy	Richmond City	5,433
Truist	Banking	Richmond City	4,549
Amazon	Online retail	Chesterfield	4,100
Altria Group	Corporate HQ, tobacco products, R&D	Henrico	3,850
Federal Reserve Bank Richmond	Federal reserve bank	Richmond City	2,700
Anthem Blue Cross Blue Shield	Health Insurance	Henrico	2,655
Wells Fargo	Banking	Richmond City	2,582
United Parcel Service	UPS Freight Corp HQ and package distribution	Richmond City	2,490
CarMax	Corporate HQ and used auto sales	Goochland	2,475
DuPont	Chemicals and fibers	Chesterfield	2,436
Bank of America	Banking and data center	Richmond City	1,921
Markel	Specialty insurance	Henrico	1,886
Verizon Communications	Telecommunications	Richmond City	1,700
University of Richmond	Private four-year university	Richmond City	1,578
General Dynamics	Call center	Chesterfield	1,450
Estes Express Lines	Trucking, air freight	Richmond City	1,345
T-Mobile USA	Telecommunications	Henrico	1,316
AdvanSix	Polymers	Hopewell	1,269
CoStar Group	Real estate information and analytics	Richmond City	1,150
Kings Dominion	Amusement park	Hanover	1,000

Source: Greater Richmond Partnership



Gross domestic product (GDP) is an economic output measure that is used to convey how geography is faring economically. GDP is the total value of all goods and services produced within geography during a specific period, usually a year. Richmond's GDP growth has been lower than the nation over the 2010-21 time period. National real GDP grew at a 2.3% compound annual rate over the period. Richmond's real GDP grew at a 1.9% rate. As with employment, Richmond's GDP (Figure 7-3) contracted less than the nation's due to the pandemic, but Richmond has also seen a less robust recovery.

FIGURE 7-3.  
GROSS DOMESTIC PRODUCT  
CITY OF RICHMOND MARKETPLACE



Source: Bureau of Labor Statistics

## 7.4 Economic Impact Analysis Methodology

Economic impact analysis is used to estimate the overall economic activity, including spill-over and multiplier impacts, which occurs as a result of a particular business, event, or investment. The initial economic activity of this study will be the City of Richmond's spending with MBEs between 2017 and 2021.

The total estimated economic impact includes direct, indirect, and induced effects. For example, the initial economic benefit from an economic event is referred to as the *direct effect* of the economic event. The *indirect effects* are generated as a result of the purchases associated with the economic event. Finally, the *induced effects* occur when employees spend their earnings in the economy on goods and services.

The recirculation of the original expenditures multiplies their impact through such indirect and induced effects. The extent to which the initial expenditures multiply is estimated using economic models that depict the economic relationships between industries (i.e., a department store and its suppliers) and among different economic agents (i.e., a personal services firm and its employees). The models used in



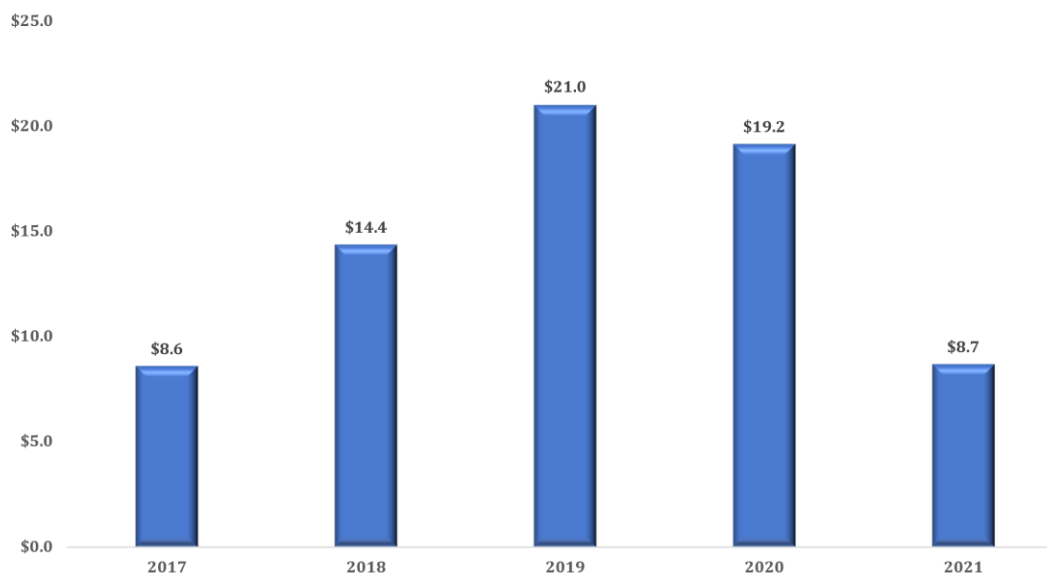
this analysis were developed using software and data from the IMPLAN Group, LLC. The economic region of interest is the Richmond, VA metropolitan statistical area (MSA).

The metrics used to determine the value of the economic impact include employment, labor income, value added, and output. Employment includes full-time, part-time, permanent, and seasonal employees and the self-employed, and is measured on a job count basis regardless of the number of hours worked during the year. Labor income includes all income received by both payroll employees and the self-employed, including wages and benefits such as health insurance and pension plan contributions. Value added is sum of wage income and corporate profit generated in the study area. It is roughly the equivalent of Gross Domestic Product.

### 7.4.1 Economic Impact Analysis

Richmond's spending is represented in **Figure 7-4**. Over the 5-year period pictured above, Richmond's spending with MBE's totaled nearly \$72 million. The Administrative and Support and Waste Management and Remediation Services sector (NAICS Code Super Sector 56) has been the dominant sector for total dollars spent during the five years of data analyzed. Nearly \$49 million went to this sector from 2017-21.

FIGURE 7-4.  
ECONOMIC IMPACT ANALYSIS  
MBE SPENDING OVERALL



Source: City of Richmond and MGT Consulting  
Figures in millions



**Table 7-6** is a summary of the economic impact analysis results. Our analysis indicates that that in the 2017-21 period, Richmond's spend with MBEs has created and/or supported 476 jobs, generated \$33.8 million in labor income, generated \$49.5 million in value added (economic activity), and generated \$9.3 million in tax revenue. The Administrative and Support and Waste Management and Remediation Services sector (NAICS Code Super Sector 56) contributed the largest in total spending of any sector to the economic impact analysis. The follow tables provide more detail into the annual impacts.

TABLE 7-6.  
MBE TOTAL SPENDING  
ECONOMIC IMPACT SUMMARY  
CITY OF RICHMOND

Year	Employment	Labor Income	Value Added	Local, State, and Federal Taxes
2017	99	\$6,033	\$9,518	\$1,787
2018	104	\$6,472	\$9,634	\$1,790
2019	99	\$7,382	\$10,573	\$2,013
2020	92	\$7,136	\$10,176	\$1,788
2021	83	\$6,741	\$9,640	\$1,893
<b>Total Economic Impact</b>	<b>476</b>	<b>\$33,764</b>	<b>\$49,540</b>	<b>\$9,272</b>

Note: Dollar values are in thousands



In 2017, Richmond's total spending was \$3.7 million in the Administrative and Support and Waste Management and Remediation Services sector. The \$8.6 million in MBE spending from all sectors resulted in the following economic impacts:

- 99 jobs created and/or supported.
- \$6.0 million in labor income created.
- \$9.5 million in economic activity (value added)
- \$1.8 million in total tax revenue

TABLE 7-7.  
MBE SPENDING 2017  
ECONOMIC IMPACT SUMMARY  
CITY OF RICHMOND

Richmond Economic Impact (2017)				
	Employment	Labor Income	Value Added	Local, State, and Federal Taxes
Direct	64	\$3,904	\$5,963	\$990
Indirect	12	\$950	\$1,342	\$297
Induced	23	\$1,179	\$2,213	\$500
<b>Total Impacts</b>	<b>99</b>	<b>\$6,033</b>	<b>\$9,518</b>	<b>\$1,787</b>

Note: Dollar values are in thousands



In 2018, the Administrative and Support and Waste Management and Remediation Services sector contributed \$10.7 million in this sector. In total, \$14.4 million in MBE spending represented in all sectors resulted in the following economic impacts:

- 104 jobs created and/or supported.
- \$6.4 million in labor income created.
- \$9.6 million in economic activity (value added)
- \$1.8 million in total tax revenue

