



**City of Wilmington
Disparity Study**

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FINAL REPORT

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GLOSSARY OF TERMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Contract award data—data gleaned from the City’ bid history data and contract logs that were provided to M³ Consulting in a shared folder. Access to the shared folder was provided by the City’s Point of Contact. The contract logs represent the universe of formal competitive contracts let by the City.

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

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

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

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

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

Disparity Ratio—ratio of the percentage of receipts received by M/WBEs from a particular public entity in a specific category of work (e.g. construction), to the percentage of firms that are M/WBEs available to

do business with that public entity; also, the public entity's M/WBE utilization divided by M/WBE availability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ready, Willing and Able Availability Estimate (RWASM Estimate)—the number of DBEs ready and willing to perform a particular scope of work and with the ability to expand (or contract) to do the type of work required. Derived from the U.S. Supreme Court’s statement that:

Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise.¹

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

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

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

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

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

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

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

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

¹*City of Richmond v. J.A. Croson*, 109 S.Ct. 706, at 729 (1989).

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

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

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

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

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

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

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

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

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

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

EXECUTIVE SUMMARY

E.1 INTRODUCTION

E.1.1 PURPOSE OF DISPARITY STUDY

On August 18, 2021, the City of Wilmington (the City) commissioned Miller³ Consulting, Inc. (M³ Consulting) to conduct a Disparity Study (the Study). The purpose of the study was to determine if there is evidence showing that there is disparity among ready, willing, and able disadvantaged businesses enterprises (DBEs) in Architecture and Engineering (A&E), Construction and Construction-Related Services, Professional Services, Non-Professional Services, and Goods & Supplies procurement and contracts issued by the City. The study period covers fiscal year (FY) 2016 to FY 2020.

E.1.2 OVERVIEW OF THE CITY OF WILMINGTON'S CURRENT RACE AND GENDER-CONSCIOUS AND RACE AND GENDER-NEUTRAL PROGRAMS

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

E.1.3 CROSON AND THIRD CIRCUIT STANDARDS

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

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

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

“Narrow tailoring” is a crucial element in crafting appropriate *Croson* remedies.² Courts have struck down many M/WBE programs due to the failure of local jurisdictions to narrowly tailor their remedies. Once government policymakers have established and relied upon a factual predicate in devising M/WBE programs, post-*Croson* case law provides more detailed guidance for crafting M/WBE programs:

- Race- and gender-conscious M/WBE programs should be instituted only after, or in conjunction with, race- and gender-neutral programs.
- M/WBE programs should not be designed as permanent fixtures in a governmental purchasing system without regard to eradicating bias in standard purchasing operations, or in the private sector contracting arena in which the governmental entity is a participant. Consequently, each M/WBE program should have a sunset provision as well as provisions for regular review. Additionally, there is the implication that purchasing systems should be reformed.
- M/WBE programs should have sensible graduation provisions for M/WBEs that have largely overcome the effects of discrimination and are no longer in need of a remedy.
- Rigid numerical quotas are at considerable risk of being overturned by judicial review; flexible, rational, contract-specific goals are more legally defensible.
- Race- and gender-conscious goals should be tied to the relative M/WBE availability of qualified firms to perform a given contract and to addressing identified discrimination within an industry.
- M/WBE programs should limit their adverse impact on the rights and operations of innocent third parties.
- M/WBE programs should be limited in scope to only those group(s) and firms that suffer the ongoing effects of past or present discrimination.

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

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

² Narrow tailoring elements include good faith consideration of race-neutral alternatives for elimination of barriers to M/WBE participation; project-specific goal setting; flexibility in the size of goals based upon the relative availability of qualified, ready and willing M/WBEs; and limiting the scope of such remedies to those specific firms that are significantly underutilized within an industry segment.

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

- Race-neutral efforts, including any revolving loan fund, technical assistance and training, and bonding assistance, must also be assessed and considered prior to the use of race-conscious relief.

E.2 M³ CONSULTING'S APPROACH AND METHODOLOGY

M³ Consulting's exclusive Study methodology includes 10 analyses, which lead to overall conclusions and recommendations.

E.2.1 M³ CONSULTING'S 10-PART DISPARITY STUDY METHODOLOGY

M³ Consulting's 10-part Study methodology provides a complete factual predicate consistent with evolving case law and the City's regulatory environment. The statistical analysis—relevant market, availability, utilization, disparity and capacity—conforms with the requirements of *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 109 S.Ct. 706 (1989); *Adarand Contractors, Inc. v. Federica Pena*, 515 U.S. 200, 115 S. Ct. 2097 (1995); and Eleventh Circuit progeny and determines if there are statistically significant disparities from which an inference of discrimination may be drawn. The remaining industry and market analysis assists in determining if organizational factors (active discrimination or exclusion) or private sector and marketplace factors (passive discrimination or exclusion) cause any disparity. Together, these findings allow the City to determine if there is a compelling governmental interest in using race- and gender-conscious remedies for any statistically significant disparity. The combined analysis also leads to a set of customized recommendations that includes race- and gender-neutral initiatives and narrowly tailored race- and gender-conscious initiatives.

The City of Wilmington Disparity Study

Industry Analysis	Statistical Analysis	Market Analysis	Conclusions	Recommendations
•Legal Analysis •Procurement and DBE Program Operational Analysis	•Relevant Market Analysis •Availability Analysis •Utilization Analysis •Disparity Ratios •Regression and Capacity Analyses	•Anecdotal and Survey Analyses •Race- and Gender-Neutral Analysis •Marketplace Analysis	•Finding of Passive or Active Discrimination, If Any •Identification of Barriers to DBE Participation	•Procurement and DBE Programmatic Initiatives •Goal-setting •Nondiscrimination Initiatives •Management and Technical Assistance

Description of Disparity Study Components

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

The methodology components M³ Consulting deploys reflect the continuing development of case law, which has increased the level and sophistication of the statistical analysis necessary to comply with *Croson* and *Adarand* standards.

E.2.2 STATISTICAL METHODOLOGY

The statistical methodology below discusses in more detail relevant market, availability, utilization, and disparity. It includes various definitions of availability and M³ Consulting's "Ready, Willing and Able" (RWASM) model. M³ Consulting has adapted this model to the specific the City data sources available for this study. Also discussed are the types of utilization analysis M³ Consulting will perform. The statistical methodology section concludes by defining the disparity ratio and significance tests, crucial for drawing conclusions regarding any disparity in the City's recent history of contracting with DBEs.

To conduct the analysis, M³ Consulting collected vendor, bidder, contract award, purchase order (PO) and payments data for years FY 2016 to FY 2020.

A. Relevant Market

The *Croson* statistical analysis begins with identifying the relevant market. The relevant market establishes geographical limits to the calculation of DBE availability and utilization. Most courts and Study consultants characterize the relevant market as the geographical area encompassing most of a public entity's commercial activity. The *Croson* Court required that an MBE program cover only those groups that have been affected by discrimination within the public entity's jurisdiction.³

Two methods of establishing the relevant market area have been used in disparity studies. The first uses vendor and contract awardee location of dollars expended by an entity in the relevant industry categories. In the second method, vendors and contractors from an entity's vendor or bidder list are surveyed to determine their location. The former method is based on approaches implemented under the U.S. Justice Department guidelines for defining relevant geographic markets in antitrust and merger cases. M³ Consulting has developed a method for determining an entity's relevant market by combining the above methods and using an entity's bidder lists, vendor lists and awardee lists as the basic foundation for market definition.

By examining the locations of bidders, vendors and winners of contract awards, M³ Consulting seeks to determine the area where most of an entity's commercial activity occurs based on its contracting activity. While case law does not indicate a specific minimum percentage of vendors, bidders, or contract awardees that a relevant market must contain, M³ Consulting has determined a reasonable threshold is somewhere around 70 percent each for bidders, vendors and contract award winners. Further analysis may be necessary if there are large differences in the percentages of these three measures.

³ *Richmond v. Croson* at 725.

B. Availability Analysis

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

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

1. M³ Consulting Availability Model

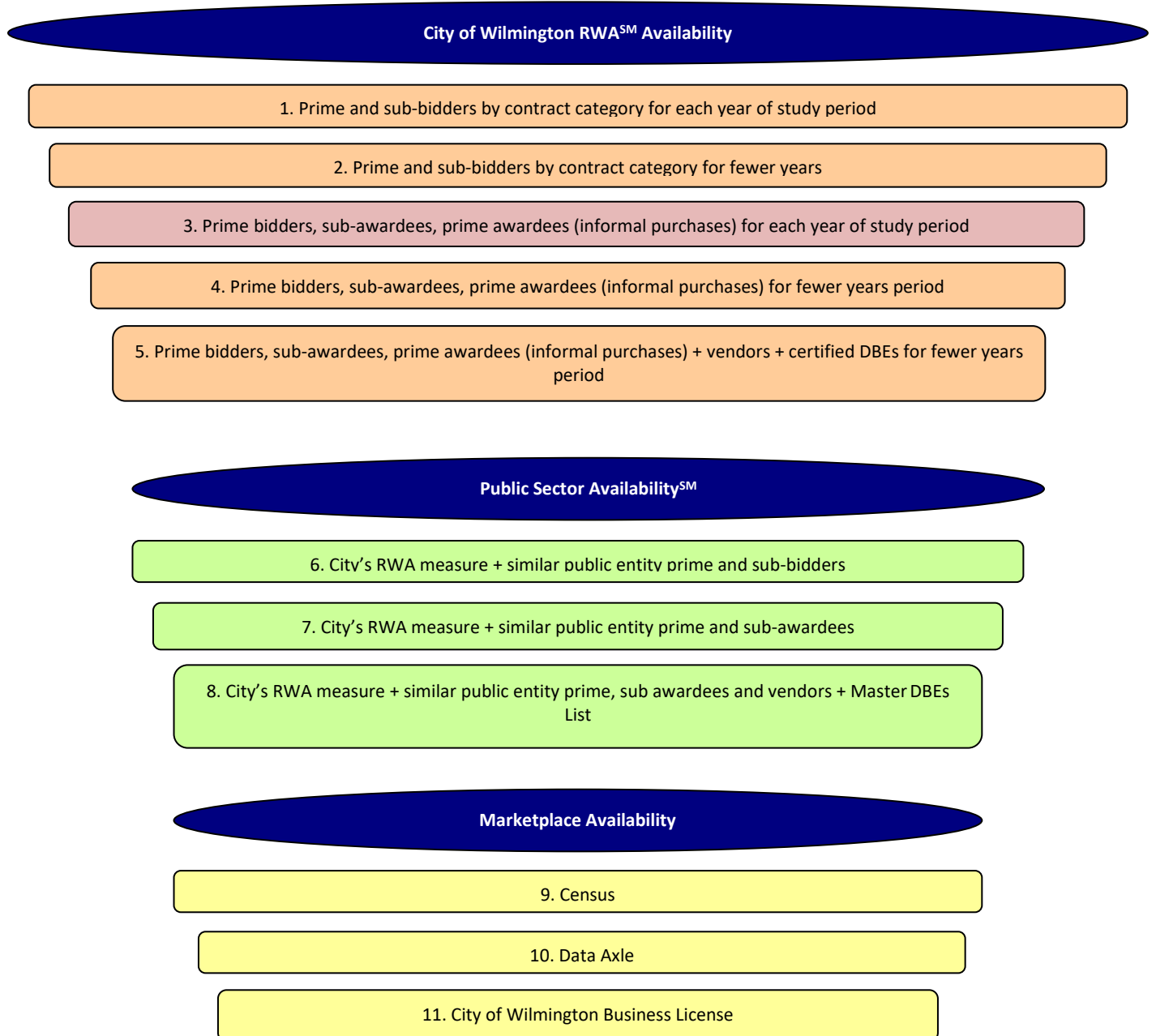
M³ Consulting employs two general approaches to measuring availability: the RWASM model and marketplace availability. The availability measures can fall into the following categories:

- **RWASM**—Those firms that are ready, willing and able to do business with the City;
- **Public Sector Availability**—Those firms that are ready, willing, and able to do business with similar public sector agencies within the City’s marketplace⁴; and
- **Marketplace Availability**—All firms available in the City’s marketplace, as measured by Census, Dun & Bradstreet, Data Axle, Dodge Data & Analytics and/or business license data.

The matrix in Figure E.1 outlines M³ Consulting’s Availability Model. The matrix starts with the optimum availability measure of those firms ready, willing and able to do business with the City and descends to less optimum measures. Factors that determine which level of availability best suits the City’s environment include quality of available data, legal environment, and previous levels of inclusion of DBE in bidding and contracting activity.

⁴ This analysis requires intergovernmental cooperation between public entities providing bidder, vendor and awardee data; thus it is not performed unless such agreement is developed for individual agencies or a consortium of agencies conducted a consortium disparity study.

Figure E.1.
RWASM Availability Model



Source: M³ Consulting

M³ Consulting's RWASM Availability Model is further tailored to the robustness of the City's specific databases available for analysis. RWASM availability is defined at Level 2 for the years FY 2016–FY 2020, which includes prime and sub-bidders, informal and noncompetitive awardees, and prime and sub-awardees.

Figure E.2.
City of Wilmington Specific RWASM Availability Levels

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

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

C. Utilization Analysis

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

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

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

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

D. Disparity Analysis

A straightforward approach to establishing statistical evidence of disparity between the availability of DBEs and the utilization of DBEs by the City is to compare the utilization *percentage* of DBEs with their availability *percentage* in the pool of total businesses in the relevant market area. M³ Consulting's specific approach, the "disparity ratio," consists of a ratio of the percentage of dollars spent with DBEs (utilization) to the percentage of those businesses in the market (availability).

Disparity ratios are calculated by actual availability measures. The following definitions are used in the M³ Consulting ratio:

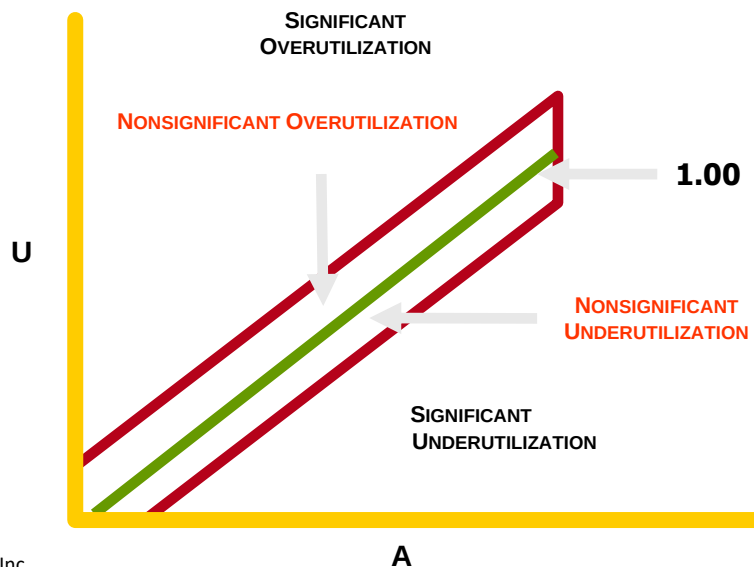
A	=	Availability proportion or percentage
U	=	Utilization proportion or percentage
D	=	Disparity ratio
N _w	=	Number of women-owned firms
N _m	=	Number of minority-owned firms
N _t	=	Total number of firms

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

A _w	=	N _w /N _t
A _m	=	N _m /N _t
D	=	U/A

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

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



Source: M³ Consulting, Inc.

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

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

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

E.3 FINDINGS AND CONCLUSIONS

E.3.2 STATISTICAL FINDINGS IMPACTING STATISTICALLY SIGNIFICANT DISPARITY

A. Relevant Market

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

- City of Wilmington;
- Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metropolitan Statistical Area (hereinafter, Wilmington MSA)⁵;
- State of Delaware; and
- Nationwide.

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

Source: M³ Consulting, Wilmington Contracts Data, MUNIS Financial System PO and AP data

B. Availability Analysis

Table E.2 summarizes the availability estimates for DBEs within the relevant market for the City of Wilmington. It also provides the source of the information. M³ Consulting typically relies upon RWASM estimates derived from bidders, sub-bidders, and awardees in that order of importance. Marketplace availability measures, based on Data Axle and reflected in Table E.3, are presented as a benchmark of minority- and woman-owned firm availability and for the City of Wilmington to consider when looking for potentially available firms for outreach.

⁵ Bucks County, Burlington County, Camden County, Cecil County, Chester County, Delaware County, Gloucester County, Montgomery County, New Castle County, Philadelphia County, Salem County

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

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

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

DBE availability based on RWASM availability was 11.31 percent for Non-Professional Services, in comparison to the marketplace availability at 36.13 percent. The RWASM pool included 844 firms; marketplace, however, reflected a pool of 25,765 firms. Under RWASM availability, African American-owned firms reflected the highest availability at 6.67 percent, followed by WBEs at 2.60 percent. In comparison, based on marketplace availability, WBEs had the highest availability at 27.97 percent, and African American-owned firms were barely represented, reflecting less than 1.2 percent. Hispanic American-owned firms had the highest presence in marketplace availability among MBEs at 5.09 percent, but they were barely represented within RWASM availability, with only 11 firms, or 1.24 percent. This presents a window of opportunity for the City of Wilmington to consider potentially available Hispanic American-owned firms for outreach.

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

Except for Construction, DBEs reflect a lower proportion of bidders and awardees in the City of Wilmington's procurement process, as noted in the RWASM measures for A&E, Professional and Non-Professional Services compared to marketplace availability, largely due to high WBE representations in

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marketplace. These proportions change for MBEs in A&E, Construction and Non-Professional Services, where they have higher RWASM availability than marketplace.

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

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Table E.2.

**Summary Table – RWASM Level 2 Availability Percentage Participation
City of Wilmington
Relevant Market; FY 2016–FY 2020**

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

Source: M³ Consulting; Wilmington Contracts Data; MUNIS PO and AP data; Wilmington Vendor data; Other MBE is a firm identified as MBE with no specific race/ethnicity identified; Unknown DBE is a firm identified as DBE, with no specific race/ethnicity/gender identified.

¹Nationwide

²Wilmington MSA Area

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**Table E.3.
Data Axle Availability
Wilmington MSA, 2021**

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

Source: Data Axle, 2021; M³ Consulting

C. Utilization Analysis

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

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

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

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

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

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

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

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

Source: M³ Consulting, Wilmington Contracts Data, MUNIS PO and AP data, Wilmington Vendor data

¹Nationwide

²Wilmington MSA

³State of Delaware

⁴Includes unknown DBEs

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Table E.5.
Total Utilization
POs—Dollars
City of Wilmington
Nationwide, FY 2016–FY 2020

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

Source: Wilmington Contracts Data, Wilmington MUNIS data, M³ Consulting

¹Nationwide

²Wilmington MSA

³Contract Awards

⁴POs

D. Disparity Analysis

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

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

Table E.6.
Summary Disparity Ratios by Race, Ethnicity and Gender
Utilization vs. RWASM Availability Level 2
City of Wilmington
Relevant Market; FY 2016–FY 2020

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

Source: Wilmington Contracts Data, MUNIS PO and AP data, M³ Consulting

-Ratio is less than 1—underutilization; ratio is greater than 1—overutilization

-Significance is S and ratio is less than 1—statistically significant underutilization or disparity; significance is S and ratio is greater than 1—statistically significant overutilization

-Significance is NS and disparity ratio is less than 1—disparity but not statistically significant; significance is NS and ratio is greater than 1—overutilized but not statistically significant

E. Capacity Analysis

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

Capacity Based on Census Annual Survey of Entrepreneurs

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

With 18.20 percent of firms with paid employees, Asian American-owned firms have the highest capacity among M/WBEs for Goods & Supplies, followed by WBEs at 11.62 percent. Among M/WBEs in Non-Professional Services, Asian American-owned firms, African American-owned firms and WBEs represented 13.96 percent, 3.01 percent, and 14.23 percent, respectively, of firms with paid employees. In Professional Services, WBEs had 6,115 firms with paid employees, which represented 18.28 percent of the total, while there were 4,813 MBEs that represent 14.39 percent of firms with paid employees.

Capacity Based on Data Axle

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

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

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

Most Goods & Supplies companies have 1,000 employees. Only four Non-M/WBEs firms and 10 of unknown/multiethnic-owned firms have over 1,000 employees. WBEs and unknown/multiethnic firms were most consistently represented across all ranges in Non-Professional Services. In Professional Services, Non-M/WBEs firms reflect between 20–35 percent across all employee ranges, and WBEs

represented 11–18 percent across all ranges. No MBEs had 1,000 or more employees in Professional Services.

If capacity were based on sales revenues, in A&E, only Non-M/WBE, WBE and unknown/multiethnic-owned firms are represented in every revenue range until \$500 million. In Construction, Non-M/WBEs based on sales volume range up to \$100 million, along with WBEs and Asian American-owned firms. All firms showed capacity in Goods & Supplies, up to \$50 million; only Non-M/WBEs, WBEs and those with unknown racial ethnicity show capacity up to \$1 billion. There are firms in all race/gender groups with capacity up to \$50 million in sales volume, except for Native American-owned firms with capacity up to \$10 million and African American-owned firms up to \$20 million in the case of Non-Professional Service firms. Among Professional Service firms, only WBEs reflected capacity up to \$1 billion, although one unknown/multiethnic-owned firm and Non-M/WBEs are shown for the revenue range over \$1 billion.

Capacity Based on Survey Regressions

Based on the results from the survey:

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

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

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

Capacity Based on Public Use Microdata Sample

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

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

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

- If all other variables are kept constant, a self-employed African American will earn about \$27,765 less than a similarly situated nonminority; a self-employed Hispanic American will earn about \$19,529 less, and a White female will earn about \$27,361 less. A female who is self-employed in the State of Delaware will earn \$28,143 less than a self-employed male.
- A disabled individual who is self-employed earns about \$16,702 less than a non-disabled individual, whereas a person with a bachelor's degree will earn \$14,454 more being self-

- employed and one with an advanced degree will earn \$47,336 more in self-employment earnings in Delaware.
- Among the industries, individuals in Construction, Non-Professional Services and Goods & Supplies are less likely to earn more in self-employment.

E.3.3 QUALITATIVE FINDINGS IMPACTING STATISTICALLY SIGNIFICANT DISPARITY

A. Procurement and DBE Program Analysis

The City has developed procurement policies and procedures and DBE policies and procedures that are extensive and detailed in many respects. However, in consideration of the aforementioned discussion, analysis, and findings, M³ Consulting asserts that the City's Procurement and DBE program policies, procedures and practices contain aspects that may negatively impact the ability of DBEs to participate in the City's procurement and contracting opportunities.

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

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

Limited and Inconsistent Implementation of Policies/Strategies

While the City appears to have clearly defined DBE policies, the implementation of these policies is hampered by Item A. above, the lack of clear lines of responsibility and accountability between OED and Procurement for the DBE program, and the decentralized procurement process. These limitations reduce the City's ability to be collaborative, responsive, and inclusive within real-time procurement operations.

As such, there are missed opportunities in play for DBE inclusion, for which the Procurement and OED staff should be responsible.

Overuse of Bid Waiver

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

Repeated Use of Same Vendors at Informal Level

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

Enterprise-wide Ownership of DBE Program Policies and Procedures

No department takes full responsibility for the DBE program and its implementation overall or within their respective departments. While Chapter 35 delineates responsibilities between OED and Procurement⁶, demarcation lines of program responsibility were not embraced. Departmental staff interviews reflected inconsistent views on the department's internal responsibility for DBE program policies and procedures.

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

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

Additionally, there are a number of observations that were born out of the 2018 Audit Report as it relates to the City's Disadvantaged Business Enterprise Program. Among the many observations, the auditor found that code sections were outdated and provided little daily operational guidance for the DBE program. The code did not capture the current role of the mayor's OED within the overall DBE program process. There were no documented policies and procedures that provide daily operational guidance on

⁶ See Chapter 35.

program administration. Finally, the Economic Opportunity Plan (EOP) that requires the submission of an EOP for developers that receive City funds or in-kind contributions in excess of \$200K does not identify which office or board is responsible for monitoring departments' compliance with this provision or enforcing the penalty for noncompliance. There is no indication in the documents provided for this analysis that the issues identified in the 2018 audit relative to Sections 35-111 through 35-115 and 35-131 through 35-135 have been addressed. All of these issues negatively impact the DBEs' ability to successfully navigate the City's procurement processes.

Vendor Registration

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

Inconsistent and Limited Reporting

The City's current aspirational diversity inclusion goals are 20 percent on Construction Contracts, 10 percent on Goods & Supplies, and 5 percent on Professional Services. No staff could confirm that there is a specific responsible department or person cross-checking utilization of DBEs against the commitments as represented in the executed contract agreements. Some departments reported that they do use coordinators to make sure that the subcontractors listed on the contract agreements (regardless of race/gender) are the same ones used during contract execution. The function, however, is done from the standpoint of contract adherence as opposed to DBE participation commitment compliance auditing. Some departments reported that they do not regularly send over any DBE spend data for inclusion in an annual report, nor for ad-hoc report requests to the mayor or city council. Therefore, because of this limited reporting transparency, the City will be less likely to identify and eliminate issues of favoritism and discrimination.

Limited Forecasting and Notification of Opportunities

The City engages in limited forecasting of upcoming opportunities at both the informal and formal procurement levels. Furthermore, informal procurements, similar to many other public agencies, are not required to be advertised using any source (e.g., newspaper, website). There is no indication that budgeting and forecasting is a coordinated, enterprise-wide process to determine upcoming procurement needs. There is also no indication that the departments engage in any efforts to analyze capital project solicitations to break down the scopes into the different trade categories to support outreach and matchmaking with diverse vendors—including SBEs and VBEs. The M/WBE Office indicated that they do not participate in any forecasting function or trade analysis exercises with other departments. This lack of forecasting has implications for the ability of the diverse contracting community to properly prepare to

compete for upcoming contracting opportunities. Limited forecasting and notification reduce transparency as it relates to opportunities where DBEs have the capacity to perform. It also limits the time DBEs have to complete all the requirements to ensure that once a solicitation is released, they are ready, willing and able to participate.

Limited Diversity Firm Outreach and Matchmaking

Document analysis and interview feedback revealed that there is no consistent or enterprise-wide philosophy and approach to DBE or diverse firm outreach and matchmaking. Some departments report that they rely on the Procurement Department and the OED to execute all outreach, while other departments try to use the vendor list for outreach (when a list is available). The M/WBE Office reported that there has been a precipitous decrease in outreach, matchmaking and “how to do business” engagements with the diverse business community in part due to the Covid-19 pandemic, but it should be noted that outreach activity was sparse even before the pandemic.

Impact of Decentralized Process

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

M³ Consulting reiterates that the execution and implementation of a public entity’s community economic development objectives commences with the procurement process. Public entity achievement of its community economic development objectives through procurement begins with a public policy approach to procurement and community economic development, supported by project execution, as opposed to purely employing a cost-, schedule-, and project efficiency-based approach.

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

B. Anecdotal Analysis

After analyzing the anecdotal evidence collected from 20 business owners and representatives in the State and the tri-state area, the following observations illustrate the possible barriers that interviewees perceive to exist for minority and women business owners as they attempt to transact business with the City.

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

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

C. Marketplace Analysis

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

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

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

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

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

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

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

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

D. Race Neutral

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

- Goal-Based and Other Targeted Procurement Programs;
- Management and Technical Assistance Providers;
- Financial Assistance Providers;
- Community and Economic Development Organizations;
- Chambers of Commerce;
- Trade Organizations and Business Associations; and
- Other Advocacy Groups.

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

- Importance and availability of capital (funding);
- Insufficient access to information, communication, and/or technology;
- Need for improved City commitment to and processes supporting M/W/DBEs;

- Need for training and education on bid process, running a business, and/or goal-based program requirements;
- Need for improved engagement with the Hispanic community and other “non-English as a first language” communities; and
- Lack of parity, inclusiveness, diversity, and/or discrimination.

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

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

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

E.4 RECOMMENDATIONS

In light of the findings discussed above, M³ Consulting is providing the following recommendations to the City. The recommendations contain both race/gender-neutral and race/gender-conscious elements. These recommendations consist of a listing of pertinent options from which the City may select in tailoring its efforts to the findings of this report. The options combine agency-specific and best practices recommendations that are legally defensible based on the factual findings of this study. The City should consider adoption of those recommendations considered most appropriate in terms of cost, resources, likely effectiveness, community acceptance and organizational feasibility.

E.4.1 IDENTIFICATION OF RACE/GENDER-CONSCIOUS GOAL POSSIBILITIES

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

Establishment of Race/Gender-Conscious Goals

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

M³ Consulting draws an inference of discrimination against the following race, ethnicity, and gender groups:

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

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

Source: M³ Consulting
*Statistically significant

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

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

Availability, utilization, and disparity measures should be tracked on an annual basis and annual goals set as discussed above, as the recommendations below are implemented.⁷ RWASM availability is significantly

⁷ Annual goals should be set only as benchmarks that provide guidance in accessing how well the program is working on an annual

impacted by bidding patterns and practices. If the bidding patterns of the City vendors are altered, due to internal adjustments within the City or marketplace factors, the impact of those changes should be captured.

E.4.2 ENHANCEMENTS TO PROCUREMENT AND DBE PROCEDURES AND PRACTICES

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

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

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

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

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

basis, and that help the agency determine whether it needs to be more or less aggressive in the kinds of tools and efforts it is undertaking to remedy the ongoing effects of discrimination.

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

M³ Consulting does not advocate for either a centralized or decentralized procurement process. We seek to determine the impact of either process on the ability of DBEs to contract with a public entity. Without appropriate infrastructure, management and operational support, an unwieldy bureaucracy can be created that serves as a de facto barrier to DBEs. The City currently operates in a decentralized procurement environment that has the overall effect of decreasing accountability and transparency regarding DBE participation, resulting from a lack of robust infrastructure and integration, coordination and delegation. As such, the City should ensure that the Procurement Department has the authority and ability to:

1. Report to the mayor and city council on the way the City's annual procurement spend has assisted in achieving the objective of increasing DBE participation.
2. Report to the mayor and city council, in conjunction with the M/WBE manager, on whether and the manner in which the City has met stated DBE targets at both the prime and subcontractor levels across procurement categories, inclusive of change orders and work plans, as well as other inclusive procurement initiatives; and,
3. Make recommendations for the utilization of procurement techniques and contracting vehicles that best meet the mayor and city council's objectives as it relates to community economic development and inclusive procurement, as well as User Department needs.

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

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

C. Identify Community Economic Development and Inclusive Procurement Objectives

The Procurement Department and the M/WBE Office must operate in a manner that is both consistent with the policy objectives established by the mayor and city council and programmatically sound. The City can do so through striving toward inclusive procurement, which focuses on continuously working to

ensure that all vendors—regardless of race, ethnicity, gender, national origin, sexual orientation or disability—have the opportunity to bid and perform on the City’s procurement and contracting prime and subcontracting opportunities, thereby participating in the economic prosperity of the Wilmington area, as well as the MSA. An inclusive procurement environment will incorporate the following elements:

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

D. Training and Development

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

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

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

E. Full Implementation of M/WBE Programmatic Initiatives

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

But it does not appear that full and aggressive implementation has ever occurred, based on a 2018 audit of the City's DBE program and M³ Consulting analysis. The City needs to first work to implement its currently established initiatives before making programmatic adjustments. This can only be done sufficiently when Items A. through C. listed above are addressed. The City's current DBE programs require Procurement Department, M/WBE Office and department staff who are well-grounded in procurement, M/W/DBE programs and supplier diversity to achieve the programs' outlined objectives. Otherwise, these programs and initiatives become no more than subcontractor goal programs, supported by insufficient certification efforts and redundant outreach. In a subcontractor-focused program, the responsibility of inclusion is passed on to the City's prime contractors. The City should seek to have direct relationships with diverse businesses at the prime contractor level.

F. Culture Audit

M³ Consulting recommends that the City conduct a culture audit to assist it in moving toward an organizational culture that will more readily support a more inclusive procurement process. The culture audit will allow examination and explanation of the common rules of behavior and underlying beliefs of the City that drives its organization, and the way people approach their work. It will also assist in determining whether the City's current organizational culture is an asset or liability in achieving its vision and mission and provide actual evidence for establishing the appropriate direction for the City.

