



Executive Summary 2023 Disparity Study

CITY OF RICHMOND

Draft Report

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City of Richmond

2023 Disparity Study

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Executive Summary

Introduction

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.

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 involved analyzing contracting opportunities in the procurement categories to identify whether 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.

Legal Framework

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

The foundational case for evaluating M/WBE programs is *Croson*. *Croson* indicated what types of data might be sufficient to show that a program was narrowly tailored to further a compelling government interest. "Where there is a significant statistical disparity between the number of qualified minority

contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise." *Croson*, 488 U.S. at 509. The appropriate remedy for such an inference is likely not a "rigid numerical quota," *id.* at 508, but could be a program that offers "some form of narrowly tailored racial preference," *id.* at 509.

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.*,¹. 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*² 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 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."³ 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 body⁴. 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 question⁵. "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."⁶ 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 power⁷. 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 reasonable⁸.

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

¹ *Clinton v. Cedar Rapids & M. R. R. Co.*, 24 Iowa 455 (1868).

² *Hunter v. Pittsburgh*, 207 U.S. 161, 28 S. Ct. 40 (1907).

³ *Marble Techs., Inc. v. City of Hampton*, 279 Va. 409, 416-17, 690 S.E.2d 84, 88 (2010).

⁴ *City of Chesapeake v. Gardner Enters.*, 253 Va. 243, 246-47, 482 S.E.2d 812, 814-15 (1997).

⁵ *Id.* at 247, 482 S.E.2d at 815.

⁶ *Marble Techs., Inc. v. City of Hampton*, 279 Va. 409, 418, 690 S.E.2d 84, 88 (2010).

⁷ *Marble Technologies v. City of Hampton*, 279 Va. 409, 421, 690 S.E.2d 84, 90 (2010).

⁸ *Advanced Towing Company, LLC v. Fairfax County Board of Supervisors*, 280 Va. 187, 694 S.E.2d 621 (2010).

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.

Study Scope and Data Parameters

The scope of the disparity study included defining the City’s market area and analyzing payment and contract data. MGT staff compiled and reconciled electronic data provided by the City to merge prime and subcontractor contract data to create a Master Utilization Database to support the needs of the study. MGT utilized the City’s financial data as the primary source of the prime financial data and supplemented that data with input from the City departments. The prime contract data was combined with the subcontractor data which was collected via a survey of the primes. Based on a common contract ID across both data sets, MGT merged the subcontractor data with the prime data to make up the Master Utilization Database.

Market Area

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

The recommended relevant market area includes Amelia County, Charles City, Chesterfield County, Colonial Heights City, Goochland County, Hanover County, Henrico County, Hopewell City, King William County, New Kent County, Petersburg City, Powhatan County, Prince George County, and Richmond City, VA (“Market Area”). **Chapter 4** details the exact localities utilized.

Economic Impact Analysis

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 MBEs is the program’s goal, the program’s impact can go far beyond the spending. An economic impact analysis (EIA) can be used to obtain a more comprehensive measurement of an MBE program’s impact.

Key Findings

Finding A: M/WBE Utilization (Chapter 4, Appendix B)

In **Table E-1**, 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.⁹

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

BUSINESS OWNERSHIP CLASSIFICATION	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
BUSINESS OWNERSHIP CLASSIFICATION	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 Analysis.

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

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

MGT calculates availability based on a “custom census” approach. This approach is the most accurate for calculating availability at its most granular level. An in-depth explanation of this approach is provided in **Chapter 4**. Detailed availability results by business category and 4-digit NAICS code are provided in **Appendix B**. The availability estimates by procurement category are illustrated in **Table E-2**.

⁹ Chapter 3, Market Area and Utilization Analyses

TABLE E-2.
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 4, Market Area and Availability Analysis.

Finding C: Disparity (Chapter 5)

This section includes the results of the disparity ratios calculated in **Chapter 5**. MGT's disparity index methodology yields an easily calculable value, understandable in its interpretation, and universally comparable. A disparity in utilization within the minority-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 between 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 E-3.
DISPARITY RATIO SUMMARY ANALYSIS

Procurement Category	All	Construction	Architecture & Engineering	Professional Services	Non-Professional Services	Goods
African Americans	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
Asian Americans	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
Hispanic Americans	Disparity	Disparity	Disparity	Disparity	No Disparity	Disparity
Native Americans	Disparity	Disparity	No Disparity	Disparity	No Disparity	Disparity
MBE Firms	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity

BOLD indicates substantial statistically significant disparity.

Finding D: 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 E: 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 F: Qualitative Data Analysis (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 E-4** and **Table E-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 the contract, and slow payments impact doing business at statistically significant rates.

TABLE E-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)	

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).

TABLE E-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).

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).

Finding G: Economic Impact Analysis of MBE Program *(Chapter 7)*

Table E-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 E-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
Total Economic Impact	476	\$33,764	\$49,540	\$9,272

Note: Dollar values are in thousand

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.

Commendations

The City of Richmond is commended for investing the resources and providing 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- -neutral measures and race -based measures.

Recommendations

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

Race- -Neutral:

A: 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 and ethnicity 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, and 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.

Race- -Based:

A: 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.¹⁰ The federal DBE program has the features in **Table E-7** that contribute to this characterization as a narrowly tailored remedial procurement preference program. The City should adopt these features in any new MBE program.

¹⁰ *Adarand v. Slater*, 228 F.3d 1147 (10th Cir. 2000), *Gross Seed. v. State of Nebraska*, 345 F.3d 968 (8th Cir. 2003); cert denied, 158 L.Ed. 2d 729 (2004).

TABLE E-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-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 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.

1. 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.

CONCLUSION

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.