TABLE 7-8.  
MBE SPENDING 2018  
ECONOMIC IMPACT SUMMARY  
CITY OF RICHMOND

	Employment	Labor Income	Value Added	Local, State, and Federal Taxes
	68	\$4,196	\$5,806	\$973
Indirect	12	\$953	\$1,356	\$287
Induced	24	\$1,323	\$2,472	\$530
<b>Total Impacts</b>	<b>104</b>	<b>\$6,472</b>	<b>\$9,634</b>	<b>\$1,790</b>

Note: Dollar values are in thousands

In 2019, \$11.3 million was spent in the Administrative and Support and Waste Management and Remediation Services sector. MBE spending was \$21.0 million in all sectors and resulted in the following economic impacts:

- 99 jobs created and/or supported.
- \$7.4 million in labor income created.
- \$10.6 million in economic activity (value added)
- \$2.0 million in total tax revenue



TABLE 7-9.  
MBE SPENDING 2019  
ECONOMIC IMPACT SUMMARY  
CITY OF RICHMOND

	Employment	Labor Income	Value Added	Local, State, and Federal Taxes
Direct	61	\$5,105	\$6,533	\$1,143
Indirect	10	\$789	\$1,180	\$252
Induced	28	\$1,488	\$2,860	\$618
<b>Total Impacts</b>	<b>99</b>	<b>\$7,382</b>	<b>\$10,573</b>	<b>\$2,013</b>

Note: Dollar values are in thousands

In 2020, Richmond's spending totaled \$16.3 million in the Administrative and Support and Waste Management and Remediation Services sector. MBE spending totaled \$19.2 million in all sectors and resulted in the following economic impacts:

- 92 jobs created and/or supported.
- \$7.1 million in labor income created.
- \$10.2 million in economic activity (value added)
- \$1.8 million in total tax revenue

TABLE 7-10.  
MBE SPENDING 2020  
ECONOMIC IMPACT SUMMARY  
CITY OF RICHMOND

Richmond Economic Impact (2020)				
	Employment	Labor Income	Value Added	Local, State, and Federal Taxes
Direct	57	\$4,932	\$6,324	\$1,028
Indirect	10	\$809	\$1,202	\$237
Induced	24	\$1,395	\$2,650	\$523
<b>Total Impacts</b>	<b>92</b>	<b>\$7,136</b>	<b>\$10,176</b>	<b>\$1,788</b>

Note: Dollar values are in thousands



And lastly, the 2021 total spending in the Administrative and Support and Waste Management and Remediation Services sector was \$6.8 million. The \$8.7 million in MBE spending from all sectors resulted in the following economic impacts:

- 83 jobs created and/or supported.
- \$6.7 million in labor income created.
- \$9.6 million in economic activity (value added)
- \$1.9 million in total tax revenue

TABLE 7-11.  
MBE SPENDING 2021  
ECONOMIC IMPACT SUMMARY  
CITY OF RICHMOND

Richmond Economic Impact (2021)				
	Employment	Labor Income	Value Added	Local, State, and Federal Taxes
Direct	50	\$4,576	\$5,836	\$1,068
Indirect	10	\$844	\$1,277	\$272
Induced	23	\$1,321	\$2,526	\$554
<b>Total Impacts</b>	<b>83</b>	<b>\$6,741</b>	<b>\$9,640</b>	<b>\$1,893</b>

Note: Dollar values are in thousands

## 7.5 Payback and Return on Investment

The return on investment (ROI) is a financial metric used to measure the profitability of an investment. It is calculated as a percentage of the investment's gain or loss relative to its initial cost. The formula for ROI is the ROI = (Gain from Investment - Cost of Investment) / Cost of Investment. We have calculated the fiscal return on investment of Richmond's MBE program. The cost of the investment is the Office of Minority Business development (over the 5 years of the disparity study). The gain from the investment is the total tax impact from Richmond's spending with MBEs.

Using the information above, the fiscal ROI of Richmond's MBE program was calculated at 141%. **In other words, for every dollar of tax revenue used to fund the Office of Minority Business Development, \$1.41 in tax revenue was returned to the Richmond economy.**

The Payback methodology is a financial analysis tool used to evaluate the time it takes for an investment to recoup its cost. The Payback methodology determines the timeframe under which an investment will be recouped.

Using the tax impact figures and the total 5-year budget for the Office of Minority Business Development as the cost of the cost, we calculate that the 5-year cost of the Office of Minority Business Development was recouped in 2.1 years.



## 7.6 Summary

In summary, the impact of Richmond's MBE program goes well beyond the spending with MBEs. The nearly \$72 million in spending from 2017-2021 has supported and/or created 476 jobs, generated \$33.8 million in labor income, generated \$49.5 million in value added (economic activity), and generated \$9.3 million in tax revenue. Moreover, the fiscal ROI means that for every dollar of tax revenue used to fund the Office of Minority Business Development, \$1.41 in tax revenue was returned to the Richmond economy.

There are additional implications of this analysis. Outside of the moral ground upon which an MBE program's goal can stand, this analysis means that there are sound economic reasons to achieve MBE spending goals since spending with MBEs creates tax revenue. Moreover, the fiscal ROI also means that the MBE program pays for itself by generating tax revenue that exceeds its annual budget.

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# 8 Qualitative Data Analysis

## 8.1 Introduction

This chapter examines the qualitative evidence from MBE firms about the discriminatory obstacles they face in the study market area and their experiences working with the city of Richmond, City's prime contractors, and within the private sector. We have presented statistical findings in previous sections that are consistent with and indicative of the presence of business discrimination against minority and women-owned firms in the geographic and product markets that are relevant to City in **Chapter 4 Market Area and Utilization Analyses, Chapter 5 Availability and Disparity Analyses, and Chapter 6 Private Sector.** In conjunction with the quantitative data, MGT also drew inferences from the qualitative data as to the prevalence of obstacles perceived as limiting the participation of MBEs in City's procurements. The evidence found that MBE firms face business-related discrimination in the relevant marketplace at substantially higher rates than non-MBEs. Encouraging firms to participate in the qualitative data collection proved to be difficult as firms, particularly MBEs, were resistant to participate for fear of retribution by the City or primes, and the culture that their comments would not change the current barriers they face. Additionally, the results show that MBE firms that were solicited for projects with MBE goals are seldom or never solicited for projects without goals. The relative lack of solicitation of MBEs in the absence of affirmative efforts by the City and other public entities in the relevant market area shows that business discrimination continues to be a barrier to MBE business opportunities.

### Chapter Sections

- 8.1 Introduction
- 8.2 Qualitative Background
- 8.3 Methodology
- 8.4 Online and Telephone Business Survey
- 8.5 Business Owners In-Depth Interviews
- 8.6 Stakeholder Engagement
- 8.7 Summary

Qualitative comments in this chapter detail the perceptions and opinions of individuals as they relate to discrimination in the City marketplace. The importance of these opinions depends on how much they are corroborated by others' statements and the quantitative data compiled to substantiate these perceptions. Unlike conclusions derived from other analyses in this report, the qualitative analysis does not rely solely on quantitative data. Instead, the analysis in this chapter utilizes qualitative data to describe the discriminatory context of the examined social, political, and economic environment in which all businesses and other relevant entities applicable to the study operate. This analysis assesses the broad patterns among large groups of businesses based on their business ownership classification and industry.

MGT used a combination of surveys, business engagement meetings, one-on-one interviews, and comments provided via the disparity study website with businesses to collect qualitative data that are analyzed to identify the presence of discrimination, issues, and concerns common to businesses in the market area. In addition to the qualitative data collection from area businesses, MGT and City identified area trade associations and business organizations referred to as stakeholders for this report, whose insights would be valuable in understanding the dynamics and perceptions of the business community.

In the successive sections, findings are generally organized around themes of discriminatory concerns expressed by vendors, with evidence divided between (1) items identified through qualitative input from qualitative research participants (interviews and open-ended comments) and (2) quantitative summaries



of perceptions collected through the business surveys. In some cases, content is limited to one category of findings based on the scope of the information collected through either medium.

## 8.2 Qualitative Background

A major component of this study is collecting and analyzing quantitative data from the entity's procurement and contracting records to determine if discrimination bears any relationship to the extent to which businesses are "chosen" in government contracting and procurement to provide needed goods and services that government cannot deliver on its own. Government purchasing records identifying race, ethnicity, or gender of utilized businesses provide the quantitative record for determining inferences of discrimination. To provide context to the quantitative results, an account of business owner experiences in dealing with the government procurement processes and with other businesses, in a given jurisdiction, qualitative and anecdotal information is also gathered in the form of telephone, online surveys, and individual interview sessions. The data collected are intended to explain the quantitative results from purchasing and procurement data by providing insight into purchasing trends that might explain how discrimination plays out and evolves in the marketplace.