G. Address Data Capture Issues

Critical to creating an inclusive procurement operation for the City is an efficient and integrated procurement data infrastructure. M³ Consulting recommends that the City address the following data issues outlined below to support transparent monitoring, tracking, and reporting. Once these changes are implemented, M³ Consulting recommends that the City update the statistical portion of the Study to capture FY2016–FY2020 data to provide both a more accurate reflection of DBE utilization at prime and subcontractor levels and as a test case for its DBE data capture process.

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

H. Budgeting, Forecasting and Scheduling

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

I. Monitor Contracts for Issue of Concentration

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

E.4.3 LONG-TERM AVAILABILITY AND CAPACITY-BUILDING INITIATIVES

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

A. Increasing Pipeline of DBEs

1. The Starting Point: Youth Entrepreneurship

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

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

Efforts can include:

- Youth entrepreneurship and financial literacy programs;
- Mentorship and apprenticeship programs with City and other public and private sector vendors/contractors/consultants;

- Targeted entrepreneurship career tracks, in conjunction with local technical colleges; and
- Expanded access to entrepreneurship and financial literacy programs to students' parents/family members.

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

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

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

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

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

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

B. Expanding Competition

Due to policies (such as pre-qualification) and practices (such as awarding contracts to a few firms in certain instances), the City has limited competition on its opportunities. The City may expand competition and potentially increase the award of contracts to DBEs in the following ways.

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

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

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

2. Goal Setting and Other DBE Tools Applied by Threshold

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

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

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

3. Assess Performance of Personnel with Buying Authority

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

E.4.4 EXPANDED DBE INITIATIVES

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

A. Promoting DBE Participation at the Prime Contractor Level

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

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

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

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

Utilizing the Seven Phases of a Development ProjectSM defined by M³ Consulting will allow the City to meet its planning, procurement and DBE needs across the life cycle of the development project.

Along with possible opportunities (list not intended to be exhaustive), the Seven Phases of a Development ProjectSM at each stage are:

- **Planning**—Opportunities exist in the acquisition of right-a-way; acquisition of property; legal services; environmental studies; land use studies; geotechnical studies; and feasibility studies.
- **Financing**—Opportunities may include investment banking, lobbyists, grant proposers and legal services.
- **Designing**—Design services include both architectural and engineering services, with other additional services that may be required such as geotechnical services and environmental services. Design services may also include the development of a bulk purchasing plan.
- **Constructing**—These services include prime contractor/subcontractor activities including construction managers, general contractors, tradesmen, and soil testing.
- **Equipping**—This involves the furnishing of facilities and buildings.
- **Maintaining**—This involves the maintenance of equipment, facilities, and buildings.
- **Operating**—This covers the provision of those services that contribute to the overall continued function of the facility and buildings.

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

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

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

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

D. Address Concerns about Slow Payments

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

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

Bonding

Four approaches may be taken to remove the barrier that bonding requirements can sometimes represent. The efficacy of these programs must be reviewed considering bonding requirements from the

State. The approaches include waiving bonding requirements, removing customary bonding stipulations at the subcontract level, reducing bonding and phasing bonding. Each is described below:

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

In addition to the above, several governmental bodies across the country have worked with local banking and other financial institutions to create bonding programs underwritten by the local government. A key to the success of such programs is establishing a contractor performance-monitoring function to provide

an early warning for any problems encountered by covered contractors. The monitors are empowered to mobilize necessary assistance to ensure completion of the work and to minimize financial and other risks to the underwriter.

Wrap-Up Insurance

This represents an approach to affording all contractors the necessary insurance to perform public work, while guaranteeing the owner that needed insurance coverage is in place in all critical areas of contracting. Under a wrap-up insurance plan, the owner establishes a subsidiary organization, usually made up of a consortium of insurance brokers. Insurers are normally eager to compete for this business and will offer competitive rates to secure it. The arrangement also represents an excellent opportunity to involve DBEs in this business. Once in place, the owner offers blanket insurance coverage to all its contractors through the wrap-up program.

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

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

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

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

G. Effective Matchmaking and Outreach Programs

1. Matchmaking

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

Currently, the City has taken some steps toward matchmaking through its pre-bid matching sessions. However, a full matchmaking process has not been implemented. Matchmaking programs must be tailored to the dynamics of a particular procurement operation. We emphasize that the matchmaking session is not for the purpose of steering vendors to buyers. The City's Procurement and M/WBE

personnel will be required to have detailed knowledge of the capabilities of certified DBEs to fully maximize the matchmaking process. The matching sessions should include the following:

- Coordinate matchmaking sessions with a forecast release and/or solicitation schedule. In many instances, matchmaking sessions follow pre-bid conferences. Matchmaking sessions can also be utilized to identify available firms for projects in planning stages. While not called matching sessions, the federal government often allows vendors to provide qualification information in pre-bid research to determine the level of competitiveness it can expect once the bid is let.
- Focus on commodity areas in the five procurement categories, such that vendors specializing goods and services will have the opportunity to meet with buyers responsible for those commodities.
- Provide the necessary procurement projections buyers and contract specialists should have such that they can discuss specific upcoming opportunities and the requirements and procurement mechanisms that will be utilized to procure the good or service. This specificity is the key factor that distinguishes matchmaking sessions from outreach and vendor fairs.
- Identify informal and formal opportunities during the matching session so that vendors can determine where they have the greatest likelihood of successfully marketing to the City.

Matchmaking at the subcontractor level—Matchmaking takes on a team-building dynamic at this level. Prime contractors/consultants have the opportunity to identify potential DBE team members on upcoming opportunities to be let by the City. To be most effective, City personnel will be required to have an in-depth knowledge of the capabilities of the pool of certified DBEs. M/WBE staff also need to have strong business development skills. The matchmaking session should focus on a particular project, either in planning or prior to bid. It is critical to success that matchmaking occur as early in the planning process as possible. Prime contractors, construction managers and large consultants' planning processes begin well in advance of the actual Invitation to Bid or RFP.⁸ As such, at the time of bid letting, prime contractors and contract managers have often already identified team members to address commercially viable opportunities at the subcontractor level that build a firm's capacity and portfolio. Conformance to DBE requirements often do not produce quality and high-level DBE participation, because these firms are an "appendage" to the team already developed.

⁸Some government online bid and marketing portals employ staff that is in constant contact with government procurement agents and planning departments to identify projects for its clients that may be in the initial planning stages and not yet included in procurement forecasts and budgets. Membership in these portals can cost \$10K or more.

In addition to establishing matchmaking initiatives planned around the City's capital budgets, the City's legal counsel should consider the legality of including responsiveness to matchmaking efforts as a factor of good faith. Often, prime vendors may attend a matchmaking session, but thereafter prime vendors do not communicate with or make themselves available to DBEs after the session. As a result, opportunities for these groups do not often materialize.

2. Outreach

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

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

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

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

Source: M³ Consulting

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

- Promoted and strengthened economic prosperity in the Wilmington area;

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

I. Post-Award Compliance Responsibilities

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

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

J. Partnerships with Technical Assistance Providers

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

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

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

K. Working Capital Loans, Paymaster⁹ Programs and Prompt Pay Requirements

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

⁹ A paymaster is authorized by the firm to handle the firm's receipts and payment of expenses, including payroll and subcontractor payments.

E.5 SUMMARY

In summary, Miller³ Consulting, Inc. found that the City's purchasing activities suggest that DBEs continue to have some difficulties obtaining significant contracts with the City. In submitting specific findings within the Study for the City, M³ Consulting formulated recommendations that allow the City to rely upon race/gender-conscious means when necessary to address ongoing hindrances to eliminate disparities, while also addressing DBE participation through race/gender-neutral efforts. Our economic and statistical utilization analyses could serve as part of the policy- and procedure-making decisions needed to ensure enhanced and legally defensible DBE participation in the City's purchasing processes and opportunities.

CHAPTER 1: INTRODUCTION

1.1 SCOPE OF THE DISPARITY STUDY

August 18, 2021, the City of Wilmington, (the City), commissioned Miller³ Consulting, Inc. (M³ Consulting) to conduct a Disparity Study (the Study). In conducting this Study, M³ Consulting collected and developed data to determine disparities, if any, between the availability and utilization of small-, minority-, and women-owned businesses for contracts awarded by the City. The Study involved the following areas of analysis:

- Collection and analysis of historical purchasing, contracting records and levels of DBE participation in the procurement categories of Architecture & Engineering, Construction and Construction-Related Services, Professional Services, Non-Professional Services, Goods & Supplies from FY 2016 through FY 2020.
- Compilation of bidder, vendor, DBE certification and other lists to determine relative availability of contractors and vendors.
- A market survey analysis to determine capacity.
- An assessment of procurement and DBE policies and procedures that included the following: an analysis of the organizational structures of the City; a review of past and present purchasing, as well as DBE laws, policies, procedures, and practices; and interviews with Procurement, Departmental and Office of Economic Development (OED) personnel;
- Anecdotal interviews and surveying of minority, women, and Non-DBE business owners.
- Examination of Non-DBE and DBE participation in the private sector in the City's market areas; and
- Analysis of race- and gender-neutral alternatives to minority and women business goal-based programs.

This Disparity Study contains the results of M³ Consulting's research and provides conclusions based on our analyses.

1.2 ORGANIZATION OF THE DISPARITY STUDY

This report consists of two volumes. Volume I includes the Executive Summary and twelve chapters. Volume II contains additional statistical tables and relevant appendices. A brief description of each chapter is outlined below.

- **Chapter I – Introduction** includes a synopsis of the contents of each chapter.

1.2.1 Industry Analysis

- **Chapter II – Legal Analysis** presents a discussion of the *City of Richmond v. J.A. Croson* decision and lower court cases interpreting and applying the *Croson* decision, including a discussion of the United States Court of Appeals for the Third Circuit’s review of race- and gender-conscious programs.
- **Chapter III – Procurement Analysis** reviews the City’ Procurement and DBE procedures, policies, and practices in relation to their effect on DBE participation.

1.2.2 Statistical Analysis

- **Chapter IV – Statistical Methodology** provides a detailed discussion of the statistical methods used in the Study for determining availability and utilization of DBEs and in calculating disparity. The chapter begins with a brief review of (a) the relevant market; (b) definition of businesses’ *readiness, willingness, ability* and how they affect measurement of availability; (c) measures of utilization and disparity; and (d) statistical significance. This chapter also reviews the task of data collection and includes a summary of data sources relied upon for relevant market, availability, utilization, and capacity determinations.
- **Chapter V – Statistical Analysis of Relevant Market and DBE Availability** presents data on DBE availability in the relevant market based on the *Ready, Willing and Able (RWASM) Model* and Data Axle data.
- **Chapter VI – Statistical Analysis of DBE Utilization** presents data on DBE, SBE and VBE utilization in awards and payments for FY 2016-FY 2020 based on contract awards, accounts payable and purchase order data.

- **Chapter VII – Statistical Analysis of DBE Disparity in Contracting** presents disparity ratios, which are a comparison of the availability measures in Chapter V and the utilization measures in Chapter VI.
- **Chapter VIII – Capacity and Regression** examines if firm capacity contributed in any way to the observed disparities. The purpose of this analysis is to determine if, after accounting for any differences in the capacity of firms, race and gender are contributing factors to any disparities found. In addition, access to financing is also analyzed in this chapter through survey data.

1.2.3 Market Analysis

- **Chapter IX – Anecdotal Analysis** includes a description of anecdotal data collected and a synopsis of comments during interviews made by minority women and Non-DBE business owners. The interviews focus on personal experiences in conducting business within a specified industry or with the City.
- **Chapter X – Marketplace Analysis** examines DBE participation in public/private sector opportunities and factors impacting their growth and development. It includes U.S. Bureau of Census Self-Employment and Apprenticeship data, Census EEO data, Dodge Construction data, the City's building permits data and local business license data.
- **Chapter XI – Race-Neutral Alternatives** analyzes race and gender-neutral programs to determine if they stimulate the utilization of DBEs without reliance upon characteristics of race, ethnicity, or gender.

1.2.4 Recommendations

- **Chapter XII – Recommendations** presents policy and program recommendations that flow from the findings presented in the report. These recommendations range from race and gender-conscious initiatives for the City to substantive suggestions that pertain to the enhancement of inclusive procurement operations and DBE programs.

The findings in each of the report's chapters are interdependent. This statistical analysis, when viewed in totality, provides the City with a picture of DBE participation in contracting and procurement activity involving prime contracts and subcontracts for the period FY 2016-FY 2020.

CHAPTER 2: LEGAL ANALYSIS

2.1 INTRODUCTION

The purpose of this chapter is to review the legal guidelines governing the City of Wilmington's (the City) efforts to include minority- and women-owned firms in its procurement and contracting opportunities. The analysis is intended to be a comprehensive overview of the requirements of *City of Richmond v. J.A. Croson* and its progeny¹⁰ and their prospective application to Wilmington.

The chapter is divided into three sections, with the following subsections.

2.2. Constitutionality of Race and Gender-Conscious Programs

2.2.1 *City of Richmond v. J.A. Croson* Analysis

- *Adarand v. Peña*—Strict Scrutiny Applied to Federally Funded Requirements

2.2.2 Judicial Review of Croson Cases in the Third Circuit

2.3 Factual Predicate Standards (Conducting the Disparity Study)

2.3.1 Relevant Market vs. Jurisdictional Reach

2.3.2 Availability

2.3.3 Utilization

2.3.4 Disparity Ratios

2.3.5 Capacity and Regression

2.3.6 Anecdotal

2.3.7 Private Sector

2.3.8 Race Neutral

2.4 Conclusions

2.4.1 *Croson* Standards

2.4.2 Third Circuit Standards

2.4.3 Elements of Factual Predicate

This legal construct is instrumental in not only determining the parameters of a disparity study, but also in guiding the analysis of the constitutionality of Wilmington's current and planned race and gender-conscious initiatives.

¹⁰ Progeny are legal cases that follow an original opinion setting legal precedent.

2.2 CONSTITUTIONALITY OF RACE AND GENDER-CONSCIOUS PROGRAMS

2.2.1 CITY OF RICHMOND V. J. A. CROSON ANALYSIS

The legal basis for adoption and application of a government race-conscious program was considered by the U.S. Supreme Court in the precedent-setting case, *City of Richmond v. J.A. Croson Co.*¹¹ The following sections of this chapter discusses the *Croson* case and the United States Court of Appeals for the Third Circuit's interpretation of the Supreme Court's constitutional analysis of government sponsored race and gender-conscious programs.

a. Background

In 1983, the City of Richmond, Virginia enacted an ordinance that established a minority business enterprise utilization plan (MBE plan) requiring non-minority-owned prime contractors awarded city contracts to subcontract at least 30 percent of the dollar amount to minority business enterprises. According to the MBE plan, minority business enterprises were defined broadly as companies with at least 51 percent ownership and control by U.S. citizens who were Black, Spanish-speaking, Asians, Indian, Eskimo, or Aleut. Under this definition, the MBE plan had no geographic boundaries, in that the MBEs eligible to participate in the plan could be located anywhere in the United States. The MBE plan was touted as a solution for promoting greater participation by minority business in construction contracting. The operation of the MBE plan included a waiver for contractors who demonstrated to the director of the Department of General Services that the plan's set-aside requirements could not be achieved. There was no administrative appeal of the director's denial of waiver.

The MBE plan was adopted after a public hearing at which no direct evidence was presented that: 1) the City had discriminated based on race in letting contracts, or that 2) prime contractors had discriminated against minority subcontractors. In the creation of its program, the City Council relied upon a statistical study indicating that, in a city where the population was 50 percent Black, less than one percent of the contracts had been awarded to minority businesses in recent years.

In 1983, the same year the MBE plan was adopted, J.A. Croson Company lost a contract to install plumbing fixtures in the city jail because of a failure to satisfy the 30 percent set-aside requirement. Croson determined that to meet the City's requirements, an MBE would have to supply fixtures that would account for 75 percent of its contract price. After contacting several MBEs on two separate occasions, only one MBE expressed interest, but was unable to submit a bid to Croson due to credit issues. Upon bid opening by the City of Richmond, Croson was the only bidder. Post bid-opening, Croson provided

¹¹ 488 U.S. 469, 109 S.Ct. 706 (1989).

additional time for the MBE to submit a bid to no avail. Croson then requested a waiver from the City, which was denied.

Croson sued the City of Richmond in the U.S. District Court, alleging the plan was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment.¹² The court upheld the plan. In 1985, the Fourth Circuit Court of Appeals affirmed the decision. The U.S. Supreme Court, in an opinion in which Justice O'Connor was joined by four other Justices, held that the Fourteenth Amendment's Equal Protection Clause of the U.S. Constitution was violated by the City of Richmond's set-aside ordinance because:

- 1) Richmond had failed to demonstrate a compelling governmental interest in apportioning public contracting opportunities based on race; and,
- 2) The plan was not narrowly tailored to remedy the effects of prior or present discrimination.¹³

The Court stated there was no proof in the record upon which to base a *prima facie* case of a constitutional or statutory violation by any contractors in the Richmond construction industry. The Court further held that the inclusion of Spanish-speaking, Asians, American Indians, Alaskans, and Aleuts, where there was absolutely no evidence of past discrimination against such persons, demonstrated that the City's purposes were not, in fact, to remedy past discrimination. Finally, the Court held that the 30 percent set-aside was not narrowly tailored to remedy the past effects of any prior alleged discrimination.

b. Standard of Scrutiny Analysis

The *Croson* case falls under the protection of the Equal Protection Clause. The Fourteenth Amendment, which prohibits states from denying any person within its jurisdiction the equal protection of the laws, is usually invoked when the state makes distinctions or classifications. There are three levels of scrutiny under which a state statute, regulation, policy, or practice can be examined: strict scrutiny, intermediate scrutiny, or rational basis.

- 1) The **strict scrutiny** standard is evoked if the classification is suspect, one based on race, ethnic, or alien distinctions or infringements upon fundamental rights. The strict scrutiny test is the most rigorous of the three, requiring the state to show compelling governmental interests for making such classifications.

¹² The district court upheld the plan which was affirmed by the Court of Appeals for the Fourth Circuit in reliance on *Fullilove v. Klutznick*, 448 U.S. 448, 100 S. Ct. 2758 (1980). The United States Supreme Court remanded the case for further consideration in light of the decision in *Wygant v. Jackson Board of Education*, 476 U.S. 267, 106 S.Ct. 1842 (1986) in which it applied the "strict scrutiny test" in invalidating the local school board's layoff policy.

¹³ See *Croson*, at 488 U.S. 469, 109 S. Ct. 706 (1989).

- 2) **Intermediate scrutiny** is applied to gender and age distinctions and requires the state to prove there is a fair and substantial relationship between the classification and the objective of the legislation.¹⁴
- 3) The **rational basis** standard tests economic programs that do not make distinctions based on race, ethnic origin, or gender. Under this standard, the moving party is required to show that the classification is not rationally related to a valid state purpose.

c. *Croson* and Strict Scrutiny

In reviewing the Richmond ordinance, the Supreme Court analyzed an affirmative action program that made distinctions based on race. Although the Court was deeply divided, the majority opinion in *Croson* interpreted the Equal Protection Clause as providing the same protection against discrimination and unequal treatment provided to Blacks and other minorities as to non-minority individuals.¹⁵ The Court reasoned that protection of the individual rights guaranteed by the Equal Protection Clause requires strict judicial scrutiny of the facts and circumstances surrounding the adoption of race-based preferences to “smoke out” possible illegitimate motivations such as simple race politics or racial stereotyping.¹⁶

Justice O’Connor, writing the majority opinion, favored this heightened scrutiny of race-conscious programs, basing her opinion on Justice Powell’s opinions in *University of California Regents v. Bakke*¹⁷ and *Wygant v. Jackson Board of Education*, in which he applied the strict scrutiny standard to race-based preferences related to student admissions and employment, respectively. The use of a heightened scrutiny was necessary, O’Connor reasoned, because the majority Black population in the City of Richmond raised the concern of the Court that a political majority will more easily act to the disadvantage of a minority based on “unwarranted assumptions or incomplete facts . . .”¹⁸ Although Justice O’Connor relied on *Wygant* to define the strict scrutiny standard for *Croson*, it is important to note that her concurring opinion in *Wygant* acknowledges the lack of consensus among the members of the Court regarding the appropriate interpretation of the strict scrutiny standard. Four members of the Court dissented on the standard set forth in the O’Connor opinion.

While the majority in *Croson* subjected race-based preferences adopted by state and local governments to the most stringent test of constitutionality, the Court apparently did not intend to sound a complete retreat from attempts by state and local governments to remedy racial injustice. In her opinion, Justice O’Connor stated:

¹⁴ Lower courts have not agreed upon the standard to be applied to physical and mental handicaps, however, intermediate and rational basis have been employed.

¹⁵ *Croson*, at 721.

¹⁶ *Id.*

¹⁷ 438 U.S.265, 98 S. Ct. 2733 (1978).

¹⁸ *Croson*, at 722.

“It would seem equally clear, however, that a state or local subdivision (if delegated the authority from the State) has the authority to eradicate the effects of private discrimination within its own legislative jurisdiction. This authority must, of course, be exercised within the constraints of the Fourteenth Amendment.”¹⁹

Justice Kennedy, in his concurring opinion, went further, stating the City, upon intentionally causing wrongs, has an “absolute duty” to eradicate discrimination.²⁰ Even so, the Court concluded that, in the enactment and design of the plan, the City of Richmond failed both prongs of the strict scrutiny test.

1. Compelling Governmental Interest

In some instances, public entities have compelling reasons to remedy past discriminatory treatment of racial or ethnic groups. In *Croson*, the Court noted that a municipality has a compelling interest in redressing discrimination committed by the municipality or private parties within the municipality’s legislative jurisdiction if the municipality in some way perpetuated the discrimination to be remedied by the program.²¹ The Court makes clear that a state or local government may use its legislative authority in procurement to remedy private discrimination, if that discrimination is identified with the “particularity required by the Fourteenth Amendment.”

In *Grutter v. Bollinger*,²² the U.S. Supreme Court further expounded on the compelling governmental test, stating that, “[we] have never held that the only governmental use of race that can survive strict scrutiny is remedying past discrimination...Not every decision influenced by race is equally objectionable and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the reasons advanced by the governmental decision-maker for the use of race in that particular context.”²³

¹⁹ *Id.* at 720.

²⁰ *Id.* at 734.

²¹ *Id.* at 720.

²² 539 U.S. 306, 123 S. Ct. 2325 (2003)

²³ *Sherbrooke and Hershell Gill* have concluded that the holdings of the *Gratz v. Bollinger*, 539 U.S. 244, 123 S. Ct. 2411 (2003) and *Grutter v. Bollinger*, 539 U.S. 306, 123 S. Ct. 2325 (2003) cases in no way disturbs the holdings of *Croson*. See *Sherbrooke Turf. Inv. V. Minnesota Department of Transportation*, 345 F. 3d 964 (8th Cir. 2003) and *Hershell Gill Consulting Engineers v. Miami-Dade County*, 333 F.Supp.2d 1305 (2004)

2. Factual Predicate

Thus, race-conscious measures can be adopted when a governmental entity establishes, through a factual predicate, identified instances of past discrimination which must be particularized to provide guidance for the “legislative body to determine the precise scope of the injury it seeks to remedy.”²⁴

The City of Richmond justified its enactment of the plan based on five factors: (1) the plan declared its purpose to be “remedial”; (2) at public hearings in connection with enacting the plan, proponents stated there had been past discrimination in the construction industry locally, throughout the state and the country; (3) minority businesses received .67 percent of prime contracts from the City, while minorities constituted 50 percent of Richmond’s population; (4) minority contractors were grossly under-represented in local contractors’ associations; and (5) U.S. Congressional studies have concluded that minority participation in the construction industry nationally was stifled by the present effects of past discrimination.²⁵

The *Croson* court rejected the foregoing factors as inadequate, either singularly or in concert, to establish a strong basis in evidence to justify Richmond’s plan for the following reasons:

- *Remedial Purpose Recitation:* The mere recitation of a “remedial” purpose for a racial classification is insufficient, particularly where an examination of the history of the legislation and its legislative scheme suggests that its goal was other than its asserted purpose.²⁶
- *Statements Regarding Past Discrimination:* The generalized assertions of plan proponents’ that there had been past discrimination in the construction industry were highly conclusive in nature and of no sufficient evidence or probative value in establishing past discrimination by anyone in the construction industry in the City of Richmond.²⁷
- *Disparity in Contracts Awarded:* Where special qualifications were required, the comparisons to the general population, rather than to the special smaller group of qualified individuals, may have little probative value. Thus, the relevant statistical pool for demonstrating discriminatory exclusion was the number of MBEs qualified to undertake the task, as opposed to the percentage

²⁴ *Croson* at 723.

²⁵ The City of Richmond attempted in part to predicate its program on the studies cited by the Supreme Court in *Fullilove v. Klutznick*, supra n. 1. The court noted that the Equal Protection component of the Fifth Amendment was not violated when Congress established a set-aside program since it was substantially related to the achievement of an important national goal of remedying the past acts of racial discrimination in the area of public contracts. The Congressional authority to establish a set-aside program is greater than that of a state and is subjected to less judicial scrutiny by the courts. However, the Court in *Adarand Contractors, Inc. v. Federica Pena* held that “all racial classifications, imposed by whatever federal, state, or local government actor, must be analyzed under strict scrutiny. 515 U.S. 200, 115 S. Ct. 2097, 2113 (1995)

²⁶ *Id.* at 720.

²⁷ *Id.* at 724.

of minority individuals in the general population. While the plan contemplated minority subcontractor participation, the City did not know how many MBEs in the local area were qualified to do the work or the percentage of MBE participation in city projects.²⁸

- *Low Participation in Contractors' Association:* A low percentage of minorities in the local contractors' associations did not provide sufficient evidence without proof that this low percentage was due to discrimination against, as opposed to the free choice, of Blacks to pursue alternate employment or interests.²⁹
- *Congressional Findings:* The finding by Congress that past discrimination accounted for the low number of minority contractors in the county had little or no probative value with respect to establishing discrimination in the City of Richmond. A more particularized showing of past discrimination by the City was required, such as a pattern of discrimination in the local industry that the City could act to eradicate, or discrimination in which the City was a "passive participant."³⁰

The Court concluded that a more specific inquiry and discovery would be required to support a constitutionally permissible set-aside program. The factual inquiry must be local in nature and the statistical analysis must address a relevant comparison. In *Croson*, Justice O'Connor relied heavily on her opinion and that of Justice Powell in *Wygant*, when specifying the requirement that "judicial, legislative or administrative findings of constitutional or statutory violation" must be found before a government entity has a compelling interest in favoring one race over another.³¹

For example, in *Wygant*, the U.S. Supreme Court considered the validity of a collective bargaining agreement, which provided special protection for minority teachers in layoffs. The school board argued that the board's interest in providing minority teacher role models for its minority students, as an attempt to alleviate societal discrimination, was sufficiently important to justify the use of a racial classification embodied in the layoff provision.³² The Justices rejected the role model theory and held that it could not be used to support a remedial measure, such as a layoff provision. The disparity between teachers and students, according to the Court, had no probative value in demonstrating discrimination in hiring and promotion, which necessitated corrective action. Substantially, the same conclusion had been reached by the Supreme Court in 1979 in *Bakke*.³³

²⁸ *Id.* at 726.

²⁹ *Id.* at 727.

³⁰ *Id.*

³¹ *Id.* at 723.

³² See *Wygant*, at 274.

³³ *Cone v. Hillsborough*, 905 F. 2d 908, 913 (1990)

In showing particularized instances of discrimination, the *Croson* Court decided that the factual predicate suffered the same flaws, as did *Wygant*'s. The factual predicate depended upon generalized assertions, which could lead to an attempt to match contract awards to MBEs to the minority population as a whole. In analyzing the *Croson* factual predicate, the Supreme Court did not "provide a set of standards or guidelines describing the kind of MBE plan that would pass constitutional muster. It simply provided a stringent burden of proof for proponents of MBE laws to meet . . ." ³⁴ The Court also did not give legislatures much guidance on the parameters of a factual predicate that would show evidence of discrimination. There are some indications of the measures the Court will accept:

- 1) A pattern of discrimination shown through an appropriate disparity analysis can raise an inference of discrimination;
- 2) A relevant market in which the public entity conducts business must be established; and
- 3) Qualitative evidence of discrimination, such as anecdotal testimony, may also be acceptable.

The Court, however, leaves a great deal of room for interpretation in the development of models to satisfy these standards.

Because the *Croson* Court left the task of further establishing a factual predicate to the lower courts, the lower courts have been experiencing difficulties in navigating the complexities in this area of constitutional law. In response, state and local governmental entities use independent consultants to assess if they have the factual predicate or a statistically significant disparity necessary to justify remedial race and/or gender-conscious programs under *Croson*.

3. Narrowly Tailored

The Court in *Croson* made it clear that the second prong of the "strict scrutiny" test demands that remedial action be "narrowly tailored" to identify past or present discrimination. At least three characteristics were identified by the Court as indicative of a narrowly tailored remedy:

- 1) The program should be instituted either after, or in conjunction with, race-neutral means of increasing minority business participation; a governmental entity does not have to enact race-neutral means if they are not feasible or conducive to remedying past discrimination;
- 2) The plan should avoid the use of rigid numerical quotas;³⁵ and,

³⁴ 488 U.S. at 507-508.

³⁵ *Id.*

- 3) The program must be limited in its effective scope to the boundaries of the governmental entity.

Croson found the 30 percent quota in Richmond to be a rigid numerical quota without justification. Given that the city considered bids and waivers on a case-by-case basis, the Court found no need for the rigid quotas. In creating a plan, a public entity cannot employ quotas simply to avoid “the bureaucratic effort necessary to tailor remedial relief to those who truly have suffered the effects of prior discrimination.”³⁶

Yet, based on the discovery of a significant statistical disparity, the public entity can then institute measures to “end the discriminatory exclusion.”³⁷ In fact, in some showings of discrimination, goals, quotas or set-asides could be employed: “in the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion.”³⁸ Any plan of action containing racial preferences should be grounded in the statistical assessment of disparity.

Several lower courts have sought to expound upon the components of narrow tailoring dictated by the Supreme Court. In doing so, the following findings have been made:

- 1) Flexible and aspirational goals should be demonstrated by being tied to availability, set project-by-project and achieved through good faith efforts.³⁹ Goals can be set for small minority groups where discrimination may have negatively impacted their numbers causing the inability to reach statistical significance.⁴⁰ Race-conscious goals within federal contracts should be utilized to achieve the portion of DBE participation that cannot be achieved through race and gender-neutral means.⁴¹
- 2) Waivers and good faith efforts should be an integral component of the program. If MBEs are not available, or submit unreasonably high price quotes, the prime contractor should be granted a waiver.⁴²
- 3) A sunset clause is also a component of a narrowly tailored MBE program. This can involve: a) a graduation program,⁴³ b) a definite date to end the program,⁴⁴ or c) an annual review of M/WBE

³⁶ *Croson* at 729.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Cone v. Hillsborough County*, 905 F. 2d 908 (1990), *Associated General Contractors of Ohio v. Drabik*, 214 F. 3d 300 (6th Cir. 2000).

⁴⁰ *Concrete Works v. County of Denver* (Concrete Works I), 823 F. Supp. 821, 843 (1993).

⁴¹ *Western States Paving Co. v. Washington DOT*, 407 F.3d 983 (9th Cir. 2005).

⁴² *Coral Construction Co. v. King County*, 941 F. 2d at 924, *Associated General Contractors of Ohio v. Drabik*, 214 F. 3d 300 (6th Cir. 2000), *Hershell Gill Consulting Engineers v. Miami-Dade County*, 333 F.Supp.2d 1305 (2004), *Western States Paving Co. v. Washington DOT*, 407 F.3d 983 (9th Cir. 2005)

⁴³ *AGC v. Coalition for Economic Equality*, 950 F.2d 1407,1417 (1991), *Associated General Contractors of Ohio v. Drabik*, 214 F. 3d 300 (6th Cir. 2000), *Hershell Gill Consulting Engineers v. Miami-Dade County*, 333 F.Supp.2d 1305 (2004) (August 24, 2004).