## 8.3 Methodology

MGT used a combination of surveys, a business engagement meeting, focus groups, and one-on-one interviews with businesses to collect qualitative data that are analyzed to identify issues and concerns common to businesses in the market area. MGT also conducted in-depth interviews with area professional organizations to gather anecdotes on their perceptions of the City's procurement process and the impact of the MBE program on MBE and non-MBE firms in the market area. While the courts do not require the collection of these anecdotes, input from advocacy and professional development organizations gives a third-party perspective on MBE issues. It broadens the collection of MBE firms' experiences doing or attempting to do business with the City.

### 8.3.1 Sampling

MGT's sampling methodology for in-depth interviews and business surveys randomly selected firms from the study's master vendor database<sup>115</sup>. The samples were stratified by the number of firms, race, ethnicity, gender ownership classification, and business industry. The database was cross-referenced with previous extractions to avoid contacting businesses multiple times to ensure that firms did not participate in more than one qualitative data collection activity. Receiving single anecdotal accounts from only one business allows for a broader collection of unique experiences. The qualitative analysis is not steered to the interests of a small group of participants.

Additionally, MBE firms were oversampled to facilitate statistical comparisons with non-MBEs. Oversampling is the practice of selecting respondents so that some groups make up a larger share of the survey sample than they do in the population. Knowing that MBEs make up a smaller population, it is crucial to oversample to acquire accurate and comparable responses.

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<sup>115</sup> See Chapter 4, Market Area and Utilization Analysis for an explanation.



### 8.3.2 Business Survey

The business survey asked respondents to provide information on business ownership, demographics, and structure; work bid or performed as prime contractors with City; work bid or performed as subcontractors to City prime contractors; whether the respondent firm bid or performed work in the private sector; and any perceived barriers they had experienced, including discrimination, to doing business with City or its primes during the study period. The survey was administered via telephone and online to a randomly selected list of firms. The survey of vendors questionnaire is included in this report as **Appendix F, Business Survey Instrument**.

The data from the survey responses were analyzed to determine the types of firms represented in the findings included in this chapter. These survey results are included in **Appendix G, Demographics of Business Survey Respondents**.

### 8.3.3 Business Engagement Meetings

Area businesses and professional organizations were invited to attend virtual community meetings to learn about the study and provide qualitative input on doing business with City and the marketplace. Due to the COVID-19 pandemic, MGT conducted one virtual business engagement meeting on April 7 2022. The business engagement meeting was open to all businesses in the market area. The business engagement meeting educate attendees on the study's objectives, work tasks, and methods by which qualitative data can be received.

### 8.3.4 In-Depth Interviews

The in-depth interviews were individual interviews with MBE and non-MBE business owners or representatives to gather information about the firms' experiences attempting to conduct business with City (both directly as a prime or as a subcontractor). During the interviews, MGT gathered demographic information such as the firm's primary line of business, ethnicity, gender, education/training background of the owner, business history, size, and gross revenues during a selected calendar or fiscal year. The in-depth interviews were structured settings where an interviewer or facilitator used an interview guide (**Appendix H, In-Depth Interview Guide**) to obtain input from participants. The interviews provided more latitude for additional information on issues unique to the respondents' experiences than the business engagement meeting or surveys. The interviewer did not attempt to prompt or guide responses from the participants, although follow-up questions were asked to obtain further clarification or information as necessary and appropriate. Before the interviews began, each participant attested that their responses were given freely and were true and accurate reflections of their experience with City or its prime contractors.

### 8.3.5 Professional Organizations Outreach

Outreach to professional organizations (trade associations and business organizations) benefited the outreach strategy because their assistance extended communication efforts to inform and engage the business community in qualitative activities. The professional organizations disseminated the business engagement meeting and study update notices to their members. Professional organizations were also asked to provide MGT with a copy of membership or vendor lists they used to help build the master vendor



outreach database. The organizations and associations included in these efforts are identified in **Appendix J, List of Professional Organizations**.

## 8.4 Online and Telephone Business Survey

The business survey asked respondents to provide information on business ownership, demographics, and structure; work bid or performed as prime contractors with City; work bid or performed as subcontractors to City prime contractors; whether the respondent firm bid or performed work in the private sector; and any perceived barriers they had experienced, including discrimination, to doing business with City or its primes during the study period. The survey was administered via telephone to a randomly selected list of firms and online to businesses in the market area.

MGT attempted to collect data in proportion to the distribution of MBEs and non-MBEs in the relevant market area. Although MGT's goal is to report data that can satisfy the 95 percent confidence level, this does not mean that data should not be reported because of slightly reduced confidence intervals, especially when extreme due diligence has been exercised in attempting to meet the 95 percent standard. The survey of vendors questionnaire is included in this report as **Appendix F, Business Survey Instrument**.

The data from the survey responses were analyzed to determine the types of firms represented in the findings included in this chapter. These survey responses are included in **Appendix G, Responses of Business Survey Respondents**.

The survey collected 141 responses from firm owners and representatives in the City's relevant market area. MGT executed multiple methods to encourage area businesses to complete the survey to include direct contact, emails, press releases, etc. **Table 8-1** provides respondents' race and ethnicity from the procurement categories included in the study. African American firms representing 55 percent of those that participated, followed by Hispanic American firms at 5 percent, Asian American firms at 4 percent, Native Americans did not participate in the survey.

TABLE 8-1.  
SURVEY OF VENDORS

CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	TOTAL MBE	NON-MBE
CONSTRUCTION	40%	0%	10%	0%	50%	50%
A&E	22%	11%	0%	0%	33%	67%
PROFESSIONAL SERVICES	65%	6%	4%	0%	75%	25%
OTHER SERVICES	68%	0%	5%	0%	73%	27%
GOODS	20%	0%	0%	0%	20%	80%
TOTAL	55%	4%	5%	0%	64%	36%



## 8.4.1 Discriminatory Barriers to Doing Business

Barriers to doing business with City, City's primes, or in the prime sector marketplace can hinder a business's ability to exist, compete, and grow. The telephone and online survey included questions regarding instances of discriminatory treatment based on minority or gender status experienced while attempting to do business. **Table 8-2** & **Table 8-3** shows that in almost every category, regardless of prime or subcontractor status, MBE firms experience substantially higher discriminatory treatment levels while doing business than their non-MBE counterparts.

Overall, indications of discriminatory treatment were reported highest by Native American prime contractors, with an overall rate of 36 percent. Across the other groups, the reports were: African Americans (13 percent), Hispanic Americans (9 percent), Asian Americans (7 percent), and nonminority females (6 percent). Comparing these results to non-MBEs, the overall average of incidences reported by MBEs was 487 percent higher. MBE subcontractors followed a similar pattern of discriminatory treatment. African American subcontractors reported the highest discriminatory treatment incidences.

TABLE 8-2.  
BARRIERS IDENTIFIED BY SURVEY RESPONDENTS  
PRIME FIRMS

BARRIER	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	TOTAL MBE
Pre-qualification Requirements	20%	50%	50%	0%	23%
Bond Requirements	8%	25%	50%	0%	11%
Proposal/bid specifications	24%	50%	50%	0%	26%
Short or limited time given to prepare bid package or quote	27%	25%	50%	0%	28%
Restrictive contract specifications	20%	50%	50%	0%	23%
Selection process/evaluation criteria	34%	50%	50%	0%	35%
Insurance requirements (general liability, professional liability, etc.)	7%	0%	50%	0%	8%
Cost of bidding/proposing	17%	50%	100%	0%	22%
Price of supplies/materials	14%	25%	50%	0%	15%
Competing with large companies	49%	75%	100%	0%	52%
Financing	34%	50%	50%	0%	35%
Lack of Experience	27%	0%	0%	0%	25%
Contract too large	15%	50%	100%	0%	20%
Informal network of prime contractors and subcontractors that has excluded my company from doing business ("good ole boy" network)	36%	25%	100%	0%	37%
Changes in the scope of work (after work began)	5%	0%	0%	0%	5%
Slow payment or non-payment for project work	17%	0%	0%	0%	15%

Source: MGT Business Surveys



TABLE 8-3.  
BARRIERS IDENTIFIED BY SURVEY RESPONDENTS  
SUBCONTRACTORS

BARRIER	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	TOTAL MBE
Pre-qualification Requirements	22%	25%	67%	0%	25%
Bond Requirements	9%	25%	0%	0%	10%
Proposal/bid specifications	27%	25%	33%	0%	27%
Short or limited time given to prepare bid package or quote	31%	0%	33%	0%	29%
Restrictive contract specifications	20%	25%	33%	0%	21%
Selection process/evaluation criteria	33%	25%	33%	0%	33%
Insurance requirements (general liability, professional liability, etc.)	7%	0%	33%	0%	8%
Cost of bidding/proposing	18%	25%	33%	0%	19%
Price of supplies/materials	20%	0%	33%	0%	19%
Competing with large companies	47%	75%	100%	0%	52%
Financing	36%	25%	33%	0%	35%
Lack of Experience	20%	0%	0%	0%	17%
Contract too large	20%	25%	0%	0%	19%
Informal network of prime contractors and subcontractors that has excluded my company from doing business ("good ole boy" network)	40%	0%	33%	0%	37%
Changes in the scope of work (after work began)	7%	25%	0%	0%	8%
Slow payment or non-payment for project work	22%	0%	0%	0%	19%

Source: MGT Business Surveys

As discussed in **Chapter 5, Availability and Disparity Analyses**, variables such as firm age, firm financing, bonding limits, or experience are all impacted by discrimination. Regardless, if specific differences between MBEs and non-MBEs are present after holding these variables constant, the inference of discrimination is more powerful. Like the Logit model described in **Chapter 6, Private Sector**, a Logit model was utilized to control for these variables and show the impact that MBE status had on an individual, indicating that the barrier had a discriminatory effect on doing business. This model was conducted on both the prime and subcontractor respondents. For the model, the firm characteristics used as control variables were the firm's age, the number of employees, the size of revenues, and the education level of the primary owner of the firm. In **Table 8-4** and **Table 8-5**, a "+" indicates that MBEs are more likely to indicate that the barriers had a discriminatory impact on doing business than non-MBEs. Overall, the results show that when firm characteristics are held constant, MBE firms are more likely to indicate barriers such as pre-qualification requirements, proposal/bid specifications, insurance requirements, bond requirements, informal networks, size of contract, and slow payments impact doing business at statistically significant rates.



TABLE 8-4.  
PRIME CONTRACTOR SURVEY RESPONSES LOGIT

BARRIER	TOTAL MBE
Pre-qualification Requirements	+*
Bond Requirements	+
Proposal/bid specifications	+*
Short or limited time given to prepare bid package or quote	+
Restrictive contract specifications	+
Selection process/evaluation criteria	+
Insurance requirements (general liability, professional liability, etc.)	+*
Cost of bidding/proposing	+
Price of supplies/materials	+
Competing with large companies	+*
Financing	
Lack of Experience	
Contract too large	+*
Informal network of prime contractors and subcontractors that has excluded my company from doing business ("good ole boy" network)	+*
Changes in the scope of work (after work began)	
Slow payment or non-payment for project work	+

Source: Business Surveys, Greensboro Staffing & Online Surveys.

Note: "\*" indicates significance at a 5% level or better (95% confidence).



TABLE 8-5.  
SUBCONTRACTOR CONTRACTOR SURVEY RESPONSES LOGIT

BARRIER	TOTAL MBE
Pre-qualification Requirements	+*
Bond Requirements	
Proposal/bid specifications	+*
Short or limited time given to prepare bid package or quote	+*
Restrictive contract specifications	+
Selection process/evaluation criteria	+*
Insurance requirements (general liability, professional liability, etc.)	
Cost of bidding/proposing	+
Price of supplies/materials	+
Competing with large companies	+*
Financing	+*
Lack of Experience	
Contract too large	+
Informal network of prime contractors and subcontractors that has excluded my company from doing business ("good ole boy" network)	+*
Changes in the scope of work (after work began)	
Slow payment or non-payment for project work	+

Source: Business Surveys, Greensboro Staffing & Online Surveys.

Note: "\*" indicates significance at a 5% level or better (95% confidence).

### 8.4.1 Prime Contracting Inclusion of MBEs on Projects with and without Goals

Firms that participated in the qualitative data collection who also work in the private sector as primes noted that relationships are the foundation of their success. However, MBE subcontractor firms were not as fortunate in developing such relationships because the private sector does not historically have MBE goal requirements on their contracts, which means that without goals, primes hire MBE subcontractors for their projects at lower rates than their non-MBE counterparts. In *Builders Association of Greater Chicago v. City of Chicago*, the court held that the failure of prime contractors even to solicit qualified MBE firms is a "market failure" that is significant evidence in helping to establish a government's compelling interest in remedying such failures<sup>116</sup>.

Survey respondents who indicated they were subcontractors or suppliers were asked how often prime contractors/vendors solicited their firm to bid on projects with MBE goals compared to those without MBE goals. The survey sought to determine if prime contractor behavior was the same when projects applied MBE goals versus projects without goals.

<sup>116</sup> *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp. 2d 725, 737 (N.D. Ill. 2003).



Participants overwhelmingly agreed that primes that solicit bids for public sector work were not soliciting MBE firms for private projects.

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**Table 8-6** below details survey respondents' experiences with primes when projects do not include MBE goals. The survey asked, "How often do prime contractors/vendors who use your firm as a subcontractor on public-sector projects with MBE goals solicit your firm on projects (private or public) without MBE goals?" For MBEs collectively, 10 percent indicated that they are seldom or never solicited on projects without goals. Individually, Hispanic American firms experienced the largest impact of exclusion when there were no goals (40 percent).

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TABLE 8-6.  
PRIMES LACK OF SOLICITATION OF MBE FIRMS ON PROJECTS WITHOUT GOALS

BUSINESS OWNERSHIP CLASSIFICATION	A&E	CONSTRUCTION	OTHER SERVICES	GOODS	PROFESSIONAL SERVICES
AFRICAN AMERICAN	0%	38%	0%	0%	3%
ASIAN AMERICAN	100%	0%	0%	0%	0%
HISPANIC AMERICAN	0%	50%	100%	0%	0%
NATIVE AMERICAN	0%	0%	0%	0%	0%
TOTAL MBE	33%	40%	7%	0%	3%

Source: MGT Business Surveys

Further evidence of “Market Failure” can be seen in **Table 8-7**. This table summarizes the firms’ experiences being released from City and non-City projects after the project has been awarded. As shown above, in



**Table 8-6**, MBE firms are seldomly asked to participate in nongoal projects. When MBEs are asked to be a part of non-City projects, the table shows that the prevalence of MBEs being dropped from the project is much higher on non-City projects than on City projects. Hispanic American-owned businesses experienced being dropped from non-City projects at the highest degree, followed by African Americans.

TABLE 8-7.  
MBE FIRMS DROPPED AFTER PROJECT AWARD

AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN
18%	0%	20%	0%

Source: MGT Business Surveys

### 8.4.1 Discrimination and Disparate Treatment

This section examines understanding and identifying the type of discriminatory treatment encountered by MBEs working with City or City's primes. A trend for firms that participated in interviews, surveys or business engagement meetings was the indication that discrimination is prevalent and happens frequently in subtle ways and even to their peer competitors in the marketplace. When asked why their company was discriminated against, the survey respondents said they believe they were discriminated against due to race, ethnicity, or gender. **Table 8-8** shows the type of discrimination felt by those indicating they were discriminated against based on their race, ethnicity, or gender. Individually, African American firms indicated experiencing the highest levels of direct discrimination against them due to race. Additionally, all other groups indicated direct discrimination compared to nearly no indication for non-MBEs.



TABLE 8-8.  
DISCRIMINATORY TREATMENT IDENTIFIED BY PRIMES AND SUBCONTRACTORS

DISCRIMINATORY ACT	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN
Harassment on the Jobsite	8%	0%	0%	0%
Double standards in measuring performance	11%	0%	20%	0%
Denial of opportunity to bid	9%	20%	0%	0%
Unfair denial of contract award	12%	0%	0%	0%
Unfair contract termination	3%	0%	0%	0%
Predatory business practices such as price discrimination by suppliers/inspectors, bid shopping, slow payment, or non-payment	17%	0%	0%	0%
Unequal access to bonding, credit, or financing as compared to nonminority- or nonwoman-owned companies	17%	0%	40%	0%

Source: MGT Business Surveys

## 8.5 Business Owners In-Depth Interviews

The in-depth interviews were individual interviews with MBE and non-MBE business owners or representatives to gather information about the firms' discriminatory experiences attempting to conduct business with City (both directly as a prime or as a subcontractor) and in the private marketplace. During the interviews, MGT gathered demographic information such as the firm's primary line of business, ethnicity, gender, education/training background of the owner, business history, size, and gross revenues during a selected calendar or fiscal year. The interviews provided a more open-ended latitude for additional information on discriminatory issues unique to the respondents' experiences. The interviewer did not attempt to prompt or guide responses from the participants, although follow-up questions were asked to obtain further clarification or information as necessary and appropriate. Before the interviews began, each participant attested that their responses were given freely and were true and accurate reflections of their experience with City or its prime contractors. The in-depth interviews were structured settings where an interviewer or facilitator used an interview guide (**Appendix H, In-Depth Interview Guide**) to obtain input from participants.