⁴⁴ *AGC v. San Francisco*, 748 F. Supp. 1443, 1454 (1990), *Associated General Contractors of Ohio v. Drabik*, 214 F. 3d 300 (6th Cir. 2000).

program efficacy, goals, and utilization. M/WBE programs should not be designed as permanent fixtures in a purchasing system without regard to eradicating bias in standard purchasing operations or in private sector contracting.

- 4) Additionally, any race-conscious program or other remedial action should not extend its benefits to MBEs outside the political jurisdiction, unless the MBEs can show that they have suffered discrimination within the locale.⁴⁵ M/WBE programs should be limited in scope to group(s) and firms that suffer the ongoing effects of past or present discrimination.⁴⁶
- 5) Race and gender-conscious M/WBE programs should be instituted only after, or in conjunction with, race and gender-neutral programs.
- 6) M/WBE programs should limit their impact on the rights and operations of third parties.

In *Grutter v. Bollinger*⁴⁷ and *Gratz v. Bollinger*⁴⁸, which addressed the standards for utilizing race-conscious measures in public education, the U.S. Supreme Court reviewed the utilization of goals in affirmative action cases. The utilization of race should allow for individualized consideration, and be applied in a flexible, non-mechanical way. The Court appears to conclude that race can be used as more of a “plus” factor, as opposed to a defining feature of the application.

In *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation* and *Gross Seed Company v. Department of Transportation*⁴⁹, the Eighth Circuit Court of Appeals has interpreted these two cases considering the U.S. Supreme Court’s decision in *Croson*. The court found that the DOTs’ goal programs were consistent with the requirements of *Gratz* and *Grutter*, as they were flexible and individualized and emphasized race-neutral means.

In *Western States Paving Co., Inc. v. Washington State Department of Transportation*⁵⁰, the Ninth Circuit Court of Appeals reached a similar conclusion in finding that Washington DOT met the compelling governmental interest test but failed the narrow tailoring test. The court found that Washington DOT did not present any evidence of discrimination within the transportation construction market. Missing

⁴⁵ *Concrete Works I*, 823 F. Supp. 821, 843 (1993). This was true even if the statistical evidence shows discrimination by contractors in cities in other locales, *Coral Construction v. King County*, 941 F. 2d 910, 925 (1991).

⁴⁶ In *Jana-Rock Const. v N.Y. State Dept of Econ. Dev.*, 438 F.3d 195 (2nd Cir. 2006), the 2nd Circuit considered the issue of under-inclusiveness—whether NYS’ exclusion of Portuguese and other European Spanish speaking persons from its definition of Hispanic in its affirmative action programs. While the court found that strict scrutiny and narrowly tailoring required that programs not be over-inclusive, the Court of Appeals did not believe that *Croson* intended to subject under-inclusiveness to the strict scrutiny standard.

⁴⁷ 539 U.S. 306, 123 S. Ct. 2325 (2003)

⁴⁸ 539 U.S. 244, 123 S. Ct. 2411 (2003)

⁴⁹ 345 F.3d 964, 2003 U.S. App. LEXIS 20287 (8th Circuit, May 2004)

⁵⁰ 407 F.3d 983 (9th Cir. 2005)

the court stated was (1) a statistical analysis that considered capacity of firms within Washington DOT's market, and (2) anecdotal testimony.⁵¹

4. Overconcentration

The District Court of Minnesota considered whether a DBE Program was narrowly tailored due to overconcentration in *Geyer Signal, Inc. v. Minnesota DOT*⁵². In this case, Geyer sought a permanent injunction of Minnesota DOT's DBE Program, declaring it unconstitutional on its faces and as applied. A major argument made by Geyer was that the DBE program was not narrowly tailored because DBE goals were only satisfied through a few areas of work on construction projects or over-concentrated, which burdens non-DBEs in those sectors and not addressing problems in other areas.⁵³ Under the federal requirements, DBE programs are required to monitor and address issues of overconcentration. The court first held that plaintiffs failed to establish that the DBE Program will always be fulfilled in a manner that creates overconcentration, as is required under a facial challenge. Goals are established based on DBEs that are ready, willing, and able to participate, thus accounting for work that DBEs are unable to perform. As such, the non-existent DBEs would not be factored into availability.⁵⁴ Second, the court found, where there are issues of overconcentration, MnDOT Program has established mechanisms to address through:

- Flexible contract goals that allow MnDOT to change focus from over-concentrated areas;
- Ability of prime contractors to subdivide projects that would typically require more capital and equipment than a DBE can acquire;
- Waivers; and,
- Incentives, technical assistance, business development programs, mentor-protégé programs and other measures to assist DBEs to work in other areas, where there is not overconcentration.⁵⁵

The as-applied challenge failed as well. On the issue of overconcentration, the district court held that there is "no authority for the proposition that the government must conform its implementation of the DBE Program to every individual business' self-assessment of what industry group they fall into and what other businesses are similar."⁵⁶ Because Geyer did not demonstrate that the NAICs code analysis was unreasonable or that overconcentration exists in its type of work, it did not show that MnDOT's program was not narrowly tailored.

⁵¹ *Id.* at 1002-1003.

⁵² 2014 WL 1309092

⁵³ *Id.* at 11.

⁵⁴ *Id.* at 16.

⁵⁵ *Id.* at 16-17.

⁵⁶ *Id.* at 20.

5. Race-Neutral Alternatives

The Court in *Croson* held that the MBE program should be instituted either after, or in conjunction with, race-neutral means of increasing minority business participation. The *Croson* Court stated that, in Richmond, there did “not appear to have been any consideration of the use of race-neutral means to increase minority participation in City contracting.”⁵⁷ The Court further stated that, in upholding the federal set-aside in *Fullilove*⁵⁸, “Congress had carefully examined the rejected race-neutral alternatives before enacting the MBE set-aside.” This was because “by the time Congress enacted [the MBE set-aside] in 1977, it knew that other racial remedies had failed to ameliorate the effects of racial discrimination in the construction industry.”⁵⁹

While *Croson* does not define race-neutral programs or what constitutes a consideration of race-neutral programs, other passages in *Croson* do shed some light on the Court’s opinion on these two issues. The Supreme Court noted that the City of Richmond had at its disposal a wide array of race-neutral measures that could “increase the accessibility of City contracting opportunities to small entrepreneurs of all races. Simplification of bidding procedures, relaxation of bonding requirements, and training and financial aid for disadvantaged entrepreneurs of all races would open the public contracting market to all those who have suffered the effects of past societal discrimination or neglect.”⁶⁰

The Court also suggested that the City may “[a]ct to prohibit discrimination in the provision of credit or bonding by local suppliers and banks. Business as usual should not mean business pursuant to the unthinking exclusion of certain members of our society from its rewards.”⁶¹ Thus, the cities can attempt to thwart discrimination in those private industries that can award city contracts to minority contractors.⁶²

What constitutes an adequate consideration of race-neutral programs is vaguer. *Fullilove* held that Congress made a thorough investigation of the inadequacy of race-neutral measures to promote MBEs. While *Croson* held that Richmond could not rely on the congressional findings referred to in *Fullilove*, presumably, Richmond could have relied on a similar quantum of evidence that Congress relied upon in *Fullilove*. However, congressional findings in *Fullilove* were remarkably thin with no hearings held to document the discrimination that the statute in *Fullilove* set out to rectify. While *Fullilove* has been in

⁵⁷ *Croson*, citing *U.S. v. Paradise*, 480 U.S. 49, 171 (1987).

⁵⁸ In *Fullilove v. Klutnick*, 448 U.S. 448 (1980), the U.S. Supreme Court found that the United States government could use its spending power to remedy past discrimination in the construction industry by establishing that 10 percent of federal funds could go to minority-owned firms under a set-aside program. *Fullilove v. Klutnick* was overruled by *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), bringing federal programs in line with *Richmond v. Croson*.

⁵⁹ *Croson*, at 732 (1989).

⁶⁰ *Id.* at 706-707.

⁶¹ *Id.* at 729.

⁶² However, the court did not say whether this influence should be exercised through legislative enactment.

large part superseded by *Adarand v. Peña*, *Adarand* was also largely silent on what constituted an adequate consideration of race-neutral alternatives.⁶³

Subsequent federal case law has provided some illumination on the question of what constitutes adequate consideration of race-neutral measures.

- 1) As stated previously, a governmental entity does not have to enact race-neutral means if they are not feasible or conducive to remedying past discrimination.⁶⁴
- 2) If race-neutral programs and legislation were in place prior to the establishment of a race-conscious program and had been attempted in good faith, and yet M/WBE participation in public procurement remains low relative to availability, then an inference is created that race-neutral programs were inadequate to relieve the impact of past discrimination.⁶⁵

Scrutiny Applied to Federally Funded Programs

a. Background of *Adarand v. Peña*

In *Adarand Contractors, Inc. v. Peña*⁶⁶ the U.S. Supreme Court analyzed the constitutionality of a federally funded race-conscious DBE program. The facts of *Adarand III*⁶⁷ are as follows. The Central Federal Lands Highway Division (CFLHD), which is part of the United States Department of Transportation, in 1989, awarded the prime contract for a highway construction project in Colorado to Mountain Gravel & Construction Company. Mountain Gravel then solicited bids from subcontractors for the guardrail portion of the contract. Petitioner *Adarand*, a Colorado-based highway construction company that specialized in guardrail work, submitted the lowest bid. Gonzales Construction Company also submitted a bid to complete the guardrails.⁶⁸ Gonzales was a certified Disadvantaged Business Enterprise (DBE), however *Adarand* was not. Mountain Gravel awarded the subcontract to Gonzales, even though *Adarand* had the lowest bid.⁶⁹

⁶³ See fn 45, as well as discussion below in 6. Scrutiny applied to Federally Funded Programs.

⁶⁴ *Coral Construction v. King County*, 941 F.2d 910, 923 (9th Cir. 1991), *AGC of California v. Coalition of Economic Equity*, 950 F. 2d 1401,1417 (9th Cir. 1991), *Engineering Contractors v. Dade County*, 122 F. 3d 895 (11th Cir. 1997), *Concrete Works of Colorado, Inc. v. City and County of Denver (Concrete Works I)*, 823 F. Supp. 821 (D Colo 1993), *Western States Paving Co., Inc. v. Washington State Department of Transportation*, 407 F.3d 983 (9th Cir. 2005).

⁶⁵ *Concrete Works I* at 841.

⁶⁶ 515 U.S. 200; 115 S. Ct. 2097 (2005).

⁶⁷ *Id.*

⁶⁸ *Id.* at 205.

⁶⁹ *Id.* Note that in *Western States Paving*, the Ninth Circuit concluded that a DBE program is not rendered unconstitutional because it sometimes results in bids by non-DBE firms being rejected in favor of higher bids from DBEs. “Although this places a very real burden on non-DBE firms, this fact alone does not invalidate TEA 21. If it did, all affirmative action programs would be unconstitutional because of the burden on non-minorities.” 407 F.3d at 995.

Federal law requires a subcontracting clause “be inserted which states that [the] contractor shall presume that socially and economically disadvantaged individuals include Blacks, Hispanics, American Indians, Asians, and other minorities, or any other individual found to be disadvantaged by the [Small Business] Administration pursuant to section 8(a) of the Small Business Act.”⁷⁰ Adarand filed suit in the United States District Court for the District of Colorado against various federal officials, claiming that the race-based presumptions involved in the use of subcontracting compensation clauses violated Adarand’s right to equal protection. In addition to its general prayer for “such other and further relief as to the court seems just and equitable,” Adarand specifically sought declaratory and injunctive relief against any *future* use of subcontractor compensation clauses.⁷¹ The District Court ruled against Adarand, (*Adarand I*) granting the government’s motion for summary judgment. The Court of Appeals affirmed. (*Adarand II*)⁷²

b. Discussion of U.S. Supreme Court Ruling

Before the U.S. Supreme Court could decide on the merits of the case, it had to determine if Adarand had standing to seek forward-looking relief. For Adarand to have standing, it would have to allege that the use of subcontractor compensation clauses in the future constitutes “an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.”⁷³ The Court determined that Adarand’s claim met this test. The Court further stated that Adarand need not demonstrate that it has been, or will be, the low bidder on a government contract. The injury in cases of this kind is that a “discriminating classification prevent[s] the plaintiff from competing on an equal footing” ... The aggrieved party “need not allege that he would have obtained the benefit but for the barrier in order to establish standing.”⁷⁴

The next issue the Court addressed was the standard of review for federal racial classifications in determining the viability of programs to address discrimination. The Court concluded “that any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny,”⁷⁵ thereby holding “that all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny.” Such classifications are constitutional only if they have narrowly tailored measures that further compel governmental interests. The Court, in its decision, recognized the persistence of the practice and lingering effects of racial

⁷⁰ *Id.* at 205.

⁷¹ *Id.* at 210.

⁷² *Id.*

⁷³ *Id.* at 211.

⁷⁴ *Id.* at 211.

⁷⁵ *Adarand*, 515 U.S. at 224.

discrimination against minority groups and the government's ability to act in response to it. Further, the Court wanted to dispel the notion that strict scrutiny is "strict in theory, but fatal in fact."⁷⁶

c. *Adarand* on Remand to the Lower Courts

The Court remanded the case to the United States Tenth Circuit Court of Appeals to address several issues:

- To determine if the interests served using subcontractor compensation clauses are properly described as "compelling."
- To address narrow tailoring in terms of strict scrutiny cases by exploring the use of race-neutral means to increase minority business participation in government contracting.
- To determine if the program is appropriately limited, so it will not outlive the discriminatory effects it was designed to eliminate.
- To review the discrepancy between the definitions of which socially disadvantaged individuals qualify as economically disadvantaged for the 8(a) and 8(d) programs.
- To determine if 8(d) subcontractors must make individualized showings, or if the race-based presumption applies to both socially and economically disadvantaged businesses.

The Tenth Circuit Court of Appeals remanded the case to the district court for action on the issues raised by the U.S. Supreme Court.⁷⁷ The federal district court in *Adarand* ("*Adarand IV*") accepted the federal government's evidence of compelling interest, but rejected the DBE program in Colorado as not being narrowly tailored.⁷⁸ The court, although acknowledging the U.S. Supreme Court's pronouncement that strict scrutiny is not "fatal in fact", found it "difficult to envisage a race-based classification" that would ever be narrowly tailored, thereby effectively pronouncing strict scrutiny fatal in fact.⁷⁹

Following *Adarand IV*, the Tenth Circuit Court of Appeals, in *Adarand V*, considered subsequent events that the court deemed to have rendered the case moot.⁸⁰ During the course of the litigation, *Adarand* applied for and was granted DBE certification by the Colorado Department of Transportation. The appellate court concluded that *Adarand* could no longer demonstrate an injury stemming from the

⁷⁶ *Fullilove*, supra at 519.

⁷⁷ *Adarand Constructors, Inc. v. Peña*, 965 F.Supp. 1556 (D.Colo. 1997).

⁷⁸ Similarly, a Texas District court, in *Rothe Development Corp v. U.S. Department of Defense*, Civ. Act No. SA-98-CV-1011-EP (1999), upheld the federal government benchmark study as an adequate factual predicate for the small, disadvantaged business program of the U.S. Department of Defense. See also *Concrete Works of Colorado, Inc. v. City and County of Denver, Co.* Civil Action No: 92-M-21 Mar. 7, 2000.

⁷⁹ See *Adarand Constructors, Inc. v. Peña* 965 F. Supp. 1556, 1580 (D. Colo. 1997) ("*Adarand IV*")

⁸⁰ See *Adarand Constructors, Inc. v. Slater*, 169 F.3d 1292 (10th Cir. 1999) ("*Adarand V*")

Subcontractors Compensation Clause (a federal subcontracting program), and therefore, the case was moot.⁸¹

In the U.S. Supreme Court's review of the court of appeals decision in *Adarand VI*, the Court reversed the lower court, holding that "it was 'far from clear' that DOT would not initiate proceedings to revoke Adarand's status and because 'it is impossible to conclude that respondents have borne their burden of establishing that it is 'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur, petitioner's cause of action remains alive.'"⁸² The Supreme Court remanded the case back to the Appellate Court for consideration on the merits.

On remand, in *Adarand VI*, the Appeals Court found that the government's evidence more than satisfied the compelling interest prong of the strict scrutiny test, thus reversing the district court's holding in *Adarand IV*. The Court then considered if the programs currently before the Court were narrowly tailored using the following factors: (1) the availability of race-neutral alternative remedies, (2) limits on the duration of the subcontractors' compensation clause program and the DBE certification program, (3) flexibility, (4) numerical proportionality, (5) the burden on third parties, and (6) over- or under-inclusiveness. Taking all these factors into consideration, the Court found the amended and revised subcontracting program and DBE certification programs to be narrowly tailored.⁸³ On November 27, 2001, in *Adarand Constructors v. Mineta*, (*Adarand VII*) the U.S. Supreme Court dismissed the writ of certiorari on the Tenth Circuit's decision as improvidently granted.⁸⁴

d. Intermediate Scrutiny

The courts examine programs that give preference to women-owned businesses under a different standard than racially-based programs. A gender-conscious program created by a governmental entity is examined under the intermediate scrutiny test, rather than the strict scrutiny test employed for racial classifications.⁸⁵ Under intermediate scrutiny review, the actions of the state are valid if they are "substantially related" to important governmental objectives, supported by sufficiently probative evidence or exceeding persuasive justification.⁸⁶

⁸¹ *Id.* at 1296-1297

⁸² *Adarand Constructors, Inc. v. Slater*, 120 S.Ct. 722, 726-27 (2000) ("*Adarand VI*")

⁸³ *Adarand Constructors, Inc. v. Slater*, docket no. 90-K-1413 (D. Colo) (Sep 25, 2000)

⁸⁴ 534 U.S. 103, 122 S. Ct. 511 (2001). See also *Gratz v. Bollinger*, 539 U.S. 244, 123 S. Ct. 2411 (2003) and *Grutter v. Bollinger*, 539 U.S. 306 123 S. Ct. 2325 (2003)

⁸⁵ See e.g. *City of Cleburne*, *supra* no.6.

⁸⁶ *Id.* at 441. See also *Caltrans*, 713 F.3d at 1195; *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Eng'g Contractors Ass'n*, 122 F.3d at 905, 908, 910; *U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996) ("exceedingly persuasive justification.")

In *Coral Construction Co. v. King County*⁸⁷, the Ninth Circuit employed the intermediate scrutiny test to review King County's WBE program by examining the validity of a sex-based preference.⁸⁸ Under the test, the Court noted that the gender classification must serve an important governmental objective, and there must be a "direct, substantial relationship" between the objective and the means chosen to accomplish that objective.⁸⁹ A governmental entity may use gender-based preferences "only if members of the gender benefited by the classification actually suffered a disadvantage related to the classification."⁹⁰

According to the court of appeals, unlike the strict standard of review applied to race-based programs, intermediate scrutiny does not require any showing of governmental involvement, active or passive, in the discrimination it seeks to remedy.⁹¹ The Court would uphold the ten percent gender preference if the County could establish a sufficient factual predicate for the claim that women-owned construction businesses have suffered economic discrimination.

The Court concluded that King County had legitimate and important interests in remedying the many disadvantages that confronted women business owners. Further, the means chosen was substantially related to the objective. The Court determined there was adequate information to show discrimination against women in King County⁹² after reviewing an affidavit from a woman business owner detailing that less than seven percent of her firm's business came from private contracts with the majority coming from gender-based set-aside programs.

The Ninth Circuit revisited this issue in *Western Paving*, where it essentially applied the intermediate scrutiny standard to gender discrimination. The Court determined that conducting a separate analysis for sex discrimination under intermediate scrutiny was not necessary, "in this case, intermediate scrutiny would not yield a different result than that obtained under strict scrutiny's more stringent standard."⁹³

In *Engineering Contractors Association of South Florida Inc. v. Metropolitan Dade County*, the Eleventh Circuit Court of Appeals held that the intermediate scrutiny remains the applicable constitutional standard in gender discrimination cases.⁹⁴ The level of evidence that is sufficient to meet the intermediate scrutiny

⁸⁷ 941 F.2d 910 (9th Cir. 1991)

⁸⁸ See *Coral Construction Co. v. King County*, 941 F.2d 910,931 (9th Cir. 1991); *Contractors Ass'n. Eastern Pennsylvania, Inc. v. City of Philadelphia*, 6 F.3d 990 (3rd Cir. 1993). The Sixth Circuit Court of Appeals employed the intermediate scrutiny review in *Michigan Road Builders Ass'n. v. Milliken*, 834 F. 2d 583 (6th Cir. 1987), aff'd 49 U.S. 1061 (1989). However, after *Croson*, the Sixth Circuit seemingly applied a strict scrutiny test when considering a gender-based affirmative action program.

⁸⁹ *Id.* at 921.

⁹⁰ *Id.* at 931.

⁹¹ *Id.* at 932.

⁹² *Id.* at 932-33. In *Construction Association of Eastern Pennsylvania, Inc. v. City of Philadelphia*, supra n. 76, the Court of Appeals for the Third Circuit also applied the intermediate standard to a gender-based preference program.

⁹³ *Western Paving* at 407 F.3rd 990, fn 6.

⁹⁴ 122 F.2d 895 (11th Cir. 1997).

test is “one of degree, not of kind.”⁹⁵ This test requires less evidence than a race-conscious constitutional review. The Court, however, noted that the difficulty in determining the adequacy of evidence in gender-conscious cases is determining how much evidence is permissible. To resolve this issue, the Court looked to the Third Circuit Court of Appeals’ review of the City of Philadelphia for guidance and applied the same analysis to its review of the Dade County WBE program.

The Court of Appeals for the Third Circuit in the City of Philadelphia noted that the Supreme Court’s gender discrimination cases are inconclusive, and the Court has never squarely ruled on the necessity of statistical evidence in gender discrimination cases. However, the court of appeals found that the City must be able to rely on less evidence in enacting a gender preference than a racial preference, because the intermediate scrutiny standard is less stringent than the strict scrutiny test applied in *Croson*.⁹⁶

In support of its program, Philadelphia relied only on general statistics and one affidavit from a woman in the catering business. Since there was not a disparity index for women-owned construction businesses and given the absence of anecdotal evidence establishing discrimination in the construction industry, the court of appeals affirmed the grant of summary judgment, invalidating the gender preference for construction contracts.

e. Rationally Related Standard of Scrutiny

Race-neutral economic development and local business programs would be evaluated under the rationally related test. That is, a legitimate state interest must exist, and the means employed to further the interest must be rationally related to the legislation’s purpose.

In the 1987 case of *Associated General Contractors of California v. City and County of San Francisco*,⁹⁷ the Court held that the City had a legitimate state interest in encouraging businesses to locate and remain in the city. Two factors were used to substantiate the City’s interest. First, the Court noted the higher administrative costs of doing business within the City, such as higher rents, taxes, and wages, incurred by disadvantaged businesses. Second, the Court noted that the public interest was best served by encouraging businesses to be located in the city. The Court also noted that foreign businesses could be locally-owned business enterprises (LBEs) by acquiring offices within the City and paying permit and license fees from a city address.

⁹⁵ *Id.*

⁹⁶ *Id.* at 1010. Another example of this double standard was in *RGW Construction v. San Francisco BART*, Case No. C92-2938 TEH (N.D. CA). In this case, an injunction was issued against the race-conscious but not the gender-conscious program area of BART’s DBE program for non-federally funded contracts because of the lack of a factual predicate for the program. The injunction was later partially lifted based on evidence in two disparity studies in counties where BART operated.

⁹⁷ 813 F. 2d 922, 943 (9th Cir 1987)

In *Gary Concrete Products, Inc. v. Riley*⁹⁸ the Court held that an LBE bid preference was constitutional, as the State has a legitimate interest in directing the benefits of its purchases to its citizens. The Court concluded that bid preferences for residents encourage local industry, which increases the tax base and helps the state economy. The statute was rationally related, even though non-residents could qualify for the preference. Non-residents qualified only when they maintained an office and inventory in the state and paid certain taxes.

In *CS-360, LLC v. U.S. Department of Veterans Affairs*,⁹⁹ 101 F. Supp. 3d 29 (Dist. Court, DC 2015), the District Court for the District of Columbia upheld the Veteran Administration's denial of CS-360's application for verification as a Service Disabled Veteran-Owned Businesses. The court found that the standard of law was very "deferential" and that the decision was not "arbitrary or capricious, unsupported by substantial evidence or otherwise contrary to law." The court further found that, using the established legal standard, there was a "rational connection between the facts found and the choice made."

f. Burden of Proof

Under the *Croson* strict scrutiny analysis, the governmental entity has the initial burden of showing that there was a "strong basis in evidence" supporting its race- and gender-conscious program. This evidentiary burden is met by satisfying *Croson's* two-pronged test of showing both a compelling governmental interest and narrow tailoring. *Croson* established that a factual predicate consisting of statistically significant disparity and anecdotal interviews was important to showing compelling governmental interest.¹⁰⁰ Several courts have since held that disparity studies are important to establishing the factual predicate that supports *Croson's* two-pronged test.¹⁰¹

Once the governmental entity has met the *Croson* two-pronged test, the burden of proof shifts to the plaintiff to rebut the showing. The plaintiff cannot simply state that the evidence submitted by the governmental entity is insufficient or flawed. According to the Eleventh Circuit, the plaintiff has the ultimate burden of persuading the court that the defendant's evidence "did not support an inference of prior discrimination and thus a remedial purpose, or that the plan instituted on the basis of this evidence was not sufficiently "narrowly tailored.""¹⁰² The court stated that the plaintiff could rebut the inference of discrimination with a neutral explanation by showing that the statistics were flawed, that the disparities are not significant or actionable or by presenting contrasting data.

In *Rowe v. Tippet*, the Fourth Circuit held that:

⁹⁸ 285 S.C. 498, 331 S.E. 2d 335 (1985)

⁹⁹ 101 F. Supp. 3d 29, 32-33 (D.Ct. DC, 2015)

¹⁰⁰ See *Croson* discussion supra, at pp.5-9.

¹⁰¹ See *Caltrans*, 713 F.3d at 1195-1200; *Concrete Works of Colo. Inc. v. City and County of Denver*, 36 F.3d 1513, 1522 (10th Cir. 1994).

¹⁰² *Engineering Contractors*. at 916.

Those challenging race-based remedial measures must "introduce credible, particularized evidence to rebut" the state's showing of a strong basis in evidence for the necessity for remedial action. See *Concrete Works*, 321 F.3d at 959 (internal quotation marks omitted). Challengers may offer a neutral explanation for the state's evidence, present contrasting statistical data, or demonstrate that the evidence is flawed, insignificant, or not actionable. See *Eng'g Contractors*, 122 F.3d at 916; *Contractors Ass'n of E. Pa, Inc. v. City of Philadelphia*, 6 F.3d 990, 1007 (3d Cir. 1993) (*Contractors Ass'n I*); *Coral Constr. Co. v. King County*, 941 F.2d 910, 921 (9th Cir. 1991). However, mere speculation that the state's evidence is insufficient or methodologically flawed does not suffice to rebut a state's showing. See *Concrete Works*, 321 F.3d at 991.¹⁰³

2.2.2 JUDICIAL REVIEW OF *CROSON* CASES IN THE THIRD CIRCUIT

Below are cases considering equal protection challenges to state and local contracting programs using racial and gender classifications that have been decided by and within the United States Court of Appeals for the Third Circuit. In these decisions, the Third Circuit and its lower courts have held that:

- A disparity study must account for the number of MBEs and WBEs that are qualified and able to do the work.
- Post-enactment evidence may be considered in determining the extent of discrimination.
- Preferences must be granted based on evidence of discrimination against specific groups.
- Payment of tax dollars to firms participating in discriminatory associations does not constitute passive discrimination.
- Participation goals must track evidence of past discrimination.
- The government must present evidence that it considered race-neutral alternatives prior to instituting any program using racial classifications.
- Non-discrimination efforts can include the use and analysis of race/sex information without being subject to *Croson* standards.

Following is a summary of each of these Third Circuit cases and their respective analyses of the constitutionality of M/WBE programs.

¹⁰³ *Rowe v. Tippet*, 615 F.3d 233, 241-242, (4th Cir. 2010).

Contractors Ass’n of Eastern Pennsylvania vs City of Philadelphia, 945 F.2d 1260 (1991), (referred to as “Contractors I”)

This was the first post-*Croson* case decided by the Third Circuit and involved the City of Philadelphia’s (“City”) legislative effort to enact a M/WBE preference-based program. The program was called "Goals For The Participation Of Minority, Female And Handicapped Owned Businesses In City Contracts." Through various means, the program sought to increase the number of "Disadvantaged Business Enterprises" owned by minorities, women or handicapped persons who were awarded city contracts. A Disadvantaged Business Enterprise was defined as any small business "which is at least 51 percent owned by one or more socially and economically disadvantaged individuals." The legislation also created an agency charged with the administration of the program, which authorized the agency to presume that all minorities, women, and handicapped persons are socially and economically disadvantaged persons. Once a Disadvantaged Business Enterprise received contract work of more than \$5,000,000.00 from the City under the program, that business was rebuttably presumed not to be disadvantaged. The Ordinance set "goals" of fifteen-percent participation in city contracts for minority-owned businesses, ten percent for female-owned businesses and two percent for handicapped-owned businesses. Lastly, the Ordinance contained provisions that allowed the agency to waive its set-aside requirements in certain situations.¹⁰⁴

The court found that the contractors’ association had standing to challenge the City’s program because “[a]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” It also found that the association’s position in the litigation was not contrary to the interests of a majority of its members and that there was nothing in the record to show that the association had failed to follow its own rules by participating in the litigation.¹⁰⁵

While the court affirmed the District Court’s ruling that the contractors’ associations had standing to challenge the set-aside program, it reversed the grant of summary judgment in favor of the contractors’ association because an intervening party, United Minority Enterprise Associates, had not been allowed a fair opportunity to develop a record documenting the existence of past discrimination in the Philadelphia construction market, which could justify the set-asides provided for by the ordinance.¹⁰⁶

¹⁰⁴ See *Contractors Ass’n of Eastern Pennsylvania vs City of Philadelphia*, 945 F.2d 1260, 1263-1264 (1991)

¹⁰⁵ *Id.* at 1266.

¹⁰⁶ *Id.* at 1267.

Contractors Ass’n of Eastern Pennsylvania vs City of Philadelphia, 6 F.3d 990 (1993), referred to as “Contractors II”

On the case’s second appeal, the Third Circuit reviewed a second grant of summary judgment in favor of the contractors’ associations by the trial court. After concluding that the contractors had standing to challenge the program only as it applied to the award of construction contracts, and not contracts for vending or services, the court affirmed the grant of summary judgment to the contractors’ associations with respect to their equal protection challenges against the ordinance’s preferences for women and non-minority contractors. The court denied summary judgment with respect to the ordinance’s preferences for black contractors, finding that the record reflected a genuine issue of material fact as to whether the portion of the ordinance requiring a set-aside for black contractors was permissible in that it was narrowly tailored to serve the city’s compelling governmental interest in remedying the effects of past discrimination against black construction contractors in Philadelphia.

The court found that post-enactment evidence was admissible, citing other Circuit Courts that had reached that conclusion. The court noted the dilemma faced by a governmental entity of deciding whether to wait months to further develop the record, risking liability to minorities due to inaction, or risk liability to non-minorities for acting prematurely. The court held that consideration of post-enactment evidence was appropriate where an injunctive relief was sought.¹⁰⁷

After evaluating both pre- and post-enactment evidence, the court found that the city failed to provide evidence to support an inference that the city discriminated against contractors who were women, Hispanic, Asian American, or Native American. As a result, the court granted summary judgment to the contractors on their equal protection challenges to the portions of the ordinance requiring set-asides for women and the non-black minority contractors.¹⁰⁸

The Court also suggested that the lower court may have exceeded its proper summary judgment inquiry by assessing and deciding the merits of the case, and not limiting its inquiry to whether there were sufficient facts in dispute for the case to be tried, as is appropriate for summary judgment.¹⁰⁹

In evaluating the statistical support for the program at issue, the court found that the analysis conducted by Dr. Brimmer satisfied the inquiry required by *Croson*. “Brimmer’s study provides the ‘relevant statistical pool’ needed to satisfy *Croson*--the percentage of minority businesses engaged in the Philadelphia construction industry.”¹¹⁰

¹⁰⁷ See *Contractors Ass’n of Eastern Pennsylvania vs City of Philadelphia*, 6 F.3d 990, 1004 (1993)

¹⁰⁸ *Id.* at 1007-1008.