The following are summaries of the discriminatory issues discussed. They mirror and corroborate the results from the telephone and online survey results provided throughout this chapter. Quotations are intended to represent the views expressed by multiple participants. The in-depth interviews were conducted with randomly selected firms extracted from the master vendor database and located in City's relevant market area.<sup>117</sup> MGT cross-referenced the list of firms for the interviews to ensure they were not previously selected for other qualitative activities. In total, 40 firms were interviewed.

### 8.5.1 Discriminatory Experiences

- ♦ An African American professional services business owner stated, "Richmond is a very racist town. Period. I mean, it feels as if because we're in between Northern Virginia, and

<sup>117</sup> See Chapter 4, Market Area and Utilization Analyses.



what we think is Southern Virginia, it seems like we should be so much more progressive. But you see that there's no progression because when you come here, everything is still very segregated. You can very rarely go anyplace and it's not all whites. In a city that is predominantly black."

- ♦ An African American services business owner stated that doing business in the city that they "And I feel threatened. If I make that mistake, that's going to take me out of the game that I cannot be able to go further to one day build my company, as a six-figure company and that's what all these businesses have been fussing about, is, how do we get our foot in the door."
- ♦ An African American construction subcontractor stated that minority contractors have to subcontract with nonminority contractors in order to be included on the project. The owner continued by stating, "It is absolutely discrimination. Especially when it comes to development in the city".
- ♦ An African American construction business owner expressed that "based on generations of belief that white people do it better and Hispanics do it faster. Black businesses are left out of the opportunities".
- ♦ An African American services business owner stated that they have been told "you don't act like other businesses from here". The business owner continues by stating that "there is a stigma with Black not performing business well."

### 8.5.2 Experiences from MBEs on Prime Behavior

As illustrated throughout this chapter, many of the actions taken by prime contractors discriminate directly against MBEs. A few of the anecdotes from the interview and the community meetings include:

- ♦ An African American owner of a construction firm stated that "the prime contractor who works for the city saw us out there at a city location, there was basically a call made to one of the city managers, project managers or whatnot, that we weren't supposed to be out there because the city was their contract. And we're talking about a million dollar a year contract, but the most that they can give me without me bidding is \$10,000, I think every six months or once a year or something, without putting it out to bid. They tried to block me from doing that or getting more work there."
- ♦ An African American specialty contractor stated, "they had experiences with a general contractor who always requested bids for the firm for City projects. However, the general contractor only asked for bids without hiring the MBE firms because they would self-perform portions of the contract."
- ♦ An Asian American services firm owner stated, "if there is no MBE requirement on contracts, the primes will not call you."
- ♦ Nonminority male construction firm stated that they try to meet the MBE goal. If there are no MBE firms bidding, then they will hire a non-MBE subcontractor.



- ♦ An African American specialty contractor stated that when they speak up against potential violations of the nonminority primes, their firm is not considered for subcontracting opportunities.

### 8.5.3 Financial Barriers Expressed by MBE Firms

Limited access to capital and inconsistent cash flow impacts MBE and small firms' ability to complete projects, apply for and receive bonds, hire employees, and operate their businesses. Similarly, cash flow becomes a barrier for MBE firms, notably smaller MBE firms, because it limits the amount of work they can bid on. As the results in **Chapter 6, Private Sector** shows, MBEs consistently earn less wages and less business earnings than their non-MBE counterparts. The anecdotes add credence to the assertion that with less capital MBEs face financial barriers to operating their businesses.

Many firms stated that they started their business with their own money. During the COVID-19 pandemic, many firms noted that the Payroll Protection Program and Economic Injury Disaster Loan (EIDL) monies were valuable to keeping their businesses operating even though they had to reduce their staff. Acquiring bonding for projects continues to be a financial barrier for MBE firms that prevents them from being primes and limits their ability to scale up to larger subcontracts.

Comments gathered from interview and community engagement participants highlight their financial barriers to doing business:

- ♦ A Hispanic American specialty trade contracting firm stated that "insurance and bonds are costly, and smaller firms cannot compete against large firms with more capital. To afford insurance, the firm received a loan to cover the cost."
- ♦ An African American services business owner stated that they "funding is everyone's concern, especially as minority owned women-owned biz, so didn't have the equity in a house or generational wealth to get a loan. we as minorities and women standpoint have a harder time securing startup funds and capital in general. even the knowledge of how to documents for we are left in the dark."
- ♦ An African American professional services firm stated that there are businesses, i.e. soul food restaurants, nightclub daycare in a "certain area", they're not getting approved funding. However, there is a new vegan shop a dog store with treats, or dog sitter services, and restaurants being opened by nonminority owners.

### 8.5.4 Procurement Process Issues and Challenges for MBEs

A common theme across these interviews was procurement issues and challenges faced by MBEs and how these issues affect MBEs disproportionately. Included below are comments from interview and community meeting participants reflecting specific instances of these barriers:

- ♦ An African American services firm stated that "yes, we have been discriminated against we have contracts with other counties. Caroline Co. Petersburg, Richmond is extremely closed and political with these opportunities."



- ♦ An African American construction services firm stated that the “I have seen though is more of a social bias or whatnot, a social network where I feel like this contractor is associated in different ways with the city manager, the city project manager or whatnot. And I guess, there's preferential treatment maybe.”
- ♦ An African American services business owner stated their “people that had contract issues that they felt like they got blocked out, it was only a certain selective few was able to get in”. The business owner continued by stating that if minority businesses question the process or express concerns, the solicitation is canceled and reissued in a different format that meets the qualifications of the firm the city wants to hire.
- ♦ An African American professional services business owner stated that the City has its “favorites” speaking of firms the City wants to award contracts to. The business manager went on to say that they “go through the motions to respond to request for proposals just to remain known.”

## 8.6 Professional Organizations Engagement

Involving area trade associations and business organizations that provide advocacy for and professional development to businesses in similar services in the City market area can be helpful to the success of City's program objectives. For this study, trade organizations and business associations assisted with outreach and provided insight into minority business growth, development, and barriers they face in the marketplace. There were two themes expressed by the trade groups interviewed; detailed below.

**Challenges for Minority-Owned Businesses:** Many challenges facing established minority-owned businesses were the same for start-ups but are more prevalent for MBEs. Receiving information about opportunities is a challenge, particularly for smaller businesses with fewer staff to monitor upcoming bids and proposals. MBE firms lack knowledge about business development and capital resources available stifle their business growth. The delay in payments from the City creates a hardship on MBE firms cashflow which limits their ability to scale their businesses.

**Discriminatory Barriers to Doing Business in the Private Sector:** While many obstacles to doing business in the private sector were similar, such as lack of networks to hear about contracts and related issues, or lack of networks and relationships. One statement that stood out is encouraging traditional nonminority businesses to get involved in economic equity which will benefit their businesses as well.

## 8.7 Summary

The evidence from the qualitative and anecdotal activities is consistent with and corroborates the finding of discrimination from **Chapter 4 Market Area and Utilization Analyses**, **Chapter 5 Availability and Disparity Analyses**, and **Chapter 6 Private Sector**. The qualitative evidence suggests that MBEs face discriminatory barriers to full and equitable participation in public and private sector contracts in the City market. The results also show that MBE firms face business-related discrimination in the relevant marketplace at substantially higher rates than non-MBEs. Additionally, the results show that MBE firms



that were solicited for projects with MBE goals are seldom or never solicited for projects without goals. The relative lack of solicitation of MBEs in the absence of affirmative efforts by City and other public entities in the relevant market area shows that business discrimination continues to be a barrier to MBE business opportunities. The general lack of trust in city contracting is also a discriminatory behavior that prevents MBE firms from seeking business with the City. These activities have yielded evidence that courts have found to be highly probative in deciding whether an entity such as City has been or continues to be a passive participant in a discriminatory market area. This is particularly true when considered in conjunction with the other statistical and quantitative evidence provided in this report.

Qualitative data were collected using multiple methods and included a broad reach of diverse businesses and business industries. Feedback from many businesses had common discriminatory themes regarding their experiences working or attempting to work with City, such as prime contractors rarely utilizing MBEs when there were no project goals, dropping MBEs from projects they were initially included after the work began, and numerous discriminatory barriers in doing business (i.e., insurance requirements, slow or no payments, cost of bidding, or contract requirements).

DRAFT



# 9. Findings and Recommendations

## 9.1 Introduction

The City of Richmond, Virginia (City) retained MGT of America Consulting, LLC (MGT) to conduct City's 2022 Disparity Study. The goal of the Disparity Study is to determine if there are any disparities between the utilization of minority business enterprises (MBEs) compared to the availability of MBEs in the marketplace who are ready, willing, and able to perform work, and whether such disparities are consistent with the existence of discrimination. MGT examined the statistical data using the following procurement categories:

- ♦ Construction;
- ♦ Architecture & Engineering;
- ♦ Professional Services;
- ♦ Other Services; and
- ♦ Goods

City's 2022 Disparity Study consisted of fact-finding to analyze procurement trends and practices from July 1, 2016, through June 30, 2021 (FY2017 – FY2021) regarding the utilization of minority business enterprises, and to evaluate various options for future program development. Within the context of studying the City's procurement practices, the study must be conducted consistent with disparity study best practices, controlling local legal precedents and constitutional law.

The City's Disparity Study determined that there are discriminatory disparities between the number of minority-owned businesses that are willing and able to perform construction, architecture & engineering, professional services, other services, and goods contracts, and the numbers of these same business types that are participating in these same types of contracts with the City. This chapter will summarize the evidence on the central research question: *is there factual predicate evidence for the continuation of City's MBE program?*

As discussed throughout this study, courts have determined that a race-conscious program involving governmental procurement of goods or services is subject to strict judicial scrutiny under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and must be narrowly tailored to remedy the identified discrimination.

MGT's methodology included a review of disparity studies' legal framework, a policy and procedures review, analyses of utilization, availability, and statistical disparity, qualitative/anecdotal research, private sector analyses, and findings, establishment of aspirational goals methodology, and industry selected practices. The results of this study and conclusions drawn are presented in detail in **Chapters 2** through **6** and **8** of this report.

### CHAPTER SECTIONS

- 9.1 Introduction
- 9.2 Findings
- 9.3 Aspirational Goals
- 9.4 Selected MBE Practices
- 9.5 Conclusions



## 9.2 Findings

### Finding A: Relevant Geographic and Product Market Areas (*Chapter 4, Appendix B*)

City of Richmond Relevant Market Area	
AMELIA COUNTY, VA	NEW KENT COUNTY, VA
CHARLES CITY COUNTY, VA	PETERSBURG CITY, VA
CHESTERFIELD COUNTY, VA	POWHATAN COUNTY, VA
COLONIAL HEIGHTS CITY, VA	PRINCE GEORGE COUNTY, VA
GOOCHLAND COUNTY, VA	RICHMOND CITY, VA
HANOVER COUNTY, VA	
HENRICO COUNTY, VA	
HOPEWELL CITY, VA	
KING WILLIAM COUNTY, VA	

The entire universe of expenditure data was utilized to determine the relevant geographic market area for the study.<sup>118</sup> This included both expenditures to prime contractors and subcontractors. Based on the market area analysis results for each business category, the recommended relevant market area are the 14 counties and independent cities within the City Market Area (“Market Area”), as seen in the left-hand box. The spending in the relevant geographic market area is represented in **Table 9-1**. The entire NAICS codes that made up the City’s product market are shown in **Appendix B**.

<sup>118</sup> Chapter 4, Market Area and Utilization Analyses



TABLE 9-1.  
RELEVANT MARKET AREA ANALYSIS  
DISTRIBUTION OF DOLLARS BY BUSINESS CATEGORY,  
CITY OF RICHMOND MARKET AREA

CONSTRUCTION	Amount	Percent
<i>Inside MARKET AREA</i>	\$2,370,499,968.02	71.14%
Outside MARKET AREA	\$961,588,954.61	28.86%
<b>CONSTRUCTION, TOTAL</b>	<b>\$3,332,088,922.63</b>	<b>100.00%</b>
ARCHITECTURE & ENGINEERING	Amount	Percent
<i>Inside MARKET AREA</i>	\$802,589,979.81	89.41%
Outside MARKET AREA	\$95,015,458.15	10.59%
<b>ARCHITECTURE &amp; ENGINEERING, TOTAL</b>	<b>\$897,605,437.96</b>	<b>100.00%</b>
PROFESSIONAL SERVICES	Amount	Percent
<i>Inside MARKET AREA</i>	\$176,225,720.82	48.45%
Outside MARKET AREA	\$187,474,387.97	51.55%
<b>PROFESSIONAL SERVICES, TOTAL</b>	<b>\$363,700,108.79</b>	<b>100.00%</b>
GOODS	Amount	Percent
<i>Inside MARKET AREA</i>	\$571,319,422.97	68.72%
Outside MARKET AREA	\$124,278,236.71	31.28%
<b>GOODS, TOTAL</b>	<b>\$831,325,061.32</b>	<b>100.00%</b>
OTHER SERVICES	Amount	Percent
<i>Inside MARKET AREA</i>	\$743,382,698.88	77.07%
Outside MARKET AREA	\$260,005,638.35	31.28%
<b>OTHER SERVICES, TOTAL</b>	<b>\$831,325,061.32</b>	<b>100.00%</b>
ALL BUSINESS CATEGORIES	Amount	Percent
<i>Inside MARKET AREA</i>	\$4,664,017,790.50	73.00%
Outside MARKET AREA	\$1,725,250,378.11	27.00%
<b>ALL BUSINESS CATEGORIES, TOTAL</b>	<b>\$6,389,268,168.61</b>	<b>100.00%</b>

## Finding B: MBE Utilization *(Chapter 4, Appendix C)*

In **Table 9-2**, the utilization analysis shows that non-MBE firms are utilized at higher rates than their MBE counterparts. The City's utilization with non-MBE firms totaled 97.40 percent, while 2.60 percent went to MBE firms. Overall, the highest utilization rates among MBE classifications included African American firms accounting for 1.15 percent of dollars paid. Further analyzing the individual procurement categories, African American firms had the greatest utilization among MBE firms in Construction at 1.36 percent or



\$45.42 million, followed by Asian American firms in Professional Services at 2.94 percent or \$10.69 million.<sup>119</sup>

TABLE 9-2.  
UTILIZATION ANALYSIS  
BY BUSINESS OWNERSHIP CLASSIFICATION AND BY PROCUREMENT CATEGORIES

RACE-ETHNICITY-GENDER	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS	Grand Total
AFRICAN AMERICAN	\$45,418,979.53	\$10,916,240.85	\$ 4,323,875.38	\$10,751,146.43	\$1,815,091.85	\$73,225,334.04
ASIAN AMERICAN	\$3,511,422.36	\$ 819,063.79	\$10,686,827.57	\$1,765,318.01	\$2,669,784.38	\$19,452,416.11
HISPANIC AMERICAN	\$5,668,630.85	\$161,401.35	\$30,305.19	\$63,074,470.84	\$0.00	\$68,934,808.23
NATIVE AMERICAN	\$11,086.96	\$4,339,482.42	\$0.00	\$0.00	\$0.00	\$4,350,569.38
MBE	\$54,610,119.70	\$16,236,188.41	\$15,041,008.14	\$75,590,935.28	\$4,484,876.23	\$165,963,127.76
NON-MBE	\$3,277,478,802.93	\$881,369,249.55	\$348,659,100.65	\$888,957,702.63	\$826,840,185.09	\$6,223,305,040.85
Grand Total	\$3,332,088,922.63	\$897,605,437.96	\$363,700,108.79	\$964,548,637.91	\$831,325,061.32	\$6,389,268,168.61
RACE-ETHNICITY-GENDER	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS	Grand Total
AFRICAN AMERICAN	1.36%	1.22%	1.19%	1.11%	0.22%	1.15%
ASIAN AMERICAN	0.11%	0.09%	2.94%	0.18%	0.32%	0.30%
HISPANIC AMERICAN	0.17%	0.02%	0.01%	6.54%	0.00%	1.08%
NATIVE AMERICAN	0.00%	0.48%	0.00%	0.00%	0.00%	0.07%
MBE	1.64%	1.81%	4.14%	7.84%	0.54%	2.60%
NON-MBE	98.36%	98.19%	95.86%	92.16%	99.46%	97.40%
Grand Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Source: Chapter 4, Market Area and Utilization Analyses.