¹⁰⁹ *Id.* at 1003.

¹¹⁰ *Id.*

The court also opined that availability, for disparity purposes, is to be defined by “what proportion of the ... minority-owned businesses were available or qualified to perform City construction contracts.”¹¹¹

In determining the adequacy of the statistical evidence, the court examined what it called the “critical” component--the “disparity index.” This index consists of the percentage of minority contractor participation in City contracts divided by the percentage of minority contractor availability or composition in the “population” of Philadelphia area construction firms. This equation yields a percentage figure which is then multiplied by 100 to generate a number between 0 and 100, with 100 consisting of full participation by minority contractors given the amount of the total contracting population they comprise. “Disparity indices are highly probative evidence of discrimination because they ensure that the “relevant statistical pool” of minority contractors is being considered.”¹¹²

There, the Court stated:

“Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise.”¹¹³

The court specifically said there was proper statistical evidence of disparity and that this, in tandem with the anecdotal evidence offered was enough to overcome summary judgment.¹¹⁴

The court also addressed the allocation of the burden of proof in affirmative action cases and acknowledged that the Supreme Court has ruled that “[t]he ultimate burden remains with [plaintiffs] to demonstrate the unconstitutionality of an affirmative action program.” *Johnson v. Transport. Agency, Santa Clara County*, 480 U.S. 616, 626, 107 S.Ct. 1442 1449, 94 L.Ed.2d 615 (1987) (quoting *Wygant*, 476 U.S. at 277-78, 106 S.Ct. at 1848-49), and explained how the burden of proof operates in an affirmative action case, stating that

“[o]nce a plaintiff establishes a prima facie case that race or sex has been taken into account ... the burden shifts to the employer to articulate a nondiscriminatory rationale for its decision. The existence of an affirmative action plan provides this rationale. If such a plan is articulated as the basis for the employer's decision, the burden shifts to plaintiff to prove that [this] justification is pretextual and the plan is invalid. As a practical matter, of course, an employer will generally seek to avoid a charge of pretext by presenting

¹¹¹ *Id.*

¹¹² *Id.* at 1005.

¹¹³ See *Bazemore v. Friday*, 478 US 385 at 398, 106 St.Ct. 3000 at 3008, 92 L.Ed.2d 315; *Teamsters v. United States*, 431 U.S. 324 at 337-339, 97 S.Ct. 1843 at 1856, 52 L.Ed.2d 396.

¹¹⁴ *Id.* at 1009.

evidence in support of its plan. That does not mean, however, ... that reliance on an affirmative action plan is to be treated as an affirmative defense requiring the employer to carry the burden of proving the validity of the plan. The burden of proving its invalidity remains on the plaintiff.”¹¹⁵

Although *Johnson* was a Title VII case involving a public employer's affirmative action hiring program, Croson indicated the same approach would apply in a constitutional case involving an affirmative action contracting program.¹¹⁶

***Contractors Ass’n of Eastern Pennsylvania vs. City of Philadelphia*, 91 F.3d 586 (1996) referred to as “Contractors III”**

Contractors III was the case’s third appellate review. The race-conscious relief at issue was known as Chapter 17-500 and it sought to increase the participation of Disadvantaged Business Enterprises (DBEs) in City contracting. DBEs were businesses defined as those at least 51 percent owned by socially and economically disadvantaged persons. Socially and economically disadvantaged persons are, in turn, defined as "individuals who have ... been subjected to racial, sexual or ethnic prejudice because of their identity as a member of a group or differential treatment because of their handicap without regard to their individual qualities, and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged."¹¹⁷

Chapter 17-500 set participation "goals" for different categories of DBEs: racial minorities (15 percent), women (10 percent) and handicapped (2 percent). These percentage goals were percentages of the total dollar amount spent by the City in each of the three contract categories: vending contracts, construction contracts, and personal and professional service contracts.¹¹⁸

The Minority Business Enterprise Council (MBEC) was created to oversee the set-aside program, promulgate regulations, and certify the eligibility of contractors to participate. Under the program, each City agency was expected to meet the participation goal in each type of contract. The MBEC or an agency could recommend exempting individual contracts or groups of contracts from Chapter 17-500's requirements if there were insufficient DBEs in the Philadelphia Standard Metropolitan Statistical Area to ensure adequate competition and reasonable prices for the contracts.¹¹⁹

¹¹⁵ *Id.* at 1005-1006.

¹¹⁶ *Id.*

¹¹⁷ See *Contractors Ass’n of Eastern Pennsylvania vs City of Philadelphia*, 91 F.3d 586, 591 (1996)

¹¹⁸ *Id.* at 592.

¹¹⁹ *Id.* at 592-593.

Chapter 17-500 and its implementing regulations called for City agencies and the MBEC to formulate an annual plan for achieving the established goal in the construction area and there were two different strategies for this. When there were sufficient DBEs qualified to perform a City contract to ensure competitive bidding, a contract could be let on a sheltered market basis—i.e., only DBEs will be permitted to bid. In other instances, the contract will be let on a non-sheltered basis—i.e., any firm may bid—with the goals requirements being met through subcontracting. The sheltered market strategy was seldom used. It was attempted on a trial basis, but there were too few DBEs in any given area of expertise to ensure reasonable prices, and the program was abandoned. Evidence submitted by the City indicated that no construction contract was let on a sheltered market basis from 1988 to 1990, and there is no evidence that the City has since pursued that approach. Consequently, the Ordinance's participation goals have been achieved almost entirely by insisting that bidding prime contractors subcontract work to DBEs in accordance with the aforementioned goals.¹²⁰

When the goals are to be achieved by imposing subcontracting requirements, each would-be prime contractor was required to submit a "Schedule for Participation" (Schedule) of DBEs or a "Request for Waiver." A Schedule detailed the names and addresses of participating DBE subcontractors, the type and amount of work they are to perform, and the dollar value of their services. A Request for Waiver consisted of a statement that the contractor has made a good faith effort to utilize DBEs but has failed to meet the goals for the contract, along with documentation of the good faith effort and a list of those DBEs with whom the contractor was able to make commitments. Compliance with Chapter 17-500's goals is to be considered "an element of responsiveness" of the bid when an agency awards a contract. The significance of complying with the goals is determined by a series of presumptions. Where at least one bidding contractor submits a satisfactory Schedule for Participation, it is presumed that all contractors who did not submit a satisfactory Schedule did not exert good faith efforts to meet the program goals, and the "lowest responsible, responsive contractor" gets the contract. Where none of the bidders submits a satisfactory Schedule, it is presumed that all but the bidder who proposes "the highest goals" of DBE participation at a "reasonable price" did not exert good faith efforts, and the contract is awarded to the "lowest, responsible, responsive contractor" who is granted a Waiver and proposes the highest level of DBE participation at a reasonable price. Non-complying bidders in either situation must rebut the presumption to secure a waiver. The district court found that the practical effect of the regulations and the system of presumptions was to create a protected segment of City construction work for which non-DBE contractors could not compete.¹²¹

Critical to the court's analysis in *Contractors III* was the evidence offered to provide the 'compelling interest' necessary for race-conscious relief. The City argued that it satisfied the 'compelling interest' prong by alleging that its prime contractors discriminated against minorities in the award of subcontracts;

¹²⁰ *Id.* at 592.

¹²¹ *Id.* at 592-593.

that contractor associations discriminated in their admissions; and that the City discriminated against minorities in the award of prime contracts.¹²²

With regard to discrimination by the City's prime contractors, the City presented the work (including two pretrial affidavits) and testimony of Dr. Andrew Brimmer. Dr. Brimmer's analysis consisted of disparity indices based on data from 1979 through 1981. The disparity indices were calculated by dividing the percentage of all City construction dollars received by black construction firms by their percentage representation among all area construction firms, multiplied by 100, with resulting disparity index of 22.5. He concluded that this numerical disparity was attributed to discrimination. Prior to the enactment of the relevant MBE ordinance, a number of witnesses testified to discrimination in City contracting. Dr. Brimmer believed that the disparity index and the accompanying testimony supported an inference of discrimination.¹²³

At trial, Dr. Brimmer admitted that his analysis did not include discrimination against minority subcontractors and that the only information he had in this regard was the affidavit of a former City employee who supported the race-conscious relief at issue. The court also considered the testimony of a former general counsel to a local contractor's association who testified that black contractors were subjected to discrimination in the private construction industry and City subcontracting, however, the general counsel was unable to identify any specific instance of a minority contractor being denied a private contract or subcontract when submitting the lowest bid. The court also noted that the City included an anti-discrimination clause in its contracts and that the City could not, or did not, allege that this clause had been violated.¹²⁴

Regarding discrimination by contractors' associations, the City presented Dr. Brimmer's testimony that minority membership in local trade organizations was statistically low, and that numerous minority businesses were eligible to join these organizations. The contractors' association presented testimony of the manager of a local trade organization who testified that no eligible black contractor had ever applied for admission, and been denied, and the court noted that the City had not identified any instance of an eligible minority contractor being denied admission to any such association.¹²⁵

Lastly, the court assessed the City's argument that it had discriminated against minorities in the award of prime contracts. The court undertook a qualitative analysis of Dr. Brimmer's methodologies but ultimately

¹²² *Id.* at 599.

¹²³ *Id.* at 602.

¹²⁴ *Id.* at 599-600.

¹²⁵ *Id.* at 601-602.

did not make any decision as to their adequacy, finding it unnecessary to do so because the race-conscious relief at issue was not narrowly tailored.¹²⁶

The court began its ‘narrowly tailored’ analysis by stating that race-conscious relief may be justified based on the evidence that the City discriminated against black contractors in the award of prime contracts from 1979 through 1981. However, the court found that to the extent the race-conscious relief at issue acted to limit private contractors and favor black subcontractors, it was not narrowly tailored to address the identified discrimination. In determining whether the 15 percent goal for prime contract participation by minority businesses was narrowly tailored, the court considered the testimony of a City Council member who testified that the percentage goal was “pretty arbitrary”; that the stated goals were stated to be based on minority and female representation in the local population (and not relevant availability); and that the goals included minority groups for which no evidence of discrimination was offered, i.e., Hispanics, American Indians, Aleuts, Eskimos, Asians and Native Hawaiians.¹²⁷

The court concluded its analysis by saying that the City’s procurement practices presented challenges for any small business; that the City should have relaxed its policies and/or offered training and financial assistance to help disadvantaged contractors of all races; and that the City could have recognized the certification status of minority businesses by other agencies. For these reasons, the City’s program was found to be unconstitutional.¹²⁸

The City also offered evidence concerning two programs instituted by others prior to 1982, which were intended to remedy the effects of discrimination in the construction industry but which, according to the City, had been unsuccessful. The first was the Philadelphia Plan, a program initiated in the late 1960s to increase the hiring of minorities on public construction sites. The second was a series of programs implemented by the Philadelphia Urban Coalition, a non-profit organization (Urban Coalition programs). These programs were established around 1970, and offered loans, loan guarantees, bonding assistance, training, and various forms of non-financial assistance concerning the management of a construction firm and the procurement of public contracts. According to a former City Council member, Joseph Coleman, and the former General Counsel of the Urban Coalition, Oscar Gaskins, although both programs had some successes, neither program succeeded in eradicating the effects of discrimination.¹²⁹

The City pointed to the waiver and exemption sections of the Ordinance as proof that there was adequate flexibility in its program. Finally, the City contended that its fifteen percent goal was appropriate. Although greater than the percentage of minority contractors (2.4 percent) and black contractors (0.7 percent) in the Philadelphia SMSA, it is not tied directly to the proportion of minorities (41.8 percent) or blacks (37.9

¹²⁶ *Id.* at 602-603.

¹²⁷ *Id.* at 607.

¹²⁸ *Id.* at 608.

¹²⁹ *Id.* at 608-609.

percent) in the local population. The City maintained that the goal of fifteen percent may be required to account for waivers and exemptions allowed by the City, that the goal is a flexible goal rather than a rigid quota considering the waivers and exemptions allowed by the Ordinance, and that the goal is justified considering the discrimination in the construction industry.¹³⁰

The Contractors presented testimony from an expert witness, Dr. LaNoue, challenging the validity and reliability of Dr. Brimmer's work and conclusions. Dr. LaNoue testified to many problems in the design of Dr. Brimmer's study, including, inter alia, the data used, the assumptions underlying the study, and the failure to include federally-funded contracts let through the City Procurement Department.¹³¹

The Contractors relied heavily on the legislative history of Chapter 17-500, pointing out that it reflects no identification of any specific discrimination against black contractors and, indeed, no data from which a Council person could find that specific discrimination against black contractors existed or that Chapter 17-500 was an appropriate remedy for any such discrimination. They pointed as well to the absence of any consideration of race-neutral alternatives by the City Council prior to enacting the Ordinance. On cross-examination of Oscar Gaskins, the Contractors elicited testimony that indicated that the Urban Coalition programs were relatively successful, undermining the contention that race-based preferences were needed. Finally, the Contractors argued that the fifteen percent figure must have been simply picked from the air and had no relationship to any legitimate remedial goal because the City Council had had no evidence of identified discrimination before it.¹³²

At the conclusion of the trial, the district court made extensive findings of fact and conclusions of law. It determined that the record reflected no "strong basis in evidence" for a conclusion that discrimination against black contractors was practiced by the City, non-minority prime contractors, or contractors' associations during any relevant period. The court also determined that Chapter 17-500 was "not 'narrowly tailored' to even the perceived objective declared by City Council as the reason for the Ordinance."¹³³

Following remand, the District Court determined that the ordinance's set-aside for black contractors violated the equal protection clause. It found that the program was not instituted to further a compelling governmental interest in remedying discrimination against black contractors, because the record reflected no "strong basis in evidence" for a conclusion that discrimination against black contractors was practiced by the city, nonminority prime contractors, or contractors' associations during any relevant period. The District Court also determined that the ordinance was not narrowly tailored. On its third consideration of the case, the Third Circuit affirmed the District Court's grant of summary judgment to

¹³⁰ *Id.* at 608.

¹³¹ *Id.* at 595.

¹³² *Id.* at 595-596.

¹³³ *Id.* at 596.

the contractors' associations. It concluded that the ordinance violated the Equal Protection Clause for three main reasons:

1. The City's affirmative action program has been substantially circumscribed by judicial decrees in this case. The preferences for women and non-black minorities have been stricken. Still, however, the remedy provided by the program substantially exceeds the limited justification that the record provides.
2. The program provides race-based preferences for blacks in the market for subcontracts where there is no strong basis in the evidence for concluding that discrimination occurred. It authorizes a 15 percent set-aside applicable to all prime City contracts for black contractors when there is no basis in the record for believing that such a set-aside of that magnitude is necessary to remedy discrimination by the City in that market.
3. Finally, the City's program fails to include race-neutral or less burdensome remedial steps to encourage and facilitate greater participation of black contractors, measures that the record shows to be available.

Independent Enterprises, Inc. vs. Pittsburgh Water and Sewer Authority, 103 F.3d 1165 (1997)

This case involved a challenge to the M/WBE Utilization Requirements of the City of Pittsburgh's Water and Sewer Authority ("Authority"). In May 1995, the Authority solicited bids for two projects, the "Annual Water Line Contract" and the "Grandview Avenue Project." Independent Enterprises ("Independent") submitted bids for both projects. In accordance with the Authority's "MBE/WBE Utilization Requirements," each of Independent's bids included a list of minority and women-owned business enterprises ("MBE/WBEs") that Independent intended to use as subcontractors if awarded the contract. One of the MBEs that Independent listed was a firm that Independent claimed was certified by the Authority as an approved M/WBE vendor. Independent's bids were the lowest for both projects, and an independent consultant recommended that the Authority award both contracts to Independent.¹³⁴

Before the Authority awarded the contracts, city officials expressed concern about previous work done by Independent. Following this, the Authority decided that Whaley & Sons was an unacceptable MBE subcontractor and decided to reject Independent's bids for both the Water Line Contract and the Grandview Avenue Project for not meeting M/WBE requirements. The two contracts were then awarded

¹³⁴See *Independent Enterprises, Inc. vs. Pittsburgh Water and Sewer Authority*, 103 F.3d 1165, 1169 (1997)

to the next lowest bidders. Later, the contracts with those bidders were rescinded, all bids were rejected, and the Authority decided to readvertise both projects.¹³⁵

In June of 1995, Independent submitted a bid to the Authority for the "Annual Sewer Improvement Contract." Independent's was the lowest responsible bid. Despite its low bid, Independent was not awarded the contract. Inexplicably, the Authority rejected all the Sewer Improvement Contract bids without explanation and readvertised the project.¹³⁶

In response to the Authority's failure to award it any of these contracts, Independent filed suit. Its complaint alleged, inter alia, that the Authority's M/WBE Utilization Requirements discriminate against Independent and other construction companies based on race, ethnicity, national origin, and/or sex, thereby denying them the equal protection of the laws.¹³⁷

The appellate case involved the issues of standing to challenge an M/WBE program and an equal protection challenge to an M/WBE program. The trial court dismissed the case, finding that Independent did not have standing and that it could not sustain an equal protection challenge to the MWBE program. On appeal, the Third Circuit found that the plaintiff had standing to assert its equal protection claims. "Independent's equal protection claim does allege facts satisfying all the requirements of standing. The complaint alleges an injury in fact (the rejection of Independent's bids); causation (that the rejection resulted, according to the Authority, from Independent's inability to meet satisfactorily the Authority's MBE/WBE Utilization Requirements); and redressability (that the injury can be remedied through the award of the contracts or damages and an injunction against future enforcement of the Utilization Requirements)."¹³⁸

The Third Circuit also found that Independent's equal protection claims were properly filed and should not have been dismissed on the Authority's motion. "Turning from standing to the issue of whether Independent has stated a claim on which relief could be granted, we conclude that it has. Independent's complaint alleges that the Authority has established MBE/WBE Utilization Requirements which require that all bidders on certain contracts submit with their bids a "utilization plan" that identifies the portion of work under the contract that will be subcontracted to "certified" minority- or women-owned firms. According to the complaint, bids that do not meet the MBE/WBE utilization goals are rejected. Finally, the complaint alleges that the MBE/WBE Utilization Requirements were not established to remedy past discrimination or passive participation in discrimination by the City or Authority against minority- or

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 1176.

women-owned construction companies.”¹³⁹ The Court found that these allegations supported an equal protection claim under a *Croson* analysis.

***Associated Pennsylvania Constructors vs. Jannetta*, 738 F.Supp. 891 (M.D. Pa. 1990)**

This case involved a challenge to the State of Pennsylvania’s effort to combat current discrimination against minority and women business enterprises through an executive order creating the Office of Minority and Women Business Enterprises and a resulting stated policy of the Commonwealth’s Department of General Services to establish “participation objectives” for minority and women business enterprises for the Commonwealth’s DOT projects. The plaintiffs asserted that the participation objectives were quotas, that they discriminated based on race and gender, that they were remedial and unsupported by any findings of identified discrimination. The state argued that the participation objectives were a tool to identify present discrimination. The plan summary was as follows:

“Under state law, contracts administered by DGS and PennDOT must be awarded to the lowest responsible bidder”, and “DGS’ policy statement ... provides that a bidder may not discriminate against an MBE or a WBE in the solicitation and utilization of subcontractors, manufacturers, or suppliers”.¹⁴⁰ Bidders are required to submit documentation showing MBE/WBE participation levels. The policy statement goes on to provide the following:

- Presumes that discrimination has not occurred if a bidder has achieved the Commonwealth's prescribed levels of MBE/WBE participation in the specific job being bid, and no further review will be undertaken.
- Sets forth the general participation objectives on a district-by-district basis for MBEs and WBEs.
- Provides that the specific minimum levels of MBE/WBE participation will be stated for each contract in the bid documents, and that the specific level set will be based upon factors such as geographical location, contract size, contract type, and availability of MBE and WBE firms.
- Provides that DGS will perform an initial review of construction contract bid submittals to ensure that required MBE/WBE documentation has been submitted. Failure to submit the required information on MBE/WBE participation will result in a rejection of the bid as being non-responsive.
- If a bid shows that the bidder has met the prescribed minimum levels for MBE/WBE participation, the contractor will be presumed not to have discriminated in its selections. If the minimum levels are not met, however, DGS will perform a further review to determine whether discrimination

¹³⁹ *Id.* at 1176.

¹⁴⁰ *Associated Pennsylvania Constructors v. Jannetta*, 738 F.Supp. 891-93 (M.D. Pa. 1990)

has occurred. If, after that review DGS finds that discrimination has occurred, the bidder will be deemed not responsible, and its bid will be rejected.¹⁴¹

The PennDOT policy statement is similar.

The court agreed with the magistrate's report, which found that the plan did not require the use of certain percentages of minority and women business enterprises but sought to ensure that no current discrimination was taking place. The court also found that the plan acted as a screening device, and as such, its review was based on the rational basis test and not strict scrutiny.

***First Capital Insulation, Inc. vs. Jannetta*, 768 F.Supp. 121 (M.D. Pa. 1991)**

This case involved a challenge, by way of preliminary injunction, to the Commonwealth's rejection of its bid for asbestos removal services as non-responsive and award of the bid to the second lowest bidder. The court began its analysis by stating that the plan at issue had been determined to be valid on its face in *Associated Pennsylvania Constructors vs. Jannetta*, 738 F.Supp. 891 (M.D. Pa. 1990). The plaintiff argued that its rejection was evidence that the Commonwealth was engaging in a system of racial quotas, as the Commonwealth stated that plaintiff's bid was deemed non-responsive because it "failed to achieve a commitment to MBEs at the established minimum participation levels". The Commonwealth argued that the bid was rejected as non-responsive to the bid requirements because Plaintiff's bid did not contain the required information to determine whether the bid was non-discriminatory.

Two witnesses for the DGS explained that all bids are sealed and forwarded to the OMWBE where the documents are analyzed by several officials. Part of the examination performed by OMWBE officials includes comparing the amount of minority business solicited (as described in the solicitation sheet) versus the amount of minority business committed to (listed on the commitment sheet). If discrepancies exist between the figures, then the officials look for an adequate explanation in the commitment or solicitation sheets. For instance, the prices of the MBE might be non-competitive or the MBE might not have the proper equipment. If, however, the bidder has secured the minimum participation level of MBEs and WBEs, the bid is presumed responsive. According to the DSG, the purpose for this exercise is not to guarantee a particular proportion of every contract goes to minority or woman-owned businesses, but instead to ensure that they are at least made part of the competitive bidding process. After the OMWBE analysis, the recommendations of the office are sent to the Contracting and Bidding Division in memorandum form. The reasoning within the memorandum is then to be merged into a form letter which is then sent to the disappointed bidder.

At the hearing, a DSG official explained that he personally reviewed Plaintiff's bid documents and rejected them as non-responsive. He made this decision because neither the commitment sheet nor the

¹⁴¹ *Id.*

solicitation sheet included any notes of explanation as to why Plaintiff had committed to smaller amounts of business from two minority owned suppliers than they had originally been quoted. He stated that if Plaintiff had supplied a suitable explanation for the discrepancy, then the bid may well have been considered responsive.

The court found that DSG's evaluation memorandum reflected the real explanation for the DGS's rejection of the bid: that the discrepancies between the commitment and solicitation sheets were inadequately explained, a procedure already found to be constitutional and noted that the successful bidder committed to no MBEs and only 4.78 percent of the contract to WBEs. However, the successful bidder's solicitation sheet reflected the reasons for not utilizing the minority or woman-owned businesses at the set levels. The court also determined that the quota-implying language used in the letter sent to Plaintiff was part of a form letter within the DGS computer system, and that the exclusion of additional explanatory language was an administrative oversight and not a reflection of DGS policy.

Plaintiff also appears to contend that the DGS's explanation is a facade and that there is no written requirement that the bidder supply such explanations on the commitment sheet. At the hearing, there was recorded evidence that the bid documents required, that when a bidder failed to meet the minimum participation standard and "no quotations are received nor commitments made to MBE or WBE firms, the lack of quotation and/or commitments must be shown or explained ... Leaving the Commitment Sheet blank is not sufficient." The commitment sheet itself contained a similarly worded instruction and Plaintiff offered no adequate explanation as to why its commitment sheet was not filled out in accordance with these rules.¹⁴²

Accordingly, the court found that Plaintiff did not meet the burden for injunctive relief.

¹⁴² See *First Capital Insulation, Inc. v. Jannetta*, 768 F.Supp. 121, 124 (M.D. Pa. 1991)

2.3 FACTUAL PREDICATE STANDARDS (CONDUCTING THE DISPARITY STUDY)

The factual predicate is utilized to determine if a compelling governmental interest exists to support the utilization of race and gender-conscious remedies. The disparity study is utilized to develop the factual predicate. Below is a discussion of the courts' review of the sufficiency of several components of the disparity study in establishing a factual predicate.

2.3.1 RELEVANT MARKET VS. JURISDICTIONAL REACH

Relevant market establishes geographical limits to the calculation of M/WBE availability and utilization. Most courts and disparity study consultants characterize the relevant market as the geographical area encompassing most of a public entity's commercial activity. Relevant market can be different from jurisdictional reach, which defines the reach of the race and gender-conscious program implemented. Relevant market has not been litigated much.

In *Croson*, the Supreme Court did not provide specific guidance on the estimation of relevant market for the purposes of conducting a factual predicate study. While *Croson* did not provide particularized guidance on the estimation of the relevant market, the *Croson* Court did require that an M/WBE program cover only those groups that have been affected by discrimination within the public entity's jurisdiction.¹⁴³ This position was also taken by both the Ninth and Tenth Circuits. In *Concrete Works I*, the consultant found that over eighty percent of Denver's construction and design contracts were awarded to vendors in the Denver MSA.¹⁴⁴ The district court found the Denver MSA to be relevant to determining the jurisdiction of Denver's contract awards. The district court cited the Ninth Circuit opinion in *Coral Construction v. Kings County*:

Concrete Works also overlooks the fact that the Court of Appeals found even the ultimately rejected Pierce County evidence to be probative, even though it was from a separate jurisdiction, because:

"It is, however, immediately adjacent to King County and is part of the same metropolitan area. Likewise, the world of contracting does not conform itself neatly to jurisdictional boundaries. In this regard, contracting differs markedly from a school system, which conducts its business in relative isolation from other school systems. *Id.*"

¹⁴³ Richmond v. Croson, at 725.

¹⁴⁴ 823 F.Supp. 821, 836 (1993).

We conclude that Denver is not acting outside its jurisdiction but is applying a policy to those contractors who have been found to choose to enter Denver's boundaries to seek work and win Denver's tax dollars.¹⁴⁵

In *Contractors II*, the Court found that Dr. Brimmer correctly identified the “relevant statistical pool” necessary to satisfy *Croson*, as “the percentage of minority businesses engaged in the Philadelphia construction industry.” See *Contractors Ass’n of Eastern Pennsylvania vs City of Philadelphia*, 6 F.3d 990, 1003 (1993).

2.3.2 AVAILABILITY

Availability calculations determine the number of firms who are ready, willing, and able to do business with a public entity. Disparity ratios are determined by comparing availability to actual utilization. Availability measures are the most questioned and litigated portions of a disparity study, given the challenges in developing an accurate head count of firms in the marketplace, accounting for issues of capacity, qualification, willingness, and ability. As such, this section explores the evolution of judicial opinions on availability.

We note that the judiciary’s view of availability within a jurisdiction is heavily influenced by the disparity methodology utilized to justify the DBE or M/WBE program under review. In many cases, the judge determines the validity of a particular methodology without declaring it as the only acceptable availability methodology.

The *Croson* decision did not turn on the evaluation of data in a disparity study. Consequently, *Croson* did not provide a detailed discussion of permissible data sources. Instead, the Court admonished local agencies to compare contract awards to M/WBEs to the number of “available” minority firms seeking public sector work, and not to the minority population. The source of this availability data was never addressed. Early case law following *Croson* did not cover the issue of competing measures of M/WBE availability. Several cases did not cite the sources of availability data.¹⁴⁶

In the mid-1990s, cases applying *Croson* began to address the use of Census data as a measure of M/WBE availability. The basic criticism the courts had of Census data is that Survey of Minority-owned Business Enterprises (SMOBE) and Survey of Women-owned Business Enterprises (SWOB) data did not indicate which firms were seeking public sector work.¹⁴⁷ For example, in *Engineering Contractors Association of*

¹⁴⁵ *Id.* The district court also cited *AGC v. City of San Francisco*. See *Associated General Contractors of California v. City and County of San Francisco*, 813 F.2d 922, 934 (9th Cir.1987) (“AGCC I”) (noting that any plan that extends race-conscious remedies beyond territorial boundaries must be based on very specific findings that actions the city has taken in the past have visited racial discrimination on such individuals).

¹⁴⁶ See, e.g., *Cone Corp. v. Hillsborough*, 908 F.2d 908 (11th Cir. 1990).

¹⁴⁷ Census no longer produces these sources of data.

South Florida v. Metropolitan Dade County,¹⁴⁸ the district court stated:

“The census [SMOBE] data used in both [disparity] studies simply represent individuals or firms located in Dade County, which list themselves as being in the business of construction. The census data do not identify whether these entities have ever done work specifically for the county, or to what degree their reported sales or income stems from private sources versus public sources, much less whether the earnings are primarily the result of work done for Dade County versus Broward County, Palm Beach County or some other Florida locale, or even sites outside of Florida. This lack of specificity makes it difficult, if not impossible, to draw accurate conclusions concerning whether Dade County is itself a participant in gender, racial or ethnic discrimination to the extent that it justified its use of race, ethnicity, and gender-conscious remedies.”¹⁴⁹

The Census Bureau’s Public Use Micro Sample (PUMS) data has been criticized for similar reasons. One of Miami’s disparity studies used PUMS data to study business formation amongst minorities. The district court concluded that, because PUMS did not look at public sector contracting, the PUMS “is not the type of particularized evidence that is required to provide a strong basis in evidence for the County’s race- and ethnicity-conscious contract award process, which is aimed at M/WBEs which are already in business and qualified to perform work.”¹⁵⁰

The District Court for the Southern District of Ohio had similar criticisms of the use of Census data. The court stated, “it is apparent, however, that not all construction firms in the Columbus MSA are qualified, willing and able to bid on City construction contracts.”¹⁵¹ The court went on to state that “census data probably overstate the proportions of available [M/WBEs] . . .”¹⁵² Nevertheless, the court still preferred Census data to study disparity among subcontractors. The court concluded that, “[w]hile the Census total industry data have limitations, it appears to be the best data considered by [the disparity study consultant] for use in determining availability of M/WBEs as subcontractors.”¹⁵³ In fact, the Ohio district court rejected the use of the bidder registration file list because it was not consistent with the SMOBE data.

The District Court for the Eastern District of Pennsylvania in Philadelphia also had similar criticisms of SMOBE and SWOB data. In its review of the evidence of disparity presented, the court, stated:

[The evidence of disparity] never measured the number of contractors actually engaged

¹⁴⁸943 F.Supp. 1546 (1996).

¹⁴⁹*Id.* at 1572-1573.

¹⁵⁰*Id.* at 1574.

¹⁵¹*AGC v. City of Columbus*, 1996 U.S. Dist. Lexis 12519 (SD Ohio 1996), at 22. This case was overturned on jurisdictional grounds.

¹⁵²*Id.* at 22.