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

A reliable estimation of the number of firms *willing* and *able* to provide each of the respective services under the examination scope is an incumbent 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 5**. 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 9-3**.

<sup>119</sup> Chapter 3, Market Area and Utilization Analyses



TABLE 9-3.  
ESTIMATION OF AVAILABLE FIRMS

RACE-ETHNICITY	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS	TOTAL
AFRICAN AMERICAN	21.37%	8.20%	9.30%	16.20%	3.67%	15.75%
ASIAN AMERICAN	2.07%	8.22%	3.36%	2.17%	0.65%	2.84%
HISPANIC AMERICAN	2.34%	2.04%	2.65%	1.71%	0.75%	2.01%
NATIVE AMERICAN	0.01%	0.00%	1.24%	0.33%	0.06%	0.13%
MBE	25.77%	18.46%	16.55%	20.41%	5.13%	20.73%
NON-MBE	74.23%	81.54%	83.45%	79.59%	94.87%	79.27%
Grand Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Source: Chapter 5, Availability and Disparity Analyses.

## Finding D: 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-owned firms can be assessed concerning the utilization of nonminority- and male-owned firms. MGT applies two significant tests to determine statistical significance: (1) whether the disparity index is less than or equal to 80 percent of respective MBE availability, which is labeled "substantial disparity," and (2) whether the disparity index passes the t-test determination of statistical significance. In cases where one, or especially both, measures hold true, a remedy is typically deemed justifiable by courts, making these results critical outcomes of the subsequent analyses.

These overall results show that among MBE firms there remains disparity for all categories. Only in Other Services do you find no disparity for Hispanic and Native American firms, and Native American firms in Architecture and Engineering. Additionally, as a total MBE 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**.



TABLE 9-4.  
DISPARITY RATIO SUMMARY ANALYSIS

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

**BOLD** indicates substantial statistically significant disparity.

### Finding E: Private Sector Disparities in Census SBO and ABS Data (Chapter 6)

Based on US Census 2012 SBO and 2017 ABS data, MGT attempted to answer the research question; “Do marketplace disparities exist in the private sector regarding revenue within similar City procurement categories for firms owned by minorities or females?”. Both data sets gather and report firm information for firms with paid employees, including workers on the payroll (employer firms). SBO data is the only data set that provides firms without paid employees, including sole proprietors and partners of unincorporated businesses that do not have any other employees on the payroll (nonemployer firms). This is an important distinction because it provides a more encompassing picture of the private sector. SBO is limited in the age of the data, but it can be supplemented with more recent ABS data. It should also be noted that all the disparity indices in the SBO tables are statistically significant within a 95 percent confidence interval.

According to the findings, the SBO and ABS data analysis show consistent underutilization of MBE firms relative to their availability in the marketplace. Further, each of the five procurement categories analyzed showed substantial disparity among defined MBE classes where sufficient data were available.

### Finding F: Disparities In Individual Wages, Business Earnings, Self-Employment Rates (Chapter 6)

Findings from the Public Use Microdata Sample (PUMS) from 2015-2019 data indicate that minorities earn significantly fewer wages and business earnings than their nonminority male counterparts. Additionally, the findings show that minorities have significantly fewer formation rates than nonminority males. When these self-employment rates were stratified by race and by business type, trends varied within individual race-by-type cells, but disparities persisted, in general, for all minorities. These findings support the conclusion that discriminatory disparities for these groups (of an adequate sample size to permit interpretation) were likely the result of differences in the marketplace due to race, gender, and ethnicity. Additionally, analysis of observed vs. predicted self-employment rates shows that there are instances that



discrimination impacted these rates, and that business marketplace discrimination exists in the City market.

## Finding G: Qualitative and Anecdotal Results *(Chapter 8)*

The evidence from the qualitative and anecdotal activities is consistent with and corroborates the finding of discrimination from **Chapter 4 Market Area and Utilization Analyses**, **Chapter 5 Availability and Disparity Analyses**, and **Chapter 6 Private Sector**. The qualitative evidence suggests that MBEs face discriminatory barriers to full and equitable participation in public and private sector contracts in the City market. The results also show that MBE firms face business-related discrimination in the relevant marketplace at substantially higher rates than non-MBEs. Additionally, the results show that MBE firms that were solicited for projects with MBE goals are seldom or never solicited for projects without goals. The relative lack of solicitation of MBEs in the absence of affirmative efforts by City and other public entities in the relevant market area shows that business discrimination continues to be a barrier to MBE business opportunities. The general lack of trust in city contracting is also a discriminatory behavior that prevents MBE firms from seeking business with the City. These activities have yielded evidence that courts have found to be highly probative in deciding whether an entity such as City has been or continues to be a passive participant in a discriminatory market area. This is particularly true when considered in conjunction with the other statistical and quantitative evidence provided in this report.

MBE firms interviewed for the study stated:

- ♦ An African American services firm stated that “yes, we have been discriminated against we have contracts with other counties. Caroline Co. Petersburg, Richmond is extremely closed and political with these opportunities.”
- ♦ A Hispanic American specialty trade contracting firm stated that “insurance and bonds are costly, and smaller firms cannot compete against large firms with more capital. To afford insurance, the firm received a loan to cover the cost.”
- ♦ An Asian American services firm owner stated, “if there is no MBE requirement on contracts, the primes will not call you.”
- ♦ An African American professional services business owner stated that the City has its “favorites” speaking of firms the City wants to award contracts to. The business manager went on to say that they “go through the motions to respond to requests for proposals just to remain known.”

The firm characteristics used as control variables were the firm's age, the number of employees, the size of revenues, and the education level of the primary owner of the firm. In **Table 8-4** and **Table 8-5**, a “+” indicates that MBEs are more likely to indicate that the barriers had a discriminatory impact on doing business than non-MBEs. Overall, the results show that when firm characteristics are held constant, MBE firms are more likely to indicate barriers such as pre-qualification requirements, proposal/bid specifications, insurance requirements, bond requirements, informal networks, size of contract, and slow payments impact doing business at statistically significant rates.



TABLE 9-5.  
PRIME CONTRACTOR SURVEY RESPONSES LOGIT

BARRIER	TOTAL MBE
Pre-qualification Requirements	+*
Bond Requirements	+
Proposal/bid specifications	+*
Short or limited time given to prepare bid package or quote	+
Restrictive contract specifications	+
Selection process/evaluation criteria	+
Insurance requirements (general liability, professional liability, etc.)	+*
Cost of bidding/proposing	+
Price of supplies/materials	+
Competing with large companies	+*
Financing	
Lack of Experience	
Contract too large	+*
Informal network of prime contractors and subcontractors that has excluded my company from doing business ("good ole boy" network)	+*
Changes in the scope of work (after work began)	
Slow payment or non-payment for project work	+

Source: Business Surveys, Greensboro Staffing & Online Surveys.

Note: "+" indicates significance at a 5% level or better (95% confidence).

TABLE 9-6.  
SUBCONTRACTOR CONTRACTOR SURVEY RESPONSES LOGIT

BARRIER	TOTAL MBE
Pre-qualification Requirements	+*
Bond Requirements	
Proposal/bid specifications	+*
Short or limited time given to prepare bid package or quote	+*
Restrictive contract specifications	+
Selection process/evaluation criteria	+*
Insurance requirements (general liability, professional liability, etc.)	
Cost of bidding/proposing	+
Price of supplies/materials	+
Competing with large companies	+*
Financing	+*
Lack of Experience	
Contract too large	+
Informal network of prime contractors and subcontractors that has excluded my company from doing business ("good ole boy" network)	+*
Changes in the scope of work (after work began)	



BARRIER	TOTAL MBE
Slow payment or non-payment for project work	+

Source: Business Surveys, Greensboro Staffing & Online Surveys.

Note: “\*” indicates significance at a 5% level or better (95% confidence).