¹⁵³*Id.* at 26.

by the City to perform particular services . . . Without measuring the number of contractors actually engaged by the City to perform particular services, it is impossible to determine whether Black firms were excluded from performing these services. In addition, it is impossible to determine whether Black companies even existed to perform these services required by the City. Without examining this information, it is impossible to draw any conclusions about discrimination in City public works contracting. In sum, the court finds that [the disparity study consultant] failed to measure the “relevant statistical pool” necessary to perform an accurate disparity study in accordance with the standards set forth in *Croson*.¹⁵⁴

Upon review of the lower court decision, the Third Circuit Court of Appeals was more lenient on the use of SMOBE and SWOB data. The court rejected the argument that census data did not measure those willing to undertake public sector contracting. The court stated, “in the absence of some reason to believe otherwise, one can normally assume that participants in a market with the ability to undertake gainful work will be ‘willing’ to undertake it.”¹⁵⁵ The court went so far as to state “the census data offer a reasonable approximation of the total number of firms that might vie for City contracts.”¹⁵⁶ The court further suggested that census data might *understate* MBE availability, because “past discrimination in a marketplace may provide reason to believe the minorities who would otherwise be willing are discouraged from trying to secure this work.”¹⁵⁷

The general criticism of SMOBE and SWOB data is the lack of detail and specificity in qualifications. For example, in criticizing the disparity study in Miami, the District Court for the Southern District of Florida stated “[t]he major drawback of this analysis [disparity ratios] is that the SMOBE data relied upon do not include information such as firm size, number of employees, etc., thus the Brimmer Study does not contain regression analyses to control for neutral variables that could account for these disparities.”¹⁵⁸ The district court did not suggest an alternative data source to provide the specificity it was seeking. This omission was not unusual because courts generally did not provide guidance in determining valid or invalid sources of M/WBE availability data.

Similarly, geographical mismatching of the data sets raised concern for some courts about the use of SMOBE data. The district court in Ohio, for example, criticized mixing SMOBE data with *County Business Patterns* because of the different geographical scopes,¹⁵⁹ ignoring the fact that one is a measure of firms

¹⁵⁴Contractors Assn. of Eastern Pennsylvania v. City of Philadelphia, 1995 WL 11900 (ED Pa 1995), at 13.

¹⁵⁵Contractors Assn. of Eastern Pennsylvania v. City of Philadelphia, No. 89-cv-02737 (3d Cir 1996), at 36.

¹⁵⁶*Id.* at 39.

¹⁵⁷*Id.* at 36.

¹⁵⁸Engineering Contractors Association of South Florida v. Metropolitan Dade County, *supra* n. 5, at 31.

¹⁵⁹*AGC v. City of Columbus*, *supra* n. 8, at 18, vacated on jurisdictional grounds.

and the other is a measure of establishments.¹⁶⁰

Other courts have not been concerned with the absence of such detail in Census data. For example, the Third Circuit Court also was not concerned by the lack of qualification data in the SMOBE data set. The court noted that “[t]he issue of qualifications can be approached at different levels of specificity, however, and some consideration of the practicality of various approaches is required. An analysis is not devoid of probative value simply because it may theoretically be possible to adopt a more refined approach.”¹⁶¹ The court accepted the mixture of census data with city purchasing data, although they differed in geographical scope. Similarly, a federal court of appeals sitting in Denver stated, “[w]e agree with other circuits which have interpreted [that] *Croson* implied to permit a municipality to rely, as does Denver, on general data reflecting the number of MBEs and WBEs in the marketplace to defeat the challenger’s Summary Judgment motion or request for a preliminary injunction.”¹⁶²

The principal alternative to using Census data to measure M/WBE availability in *Croson* factual predicate studies is using lists of marketplace participants, primarily, vendor, bidders, pre-qualification, and certification lists. The *Ready, Willing and Able* (RWA) approach is a list-based approach to the estimation of M/WBE availability. In the late 1990s, partly in response to the *Engineering v. Dade County* case, list-based approaches were utilized.¹⁶³ As such, courts began to focus on these types of availability analysis.

In 2005, in *Northern Contracting, Inc. v. Illinois Department of Transportation*¹⁶⁴, the district court found that a valid statistical methodology was presented to justify that the DBE program was narrowly tailored. This methodology included six steps: (1) identified the geographic market for contracting as the State of Illinois; (2) identified the product markets (i.e. highways, transportation, engineering, housing, etc.); (3) identified all available contractors in each product market regardless of race, using Dun & Bradstreet; (4) identified the number of DBE contractors in each product market and broke the numbers down by geographical location; (5) corrected errors by updating the qualified DBE firm list to eliminate firms that are no longer qualified; and (6) correct errors by accounting for DBE firms that were not listed on the qualified directory.¹⁶⁵

The availability analysis in *Northern Contracting* represented what is commonly called “custom census” availability. A similar methodology was employed in the Caltrans’ disparity study. In *Caltrans*, the Ninth Circuit citing *Northern Contracting*, held that federal guidelines state the availability analysis should not separate contracts by construction and engineering and by prime and subcontractor because there was

¹⁶⁰ An enterprise (firm) may have several establishments at various locations.

¹⁶¹ *Contractors Assn. of Eastern Pennsylvania v. City of Philadelphia*, supra n. 12, at 36.

¹⁶² *Concrete Works v. City and County of Denver* (Concrete Works II), 36 F.3d 1513, 1529 (10th Cir. 1994).

¹⁶³ D.J. Miller & Associates, Inc. (now Miller³ Consulting, Inc.) used a Ready, Willing and Able list-based approach from its inception in 1988.)

¹⁶⁴ 473 F.3d 715 (7th Cir. 2007)

¹⁶⁵ *Id.* at 719.

already substantial overlapping in these areas.¹⁶⁶ Furthermore, the court found the consultant had adjusted availability for the capacity of firms to do the work.¹⁶⁷

Conversely, the court in *Rothe Development Co. v. U.S. Department of Defense* found the appropriate measure of availability is to determine those firms “ready, willing, and able” to do business with the government. The court found the following sources as tending to establish a business’ qualifications—awardees, bidders, and certification lists. The reliance on lists compiled by local business associations, by community outreach, from vendor lists and from self-affirmation of qualification and ability is more questionable.¹⁶⁸

In *H.B. Rowe Co. v. Tippet*¹⁶⁹, the 4th Circuit found acceptable an availability analysis that depended on the following variables: “a vendor list comprising (1) subcontractors approved by the Department to perform subcontract work on state-funded projects, (2) sub-contractors that performed such work during the study period, and (3) contractors qualified to perform prime construction work on state-funded contracts.”¹⁷⁰ The court agreed with the consultant’s explanation why prime and subcontractors were not separated.

2.3.3 UTILIZATION

Utilization analysis measures the actual dollars awarded and paid to firms doing business with the public entity, by race and gender. The utilization analysis is rather straight-forward, thus there is limited discussion in case law on standards for utilization. The *Croson* decision specifically mentions the number of firms “qualified, willing and able to perform . . . and the number of such contractors actually engaged”.

In *Concrete Works III*, the court stated that the presentation of both goal and non-goal contracts provided a clearer picture of MBE participation. In fact, the court found that “non-goal projects were a better indicator of discrimination in City contracting.”¹⁷¹

Illinois Department of Transportation (IDOT), in *Northern Contracting*, tried to test for the impact of race-conscious programs on DBE participation with its Zero-Goal Program. This program dropped the DBE goal from select construction contracts to see if there would be a decrease in the number of DBE participants compared to those projects with a DBE goal. However, the court found the experiment flawed because the State did not provide the number of DBEs that bid on these projects or the dates during which these

¹⁶⁶ See also *Mountain West Holding v. State of Montana and Geyer Signal, Inc. v. MnDOT*.

¹⁶⁷ *Caltrans* at 1199.

¹⁶⁸ *Rothe Development Corp v. U.S. Department of Defense*, 545 F.3d 1023, 1042 (2008)

¹⁶⁹ 615 F.3d 233 (2010).

¹⁷⁰ *Id.* at 245.

¹⁷¹ *Concrete Works III* at 988.

experiments took place. As such, the court was unable to conclude that the drop in DBE participation was due to the lack of an affirmative action program.¹⁷²

In *Caltrans*, the Ninth Circuit noted that the disparity consultant utilized state-funded contracts, which did not have goals, to determine if the affirmative action program for federally-funded contracts skewed the data. The court further found that the consultant appropriately accounted for women, by combining minority women with the requisite minority group, thus the women category only included white women.¹⁷³

2.3.4 DISPARITY RATIOS

The most important part of the statistical analysis is the disparity ratio, which is a comparison of availability to utilization. An inference of discrimination can be drawn from statistically significant disparity. The courts agree on the calculation of disparity and statistical significance, as discussed below.

In *Adarand VII*, the Tenth Circuit noted that “the disparity between minority DBE availability and market utilization in the subcontracting industry raises an inference that the various discriminatory factors the government cites have created that disparity... Of course, it would be “sheer speculation” to even attempt to attach a figure to the hypothetical number of minority enterprises that would exist without discriminatory barriers to minority DBE formation. *Croson*, 488 U.S. at 499. However, the existence of evidence indicating that the number of minority DBEs would be significantly (but unquantifiable) higher, but for such barriers is nevertheless relevant to the assessment of whether a disparity is sufficiently significant to give rise to an inference of discriminatory exclusion.”¹⁷⁴

In *Rowe*, the court there noted that several courts have followed a similar methodology:

After *Croson*, a number of our sister circuits have recognized the utility of the disparity index in determining statistical disparities in the utilization of minority- and women-owned businesses. See, e.g., *Rothe II*, 545 F.3d at 1037-38; *Concrete Works*, 321 F.3d at 962-63; *W.H. Scott*, 199 F.3d at 218; *Eng’g Contractors*, 122 F.3d at 914; *Contractors Ass’n I*, 6 F.3d at 1005; *Associated Gen. Contractors of Cal., Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1413-14 (9th Cir. 1991). Generally, courts consider a disparity index lower than 80 as an indication of discrimination. See *Rothe II*, 545 F.3d at 1041; *Eng’g Contractors*, 122 F.3d at 914; see also 29 C.F.R. § 1607.4(D) (2010) (directing

¹⁷² Northern Contracting at 719.

¹⁷³ *Caltrans* at 1198.

¹⁷⁴ *Adarand v. Slater*, 228 F.3d 1147 (10th Cir. 2000).

federal agencies to regard a "selection rate" of lower than 80 percent as evidence of disparate impact employment discrimination).¹⁷⁵

Further, the court found that the application of t-test¹⁷⁶ was appropriate, as standard deviation test allows a determination of if any disparity found is merely due to chance or due to some other reason. The court supported its argument by citing a mid-90s case, *Engineering Contractors*, 122 F.3d at 914.¹⁷⁷

In finding the disparity study sufficient in *Caltrans*, the court noted that disparities were assessed across a variety of contracts based on funding source (state or federal), type of contract (prime or subcontract) and type of project (engineering or construction).

In assessing the use of a disparity index, the Third Circuit, in *Contractors II*, found that the City's statistical evidence as presented in Dr. Brimmer's study created an inference of discrimination which the Contractors would have to rebut at trial either by proving a "neutral explanation" for the disparity, "showing the statistics are flawed, ... demonstrating that the disparities shown by the statistics are not significant or actionable, ... or presenting contrasting statistical data." See *Contractors Ass'n of Eastern Pennsylvania vs City of Philadelphia*, 6 F.3d 990, 1007 (1993) 1007.

2.3.5 CAPACITY AND REGRESSION

Parties seeking to explain what the U.S. Supreme Court meant in *Croson* usually raise the capacity issue of qualified minorities. The Capacity and Regression analysis seeks to determine the factors, including size, race, and gender among others, that are contributing to any disparity found as a result of comparing availability and utilization.

In *Concrete Works I*, the district court reviewed the challenged availability/utilization analysis submitted by the City and County of Denver. The Concrete Works Company challenged the use of availability measures and suggested that the appropriate standard was capacity. The court provided a lengthy discussion of the capacity arguments:

Capacity, as Concrete Works' expert economist points out, is ideally measured by the total amount of business that could be handled by MBEs. There are typically three measures used to predict the amount of business that W/MBEs can handle: the number of W/MBE companies relative to the total number in the industry (also known as 'availability'), W/MBE revenue as a percent of industry revenue, and the number of W/MBE employees as a percent of the industry total . . . [A]s evidenced both by Concrete Works' failure to

¹⁷⁵ *Id.* at 244.

¹⁷⁶ T-test determines statistical significance of any disparity found. The t-test assesses whether two groups are statistically different from each other.

¹⁷⁷ *Id.*

suggest an alternative way to measure capacity and the admission of its expert that availability is more often used in actual practice, the ability of a firm to handle any given amount of business is exceedingly difficult to define and even more difficult to quantify. Capacity is a function of many subjective, variable factors. Second, while one might assume size reflects capacity, it does not follow that smaller firms have less capacity; most firms have the ability and desire to expand to meet demand. A firm's ability to break up a contract and subcontract its parts make capacity virtually meaningless . . . Finally, Concrete Works can cite no authority for its assertion that its amorphous, ambiguous conception of capacity is required. No court to date has required a comparison of a firm's 'ability to handle work.'¹⁷⁸

In *Concrete Works III*, the Tenth Circuit reviewed those variables that CWC alleged the disparity studies had not controlled for and made the following findings:

- a. **Size and experience:** CWC did not conduct its own disparity study that controlled for firm size and experience. "Denver is permitted to make assumptions about capacity and qualification of M/WBEs to perform construction services if it can support those assumptions. The assumptions made in this case are consistent with the evidence presented at trial and support the City's position that 1) a firm's size does not affect its qualifications, willingness, or ability to perform construction services and 2) that the smaller size and lesser experience of M/WBEs are, themselves, the result of industry discrimination."¹⁷⁹
- b. **Specialization:** CWC offered no support for its view that M/WBEs are clustered in certain construction specialties and did not demonstrate that disparities are eliminated when there is control for firm specialization. On the other hand, the disparity study consultant controlled for SIC code subspecialty and still showed disparities.¹⁸⁰
- c. **Bidding:** Disparity studies must make the same assumptions about availability for *all* firms. It is unnecessary to consider only those firms bidding on Denver's projects because it does not indicate qualification.¹⁸¹

The Ninth Circuit has also discussed the issue of capacity. In *Western Paving*, the Court found Washington DOT's capacity analysis to be flawed because:

¹⁷⁸Concrete Works I at 838-39.

¹⁷⁹Concrete Works III at 982.

¹⁸⁰*Id.* at 983.

¹⁸¹*Id.*

- 1) It considered contracts that had affirmative action components and thus, did not reflect “the performance capacity of DBEs in a race-neutral market.’
- 2) While Washington DOT could only rely on a comparison of the proportion of State DBE firms/percentage of awards to DBEs on race-neutral contracts, this “oversimplified statistical evidence is entitled to little weight, however, because it does not account for factors that may affect the relative capacity of DBEs to undertake contracting work.
- 3) The State’s analysis does not control for any capacity factors, such as size and experience.

The court noted that under 49 CFR Part 26, the US DOT has established that availability can be adjusted upward or downward, based on the capacity of DBEs to perform work, as measured by the volume of work allocated to DBEs in recent years. While it disagreed with the way Washington DOT relied on capacity information to defend its DBE program, the court did find that Washington DOT had closely tracked US DOT regulations.¹⁸²

The Ninth Circuit contrasted the analysis performed by the Washington DOT and that performed by Caltrans. In *Caltrans*, the Court found the statistical analysis valid, as *Caltrans* had adjusted availability for capacity and controlled for previously administered affirmative action programs.

As discussed earlier, in *Engineering Contractors*, the Eleventh Circuit found acceptable as a valid explanation for disparities found, Census data showing that, on average, non-MBE/WBE firms were larger than MBE/WBE firms. It found unreliable the data submitted by the County to explain disparities found. The County presented an analysis of a sample of 568 firms out of 10,462 that had filed a certificate of competency with Dade County as of January 1995. The County’s expert collected data on these firms related to race, ethnicity, gender, as well as total sales and receipts and sought to determine if there was a meaningful relationship between the two pools of data. The expert conducted a regression analysis, using number of employees as a proxy for size.

The Eleventh Circuit found the statistical pool of firms relied upon by the County was significantly larger than the actual number of firms willing, able and qualified to do the work, particularly given that these firms represented those firms simply licensed as construction contractors.¹⁸³ Further, the court held that, after controlling for firm size, neither MBE nor WBE data revealed statistically significant disparities and that the district court was not required to assign any disparities controlling weight.¹⁸⁴

¹⁸² *Id.* at 989.

¹⁸³ *Engineering Contractors* at 921.

¹⁸⁴ *Id.*

In *Rothe*, the court found the most reliable way for accounting for firm size, without changing the disparity-ratio methodologies, was to employ “regression analysis to determine whether there was a statistically significant correlation between the size of a firm and the share of contract dollars awarded to it.”¹⁸⁵

In *Rowe*, the court also found the State’s regression analysis useful. In that study, the State studied the impact of certain business characteristics on a firm’s gross revenues. These characteristics included company age, number of full-time employees, owner’s years of experience, level of education, race, ethnicity, and gender. The State supported the capacity analysis by reviewing the participation of minorities at different contract thresholds.¹⁸⁶

2.3.6 ANECDOTAL

Croson indicated that some measure of anecdotal evidence could be supportive in a determination of discrimination. However, it did not provide a clear picture on the type and quantum of anecdotal evidence required. Many lower courts have reviewed and assessed the quality and quantity of anecdotal evidence submitted. In *Concrete Works I*, the District Court accepted the testimony of twenty-one people at a public hearing and the interview results of 38 M/WBEs as enough anecdotal evidence for *Croson* purposes.¹⁸⁷

In *Caltrans*, the consultant included twelve public hearings, received letters from business owners and trade associations and interviewed seventy-nine owners/managers of transportation firms. The Ninth Circuit found that “the statistical evidence from the disparity study is bolstered by anecdotal evidence supporting an inference of discrimination.”¹⁸⁸

Rothe criticized the disparity analysis because it did not include direct testimony from MBEs regarding their experience with the U.S. Department of Defense (DOD) or its prime contractors.¹⁸⁹ The court sought anecdotal testimony that demonstrated some link between the DOD’s spending practices and discrimination.

Opponents have long argued that anecdotal testimony should be verified. However, more and more circuits are concluding as *Concrete Works* did:

“Anecdotal evidence is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perceptions. In this case, the

¹⁸⁵ *Rothe* at 1045.

¹⁸⁶ *Rowe* at 247.

¹⁸⁷ *Concrete Works I* at 833-834.

¹⁸⁸ *Caltrans* at 1192.

¹⁸⁹ *Rothe* at 1048.

anecdotal evidence was not subject to rigorous cross-examination...Denver was not required to present corroborating evidence and CWC was free to present its own witnesses to either refute the incidents described by Denver's witnesses or to relate their own perceptions on discrimination in the Denver construction industry."¹⁹⁰

In *Caltrans*, the Ninth Circuit made it clear that anecdotal testimony did not need to be verified, particularly considering case law in the Fourth and Tenth Circuits. Additionally, the court rejected the AGC's argument that Caltrans needed to show that every minority-owned business is discriminated against; "[i]t is enough that the anecdotal evidence supports Caltrans' statistical data showing a pervasive pattern of discrimination."¹⁹¹

In *Engineering Contractors*, the Eleventh Circuit considered the sufficiency of the anecdotal evidence submitted, which consisted of interviews with two county employees responsible for the M/WBE program, twenty-three M/WBE prime and subcontractors and a survey of black owned construction firms. While the Court found "the picture painted by the anecdotal evidence is not a good one," the anecdotal evidence could not overcome the deficiencies of the statistical analysis and cannot alone support findings of discrimination sufficient to support the implementation of race and gender-conscious programs. "While such evidence can doubtless show the perception and, on occasion, the existence of discrimination, it needs statistical underpinnings or comparable proof to show that substantial amounts of business were actually lost to minority or female contractors as the result of the discrimination."¹⁹²

The District Court for the Northern District of Georgia, in *Webster v. Fulton County*¹⁹³, examined anecdotal evidence presented by Fulton County. In that case, consultants for Fulton County conducted seventy-six one-on-one interviews, public hearings, and a random survey of 183 M/WBEs. Like *Engineering Contractors*, the District Court found that while the anecdotal evidence "reflects the honest and concerned beliefs of many in the Atlanta and Fulton County area that they have been or are the victims of discriminatory practices," anecdotal evidence was "insufficient to offset the weaknesses of Fulton County's statistical evidence." Furthermore, much of the anecdotes referred to the firms' experiences in the private sector, and not with Fulton County.

In *Contractors II*, the trial court considered the anecdotal evidence of at least fourteen minority contractors who recounted instances of discrimination and found this evidence to be insufficient to support race-conscious relief. The Third Circuit found the lower court's approach in weighing this evidence to be inconsistent with its obligation at the summary judgment phase of trial, i.e., to determine whether there is a genuine issue for trial. While the Court suggested that the lower court's approach was

¹⁹⁰ *Concrete Works III* at 898. See also *Rowe* at 249, *Caltrans* at 1197.

¹⁹¹ *Caltrans* at 1192.

¹⁹² *Engineering Contractors*, at. 925.

¹⁹³ 51 F.Supp.2d 1354 (1999).

problematic, it did not ultimately opine on the sufficiency of this anecdotal evidence. However, as the Court did not invalidate the race-conscious relief for black contractors at issue, this suggests that the anecdotal evidence presented was of significance and likely, legally sufficient. See *Contractors Ass’n of Eastern Pennsylvania vs City of Philadelphia*, 6 F.3d 990, 1002, 1003 (1993).

2.3.7 MARKETPLACE AND PRIVATE SECTOR ANALYSIS

The Marketplace and Private Sector Analysis seeks to determine if there are discriminatory practices or disparity in the private marketplace and if the public entity is a passive participant in any discrimination found. *Croson* speaks to the importance of the effects of private sector disparities for justifying M/WBE programs. In *Croson*, the Court suggested several ways that a public entity might be involved in private sector discrimination:

1. **Discrimination in subcontracting opportunities:** “If the City of Richmond had evidence before it that non-minority contractors were systematically excluding minority business from subcontracting opportunities, it could take action to end the discriminatory exclusion.”¹⁹⁴
2. **Discrimination in the construction industry:** “[I]f 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.”¹⁹⁵
3. **Discrimination in professional trade organizations:** “In such a case, the city would have a compelling interest in preventing tax dollars from assisting those organizations in maintaining a racially segregated construction market.”¹⁹⁶
4. **Discrimination in the provision of credit or bonding by local suppliers and banks:** “[a]ct to prohibit discrimination in the provision of credit or bonding by local suppliers and banks. Business as usual should not mean business pursuant to the unthinking exclusion of certain members of our society from its rewards.”¹⁹⁷

Croson also implied that evidence in employment discrimination or discrimination in subcontracting would also strengthen the argument for an MBE program: [“The city points to no evidence that its prime

¹⁹⁴ *Croson* at 729.

¹⁹⁵ *Id.* at 720.

¹⁹⁶ *Id.*, at 726.

¹⁹⁷ *Id.* at 729.

contractors have been violating the [city race discrimination] ordinance in either their employment or subcontracting practices.”¹⁹⁸

*Webster v. Fulton County*¹⁹⁹ suggests, however, that a nexus must exist between private sector discrimination and the public agency. The Eleventh Circuit rejected the consultant’s definition of passive participant as a public entity operating in a marketplace where there is discrimination. Per the court, “[i]t does not show that the County’s spending practices are exacerbating identified discrimination in the private sector. The County may rely upon a showing of discrimination in the private sector if it provides a linkage between private sector discrimination and the County’s contracting policies. *Concrete Works*, 36 F.3d at 1529. No such linkage is provided by the data in the Brimmer-Marshall Study.”²⁰⁰

In *Concrete Works III*, the Tenth Circuit found that Denver could meet its burden by showing marketplace or private sector discrimination and linking its spending practices to the private discrimination. This could be done through:

- 1) Anecdotal evidence of City contractors subject to Denver’s goals who are not using M/WBEs on private sector contracts.
- 2) Evidence of discriminatory barriers to business formation by M/WBEs and fair competition.
- 3) Evidence of lending discrimination.²⁰¹

In *Rowe*, the Fourth Circuit found that the State failed to establish any correlation between public road construction subcontracting and private general construction subcontracting, thereby severely limiting the private data’s probative value.²⁰²

Standards for demonstrating private sector discrimination must be viewed considering the U.S Supreme Court’s ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*²⁰³. The U.S. Supreme Court indicated that private developers should be given “leeway to state and explain the valid interest served by their policies” and that disparate impact liability must be sure not to “displace valid governmental and private priorities, rather than solely “remov[ing] . . . artificial, arbitrary, and unnecessary barriers.”²⁰⁴

¹⁹⁸ *Id.* at 726, n.3.

¹⁹⁹ 51 F.Supp.2d 1354 (1999) United States District Court, N.D. Georgia, Atlanta Division.

²⁰⁰ *Id.* at 1370.

²⁰¹ *Concrete Works III* at 976-978.

²⁰² *Rowe* at 257.

²⁰³ No. 13-1371, 576 U. S. ____ (2015)

²⁰⁴ *Inclusive Communities Project*, slip op., at 22.

As to whether marketplace and private sector discrimination can render the government to be a passive participant in discrimination, in *Contractors III*, the Third Circuit found that the City's reliance on a study that purported to show discrimination against minority subcontractors by prime contractors in the market to be insufficient. In support of this assertion, the study relied on the testimony of two witnesses that minority subcontractors were not being awarded City work. The Third Circuit affirmed that this general testimony of discrimination was not an adequate basis for race-conscious relief. The Third Circuit also reasoned that because the City's procurement code warned its prime contractors not to discriminate, and because there were no allegations that this provision had been violated by any of the City's prime contractors, the race conscious relief at issue was impermissible. See *Contractors Ass'n of Eastern Pennsylvania vs City of Philadelphia*, 91 F.3d 586, 601 (1996).

2.3.8 RACE NEUTRAL

As part of narrow tailoring, public entities are required to consider the efficacy of race neutral measures in addressing any disparity or discrimination. The race neutral analysis seeks to determine the ability of existing race neutral efforts in eliminating disparity in the marketplace.

Lower courts have considered what constitutes adequate consideration of race-neutral measures. For example, in *Coral Construction v. King County*, the Ninth Circuit considered race-neutral measures, but found them not to be feasible. The Court stated that, "*Associated General Contractors* requires only that a state exhaust race-neutral measures that the state is authorized to enact, and that they have a reasonable possibility of being effective. Here, the record reveals that King's County considered alternatives, but determined that they were not available as a matter of law...King's County cannot be required to engage in conduct that may be illegal; nor can it be compelled to expend U.S. precious tax dollars on projects where potential for success is marginal at best."²⁰⁵

In *Concrete Works I*, the City had already enacted several race-neutral measures, including breaking down projects to facilitate small business participation; outreach; a prompt payment ordinance; good faith measures; seminars on procurement procedures and; bond guarantee, contractor mentor and pre-apprenticeship programs. Certain race-neutral measures could not be implemented because of requirements for state bonds, lowest bidder, and prevailing wages. The court noted, however, "strict scrutiny requires only good faith, not exhaustion of all alternatives."²⁰⁶

In *Coalition for Economic Equity*, the Ninth Circuit found that race-neutral alternatives had been sufficiently considered, since San Francisco passed and enforced an ordinance prohibiting City contractors from discriminating against their employees. It noted that, in *Hillsborough County*, the MBE law was adopted when the MBE program failed to remedy the discrimination and the law included "all of the race-

²⁰⁵*Coral Construction v. King County*, 941 F. 2d 910, 923 (1991).

²⁰⁶*Concrete Works I*, 823 F. Supp. 821 (D Colo 1993).

neutral measures suggested in *Croson*.²⁰⁷ In summary, the case law suggests:

- 1) If race-neutral programs and legislation were in place prior to the establishment of a race-conscious program, and yet M/WBE participation in public procurement remains low relative to availability, then an inference is created that race-neutral programs were inadequate to relieve the impact of past discrimination.
- 2) All race-neutral programs do not have to be considered.
- 3) Low participation by M/WBEs in race-neutral programs is evidence that the race-neutral programs do not provide an adequate remedy for past discrimination.

These standards have been buttressed in cases, such as *Western Paving v. Washington State Department of Transportation*, *Concrete Works of Colorado v. City and County of Denver*, and *AGC v. Caltrans*.

Important in California, the Ninth Circuit in *Caltrans*, for the purposes of narrowly tailoring, only requires “serious, good faith consideration of workable race-neutral alternatives[.]” *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003). The court found that Caltrans program has considered an increasing number of race-neutral alternatives, starting at forty-five in 2008 and reaching 150 in 2010.”²⁰⁸

In contrast, in *Engineering Contractors*, the Eleventh Circuit expressed concern that the County had not considered race-neutral alternatives. The types of initiatives that the Court believed that the County was obligated to attempt included:

- a) Adjusting its procurement processes and ferreting out instances of discrimination within its own contracting process; Take steps to “inform, educate, discipline, or penalize its own officials and employees responsible for the misconduct.”
- b) Passage of ordinances outlawing discrimination by local contractors, subcontractors, suppliers, bankers, or insurers.
- c) Serious efforts at management, financial and technical assistance programs and evaluations of their effectiveness.

According to the Court, “The first measure every government ought to undertake to eradicate discrimination is to clean its own house and to ensure that its own operations are run on a strictly race- and ethnicity-neutral basis... Instead of turning to race and ethnicity-conscious remedies as a last resort,

²⁰⁷ See also *AGC of California v. Coalition*, 950 F. 2d 1401, 1417 (1991).

²⁰⁸ *Caltrans* at 1199.

the County has turned to them as a first resort.”²⁰⁹

The Third Circuit, in *Contractors III*, found that the City of Philadelphia’s program was not narrowly tailored because it did not consider barriers to procurement that might affect all small businesses, seeking to do business with the city, i.e., capital and bonding requirements. The lower court found that the City’s procurement practices created significant barriers to entering the market for City-awarded construction contracts. Small contractors were deterred by the City’s prequalification and bonding requirements from competing in that market. Relaxation of those requirements, the lower court found, was an available race-neutral alternative that would be likely to lead to greater participation by black contractors. The court held that there was no effort made by the City to identify barriers to entry into its procurement process and that its procurement processes were not altered before or in conjunction with the adoption of Chapter 17-500. See *Contractors Ass’n of Eastern Pennsylvania vs City of Philadelphia*, 91 F.3d 586, 608 (1996).

The lower court also found that the City could have implemented training and financial assistance programs to assist disadvantaged contractors of all races. As an example of the effect of such a program, it pointed to the Philadelphia Urban Coalition’s Minority Contractors Training and Assistance Program. This program was designed to train minority contractors and help them obtain financing and bonding so that they might otherwise advance in the construction industry. The court noted that this program had achieved substantial success in fulfilling its goals. The trial court found that the City had not supported this program and had not considered emulating and/or expanding this program in conjunction with the adoption of its Ordinance.²¹⁰

In 1980, the City did establish the OMO to certify the credentials of minority contractors who were seeking construction opportunities from the UMTA, a federally funded project to build the Center City Commuter Rail Tunnel and the Airport High Speed Line. The OMO would investigate of a minority contractor and certify that it was minority owned. Although not required by the UMTA to do so, the OMO also scrutinized the qualifications of the MBE to ensure that it could perform projects of the complexity and size involved with the UMTA. During fiscal 1982, the OMO succeeded in obtaining 20 to 25 construction contracts worth \$50 million for certified MBEs. The trial court found that despite this success the City abandoned the “OMO’s strict, but valuable, certification procedures when Chapter 17-500 was enacted in November 1982.” *Id.* at 443 n. 21. While we recognize that the federal set-aside played a very important role in the OMO achieving the level of minority participation that it did in the UMEA program in 1982, this does not undermine the district court’s conclusion regarding the value of a list of minority contractors with certified credentials.²¹¹

²⁰⁹ *Id.* at 929.

²¹⁰ *Id.* at 608-609.

²¹¹ *Id.* at 609.

In conclusion, the court found that the record contained ample support for the trial court's finding that alternatives to race-based preferences were available to the City which would have been either race neutral or, at least, less burdensome to non-minority contractors. The City could have lowered administrative barriers to entry, offered training and/or financial assistance, and continued the OMO's certification of minority contractor qualifications. However, the court found that the "City Council was not interested in considering race-neutral measures, and it did not do so." 26 Id. at 442. To the extent that the City failed to consider or adopt these measures, it failed to narrowly tailor its remedy to prior or existing discrimination against black contractors.²¹² .

²¹² Id.

2.4 SUMMARY OF FINDINGS

2.4.1 CROSON STANDARDS

If Wilmington chooses to utilize race and gender-conscious techniques, it will need to meet the U.S. Supreme Court requirements of *Richmond v. Croson*. The U.S. Supreme Court established a two-pronged test: (1) that a governmental entity had to show a compelling governmental interest to utilize race and gender-conscious remedies and (2) that any such remedies must be narrowly tailored. A factual predicate or disparity study is utilized to show if there is a compelling governmental interest. Narrow tailoring is the crucial element in crafting appropriate *Croson* remedies.

Courts, for failure of local jurisdictions to narrowly tailor their remedies, have struck down many MBE programs. Once a factual predicate has been established, post-*Croson* case law presents several broad guidelines for crafting recommendations for MBE programs by a public entity, based on the factual predicate findings:

- Race and gender-conscious MBE programs should be instituted only after, or in conjunction with, race and gender-neutral programs.
- MBE programs should not be designed as permanent fixtures in a procurement system without regard to eradicating bias in standard procurement operations or in private sector contracting. Consequently, each MBE program should have a sunset provision, as well as provisions for regular review. Additionally, there is the implication that reform of procurement systems should be undertaken.
- MBE programs should have graduation provisions for the M/WBEs themselves.
- Rigid numerical quotas run a greater risk of being overturned by judicial review than flexible goals.
- Race and gender-conscious goals, if any, should be tied to M/WBE availability and to addressing identified discrimination.
- MBE programs should limit their impact on the rights and operations of third parties.
- MBE programs should be limited in scope to only that group(s) that has suffered from discrimination in the jurisdiction enacting the program.

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

2.4.2 THIRD CIRCUIT STANDARDS

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

- Contractor Associations have standing to challenge set-aside programs;
- Any use of race- and gender-conscious classifications must be supported by consideration of the proportion of minority business enterprises available and qualified to perform the contracted work;
- Post-enactment evidence may be considered in evaluating the legality of a program preference;
- Any preference for any specified group must be supported by evidence of discrimination or an inference of discrimination against that particular group;
- For equal protection analysis, the party challenging the government action bears the ultimate burden of persuasion;
- Generalized affidavits will not satisfy the 'compelling government interest' required by *Croson*;
- Instances where contractors that were awarded government contracts and that were also members of contractor associations that discriminated against minority contractors did not amount to passive participation in private discrimination by the relevant government actors;
- Post-enactment evidence may be sufficient as a basis for race- and gender-conscious programs, but must also address other potential causes for disparity;
- A "narrowly tailored" program must correlate any race conscious program to the identified discrimination or inferences of discrimination;
- Any numeric goal must be supported by evidence;
- Race conscious initiatives can only be used after consideration of race neutral alternatives; and
- Non-discrimination efforts can include the use and analysis of race/sex information without being subject to *Croson* standards.
- The factual predicate for any constitutional race-conscious relief may consist of proper statistical evidence of disparity and anecdotal evidence.

- Proper statistical evidence of disparity for any race conscious relief must assess the ‘relevant statistical pool’ – the percentage of minority businesses engaged in the local construction industry.
- Availability, for disparity purposes, is to be defined by “what proportion of the ... minority-owned businesses were available or qualified to perform the contracts or work at issue.
- Proper statistical evidence of disparity includes the "disparity index." This index consists of the percentage of minority contractor participation in City contracts divided by the percentage of minority contractor availability in the relevant statistical pool.
- Evidence of marketplace or private sector discrimination offered by way of general testimony of discrimination is insufficient as a basis for race-conscious relief.
- Race neutral efforts, including any revolving loan fund, technical assistance and training, and bonding assistance, must also be assessed and considered prior to the use of race-conscious relief.

2.4.3 ELEMENTS OF A FACTUAL PREDICATE

While *Croson* did not speak directly to the requirements of the factual predicate, lower courts interpreting *Croson* have suggested the following elements should be included:

- Relevant Market
- Availability
- Utilization
- Disparity with Statistical Significance
- Capacity and Regression
- Anecdotal
- Private Sector Nexus
- Consideration of Race Neutral Efforts

The Third Circuit has established those elements it considers important in a factual predicate:

- The factual predicate for any constitutional race-conscious relief may consist of proper statistical evidence of disparity and anecdotal evidence.
- Proper statistical evidence of disparity for any race conscious relief must assess the ‘relevant statistical pool’ – the percentage of minority businesses engaged in the local construction industry.

- Availability, for disparity purposes, is to be defined by “what proportion of the ... minority-owned businesses were available or qualified to perform the contracts or work at issue.
- Proper statistical evidence of disparity includes the "disparity index." This index consists of the percentage of minority contractor participation in City contracts divided by the percentage of minority contractor availability in the relevant statistical pool.
- Evidence of marketplace or private sector discrimination offered by way of general testimony of discrimination is insufficient as a basis for race-conscious relief.
- Race neutral efforts, including any revolving loan fund, technical assistance and training, and bonding assistance, must also be assessed and considered prior to the use of race-conscious relief.

As Wilmington considers the findings of this disparity study and develops race and gender-conscious and race and gender-neutral programmatic initiatives in response to these findings, Wilmington should ensure that the above legal parameters established by *Richmond v. Croson* and its progeny are fully considered.

CHAPTER 3: PROCUREMENT ANALYSIS

3.1 INTRODUCTION

This procurement analysis will determine if there are any systemic barriers within the City of Wilmington (the City) procurement policies, procedures, and processes, based on the business owner's race, ethnicity and/or gender that impact a qualified vendor's access to opportunities at the City. This assessment will assist in determining if there is inherent, unintended, or purposeful discrimination resulting from the manner in which the City procures its goods and services.

M³ Consulting's analysis is a broad view that considers the impact of the City's procurement practices on all contracting opportunities. In support of this effort, M³ Consulting carried out a two-pronged analysis and review:

- A review of the City's procurement policies, procedures, and practices, including organizational structure analysis and interviews with personnel in Division of Procurement and Records (Procurement), Office of Economic Development (OED), Department of Public Works, and Department of Parks & Recreation; and
- A review of the impact of the City's procurement structure, policies, procedures, and practices on the ability of Disadvantaged Business Enterprises (DBEs) to do business with the City.

This procurement analysis is organized into the following sections:

3.2 Best Industry Practices Review

3.3 Review of the City's Organizational Structure and Procurement Process

3.4 Review of the City's DBE Programs

3.5 Impact of the City's Procurement Process and DBE Programs on DBE Participation

3.6 Conclusion

Operational characteristics within the procurement process that hinder the involvement of DBEs in the Wilmington Procurement opportunities may necessitate fundamental changes to the overall procurement and contracting activities in the City to ensure inclusiveness, transparency, accountability, and efficiency, as it relates to DBE participation and consistent with the City's strategic mission and vision. M³ Consulting may recommend changes in Chapter 12: Conclusions and Recommendations.

3.2 BEST PRACTICES IN PUBLIC SECTOR PROCUREMENT

3.2.1 INCLUSIVE AND SUSTAINABLE PROCUREMENT

Public procurement represents anywhere between 10-45 percent of a nation's GDP, with the average percentage in developed countries around 15-20 percent. This percentage only represents public sector procurement. When private sector procurement is added to the equation, institutional Procurement accounts for over 30-60 percent of a nation's GDP. That means that our economies are significantly driven by the decisions made by Procurement agents.²¹³

Public sector procurement systems are responsible to the citizens within their jurisdiction. Prier, McCue, and Bevis²¹⁴ state that the public entity, through its procurement process, is responding to the "Triple Bottom Line – the simultaneous delivery of economic, environmental, and social policies that facilitate an integrated community development strategy."²¹⁵ Within this focus, the procurement team is also responsible for the efficient and cost-effective procurement of goods and services. However, cost-effectiveness should not be achieved to the detriment of certain groups within a public entity's jurisdiction. Prier, McCue, and Bevis state "continued participation by these targeted groups [small and historically underutilized business] is a necessary precursor to a robust community economic development strategy that leads to prosperity."²¹⁶

The objective of the procurement operation, therefore, is one of inclusive and sustainable procurement and economic development (SPED).²¹⁷ The execution and implementation of a public entity's community economic development objectives commence with the procurement process. M³ Consulting asserts that the degree to which the public entity achieves its community economic development objectives through procurement depends on whether the public entity starts with a public policy approach, supported by project execution.

²¹³ "Playing the Game", Sherry J. Williams, Esq., DBE Magazine, July/August 2013.

²¹⁴ "Making It Happen: Public Procurement's Role In Integrating Economic Development And Sustainability Strategies For Local Governments In The U.S.A.," Eric Prier, Clifford P. McCue and Michael E. Bevis*, 3rd International Public Procurement Conference Proceedings, 28-30 August 2008; Eric Prier, Ph.D., is an Associate Professor, Department of Political Science, Florida Atlantic University. Clifford P. McCue, Ph.D., is Associate Professor, and Director, Public Procurement Research Center, School of Public Administration, Florida Atlantic University. Michael E. Bevis, CPPO, C.P.M., PMP, is Chief Procurement Officer, City of Naperville, Illinois, USA.

²¹⁵ *Ibid.* at 639.

²¹⁶ *Ibid.*

²¹⁷ *Ibid.* at 642.

3.2.2 COMPREHENSIVE PROCUREMENT SYSTEMS

M³ Consulting has reviewed numerous public sector procurement operations and developed an overview of best practices as it relates to creating an inclusive and sustainable procurement environment that promotes DBE participation. A comprehensive procurement system includes the ten components listed below. M³ Consulting measured the City's procurement environment against these ten features.

Figure 3.1.

Ten Components of an Inclusive and Sustainable Procurement System

1. Organizational Structure	Effective Organizational Structure provides for checks and balances and encourages collaboration and broad input from a variety of perspectives. An organizational analysis provides an assessment of the open and competitive nature of the procurement system. To make this determination, M ³ Consulting gauges the degree of centralization or decentralization of the procurement process, the sufficiency and interrelationship of the written policies and procedures, and the transparency of the procurement process.
2. Budgeting and Forecasting	Effective budgeting and forecasting are essential elements in the development of successful procurement programs that enhance bidder participation and utilization of DBEs. Budgeting and forecasting allow greater and more in-depth planning for the inclusion of DBEs in a public entity's opportunities at the prime and subcontractor levels. M ³ Consulting reviews the degree to which an agency engages in procurement forecasting and determines how forecasting is utilized to promote inclusion.
3. Informal Procurement	Informal purchases provide the greatest opportunity for procurement personnel to impact the choice of vendors selected. These purchases are below a certain dollar threshold and are not subject to a formal contracting process or an advertised competitive bid process. M ³ Consulting reviews the way buyers or procurement agents utilize their discretion in the identification of those vendors from whom they will solicit quotes and who will be selected to receive the final award.

4. Formal Procurement	Formal purchases usually allow procurement personnel less discretion in vendor selection, particularly in jurisdictions that must select the lowest bidder. Some discretion, however, typically does exist in formal Procurement. For example, a selection criterion, like the “lowest bidder,” can be modified to include terms such as the “lowest responsive and responsible” bidder. M ³ Consulting reviews the formal procurement process to determine how available discretion is exercised.
5. Bid Opening and Evaluation	Objective and thorough bid opening and evaluation procedures ensure the fair and fully vetted consideration of bid and proposal submittals. Analysis of these procedures allows M ³ Consulting to determine whether there is any subjectivity in the selection of contractors and vendors.
6. Contract Administration	Effective contract administration includes comprehensive and consistent management of the contract, payment practices, and reviews of contractor performance. A considerable amount of vendor contact occurs at this phase of the contract process. A review of contract administration procedures allows M ³ Consulting to determine overall fairness and consistency in contract execution and project management consistent with the terms and conditions of the contract.
7. Non-competitive Purchases	In some instances, non-competitive purchases are warranted for very specialized goods or services. However, in an effective procurement system, these instances are limited. M ³ Consulting reviews sole source, emergency purchases, change orders and contract amendment policies to determine whether this component of the Procurement process is being used appropriately or whether competitive bidding procedures are being avoided inadvertently or intentionally.
8. Bonding and Insurance	Bonding and insurance are contract requirements that protect the interest of the owner. These contract requirements ensure that the Owner can complete the project regardless of nonperformance by a contractor and provide protection against site accidents and other mishaps that may occur during construction and/or during the provision of services. M ³ Consulting reviews rules and regulations regarding bonding and insurance to ensure that they are not overly burdensome to DBEs.

9. Comprehensive and Efficient Enterprise Systems	Enterprise systems are critical to monitoring and tracking organizational performance. Without effective enterprise systems, the public entity cannot effectively monitor and evaluate organization procurement operations and decision-making, particularly in a decentralized procurement environment. M ³ Consulting reviews these enterprise systems to ensure that procurement systems capture data to the degree necessary to not only track levels of participation, but also to determine areas of disparity in real-time.
10. DBE Program	See Figure 3.2

Source: M³ Consulting

3.2.3 SMALL, MINORITY AND WOMEN-OWNED BUSINESS PROGRAMS

In addition to the above-mentioned components of an inclusive and sustainable procurement system, M³ Consulting has identified six essential program elements of successful and comprehensive DBE programs. These program elements should be fully integrated and work in collaboration with the overall procurement system while supporting the tenants of the organization's Mission and Strategic Plan and its community economic development objectives.

When these six essential program elements are consistently utilized, these elements tend to increase the opportunity for DBE success to participate in business and sustainable community economic development opportunities:

Figure 3.2.
M³ Consulting Six Essential S/DBE Program Elements

1. Outreach and Matchmaking	Efforts to increase the business community's awareness of an entity's procurement and contract opportunities and match SDBEs, DBEs, and VBEs to specific contract opportunities at prime and subcontracting levels.
2. Certification	Eligibility criteria for DBE participants.
3. Technical Assistance	Informational and strategic support of businesses to meet the entity's DBE plan objectives.
4. DBE Inclusion in Bid Opportunities	The mechanism by which the entity assures that material consideration of DBE participation is given in the award of a contract.
5. Contract Compliance	Ensuring adherence to DBE plan goals on all contracts after execution of the contract.
6. Organizational Performance Evaluation	A comparison of performance results to the entity's goals to determine policy successes, strengths and weaknesses, and performance improvement areas.

Source: M³ Consulting

3.3 THE CITY'S ORGANIZATIONAL STRUCTURE AND PROCUREMENT PROCESS

Below is M³ Consulting's review of the organizational structure, procurement policies, procedures, and practices for the City of Wilmington, as well as the laws and regulations of the State of Delaware that apply to the City.

To conduct this analysis, M³ Consulting reviewed the following procurement policies, procedures, laws, and regulations:

- Division of Procurement and Records, Procedures Manual, City of Wilmington, Delaware, Department of Finance, July 2017
- Part I - Charter and Related Laws, Subpart A – Charter, Article VIII. - Provisions Of General Application, Chapter 2. Contracts, Procurement, Property, and Records
- Part II - Wilmington City Code, Chapter 2 – Administration, Article VI. – Finance, Division 9. Procurement Procedures and Requirements
- Part II – Wilmington City Code, Chapter 35 – Human Rights, Article IV. Equal Opportunity in employment & City Contracts
- Ordinance to Amend Chapter 35 of the City Code in Order to Clarify the City's DBE Program's Purpose & Definition Sections
- Ordinance to Amend Chapter 35 of the City Code in Order to Clarify the Authority and Process of the Equal Opportunity Contract Review Board Pursuant to Section 35-113
- City of Wilmington General Conditions for Construction Contracts and City of Wilmington DBE Program and Bidders Requirements
- City of Wilmington Vendor Management Review, Internal Audit Review, July 30, 2019
- City of Wilmington Vendor Management Review, Internal Audit Review, Attachment A
- City Org, Consolidated Org Charts, Org Chart 2021
- DBE AUP Final, July 13, 2018

In addition to reviewing the organizational structure and written policies and procedures, M³ Consulting conducted interviews with 16 staff members in the Division of Procurement and Records (Procurement), Office of Economic Development (OED), Department of Public Works, and Department of Parks & Recreation. These interviews assist M³ Consulting in determining the clarity of written policies and procedures and consistent execution in practice.

This review of policies, procedures, and practices provides an understanding of procurement operations to determine the impact of those operations on the inclusion of DBEs. This analysis is not intended to be a procurement audit or personnel performance review. The following analysis reflects the results of the review of the City's procurement policies, procedures, and practices as compared to the ten components outlined above.

3.3.1 Organizational Analysis

A. Organizational Structure

With a little over 70,000 citizens, the City of Wilmington is the largest city in the state of Delaware and is located approximately 30 miles from the City of Philadelphia, PA. Demographically, the City represents an urban area and has a diverse mixture of citizens. Whites represent 26.6 percent, African Americans, 54.5 percent, Hispanic Americans, 13.2 percent, Asian Americans, 1.28 percent, Others, 4.1 percent, and Native Americans, .16 percent.

Procurement and Records

The City of Wilmington's procurement process is governed by the Delaware Code of Law, City of Wilmington City Charter, and City of Wilmington Procurement Procedures Manual. The City seeks to achieve the following procurement goals:

- Purchase the proper good or services to meet the needs of the City,
- Get the best possible price for the goods or services,
- Get the best value for public dollars expended,
- Have the good or service available where and when it is needed,
- Ensure a continuing supply of needed goods and services,
- Allow responsible bidders a fair opportunity to compete for the government's business, through statutory requirements for competitive bids and proposals, combined with the City's Procurement procedures, and
- Provide Disadvantaged Business Enterprise (DBE) businesses an opportunity in the contract award process and stimulate the local economy and job market by allowing local businesses an opportunity to compete in the City contract award process.²¹⁸

Procurement is responsible for establishing and administering Procurement policies; initiating reports necessary to permit analysis of Procurement performance; negotiating and approving contract terms; consolidating purchases of like or common items; and analyzing prices paid for materials, equipment, and services.²¹⁹ The Procurement Manager reports directly to the Director of Finance. There are 4 employees, which include one Procurement Manager, one Senior Procurement Specialist, one Procurement Agent II, and one Procurement Technician. While Procurement's responsibilities allow it to be in an ombudsmen position, based on interviews, the department functions more in a support function to User Departments.

²¹⁸ Division of Procurement and Records, Procedures Manual, City of Wilmington, DE, Department of Finance, 2017, The Purpose of This Manual (no page number)

²¹⁹ Ibid. at 2.

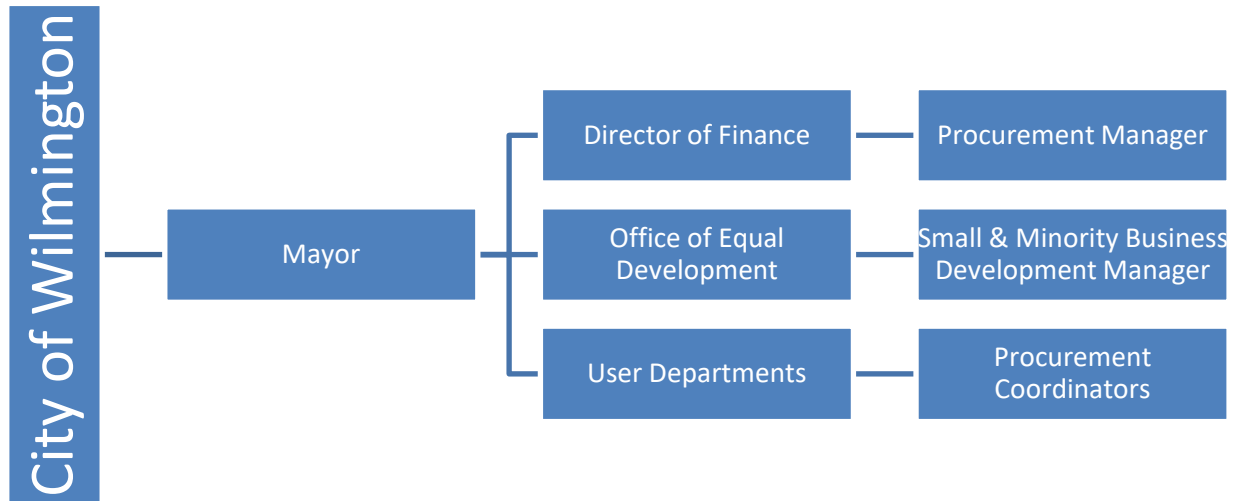
Furthermore, interviewees suggested that training on procurement functions is not provided by the Procurement Department. Some sample of various staff feedback includes:

- “[W]hen I started with the company, there was no training, whether it’s for procurement, whether it was for how to—there was just never any training in place...the only way you know how to do procurement process is because I’ve been here since 1922, and I know how to do it. And this is the way it’s done. And we always did it this way. So that’s the process.”
- “We did have some—what is it called like when you go away for training with the different agencies that deal with procurement? We did have some of those scheduled. But due to COVID, those got canceled. But within in-house, no, I haven’t had any specific training other than peer...”

Under the City Charter, Section 2-512, The City may establish a Procurement Review Committee (PRC) which would help to disseminate and enforce the procurement procedures and requirements of the City Charter and City Code. The PRC would consist of 6 voting members and one non-voting member. The 6 voting members would include the Mayor’s Chief of Staff, The Director of Finance, the City Solicitor, the Director of the Office of Management and Budget, and the Procurement Manager or their designees. The non-voting member would be the City Council’s Chief of Staff or designee. The PRC is directed to issue monthly reports to the administrative board regarding its activities, and may also issue advisories, Procurement updates, and recommendations as necessary to carry out its purpose.²²⁰ Based on interviews, the PRC is not in operation.

²²⁰ Part II - Wilmington City Code, Chapter 2 – Administration, Article VI. – Finance, Division 9. Procurement Procedures and Requirements, §2-512.

Figure 3.3. City of Wilmington Organization Hierarchy Outline



Source: M³ Consulting; All functions are not reflected on the table; only those most relevant to Procurement and contracting, and DBE program operations.

B. Procurement Function

The procurement function for goods, professional services, non-professional services, and maintenance/maintenance-related professional services are procured mostly in a decentralized manner. Construction and construction-related professional services are procured mainly by Public Works.

Procurement functions are provided below in Figure 3.4 for Procurement, User Departments, Public Works, and Office of Economic Development.

Figure 3.4.
City of Wilmington Procurement Functions

Procurement Responsibilities	• Develop Procurement objectives, policies, programs, and procedures for the negotiation and acquisition of materials, equipment, supplies, and services. • Coordinate Procurement procedures with other Departments and City officers. • Act as City representative on all matters pertaining to Procurement. • Initiate reports necessary for the analysis of Procurement performance. • Minor Edits of specifications for bid. • Consolidate Procurement of like or common items to obtain maximum economic benefits. • Arrange for the disposal or negotiation for the sale of surplus materials and equipment. • Work with other Departments to establish standardization of materials, supplies, and equipment where practicable. • Promote goodwill between the City and its suppliers. • Bid tabulation and determines responsiveness on formal contracts
User Department Responsibilities	• Prepare technical specifications and scope of work • Submit purchase requisition • Request non-formal quotes/proposals • Determines responsible bidder on RFPs
Public Works Responsibilities	• Determine construction delivery method—CMR, CM, Design-Build, ITB • Create bid and RFP packages • Prepare technical specifications and scope of work, identifying specific work elements • Establish evaluation criteria and evaluation points for bids and RFPs • Solicitation of Design and Construction firms • Bid tabulation and review of bids for responsiveness • Determine the most responsible and responsive bidder • Contract administration

Office of Economic Development Responsibilities	• Within the Office of Economic Development, responsibilities of the Equal Opportunity/Contract Compliance Office (EO/CCO) are assumed by the City of Wilmington’s Small and Minority Business Enterprise Office (SDBEO). • Helps small and minority-owned firms to find resources, capital needs, or assists with various other business challenges they may be facing. Assistance includes matching them up with technical assistance with one of Wilmington’s partner organizations, or state and federal small business administration programs, such as their local SBA. • The Office of Economic Development works closely with state and local economic development partners to promote growth within the City. This includes working in collaboration to support small businesses, major employers, and developers who may be interested to invest in Wilmington. • WEDCO provides loans to established small businesses, located in the City of Wilmington, that are growing and unable to secure financing on comparable terms from conventional financial institutions.

Source: Wilmington Procurement Manual, M³ Consulting

Public Works according to interviews is made up of 11 divisions. These divisions report to the Administrative Service Director on issues of budgeting, administrative matters, and contracting. The Department head or PO requestor must give approval before the Administrative Service Director will move forward before a PO is submitted by the ASD for payment. Public Works Procurement Coordinators (PWPCs) also report to the Administrative Service Director. The PWPCs are responsible for setting up purchase orders by entering requisitions. They make sure that a requisition has all the supporting documents needed by Procurement to approve the purchase order. The requisitioning department is responsible for obtaining the three quotes for needs under the \$60,000 threshold.

C. Enterprise Systems Supporting the Procurement Functions

Enterprise systems are critical to monitoring and tracking organizational performance. Without effective enterprise systems, a municipality cannot effectively monitor and evaluate organization procurement operations and decisions. This is particularly highlighted when operating in a decentralized procurement environment. M³ Consulting seeks to review the enterprise systems that a municipality may employ to ensure that procurement systems capture data to the degree necessary to not only track levels of participation, but also to determine areas of disparity in real-time. In 2002, the City of Wilmington formed a committee comprised of internal stakeholders representing Finance, Personnel, and Budgeting to review potential software options to replace its then outdated system. After evaluating a number of

software providers, in 2005 Wilmington ultimately selected Tyler Technologies, Incorporated's MUNIS software. The MUNIS software suite, which is currently the system of record as of this 2022 procurement review, includes financial management and human resources applications. The City also uses the MUNIS revenue software module to manage the accounts receivable and related processes for utilities, permits, taxes, and other applications. However, the current enterprise systems supporting procurement functions within the City of Wilmington fall far short of robust integration. There is no linkage to vendor databases, diversity subcontractor spend data, and contract management. This lack of linkage makes it difficult for Wilmington to monitor and validate its' aspirational diversity spend.

3.3.3 BUDGETING AND FORECASTING

Procurement budgeting and forecasting is not addressed in the Procurement Manual. We note that Public Works is responsible for planning most of the construction activity for the City. Parks & Recreation oversees a small amount of construction activity. Based on interviews with Procurement and Public Works, budgeting and forecasting is considered in the following ways:

- Public works starts its Capital Projects budgeting process "about six months prior to the beginning of the fiscal year...Capital projects is every other year—it's the odd year." The interviewee stated that capital projects are not broken down by trade categories. For budgets, the engineers provide estimates to the interviewee who assumes that the bidding proponents will look at what the specs are, and then they will be able to determine what drafts they will need to complete the job. Any trade breakdowns the engineers provide would be contained only in the specs.
- The Minority Business Development Office indicated that they really don't get any forecasting of upcoming projects to be bid and was unsure whether forecasting had been done and disseminated historically.
- For Parks and Recreation, the interviewee stated that budgeting and forecasting activities are a part of their annual budget process. The department looks at current year expenditures and what needs are on the horizon for the next year. The Superintendent develops estimated costs for certain areas to implement in the budget but observed since assuming the position that a lot of the departmental needs are "off-budget" because of events like vandalism, natural causes (fallen tree branch). Depending on the cause, some needs are handled under emergency procedures.

3.3.4 VENDOR REGISTRATION, NOTIFICATION, SOLICITATION, AND BID OPENING

After the principal or department submits a requisition, the procurement process commences with the development of a solicitation and vendor registration lists/mechanisms. These mechanisms determine

how the organization determines the pool of potential bidders to which it will provide specific notification of its opportunities.

A. Vendor Registration

Vendor registration is not addressed in the City Code or Procurement Procedures. When querying procurement and department staff regarding the availability of a DBE and/or vendor registration list:

- “I’d seen a vendor list when I started back in 2013. I don’t think I’ve seen one since. I don’t think it’s been updated. If it is, I don’t know where it is...And where I sit, I should be privy to that information...It would be helpful.”
- “So there’s no database where we can go and look and say these people are specialized in crime or curriculum writing, and they just happen to be women. There’s nothing like that.”
- “...unaware if vendor registration information is posted anywhere...”

B. Specification

City Departments or requesting Agency submitting a requisition are responsible for providing Procurement with specifications to be included in the bid. Specifications should be designed to assist the City to obtain the best value, not to limit competition.²²¹ Specifications should address the following:

- Level of quality—standard grade of merchandise which optimizes the relationship between quality and price;
- Adequate specifications—specifications should not be designed in length or content to eliminate competition; brand names should be used solely to define a standard of quality; RFPs should include a list of criteria to be met;
- Responsibility—while responsibility remains with the Department, Procurement may make minor changes to encourage competition; the Department should be sure to determine whether a pre-bid is required/desired, whether bonding and insurance are required; Procurement is responsible for distributing final specifications and communicating with vendors and bidders once ITB or RFP is issued.²²²

C. Notification and Solicitation

The City of Wilmington requires contracts between \$60,000 and \$99,999 to be advertised once in a Delaware newspaper. Contracts over \$100,000 must be advertised twice (once a week for two

²²¹ Procedures Manual, p. 10.

²²² Ibid. at 12.

consecutive weeks). Advertisement can occur in the following forms:

- Delaware newspaper (required),
- City's website (optional),
- Other publicly accessible internet location (optional).

According to Section 2-511, Chapter 2, Division 9 of the City Charter, the notice should include a description of the item being bid and where detailed specifications can be obtained. The notice should provide a reasonable time for response, which should be no less than five days from the bid opening. Bids are to be opened in the presence of the City Auditor and awarded to the lowest responsible bidder submitting a responsive bid.²²³ If it is determined that bids received are clearly unreasonable or the low bid is above available City funds and rebidding is impractical, the City may negotiate a contract, provided that each bidder is provided the opportunity to negotiate.

3.3.5 SMALL PURCHASES

Small purchases are purchases valued at less than \$60,000. Covered by Section 2 of Procurement Code and Chapter 2, Section 8-200 of City Charter.

A. Purchases Less than \$15,000

Purchases less than \$75 will be paid with a check.²²⁴ Purchases between \$75 and \$14,999 do not require multiple quotes. The requesting Department can provide a recommended vendor to be considered by the Procurement Department.²²⁵

B. Purchases between \$15,000 to \$59,999

On purchases between \$15,000 to \$59,999, three written quotations must be secured. If possible, one quote should be secured from a DBE firm.²²⁶ One interviewee stated that in her department, "I don't think it's always adhered to...they just grab the quotes...at one point, our department, they were really going after a lot of bid waivers, which allows you to forgo that process of getting the bids...Saying that they didn't have time or they didn't get the bids they needed, or because of the time restraints or the work,

²²³ Part II - Wilmington City Code, Chapter 2 – Administration, Article VI. – Finance, Division 9. Procurement Procedures and Requirements, §2-511(b)(5).

²²⁴ The City does not use P-Cards.

²²⁵ Procurement Manual, p. 5.

²²⁶ Ibid.

that they just have this particular person that they want to work with...And I've seen finance or procurement take that as a justification why you're just picking this one company and that you don't have the additional two quotes to go with the third."

Figure 3.5 summarizes the contract thresholds for Informal Purchases. Figure 3.6 summarizes signature authorities expressed in interviews, as the thresholds are not addressed in procedures.

Figure 3.5. Informal Purchases				
Contract Amount	Solicitation Method Options	# of Quotes Required	Advertisement or Web Ad Required (Yes/No)	Procurement Responsibility
Under \$15,000	None required	1	No	Authorized District Staff
\$15,000--\$59,999	Written	3, 1 DBE if possible	No	Procurement Management Services and Authorized District Staff

Source: Wilmington Procurement Manual; M³ Consulting

Figure 3.6. Signatory Authority on Purchase Orders	
Signatory	Amount
Departmental Director	• \$0-\$60,000
Commission	• Over \$60,000
Mayor	• Over \$100,000
City Council	• Over \$100,000

Source: Wilmington Procurement Manual; M³ Consulting

The Procurement Manager will review requisitions for completeness, any quotations provided by the Departments, proper account distribution, whether state contract is used and conformity with requirements, whether a business license is required, and conformity to City Charter. There are four types of purchase orders that the City may issue: Standard PO, Blanket PO, Confirming PO, or PO with Bid Waiver Attached. After the Fact Orders are not allowed.²²⁷

Based on interviews, most purchases made by departmental staff fall within the small purchase threshold.

- Many DBEs, according to one interviewee are not aware of these opportunities.

²²⁷ Ibid. at 8-9.