Qualitative data were collected using multiple methods and included a broad reach of diverse businesses and business industries. Feedback from many businesses had common discriminatory themes regarding their experiences working or attempting to work with City, such as prime contractors rarely utilizing MBEs when there were no project goals, dropping MBEs from projects they were initially included after the work began, and numerous discriminatory barriers in doing business (i.e., insurance requirements, slow or no payments, cost of bidding, or contract requirements)

### 9.3 Aspirational Goals Methodology

Estimates of MBE 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-based remedies are necessary for all industry categories. Proposed MBE aspirational goal for construction is 26 percent, architecture and engineering is 18 percent, professional services is 17 percent, other services is 20 percent, and goods is 5 percent. The overall aspirational goals are recommended at 21 percent for MBE 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.

### 9.4 Commendations and Recommendations

The City of Richmond 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 community of minority- and emerging small-owned businesses. Most of the following recommendations are based on multiple findings and do not necessarily tie to one finding. The recommendations are presented according to race- and gender-neutral measures and race- and gender-based measures.

#### 9.4.1 Race-Neutral Recommendations

##### Adopt Anti-Discrimination Ordinance

Adopt a Commercial Non-Discrimination Ordinance that prohibits discrimination on the basis of race, gender, religion, national origin, ethnicity, age, disability, or any other form of unlawful discrimination in connection with City contracts, including discrimination in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, brokers, joint venture partners or manufacturers. The ordinance should further prohibit retaliation against any person, business, or other entity for reporting any incident of prohibited discrimination.



## Expanded Data Collection and Management

The City should be commended for acquiring a contract compliance system. We recommend that all contracts, construction, professional services, etc., are entered into and monitored in the City's contract compliance system. This will expand the City's visibility to MBE utilization and will establish a single source to monitor MBE compliance. The City should also require all vendors to utilize the system to report all subcontract utilization and payments, MBE and non-MBE. This system should be utilized by all City departments to enter and monitor their contracts.

The City should be commended for implementing a subcontractor payment utilization module that enhances MBE compliance reporting. This module allows subcontractors to verify that they received payment for work performed.

The City should implement data systems and processes to monitor and track progress on key performance indicators (KPIs) and establish solid processes to collect and analyze MBE utilization data by race, ethnicity, and gender to monitor goal attainment. Data collection should include:

- ◆ Require primes to report subcontractor and supplier utilization (both MBE and non-MBE). As identified in this report, MBE subcontracting data were available, but not all non-MBE data were available. All subcontracting/supplier utilization should be maintained to analyze and report total MBE and non-MBE subcontracting participation.
- ◆ Consistently collect bid and proposal responses and identify those that are MBE firms. Bid and proposal data will assist the City in monitoring marketplace availability. For example, if data illustrates there are enough MBEs in the market presumed to be available to bid but do not bid, the City should contact firms and determine the cause.
- ◆ Data system should connect intuitively with the City's payment data system from the beginning of a contract to its completion.
- ◆ Collect and report the expenditures and percentage of spending by each City department.
- ◆ List of certified MBE firms in the established relevant market area. The database of firms located in the relevant market area should be readily available to City departments and potential bidders or proposers.

A utilization scorecard or annual report should be developed and available on the City's website. This report should provide accountability and transparency around progress toward M/WBE goals.

## Develop a Formal Strategy for Business Relationships with Organizations

The City should develop a more formal and structured business relationship with organizations that promote MBEs for a more comprehensive and effective outreach and technical assistance effort. Prior to developing the more formal relationships, the City should develop a formal strategic plan to incorporate local support groups and organizations, such as minority chambers of commerce and technical assistance centers, financial institutions, to support and augment city development and growth of small, and minority-owned firms. The strategic plan should outline the goals and objectives for creating these strategic partnerships.



- ♦ The City should be commended for conducting quarterly training meetings with local organizations that support MBEs. This effort provides a more structured basis to “index” and coordinate available assistance and support to MBEs. The City should expand its technical assistance programs to include bonding and insurance assistance for MBEs.
- ♦ The City should create a public sector advisory board that is comprised of businesses that do work in the public sector. The advisory board could more effectively develop and institute “best practices” and affect business development mechanisms and a more strategic process by which to build capacity and capability.

The City should consider increasing the budget of the Office of Minority Business Development to support additional outreach, workshops, marketing, professional development, and overall capacity building of MBE firms. Additional outreach in the community is critical to the success of the MBE program. It is recommended that the Office of Minority Business Development host more training, workshops, and professional development opportunities throughout the City to encourage participation and increase access and attendance.

## Establish Performance Review Metric

The City should consider including MBE utilization in the performance review process for department heads and other employees with procurement authority. This would result in greater accountability for MBE utilization, particularly if there are performance incentives for increased utilization.

## Adopt an Audit Clause for Contracts

An audit clause in all city contracts will require companies contracted with the City to maintain contract files and data for a period of time and require companies to provide the City with any data or information requested in the execution of the company’s contract. The audit clause allows the City to collect any data needed in the performance of their duties such as subcontract reporting.

### 9.4.2 Race-Based Recommendations

#### Narrowly Tailored MBE Program

Any new MBE Program modifications implemented to address the findings of this study should be narrowly tailored to specifically address identified disparity in accordance with guidance from case law regarding race-based procurement programs. Developments in court cases involving federal disadvantaged business enterprise (DBE) programs provide important insight into the design of local MBE programs. Federal courts found have consistently found DBE regulations in 49 CFR 26 to be narrowly tailored.<sup>120</sup> The federal DBE program has the features in **Table 9-6** that contribute to this characterization as a narrowly tailored remedial procurement preference program. The City should adopt these features in any new MBE program.

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<sup>120</sup> *Adarand v. Slater*, 228 F.3d 1147 (10<sup>th</sup> Cir. 2000), *Gross Seed. v. State of Nebraska*, 345 F.3d 968 (8<sup>th</sup> Cir. 2003); cert denied, 158 L.Ed. 2d 729 (2004).



TABLE 9-7.  
NARROWLY TAILORED M/WBE PROGRAM FEATURES

NARROWLY TAILORED GOAL-SETTING FEATURES	DBE REGULATIONS
The City should not use MBE quotas.	49 CFR 26(43)(a)
The City should use race- or gender-conscious set-asides only in extreme cases.	49 CFR 26(43)(b)
The City should meet the maximum amount of MBE goals through race-neutral means.	49 CFR 26(51)(a)

Source: Suggested features in a proposed narrowly tailored M/WBE program based on USDOT 49 CFR 26.

## Contract Specific Subcontracting Goals

The City currently applies contract specific goals to most formal contracts. To ensure all MBE firms in the relevant market area have opportunities, project-specific subcontracting goals should continue to be established where there is availability for specific scopes of work across all procurement categories, e.g., construction, professional services, architecture and engineering, etc. and based on the historical participation of MBE on identical or similar projects. Project-specific subcontract goals will assist the City in addressing identified disparities found in this report.

## Adopt Annual Aspirational MBE Goals

Estimates of MBE 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-based remedies are necessary for all industry categories. Proposed MBE aspirational goal for construction is 26 percent, architecture and engineering is 18 percent, professional services is 17 percent, other services is 20 percent, and goods is 5 percent. The overall aspirational goals are recommended at 21 percent for MBE 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.

## MBE Staff and Departmental Liaisons

The Office of Minority Business Development has a significant role in the education, compliance, and advocacy of staff as well as for the MBE community. Partnerships with City departments and professional organizations increase outreach and education, however, there must be enough staff to monitor, track, report, and coordinate all of the efforts and policies of the MBE Program. The City should consider allocating resources to support a staff member whose responsibilities include inspecting the work performed on the site of construction and repair projects. Having an advocate in the field could ensure inspection standards are applied fairly, subcontract agreements are upheld, and verification of scope issues that may arise. This person could also use their knowledge of market conditions in the goal-setting process.



All City departments can contribute to promoting the City's MBE utilization. Staff within departments with purchasing authority should act as a liaison between the department and the OMBD. Liaisons will maintain outreach and bid records and report activity to the MBE Division. The liaison will also work with the MBE Division to identify available MBE firms.

### **MBE Program Sunset**

The City of Richmond should continue the review of the MBE 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 MBEs in the relevant market area. The MBE Program sunset date should be scheduled in 2029 and re-evaluated.

## **9.5 Conclusions**

This study provides factual predicate evidence, compelling governmental interest, and legal defensibility for continuing a narrowly tailored City MBE Program. Selected practices of other MBE Program components that the City may incorporate are provided in [Appendix A](#). Discriminatory disparities were identified in all procurement categories, and business ownership classification was analyzed as illustrated in [Table 9-4](#). This evidence is based on quantitative and qualitative data from public and private sources. Any program efforts must be narrowly tailored to rectify the issues identified in this report.