- The City also utilizes many of the same vendors repeatedly. “They’re men and they are repeat vendors...So they keep hiring the same guy.”
- “Honestly, most of the managers kind of give the business to people they know...I don’t know if it’s because Delaware is small, but traditionally the same businesses, the same companies are getting the work over and over again.”

3.3.9 FORMAL PROCUREMENT

Formal Procurement or competitive Procurement is required for purchase contracts of \$60,000 and over. Formal purchases are issued under a contract, not a purchase order. Formal Procurement in the City is done using Invitations to Bid or Requests for Proposals.

A. Invitations to Bid (ITB)

Procurement Responsibilities

Once Procurement receives the written specification from the City Department, Procurement executes the following tasks as it relates to solicitation and notice and bid tabulation and award:

- Schedule the Advertisement, pre-bid meeting, and public bid opening dates.
- Reserve necessary conference rooms.
- Prepare Instructions to Bidders and Advertisement notification.
- Send Advertisements to the News Journal and the City Website
- Additionally, the Advertisement is sent to previous bidders and other companies that are identified as potential bidders.
- Attend the pre-bid meeting.
- Facilitate the bid opening.
- Review bids.

Once bids are reviewed for responsiveness, they are then forwarded to the user department. The City reserves the right to waive technical errors.²²⁸

Within 10 days of award, the successful bidder will provide the City with a performance bond, and where appropriate a labor and materials bond, unless specifically waived in the specifications.²²⁹

User Department Responsibility

²²⁸ §2-511(b)(4).

²²⁹ §8-200(4)(e).

Section 2-536 states that Department Heads are responsible for deciding responsible bidders and developing a Recommendation to Award. Section 2-537 outlines the minimum standards of responsibility as follows:

- Have adequate financial resources,
- Be able to comply with the required or proposed delivery or performance schedule,
- Have a satisfactory record of timely performance of city contracts,
- Have a satisfactory record of integrity. The following provisions, while not exclusive, shall be sufficient to justify a finding of non-responsibility:
 - Failure to pay taxes and fees due and owing to the city,
 - A conviction of the contractor or a principal officer for the commission of a criminal offense pertaining to obtaining or attempting to obtain a public contract or in the performance of such contract,
 - A conviction, of the contractor or principal officer thereof, under state or federal statutes, for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a city contractor,
- Have a satisfactory record of performance of contractual provisions. Violation of contract provisions of a character that justify a finding of non-responsibility include:
 - Deliberate failure without good cause to perform in accordance with the specifications provided in the contract,
 - A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts,
 - Failure to comply with prevailing wage and related federal, state, and city requirements,
 - Provided, however, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be a basis for a finding of non-responsibility,
- Have the necessary technical skills or ability to obtain them,
- Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them, and
- Have a satisfactory record of having provided in any bid submitted to the city the evidence of good faith efforts to achieve disadvantaged business enterprise participation in the contract through subcontracting as required by the procurement and records division as a condition for a bid to be deemed responsive.

Once responsibility determinations are made, the User Department will prepare a Recommendation to Award (RTA) letter within 7 days to the lowest responsive, responsible bidder, except in the case of an RFP. The letter will be sent to the Procurement Agent that handled the bid. Procurement will create three executed and signed original copies of the final contract to be sent to the requesting Department and vendor. The final copy will be retained by Procurement.²³⁰ Contracts of more than a year require City Council approval. The User Department is responsible for contacting City Council and requesting appropriate legislation be introduced.²³¹

B. Competitive Sealed Proposals—Request for Proposals

Procurement Responsibilities

On Request for Proposals, Procurement has the following responsibilities:

- Schedule the Advertisement, pre-bid meeting, and proposal due dates.
- Reserve necessary conference rooms.
- Prepare Instructions to Bidders and Advertisement notification.
- Send advertisements to the News Journal and the City Website
- Additionally, the advertisement is sent to previous bidders and other companies that are identified as potential bidders.
- Attend the pre-bid meeting.
- Open the proposals.
- Assist in defining the Proposal review committee.
- Facilitate the review and scoring of the proposals by the committee.²³²

User Department Responsibilities

Similar to ITBs, once Procurement opens the proposals, all copies of all proposals will be sent to the User Department for review and scoring. Interviews may be held with some or all the proposers. Once the review is complete and the best proposal is identified, the User Department will prepare an RTA and send it to the appropriate Procurement Agent. Procurement will create three executed and signed original copies of the final contract to be sent to the requesting Department and vendor. The final copy will be retained by Procurement.²³³ Contracts of more than a year require City Council approval. The User Department is responsible for contacting City Council and requesting appropriate legislation be introduced.²³⁴

²³⁰ Procurement Manual, p. 12.

²³¹ Ibid. at 13.

²³² Ibid. at 13.

²³³ Ibid. at 12.

²³⁴ Ibid. at 13.

Architecture and Engineering Services are considered Professional Services. According to an interviewee in Public Works, his department selects individuals that will be doing the engineering designs and is part of the engineer evaluation process. The selection process for Engineers is as follows: “Well, I mean, we meet with them. We tell them what we need. We have some folks on staff - I call them alternates - that are engineers that we can sit and meet with, and we discuss it, and then we come up with how are we going to best approach doing whatever that task is. And then, again, just to reiterate, the engineers, then, come up with the design, and then we can estimate the cost. The professional services contracts are one (1) year contracts with no renewal term as anything beyond 1 year must go to council. There is one DBE firm on the water side (Public Works) that has been with them for a long time. The firm has a professional services agreement.”

Similarly in Parks and Recreation, the interviewee, who is responsible for engaging professional architects, landscape architects, and civil engineers reported that there are Prime contractors awarded professional services contracts, which they can negotiate. Sometimes they may have an RFP, but most often, they get quotations for professional services and just select based on qualifications. The procurement vehicle depends on the size of the job. For example, the \$4 million renovation project was managed by a CM. However, the City or State may have certain rules governing construction management. In certain cases, the PM would be Prime, his agency would pay the CM’s pay applications and the CM would be responsible for paying their subs. But on the \$4 Million renovation contract which was managed by a CM, the City held each individual contract with the trades. His department paid 15 different vendors, each submitting their individual applications for payment and certificates to the construction manager who approved them, but his department paid them directly under agreements with each of them. The CM selection process is done administratively at the executive level in the City by interviews with a cross-section of City participants along with a non-profit board involved in sitting in on the interviews. The CM selection process does not appear to give any consideration to, or criteria for the inclusion of diverse CM firms.

G. Construction

Construction contracting and procurement is covered by Subdivision III. Minimum Standards for Responsible Prospective Contractors on City Work. In this section, M³ Consulting summarizes the requirements of bidders on contracts over \$100,000 handled by Public Works Department. Firms interested in doing business with the City on construction opportunities will have to demonstrate that they are qualified, responsible contractors or subcontractors by:

- Necessary experience, equipment, technical skills, and qualifications
- Organizational, financial, and personnel resources
- Satisfactory past performance record

- Satisfactory record of law compliance, business integrity, and ethics²³⁵

Bidding Process

At the time of bid, firms demonstrate these factors by the construction manager, general contractor, or other lead prime contractor completing a contractor responsibility certification, which reflects that the firm and its employees:

Figure 3.7. Contractor Responsibility Certification ²³⁶
Have all valid, effective licenses, registrations, or certificates required by federal, state, county, or local law
Meets the bonding and insurance requirements for the contract, as required by applicable law or contract specifications.
Has a satisfactory record of integrity.
Has a satisfactory record of timely performance of City work.
Has a satisfactory record of performance of contractual provisions.
Has a satisfactory record of good faith efforts to achieve Disadvantaged Business Enterprise participation.
Has not been debarred or suspended by any federal, state, or local government agency or authority in the past three years.
Has not defaulted on any project in the past three years.
Has not had any type of business, contracting or trade license, registration, or other certification revoked or suspended in the past three years.
Have not been convicted of any crime relating to the contracting business in the past ten years.
Has not at any time been found in violation of any federal, state, or local prevailing wage law
Has not within the past three years been found in violation of any law applicable to its contracting business, including, but not limited to, licensing laws, tax laws, prompt payment laws, wage and hour laws, environmental laws or others, where the result of such violation was the payment of a fine, back pay damages or any other type of penalty in the amount of \$1,000.00 or more
Will pay all craft employees that it employs on the project the current wage rates and fringe benefits as required under applicable federal, state, or local wage laws
All craft labor that will be employed by the firm for the project has completed at least the OSHA ten-hour training course for safety established by the U.S. Department of Labor, Occupational Safety & Health Administration. DBEs exempt

²³⁵ §2-562.

²³⁶ §2-563

Will employ craft employees in all classifications and individual trades required to successfully perform the work related to this project.
Participates in a class A apprenticeship program for the past 12 months, at a minimum, for each separate trade or classification in which it employs craft employees and shall continue to participate in such program or programs for the duration of the project. DBEs are exempt
Make all reasonable best efforts to ensure that 15 percent of the workforce hired for the project, especially with respect to new workers recruited and hired for the project, includes city residents. To ensure compliance with this subsection, the firm will also make residency information on its workforce available to the city upon request.
Has all other technical qualifications and resources, including equipment, personnel, and financial resources, to perform the referenced contract, or will obtain same using qualified, responsible subcontractors.
Notify the city within seven days of any material changes to all matters attested to in this certification.
Understands that the contractor responsibility certification required by this section shall be executed by a person who has sufficient knowledge to address all matters in the certification and shall include an attestation stating, under the penalty of perjury, that the information submitted is true, complete, and accurate.
Stipulate in the contractor responsibility certification that, if it receives a notice of intent to award the contract, it will provide a subcontractor list and required subcontractor information.
If applicable, attach a separate statement to its contractor responsibility certification that explains in detail the nature of any relationship where the business entity or in the past five years controlled or was controlled by another company or business entity, whether as a parent company, subsidiary or in any other business relationship.
If a firm fails to provide a contractor responsibility certification required by this section, it shall be disqualified from bidding

The City will issue a notice of award to the lowest, responsive bidder. Upon receipt of the notice of intent to award, the contractor will submit a list of subcontractors—their names, address, and description of the work to be performed.²³⁷ Within 7 days of notice of intent to award, subcontractors must then provide a subcontractor certification form with the same information listed above in Figure 3.7.

After the notice of intent to award has been issued, the City will conduct a review for a period of at least ten days to determine whether the prospective awardee is a qualified, responsible contractor and has the resources and capabilities to successfully perform the contract. If the City determines that the prospective awardee is qualified and responsible, and its list of subcontractors is satisfactory, the City will issue a written contractor responsibility determination verifying such. If the firm is deemed to be non-

²³⁷ §2-565

responsible, the City will advise the firm in writing and conduct a responsibility review of the next lowest, responsive bidder, or, if necessary, re-bid the project.

Upon completion of the certification review, the City will make the contractor's certification responsibility determination, subcontractor list, and subcontractors' certification responsibility determinations available to the public. During the public review period, any person or organization may protest a contractor or subcontractor for failing to meet applicable requirements or on any other relevant grounds by submitting a letter with supporting evidence to the city.

In the general conditions document, the requirements appear to be stated slightly differently. Here, the requirement states that "Before awarding the contract, a bidder may be required to show that he/she has the ability, experience, necessary equipment, experienced personnel, and financial resources to successfully carry out the work required by the contract." Furthermore, the City has 30 days from bid opening to determine the lowest responsive and qualified bidder whose proposal complies with all of the requirements.²³⁸

Subcontractor Substitution

After notice of award or intended award has been issued, the contractor may not substitute a listed subcontractor without written authorization from the City. After being appropriately informed, the City may authorize one of the following options:

- Permit the awardee to substitute a qualified, responsible, subcontractor in accordance with the requirements of this section;
- Require the awardee to self-perform the work in question if the firm has the required experience, licenses, and other qualifications to perform the work in question; or
- Disqualify the prospective awardee.²³⁹

Interviews confirmed this policy. Public Works Procurement Coordinators check to ensure that subcontractors listed in the agreement are the ones utilized.

Pre-Qualification

On specific projects, based on the type of work to be performed, Wilmington requires pre-qualification. When applicable, the pre-qualification requirement will appear in the specifications section of the solicitation document. Proponents will have to provide their qualifications to submit the bid. A Public

²³⁸ §2-562.

²³⁹ §2-567.

Works Department employee indicated that when “I’m dealing with water, sewer, stormwater utilities, so I just don't want anybody coming in and the next thing you know, we've got a major problem...” Pre-qualification data is used in conjunction with specific contractor responsibility certification information submitted on a provided form to be vetted by the City of Wilmington Division of Procurement and Records.

Bid Security

Bid Security, in the form of bonds and/or insurance, may be required on contracts over \$100,000. The state of Delaware requires the bond to be at least 10 percent of the bid. (29 Del. C. §6962(d)(8)(a)). Based on General Conditions, the successful bidder must furnish, within ten days after the award, a Performance Bond and/or Labor and Materials for 100 percent of the total cost of the Contract Price, in triplicate, with corporate surety authorized to do business in the State of Delaware, the form and surety to be approved by the City Solicitor, with a Warrant of Attorney to confess judgment thereon attached thereto.²⁴⁰

Failure to enter bond in a sum equal to the full amount of the award or to execute the contract within ten (10) days after written notice of the award, shall be just cause for the annulment of the award, and it is understood by the Bidder, in the event of the annulment of the award, that the amount of the certified check with the proposal may be forfeited to the use of the City, not as a penalty, but as liquidated damages.

Selection Committee

The establishment of a Procurement Review Committee in the City of Wilmington is codified in their Code of Ordinances (Sec. 2-512). The code section provides that The Mayor and council create the Procurement Review Committee (PRC) with the charge to assist in the dissemination and enforcement of procurement procedures as required by the City Charter and City Code. The PRC consists of a total of six members, five of whom shall be voting members and one of whom shall be a non-voting member. The voting members shall be as follows:

- (1) The mayor's chief of staff or designee, who shall serve as chair;
- (2) The director of finance or designee;
- (3) The city solicitor or designee;

²⁴⁰ City of Wilmington General Conditions for Construction Contracts, p. BP-4.

- (4) The director of the office of management and budget or designee; and
- (5) The Procurement manager.

The non-voting member shall be the city council chief of staff or designee. The PRC also issues monthly reports to the administrative board regarding its activities, and may also issue advisories, Procurement updates, and recommendations as necessary.

A Wilmington Public Works Commissioner level interviewee detailed that on any of the design-build or RFPs that go out from Public Works for solicitation, he or at least the division director will serve on the selection committee. Also on occasion, one of the department's contract engineers will serve on an evaluation panel. "Depending on the size and complexity of it, I've reached out to individuals from other departments, whether it be a representative from finance or audit or whatever. If we needed somebody we wanted to-- again, depending on what we're looking for. If it's something specifically related to the utility, it's typically going to be several supervisors, possibly one of our contracted engineers and a division director that is going through will typically make up a scoring matrix that's weighted and go through and review all the proposals and score it accordingly..."

3.3.11 NON-COMPETITIVE PROCUREMENT

A. Cooperative Purchases/Piggybacking

User Departments may purchase from contracts awarded by the State of Delaware. Once the User Department determines that the exact items are included in the requisition and attach a copy of the State contract to the requisition.²⁴¹

B. Emergency Purchases

When an emergency occurs, the procurement requirements under the City Charter are waived. Emergency purchases are those purchases that occur:

- When a breakdown in essential goods and/ or services,
- When the essential goods and/ or services are so compelling that the time necessary for the applicable bidding procedures would cause undue delay in restoring services, or,
- When not supplying the essential goods and/ or would have serious results to the City and/or its Citizens.

The Procurement Manual emphasizes that emergency purchases cannot be utilized because of negligence and failure by Departments to properly anticipate normal needs. Only authorized representatives of the

²⁴¹ Procurement Manual, p. 15.

Department involved can make emergency purchases only after contacting Procurement to determine if a true emergency exists.²⁴²

C. Sole Source

See bid waivers under Section D. Exceptions below.

D. Exceptions

In addition to Emergency Purchases, the Procurement Manual identifies two areas of exceptions to procurement policies and procedures, Professional Services Agreements and Bid Waivers.

Professional Service Agreements

While a competitive process is encouraged, Professional Services are not subject to the formal bidding procedures under the City Charter. The Head of the User Department is responsible for procuring these services, with Law Department approval. Agreements cannot be executed until reviewed and approved as to form by the law department.²⁴³

Bid Waivers

If determined to be in the public interest and approved by the Law Department, competitive bidding may be waived in cases of an emergency, where performance or price competition is not available or as identified below:²⁴⁴

- Where a needed product or service is available from only one source of supply,
- When a product or service is unique and only available from a single source ('sole source') or there is an inability to obtain quotes,
- When a blanket PO exceeds the threshold limit,
- When a contract award amount is exceeded by 10 percent or \$10,000, whichever is greater,
- When time constraints prevent the normal bidding process, and
- In cases of an emergency purchase.

Based on interviews, bid waivers have historically not had determinations of "being in the public interest" or "approved by the Law Department." In fact, the opposite was the case, with improvements being made more recently. Some interviewees suggested that, in the past bid waivers were routinely granted with

²⁴² Ibid. at 17.

²⁴³ Ibid. at 18.

²⁴⁴ Ibid. at 19.

little support rationale, or that the user departments "worked with the contractors" to ensure that that they got something in the rationale narrative that "nobody else can do."

3.4 ANALYSIS OF THE CITY'S DISADVANTAGED BUSINESS PROGRAMS

3.4.1 REVIEW OF THE CITY OF WILMINGTON'S DBE PROGRAMS

Within the current organizational and legislative construct, M³ Consulting sought to analyze the City's current DBE programmatic initiatives. As discussed previously, M³ Consulting reviewed the City's DBE efforts to determine its effectiveness in the context of the Six Essential DBE Program Elements.

The City of Wilmington's DBE initiatives are governed by Part II-Wilmington City Code, Chapter 35-Human Rights, Article IV. Equal Opportunity in Employment and City Contracts. The components of Article IV are as follows:

Figure 3.8. Part II-Wilmington City Code, Chapter 35-Human Rights, Article IV and City Auditor Review of DBE Program

Division 1. Generally ²⁴⁵		Audit Report Observations, July 13, 2018 ²⁴⁶
Sec. 35-111. Equal Opportunity Policy	- The City has established a strong commitment to equal opportunity in employment and contracting. As it relates to Contracting, the City is to “establish an active policy of encouraging, soliciting and assisting new, small and local businesses, including those of economically disadvantaged individuals, in obtaining employment and in conducting business with the city, its agents and corporations created by the city for public purposes.” - Goals are to be established based on “percentages of the total dollar amount of contracts for businesses in the categories of construction contracts, professional service contracts, and contracts for the purchase of goods and services and of materials, supplies and equipment.” - An Office of Equal Opportunity Contract Compliance (OCC) that will maintain statistics and reports on workforce composition, business in industries that the city does business in and disparity in participation in employment and business opportunities of disadvantaged individuals and businesses. The OCC will submit DBE and workforce participation reports every 6 months.	- City Code regarding the Disadvantaged Business Enterprise Program needs to be updated - Section 35 is out-of-date and provides limited daily operational guidance - The code refers to departments and positions that are no longer in existence such as the Director of Procurement, the Office of Equal Opportunity Contract Compliance, and the Commerce Department - The code does not capture the current role of the Mayor’s Office of Economic Development within the overall DBE program process - There are no documented policies and procedures that provide daily operational guidance on program administration - Section 8-5 Economic Opportunity Plan (EOP) requires the submission of an EOP for developers that receive City funds or in-kind contributions more than \$200K. Section 35 is referenced for definition purposes; however, it does not identify which office or board is responsible for monitoring departments’ compliance with this provision or enforcing the penalty for non-compliance.

²⁴⁵ Part II - Wilmington City Code, Chapter 35 - Human Rights, Article Iv. Equal Opportunity in Employment And City Contracts

²⁴⁶ Letter to Jeffrey Flynn, Director of Office of Economic Development from City Auditor Regarding Audit of DBE Program, July 18, 2018.

		• The process for sourcing and certifying qualified businesses is reactive ○ The City is not actively and aggressively pursuing local business participation in the DBE program or increasing opportunities for contracts with DBE involvement ○ There is limited communication between the City and DBEs that educates businesses on how to fill out the application and all the benefits that are included in becoming certified.
Section. 35-112. Office of Equal Opportunity Contract Compliance	• Responsible for collection of contracting and workforce data on contracts awarded to all construction contractors and Procurement contractors regarding hiring disadvantaged individuals and subcontracting with disadvantaged businesses. • Receive monthly reports from City departments regarding professional services contracts and purchase of services by the departments. Information to be reported by Contract Compliance to Mayor and City Council every six months. • Complete and adopt the DBE database and participation in city contracts since 1981 and thereafter.	• The City is not using the full functionality of MUNIS to track and report mandatory data. As such, data is not being collected regarding contracts awarded to all construction contractors and Procurement contractors. As a result, OED is not submitting semi-annual reports to the Mayor's office. • No processes in place for flagging non-compliant vendors ○ Compliance reports are not being collected or monitored: Form DBE-4—The General Contractor is required to submit this compliance report to the Disadvantaged Business Development officer when the contract is entered into by the general contractor and the subcontractor, when 50 percent completion is achieved, and when 100 percent of each DBEs subcontractor's portion of a construction project has been completed. ○ Contract performance is not being monitored, particularly as it related to DBE substitutions

		○ DBE payments are not being monitored (prompt payment)
Sec. 35-113. Equal Opportunity Contract Review Board	• Establish a five-member equal board comprising two members appointed from the mayor's office by the mayor, two members from the city council appointed by the president of the city council, and one person from the office of equal opportunity contract compliance. • Monitor data collection from all businesses regarding subcontracting opportunities with DBEs. • Review programs developed by the office of equal opportunity contract compliance. • Conduct investigations of complaints <i>See Attachment A at end of this chapter.</i>	• The Equal Opportunity Contract Compliance (EOCC) review board has not met for more than 10 years. There is no active compliance board in the current administration with Code-mandated representation from the Mayor's Office, City Council, and the Office of Economic Development • The City has not compiled or reported on mandatory data • There is no process in place for receiving complaints or conducting investigations • Goals for DBE contract participation have not been updated since the equal opportunity provisions were added to the City Code in 1968
Sec. 35-114. Departmental Reports of Professional Service Contracts	• City departments to provide quarterly reports of the number of DBEs that have procured city business with that department. • Report methods it plans to utilize to involve DBEs, minorities, and women in professional service contracts. • Report annually to the administrative assistant to the mayor, with copies to the Office of Equal Opportunity, the number of professional service contracts; submit prior to submittal of departmental budgets and annual operation budget by the mayor and city council.	• City Departments are non-compliant with City Code regarding periodic reporting of DBE participation in professional service contracts. ○ There is no process in place to monitor or assist departments with maintaining compliance with DBE participation ○ Policies and procedures are not in place for the collection and distribution of mandatory monthly reports to OED and annual department reports to the

		Mayor's office prior to the submittal of the annual operating budget by the Mayor to City Council
Sec. 35-115. Identified Discrimination; relief	- Any person alleging disadvantage due to discrimination in efforts to bid and be awarded city construction contracts or city procurement contracts will be afforded the opportunity to demonstrate by a preponderance of the evidence such disadvantage to the contract review board - Relief may be in the form of a preference in city contracts of a scope or duration closely fitting and appropriate to the scope and duration of the harm - Person making claim must provide statistical evidence of a statistical disparity between the number of qualified DBEs willing and able to engage in city contracts and the number of such firms engaged by the city or by the city's prime contractors.	
Division 2. Disadvantaged Business		
Sec. 35-131. Purpose	- To increase and enhance the accessibility to city contracting opportunities for small businesses and entrepreneurs regardless of race or national origin - To create a diversity of methods to expand participation in city contracting opportunities, particularly for businesses that may suffer the present effects of past discrimination or neglect.	
Sec. 35-132. Definitions	- Controlled—director and control of the management of the business and actual guidance in its day-to-day operations - Disadvantaged business—new, small, or local business, whether a sole proprietorship, partnership, corporation, or other entity, or any business that is at least 51 percent owned and controlled by one or more socially disadvantaged individuals who, in fact,	- Definition of social & economic DBE is incomplete and/or inconsistent as compared to programs run by other government and municipalities - Current code was written in 1968 and is out of date with Federal definition of DBE and MBE

	control the management and daily business operations of that business. - Disadvantaged individuals—those who have been actual victims of discriminatory practices or individuals whose ability to compete in the free enterprise systems has been impaired due to diminished capital and credit opportunities as compared to others in the same business who are not disadvantaged - The Procurement Director and Contract Compliance Review Board may consider, but not be limited to reviewing the assets and net worth of disadvantaged individuals and DBEs to determine the degree of diminished credit and capital opportunities; - Presumption of economic disadvantage if the net worth of an individual(s) constituting 51 percent of ownership or control, exclusive of up to \$150,000 of equity in his primary residence, is less than \$500,000 - The city may direct its assistance to economically disadvantaged individuals who are chronically unemployed - All contractors doing business with the city shall show evidence of good faith efforts to obtain disadvantaged subcontracting businesses' participation. - Local business—any entity with its headquarters' office or principal place of business within the city boundaries and in the tax year preceding application for certification has: - Earned at least 25 percent of its gross receipts from work performed on construction projects within the city boundaries; or - Employed a workforce of which at least 25 percent were economically disadvantaged individuals or were residents of	- City Code does not define the criteria for "Social disadvantage", nor does it include women as being eligible for DBE status. City limits its definition of minority to "African-American or Hispanic." - Inconsistent process for determining DBE eligibility. Criteria does not include review of the DBE's bills with the City to ensure no amounts were owed prior to acceptance as a City Vendor. The Procurement Director is not involved in the approval process. Instead, the Office of Economic Development is tasked with the responsibility. - The DBE application is inefficient and has errors: - The DBE application contains out of date information for City contracts. The application does not collect all pertinent data fields for mandatory reporting; - There is a manual process in place for the application, tracking and monitoring of DBE certifications. As a result, the certification process can be lengthy, vendor records do not have up-to-date data and expired DBEs are not being recertified timely. See Attachment B for Amendment to Code updating Definitions.

	a targeted business development area within the city boundaries. • Minority business—those businesses approved or certified as such for purposes of participation in contracts subject to minority business enterprise requirements involving federal programs and federal funds • New business—an entity that has been in existence and in business in the city for less than three years • Owned—when a sole proprietorship is one in which the sole proprietor is a disadvantaged individual; a partnership in which at least 51 percent of partnership capital is that of a disadvantaged individual; a corporation in which legal and equitable ownership of at least 51 percent of all classes of stock is that of disadvantaged individuals. • Small business—an entity that has had less than \$500,000 of gross revenues in each of its last two fiscal years. • Targeted business development area—any of those areas identified as such in the state’s blue-collar jobs program of 1984 by census tract designated in those areas located within the city boundaries for the location of business development enterprises.	
Sec. 35-133. Methods of Assistance	• Methods of assistance ○ Simplification of city bidding procedures and the conduct of educational sessions for the same; ○ Responsible relaxation of city bonding requirements, waiver of city bonding requirements, coordination of insurance requirements ○ Facilitating training in city contract requirements and procedures for disadvantaged entrepreneurs	• Procurement is not relaxing bond requirements for DBEs • There is no DBE policy regarding contracts that receive bid waivers • City Code is not being followed regarding the methods and types of assistance that are to be offered to DBEs. DBEs should be provided with educational sessions on the City bidding process, contract requirements, and procedures for DBE involvement. DBEs are also to be provided with

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	○ Financial aid, particularly through short-term loans, for disadvantaged entrepreneurs to be administered by the Wilmington Economic Development Corporation • Prompt Payment—the City will pay DBE invoices within ten business days of acceptance of goods or services; general contractors will pay DBE subcontractors within 10 days of receipt by the prime contractor of payment by the city.	financial aid and the opportunity for a “responsible” relaxation of bonding requirements. • There is no process in place to monitor or enforce the net 10 payment terms to DBE contractors and subcontractors. The current vendor management system in MUNIS does not uniquely identify DBE vendors nor does it reflect their certification status. As a result, the vendor database contains vendors that are no longer certified and vendors that are certified but do not have the net 10 days payment designation.
Sec. 35-134. Categories of Goals	• DBEs goals for percentages of the total dollar amount of each category during each fiscal year will be reviewed annually and be set for the ensuing fiscal year by the contract review board for: ○ Construction contracts ○ Professional services contracts ○ Goods and nonprofessional services, materials, supplies, and equipment contracts	• Current DBE program is not following the intent of the program ○ Actual participation rate vs. participate goal is not being tracked or reviewed ○ Participation goals are not being annually updated per City Code requirements ○ Lack of monitoring of contractor compliance with required DBE participation ○ Focus on DBE participation goals, however, limited action is being taken on behalf of small businesses that do not work in the construction industry ○ The program lacks performance goals that demonstrate the City is making a good faith effort
Sec. 35-135. Good Faith Efforts in Bidding	• The division may institute certification of DBE status and verification of good faith efforts by bidders and contractors as may be necessary or appropriate.	• Insufficient definition and application of Good Faith Efforts

	• Good faith efforts are evidenced by listing each DBE contacted, showing names of contact persons, telephone numbers, sources used to identify DBEs, methods used to make contact, dates firms were contacted, responses, date responses were received, type of subcontract, reasons for rejection and the estimated value of contract or subcontract • Each person submitting a bid is expected to demonstrate good faith efforts by actively and aggressively seeking out DBE firms to participate in the contract to the maximum extent, to meet the city's goals. • It is not in good faith if: ○ A bidding person lowers a bid by another business entity after receiving a bid or bids from a listed DBE and then raises prices on other parts of the bid package to deliberately block out DBE persons or firms from doing business with the city. • The City may consider, but is not limited to, the following efforts as evidence of good faith: ○ Efforts made to select part of the work to be performed by DBEs to increase the likelihood of achieving the city's goal for that type of contract ○ Written notification at least ten days prior to the opening of a bid soliciting individual DBEs interested in participation in the contract as a subcontractor and for specific items of work ○ Efforts made to negotiate with DBEs for specific items of work ○ Documentation that DBEs are not available or not interested • Contractors are required to make good faith efforts to replace a DBE that is terminated or failed to complete its work on a contract with another DBE.	○ Current code provides limited guidance on contractor expectations and enforcement of GFEs as compared to the Federal definition ○ The GFE compliance review and approval is not consistently documented in all City contracts. There is an OED compliance review process in place for construction contracts, but no documented review process for contracts involving goods and services or professional services ○ Enforcement of GFEs are inconsistent, incomplete, and lacking transparency during the contract award process. The Procurement Director has the authority to disqualify a bidder if GFEs are not met and enforce the penalty provisions as applicable. This level of disqualification and penalty enforcement are not currently being practiced. • There is no documented process in place that identifies contractors that do not comply with Good Faith efforts, nor is there documentation of a check of a contractor's historical good faith efforts prior to contract award. • A lack of communication between Procurement and OED has prohibited OED's full engagement in the bidding process from start to finish for all contracts that go out for bid. When notified by Procurement, OED has only been attending the pre-bids for construction contracts. • As the reviewer of GFEs, OED is not involved in the contract renewal process per City Code requirements.

	- Penalties for lack of good faith efforts include: - Suspension of contract - Withholding of contract funds - Termination of contract based on material breach - Refusal to accept a future bid - Disqualification from eligibility for providing goods or services to the city for a period not to exceed two years	DBEs that bid as prime are not consistently required to comply with GFEs
Sec. 35-136. Unlawful Practices in Credit Extension, or In Bonding and Insurance Requirements	- It is unlawful to discriminate or engage in a discriminatory practice, or to acquiesce in any of the same against any person or business based on race or national origin in the provision or extension of credit or in bonding and insurance requirements in the administration or enforcement of any contract requirements of city governmental contracts, specifically including city construction contracts and city Procurement contracts - Penalties—misdemeanor, fine of not less than \$2,500, plus the costs of prosecution.	
Division 3. Discrimination in City Contracts		
Sec. 35-161. Definitions	- City construction contract—any contract to which the city is a party involving any building, road, or sewer, or in any way employing members of the construction trades - City procurement contract—any contract to which the city is a party as the purchaser of goods and services, materials, supplies and equipment	
Sec. 35-162. Prohibited Acts	It is unlawful for any city officer or employee, or for any other person, doing business or seeking to do business, with the city as a contractor or subcontractor in any city construction contract, or in any city Procurement contract, to discriminate or engage in any discriminatory practice, or to acquiesce in any of the same, in any	

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	aspect of such contract against any person on the basis of his race, national original or disadvantaged status.	
Sec. 35-163. Penalties for Violations	Guilty of misdemeanor, fine of not less than \$1,000 for each offense and ineligibility to bid on or be awarded any city construction contract or any city procurement contract for one year from the date of violation.	
Sec. 35-164. Additional Remedies	When the city determines there has been a pattern of discrimination in city construction or procurement contracts, the city shall take all actions at law or in equity to dismantle the pattern or practice.	
Sec. 35-165. Prohibited Acts; Grants	It is unlawful for any city officer or employee, or for any other person, doing business or seeking to do business regarding grants or donations made to the city to discriminate or engage in any discriminatory practice, based on his race, national original, age, religion, sex, sexual orientation, marital status, economic status, or handicap or other disability.	
Sec. 35-166. Required Contract Provisions	All city contracts should contain the Global Sullivan Principles (not included here)	

Figure 3.9. M³ Consulting Six Essential DBE Program Elements

1. Outreach and Matchmaking	Efforts to increase the business community's awareness of an entity's procurement and contract opportunities and match DBEs to specific contract opportunities.
2. Certification	Eligibility criteria for DBE participants.
3. Technical Assistance	Informational and strategic support of businesses to meet the entity's DBE plan objectives.
4. DBE Inclusion in Bid Opportunities	The mechanism by which the entity assures that material consideration of DBE participation is given in the award of a contract.
5. Contract Compliance	Ensuring adherence to DBE plan goals on all contracts after execution of the contract.
6. Organizational Performance Evaluation	A comparison of performance results to the entity's goals to determine policy successes, strengths and weaknesses, and performance improvement areas.

Source: M³ Consulting

A. Outreach and Matchmaking

Outreach and Matchmaking are not addressed in Chapter 35, Article IV of the Wilmington City Code or in the model procurement code.

Based on interviews:

- A public works interviewee responded to a question on who is responsible for DBE outreach. "We rely on procurement, and we rely on the Office of Economic Development to reach out to those in the community that are disadvantaged businesses that may be interested in doing business with the city." The interviewee was not aware whether Procurement/Office of Economic Development was doing outreach with potential vendors regarding the publicizing of his department's needs for a six-month period, or if they work with publicizing from his department's five-year plan."
- Parks and Recreation Interviewees – "We normally use the vendor list." [staff member] been here 25 years. And [staff member name], I think, has been here 18 or 19 years. So, they pretty much—they're real familiar with the vendors and the updated lists and all of that..." The interviewee confirmed that the Department Heads contact the [staff members] and say, "Hey, we're looking for this. Do you know vendors and DBEs who can do this work?"

- A different Parks and Rec interviewee indicated that he believed that the Office of Economic Development (OED) and Procurement handles advertising and outreach. The interviewee did not know their process and is unsure regarding document delivery during outreach.
- Procurement Division Interviewee did not think their DBE program was well known among the DBE community and that the City should engage in more outreach to them.
- Minority Business Development Office Interviewee indicated that although the City may have in the past, the office currently does not host any “how to do business ...meetings” and has performed very little outreach.

B. Certification

Definitions of DBE are defined in §35-132 of Chapter 35. As defined in the DBE Program Procedures, “*disadvantaged business* means a new, small, or local business, whether a sole proprietorship, partnership, corporation or other entity, or any business that is at least 51 percent owned by one or more disadvantaged individuals who, in fact, control the management and daily operations of that business. *Disadvantaged individuals* are those individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business who are not so disadvantaged (i.e. economically disadvantaged).”²⁴⁷ Under Amended Version, a disadvantaged business is defined as a business, whether a sole proprietorship, partnership, corporation or other entity, that is at least 51 percent owned and controlled by one or more disadvantaged individuals who, in fact, control the management and daily business operations of that business. See Attachment B.

To be eligible to participate, a firm must meet one of two criteria:

- **Minority-Owned firm**—a member of a chronically unemployed demographic subgroup identified by race or national origin, where current, verifiable local statistics confirm the existence of unemployment rates among the subgroup that is more than fifty percent (50%) above the prevailing overall unemployment rate statewide. Presently the two subgroups identified under this provision are Black/African American and Hispanic.
- **Net Worth Firm**—an individual has net worth under \$500,000 (not including up to \$150,000 of equity in his primary residence); in determining net worth eligibility, the City may consider, but

²⁴⁷ Disadvantaged Business Enterprise (DBE) Program, City of Wilmington’s Office of Economic Development, Small & Minority Business Enterprise Office,

shall not be limited to, reviewing the assets and net worth of the individual disadvantaged owner(s) and the business.²⁴⁸

Certification Requirements are outlined below:

- Minority-Owned Business—documentation required includes official photo identification; valid business license (city or state); resume for each principal/owner; business literature; reference—either unexpired certification or 3 letters of reference,
- Net Worth Firm—documentation required includes personal financial statement; notarized declaration of net worth form; copy of bank/account statements; statements/bills from creditors; copy of settlement to verify purchase of primary residence; copy of most recent tax return; and copy of recent balance sheet.²⁴⁹

A total of 95 firms have been certified by the City of Wilmington. This includes 64 African American-owned firms; 11 Hispanic American-owned firms, and 5 firms based on Net Worth.²⁵⁰

- A Public Works staff member said that he does not believe there is a good pool of DBEs to select from in the tri-state area. “And if someone wanted to get some work with Public Works, they would just need to come in and do the paperwork, and they can be put on the list. We look at the list. The list is online. You can see who’s a DBE. I mean they just need to register.”
- A Parks and Recreation staff member stated that [h]e was fairly certain that some of the larger highway construction firms have definitely included women ownership. He reported that they had to seek firms in Philadelphia to find WDBE-owned landscape architectural firms. They found two or three there. They also use electrical mechanical engineering, a licensed professional engineering firm that is minority-owned. That firm is used a good amount of the time. So, for professional services, aside from construction managers, they find that they do have to go outside the Wilmington region to identify S/D/W/DBE firms.
- The Interviewee detailed that he is responsible for DBE certifications with no additional staffing support. The certification volume (at the time of the interview) was 1 or 2 per week. He sends them the certification forms and enters their submission response into the City’s database. He also sends out the Certification letter to the applicant for their files. He revised the reported number of Certifications down from a previously reported 840 to approximately 96 currently. According to the interviewee, an analysis of the 96 certifications would reveal that approximately 90 percent of them would be in construction-related fields (plumbers, electricians, and construction contractors).

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ 14 firms were blank for ethnicity and gender.

- Some interviewees stated that they are unable to get minority and women-owned businesses to certify as one DBE, responded to a staff member, “...I don’t want that kind of stigma.” Another interviewee responding to a certification question responded, “...[W]hen we offer the disadvantaged business, push it, it’s more so offered as a way to allow you to get paid faster. That’s the only advantage that I’ve ever heard pushed...DBEs are paid within 10 to 14 days...So just, personally, that’s the only advantage...”

C. Technical Assistance

Management and Technical Assistance is summarized above in §35-133. Methods of assistance include simplification of bidding procedures, relaxation of bonding requirements, financial aid through Wilmington Economic Development Corporation, prompt pay, and training on doing business with the City of Wilmington. While this assistance should be available, according to the Audit Report, this support is not currently being provided by the City.²⁵¹ Additionally, staff interviews indicated that Wilmington is not currently offering any technical assistance resources themselves, but continues to reach out to their partner organizations like the Small Business Development Center to refer start-up businesses to services and resources at the state level and provide existing businesses with technical training (in the administrative arena).

D. DBE Inclusion in Bid Opportunities

Sec. 35-134 outlines the categories of goals that can be established by the City of Wilmington. In the General Conditions DBE section, goals were established in 1991 as 20 percent on construction contracts, 15 percent on professional services contracts, and 5 percent on goods and other contracts. The requirements note that a contractor that typically performs the work him/herself does not have to try to subcontract the work to meet DBE goals. However, the burden of proof is on the contractor.

Under §35-135, the requirements for Good Faith efforts are outlined. All bidders are expected to demonstrate that they have “actively and aggressively” sought out DBE participation “to the maximum extent.”

The General Conditions DBE section notes that the following changes to Section 35 were made regarding Good Faith Efforts:

- Provide a list of subcontractors to be utilized, along with the amount of money to be paid

²⁵¹ See Section 35-133 | summary supra.

- Required to attempt to replace a non-performing DBE with another DBE - The Office of Small Business/DBE must approve the substituting DBE. General contractors must also provide evidence of good faith efforts to replace.²⁵²

Contractors must file with the City, as applicable, the City's DBE Forms as follows:

1. ***DBE-1:** A listing of the subcontractors included in the bid, by which a bidder acknowledges having read the DBE goal provisions in Attachment 1 and states that the bidder will expend a percentage of the dollar amount of the contract for DBE subcontractors, if any.
2. ***DBE-2:** A listing of the subcontractors and other information to provide evidence of good faith efforts to include DBEs in subcontracts. This form must be completed and submitted with the bid, regardless of the level of DBE participation.
3. ***DBE-3:** DBE verification form stating the ownership information regarding any business seeking to qualify as a City-certified DBE, if not listed in DBE Directory.
4. **DBE-4:** A DBE contract participation report requiring that the general contractor submit a report regarding DBE contract participation at the time the contract is entered into, when ~~5%~~ and when 100% of each DBE subcontractor's portion of the construction project has been completed.
5. ***DBE-5:** A listing of ***ALL subcontractors*** to be utilized on the contract. This form must be completed and submitted with the bid, regardless of the level of DBE participation.

E. Contract Compliance

Contract compliance and reporting requirements are addressed in §35-113. A key component of contract compliance under Chapter 35 is a five-member review board that is to ensure DBE subcontractor data collection; DBE program review, and to investigate complaints. There was no evidence, based on interviews and report reviews that the review board is operational.

F. Organizational Performance Evaluation

Under §35-114, City departments are to provide quarterly DBE utilization reports, methods to include DBEs on upcoming opportunities, and provide annual reports on utilization prior to submittal of

²⁵² City of Wilmington General Conditions for Construction Contracts, City of Wilmington DBE Program & Bidder Requirements

departmental budgets and annual operations budgets. Personal performance evaluations regarding adherence to the requirements of Chapter 35 are not conducted.

- Departmental staff, based on interviews do not provide reports on their DBE participation. The MWBE Office and Procurement Office seem to believe that the other was responsible for reporting.
 - A Parks and Recreation Departmental interviewee stated, “there’s is no tracking...No, none at all.”
 - A Public Works interviewee stated that he would be responsible for sending the Mayor or Council any requested DBE engagement reports and that he tracks based on agreements and contractor/subcontractor invoices. Even so, he did not have an estimated percentage of DBE utilization and said he has never measured it. He also confirmed that there was no cross-checking the utilization of DBEs against the commitments in the agreement. However, his procurement coordinators do make sure that subcontractors listed on the contract, regardless of race/gender are the ones used.

3.5 IMPACT OF THE CITY'S POLICIES, PROCEDURES AND PRACTICES ON DBES

The City of Wilmington has developed procurement policies and procedures and DBE policies and procedures that are extensive and detailed in many respects. However, in consideration of the aforementioned discussion, analysis, and findings, M³ Consulting asserts that the City of Wilmington's Procurement, DBE Program policies, procedures, and practices contain aspects that may negatively impact the ability of DBEs to participate in the City's procurement and contracting opportunities.

A. Limited Knowledge and Staff Training Related to Inclusive Procurement and DBE Program

The Small and Minority Business Development Manager who works out of Wilmington's Office of Economic Development (OED) is relatively new, having been in his position for less than a year. Based on interviews, there does not appear to be a structured process of knowledge transfer to the new manager. As a result, there appears to be limited historical knowledge and responsibility for developing and implementing inclusive procurement strategies. Staff interviews indicated that Wilmington is not currently offering any technical assistance resources themselves but continues to reach out to their partner organizations. When asked about training regarding the City's DBE program and inclusion within Wilmington's Procurement processes, oftentimes staff responses indicated that the training was minuscule or non-existent. Wilmington's Procurement Review Committee (PRC) whose role and responsibility includes the dissemination of procurement policy and procedural information for enforcement purposes is not operationally engaged. Because the City's individual departments drive Wilmington's procurement process with the Procurement Department serving as administrative support in lieu of assuming an ombudsman posture, the lack of staff training, both for Wilmington's internal staff and the diverse business community, provides avenues for participation impediments.

B. Limited and Inconsistent Implementation of Policies/Strategies

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

C. Overuse of Bid Waiver

Anecdotal staff feedback indicates that bid waivers historically have been justified by simply relaying that they did not have time to secure quotes, could not obtain the needed quotations, had a compressed time

schedule for the work, or a particular person/firm was desired. This practice reduces competition, transparency, and opportunities for DBEs to bid on small projects for which they have capacity and City staff has more discretion to select them.

D. Repeated Use of Same Vendors at Informal Level

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

E. Enterprise-wide ownership of DBE Program Policies and Procedures

No department takes full responsibility for the DBE program and its implementation overall or within their respective departments. While Chapter 35 delineates responsibilities between OED and Procurement²⁵³, these lines of program responsibility demarcation were not embraced. Departmental staff interviews reflected inconsistent views on their department's responsibility for DBE Program policies and procedures within their department.

Wilmington's Equal Opportunity Contract Compliance (EOCC) review board has not met for more than 10 years and is currently inoperable. As a result, there is no active compliance board in the current administration with Code-mandated representation from the Mayor's Office, City Council, and the Office of Economic Development as provided for via Wilmington Ordinances Code Section 35-113.

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

Additionally, there are a number of observations that were born out of the 2018 Audit Report as it relates to Wilmington's Disadvantaged Business Enterprise Program. Among the many observations, the Auditor found that that code sections were out of date and provided little daily operational guidance for the DBE program. The code did not capture the current role of the Mayor's Office of Economic Development within the overall DBE program process, there were no documented policies and procedures that provide daily operational guidance on program administration, The Economic Opportunity Plan (EOP) that requires the submission of an EOP for developers that receive City funds or in-kind contributions in excess of \$200K does not identify which office or board is responsible for monitoring departments' compliance with this provision or enforcing the penalty for non-compliance. There is no indication in the documents provided for this analysis that the issues identified in the 2018 audit relative to Section 35-111 through

²⁵³ See Chapter 35.

35-115, 35-131 through 35-135, have been addressed. All these issues negatively impact DBEs' ability to successfully navigate Wilmington's procurement processes.

F. Vendor Registration

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

G. Inconsistent and Limited Reporting

Wilmington's current stated aspirational diversity inclusion goals are 20 percent on Construction Contracts, 10 percent on Goods & Services, and 5 percent on Professional Services. No staff could confirm that there is a specific responsible department or person cross-checking utilization of DBEs against the commitments as represented in the executed contract agreements. Some departments reported that they do use coordinators to make sure that the subcontractors listed on the contract agreements (regardless of race/gender) are the same ones used during contract execution, but the function is done from the standpoint of contract adherence as opposed to DBE participation commitment compliance auditing. Some departments reported that they do not regularly send over any DBE spend data for inclusion in an annual report, nor for ad-hoc report requests to the Mayor or City Council. Therefore, because of this limited reporting transparency, Wilmington will be less likely to identify and eliminate issues of favoritism and discrimination.

H. Limited Forecasting and Notification of Opportunities

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

I. Limited Diversity Firm Outreach and Matchmaking

Document analysis and interview feedback revealed that there is no consistent or enterprise-wide philosophy and approach to diverse firm outreach and matchmaking. Some departments report that they rely on the Procurement department and the Office of Economic Development to execute all outreach while other departments do try to use the vendor list for outreach (when a list is available). The Minority Business development Office reported that there has been a precipitous decrease in outreach, matchmaking, and “how to do business engagements with the diverse business community in part due to the Covid -19 pandemic, but it should be noted that outreach activity was sparse before the pandemic.

J. Impact of Decentralized Process

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

3.6 SUMMARY OF FINDINGS

M³ Consulting reiterates the execution and implementation of a public entity's community economic development objectives commences with the procurement process. Public entity achievement of its community economic development objectives through procurement begins with a public policy approach to procurement and community economic development, supported by project execution, as opposed to purely employing a cost, schedule, and project efficiency-based approach.

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

Attachment A

AN ORDINANCE TO AMEND CHAPTER 35 OF THE CITY CODE IN ORDER TO CLARIFY THE AUTHORITY AND PROCESS OF THE EQUAL OPPORTUNITY CONTRACT REVIEW BOARD PURSUANT TO SECTION 35-113.

Sec. 35-113. – Equal Opportunity Contract Review Board.

(a) **Members:** There is hereby established a seven (7) member equal opportunity contract review board (hereinafter “Review Board”) to be comprised of the Small & Minority Business Development Manager (“MBD Manager”), the Director of the Office of Economic Development, or his or her designee, the Director from the Department of Finance, or his or her designee, the Division of Procurement & Records Manager, or his or her designee, two residents of Wilmington with relevant_experience related to government contracts, such as_serving on a finance committee board or advisory committee, determined and appointed by the President of City Council, and the City Solicitor from the Law Department, or his or her designee. If one of the named positions is vacant or a designee is not named within six (6) months of this ordinance’s enactment, then the Mayor’s Office will be tasked with finding a temporary replacement for the missing position until the position is filled, or a designee is assigned to the Review Board to fill said vacancy.

(b) **Presiding Member:** The MBD Manager shall preside over all meetings and hearings. He or she shall possess the ability to determine the frequency of meetings, set the agenda, and determine whether the discussions are appropriate and/or relate to a topic on the agenda. He or she shall be empowered to interrupt the meeting or hearing, determine who has the right to speak if discussions devolve, and determine whether questions by Members of the Review Board during the hearing are appropriate. This list is not exhaustive, but is limited to authority over the scheduling, subject matter, discussion, and beginning/ending of Review Board meetings and hearings. If the MBD Manager position is vacant, then the Mayor’s Office shall determine the Presiding Member.

If the MBD Manager is unable to preside over a specific meeting or hearing because of a conflict of interest, then he or she shall select a designee who shall preside only for that specific meeting or hearing. If another member is unable to attend a specific meeting or hearing because of a conflict of interest, then he or she shall inform the_Presiding Member by electronic mail prior to the meeting or hearing that the member has a conflict and cannot attend the meeting or hearing. The member shall also include in the electronic mail the reason for the conflict and why he or she believes it would be improper, or appear improper, for the member to attend the meeting or hearing.

(c) **Reporting:** If deemed necessary by the Review Board, it may request reports from City agencies or departments regarding contracts with, and purchase of services by, the City agencies or departments. This authority is distinct from the reporting requirements of § 35-112.

(d) **Enforcement:** The Review Board is hereby empowered to enforce this Article IV. This authority includes the imposition of penalties on offending parties and requesting such records and documents from City agencies or departments as are necessary for the monitoring, investigating, and conducting of hearings or meetings under Article IV. The Review Board shall also be empowered to recommend new departmental record-keeping procedures for all agencies or departments to facilitate compliance with this Article IV.

Importantly, nothing in this Article IV shall obligate the disclosure of items subject to attorney-client privilege or attorney-client work product.

(e) **Grievances:** Any person (the “petitioner”) who believes that a contractor has failed to comply with its obligations under this Article IV may file a written complaint with the Review Board. If the petitioner desires to file a complaint, he or she must do so no later than 180 days after the date of the alleged violation or the date on which he or she learned of a continuing course of conduct in violation of this Article IV. In response to the petitioner’s written request, the Review Board may extend the time for filing in the interest of justice, providing its reason(s) in writing.

The Review Board’s opportunity to investigate the petitioner’s complaint will not be limited but shall be reasonable based on the issues presented in the complaint. That is, the Review Board’s investigation shall not be dilatory or too broad in scope to such a degree that the parties are unreasonably inconvenienced.

If it appears, from the investigation of a complaint, that the contractor is not in compliance with this Article IV, the Presiding Member will promptly send the offending contractor, return receipt requested, a written notice advising the contractor that there is reasonable cause to find him or her in noncompliance. The notice will state the reasons for this finding and direct the contractor to reply within 15 days as to whether the Contractor will cure the issue or has an appropriate response as to why the contractor is following this Article IV. The contractor shall respond within 15 days either agreeing that he or she was wrong or defending his or her position. Once the Review Board receives the contractor’s response, it shall schedule a subsection (g) Hearing within 15 days.

(f) **Meetings:** The Review Board shall meet quarterly to discuss any reporting data requested from City agencies or departments, outline the procedure for any filed complaints, or to propose any new procedures that could improve the DBE Program. The Presiding Member may request emergency meetings outside of the quarterly meeting schedule if a complaint is filed which needs immediate attention. A four-member quorum will be required to impanel a meeting of the Review Board.

The notice requirements of 29 Del. C. § 10004 shall be followed for Review Board meetings.

(g) **Hearings:** Pursuant to § 35-115, the Review Board shall allow the petitioner to present his or her case to the Review Board and give the contractor an opportunity to respond and/or defend his or her

position. The petitioner must prove his or her case by a preponderance of the evidence (51% chance that the petitioner's claim is true). Evidence and exhibits may be submitted if they are reasonably relevant to the matter before the Review Board. The Review Board shall be the finder-of-fact, asking the parties or witnesses questions to determine the truth of the matter. However, the Presiding Member can prevent his or her fellow Board Review members from asking or continuing questioning if the Presiding Member finds any questions irrelevant or a violation of decorum. The parties shall not have the right to cross-examine testifying witnesses but may submit rebuttal evidence.

The Review Board shall deliberate immediately after the close of the hearing in a private session. If a necessary vote pursuant to section (i) below cannot be reached during this deliberation, then the Review Board shall inform the parties that a written decision will be mailed within 15 days. However, if the necessary vote is reached pursuant to section (i) below, then the Presiding Member shall deliver the decision of the Review Board orally in the presence of the parties.

The notice requirements of 29 Del. C. § 10004 shall be followed for Review Board hearings.

(h) **Record Keeping:** An official record (including testimony and exhibits) shall be kept of the Review Board's meetings and hearings. The Review Board is considered a "Public body" under 29 Del. C. § 10002(h).

(i) **Vote:** A seven-member majority vote (four votes) shall be required to promulgate decisions of the Board. While a full seven-member majority vote is required, the parties may unanimously waive this right prior to the hearing and request a three-member or five-member panel of the Review Board preside over the matter. If the Presiding Member does not ask the parties if they waive a seven-member majority vote prior to the hearing (either in-person or by electronic mail), then a majority vote will be necessary. Even if a quorum is present, the hearing will be postponed if the Presiding Member does not inquire as to whether the parties waived this right and all seven members are not present.

(j) **Penalties:** A contractor who fails to comply with any provision of this Article IV is subject to any or all the following penalties:

- (1) Suspension of contract;
- (2) Withholding of contract funds;
- (3) Termination of contract based on material breach;
- (4) Refusal to accept a bid;
- (5) Disqualification as a bidder, contractor, or other business from eligibility for providing goods or services to the City for a period not to exceed 2 years;

(6) Payment of liquidated damages (those damages agreed upon at the time of contract signing); and/or

(7) A monetary fine that is 10% of the contracted rate per day for each day of non-compliance.

(k) **Appeal Right:** The decision of the Review Board may be appealed to the Civil Rights Commission (the “Commission”) pursuant to Article II of Chapter 35 within seven (7) days of the Review Board’s oral decision or ten (10) days from when the Review Board mailed its written decision. The Commission shall render a decision within fifteen (15) days from the date the appeal is taken. The Commission shall not be bound by the procedures of this Article IV, but the procedures outlined in Article II. If no hearing procedures are outlined in Article II and the Commission has not promulgated separate procedures pursuant to § 35-38, then this Article IV process shall apply to hearings before the Commission.

Nothing in this subsection or Article IV shall prevent an aggrieved person, or the City, from exercising all legal rights otherwise available.

Attachment B

AN ORDINANCE TO AMEND CHAPTER 35 OF THE CITY CODE IN ORDER TO CLARIFY THE CITY'S DISADVANTAGED BUSINESS ENTERPRISE PROGRAM'S PURPOSE AND DEFINITION SECTIONS.

Sec. 131 has been amended based on the audit to reflect the following definitions:

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

Disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identity as a member of a group and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who the City's Office of Economic Development finds to be a disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if required, or

(2) Any individual in the following groups, members of which are rebuttably presumed to be disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Lesbian, Gay, Bisexual, Transgender, Queer, Intersexual, Asexual, + individuals;

(viii) Veterans (other than dishonorably discharged), service-disabled veterans, reservists, and national guard members; and

(ix) Any additional groups whose members are designated as socially and economically disadvantaged by the federal Small Business Association ("SBA"), at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

(4)The city may, in the administration of programs developed pursuant to the provisions of this section, direct its assistance toward those disadvantaged individuals who are among the chronically unemployed and may identify demographic subgroups of section (2) above whenever current, verifiable local statistics confirm the existence of unemployment rates among such individuals that are more than 50 percent above the prevailing overall unemployment rate statewide.

(5) All contractors doing business with the city shall show evidence of good faith efforts to obtain disadvantaged subcontracting businesses' participation.

CHAPTER 4: STATISTICAL METHODOLOGY

4.1 INTRODUCTION

This chapter discusses the statistical methodology employed by M³ Consulting in the City of Wilmington (City) Disparity Study in two parts:

- 4.2 Statistical Methodology**—The first part is a conceptual discussion of the statistical methodology for analysis of Disadvantaged Business Enterprises (DBEs).
- 4.3 Data Sources Utilized in Statistical Analysis for the City**—The second part is a discussion of data sources, data collection procedures, data gaps and implications of the gaps on the statistical analysis for the City.

4.2 STATISTICAL METHODOLOGY

The statistical methodology discusses availability, utilization, and disparity. It includes a presentation of the two types of availability: “*actual availability*” and “*potential availability*”; various definitions of availability; and M³ Consulting’s “*Ready, Willing and Able*” (RWASM) model. M³ Consulting has adapted this model to the specific data sources available for this study from the City. Also discussed are the types of utilization analysis that were performed. The statistical methodology section concludes by defining the disparity ratio and significance tests, crucial for drawing conclusions regarding any disparity in the City’s recent history of contracting with DBEs.

4.2.1 Disparate Impact Analysis

The statistical analysis conducted in this Disparity Study is a key component of the Disparate Impact Analysis to determine if there is any discrimination against DBEs by a public entity. Under a *Crosby* Disparate Impact Analysis, a public entity may be involved in “active discrimination”, which is caused by its own direct action, or “passive discrimination”, which involves participating in the discriminatory or exclusive actions of other agents in the public and private sector.

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

In response to *Croson*, statistical methodologies related to the analysis of procurement and contracting policies and practices continue to evolve as litigation occurs. Because the legal cases are fact-specific and the courts can only review evidence put before them, it is useful to review *Croson* statistical methodologies against the well-tested and even more extensively litigated disparate impact analysis established under EEO law, from which the disparate impact and disparate treatment tests and analysis evolved. The comparison will reveal the course that the two-disparate impact analysis have taken.

- EEO Disparate Impact Analysis requires a deeper analysis and testing of an institution's specific EEO policies, procedures, and practices, with emphasis on active participation in discrimination.
- *Croson* Disparate Impact Analysis is moving toward broader analysis, with ever increased focus on passive participation, as opposed to active participation in discrimination, therefore with a lesser focus on the actual decision-making policies, procedures and practices of the public entity itself and its vendors.

M³ Consulting's statistical methodology includes an analysis of active and passive participation, and the methodology is compared to the more evolved active participation requirements of EEO analysis.

A. Brief Overview of EEO Disparate Impact Analysis

A disparate impact analysis under EEO involves three distinct analyses. Below is a brief overview of the analysis, as stated in "The Role of Two Statistical Approaches in EEO Cases," and a comparison to methodologies deployed under *Croson* disparate impact analysis.

In the first burden of a disparate impact analysis, up to three tests are performed to determine adverse impact:

1. The "threshold" analysis (also called the initial inquiry) to see if gender and racial composition (i.e., percentages) of the at-issue job is underutilized compared to the composition of the qualified population in the relevant labor market.
2. A "barriers" analysis to see if there are barriers or practices which disproportionately deter gender or racial group members from applying; and,
3. The "selection" analysis to see if a practice, procedure, or test is disproportionately impacting a gender or racial group, unless the practices, procedures or tests are not capable of separation for analysis, then the entire decision-making process can be evaluated as one practice.

If a practice, procedure, or test is found to be a "barrier" as defined above, an adverse impact finding could be expected on the cause of the barrier. However, even if the cause of the "barrier" to an at-issue job is not involved in the action, it still can be a "barrier" for statistical purposes. If a barrier is found, a binomial statistical test will be needed in the "selection" analysis and a "proxy" group will be needed in the "selection" analysis. If a barrier is not found (i.e., applicant flow is very similar to availability), then actual applicants can be used in the "selection" analysis and a hypergeometric statistic is used.²⁵⁴

B. Threshold Analysis

Under a *Croson* Analysis, the EEO threshold analysis is akin to a disparity analysis in contracting. A disparity ratio is computed by comparing available firms, as determined by ready, willing, and able firms, to firms utilized by a public entity. This is an important inquiry that sets the stage to determine if there is cause for additional disparate impact analysis to determine if the inference of discrimination resulting from this analysis is remedial. As such, the methodology utilized for the computation of the pool of ready, willing, and able firms takes on significant importance in disparity analysis. Under U.S. DOT 49 CFR Part 26, this threshold analysis could be considered Step 1: Baseline Availability.

While relying on a threshold-type analysis appears straight-forward, under *Croson* analysis, it is not, principally due to the issues of willingness and qualifications of the firms in question. Firms in the marketplace may be ready, but not willing and/or able.

As it relates to Marketplace availability, firms may not be "able", despite efforts to refine the Marketplace or Custom Census availability to firms in NAICS or NIGP codes representing goods and services procured by the public entity. Regressions and capacity analysis not conducted on the pool of firms bidding with or awarded contracts by the public entity indirectly provides some indication of capacity but does not directly relate to the individual firm's qualifications or to the determinations of firm's qualification by the public entity during the bidding process. Relying solely on Marketplace availability does not adequately reveal a pool of firms that are "ready, willing and able" to do business with the City. Thus, a comparison of Marketplace availability to the City's utilization does not conclusively reveal if the City and its prime vendors' "policies or practices" are impacting prime and subcontractor selection.

In *Croson* disparity analysis, many consultants forego any consideration of bidder data and simply establish a basis for race- and gender-conscious goals on disparity from Marketplace or Custom Census Availability (for DBE programs, adjusted under Step 2 of the U.S. DOT's availability analysis).

²⁵⁴ Richard E. Biddle, "The Role of Two Statistical Approaches in EEO Cases", 1995. See also 29 CFR Ch. XIV, Part 1607, §1607.17(2)

The U.S. Supreme Court has shown increasing impatience with this lack of specificity in disparate impact analysis. It is worth repeating here, from Chapter II, Legal Analysis, the Court’s opinion regarding disparate impact claims in the June 2015 U.S. Supreme Court case, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*.²⁵⁵ In upholding the applicability of the disparate impact liability to the Fair Housing Act,

In a similar vein, a disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant’s policy or policies causing that disparity. A robust causality requirement ensures that “[r]acial imbalance . . . does not, without more, establish a prima facie case of disparate impact” and thus protects defendants from being held liable for racial disparities they did not create. *Wards Cove Packing Co. v. Antonio*, 490 U. S. 642, 653 (1989), superseded by statute on other grounds, 42 U. S. C. §2000e–2(k).²⁵⁶

...Were standards for proceeding with disparate-impact suits not to incorporate at least the safeguards discussed here, then disparate-impact liability might displace valid governmental and private priorities, rather than solely “remov[ing] . . . artificial, arbitrary, and unnecessary barriers.” *Griggs*, 401 U. S., at 431. And that, in turn, would set our Nation back in its quest to reduce the salience of race in our social and economic system.²⁵⁷

The U.S. Supreme Court’s analysis is applicable to the current state of most disparity analysis. However, under EEO, this type of analysis is not normally used for the establishment of race- and gender-conscious EEO goals. The barrier analysis and selection analysis are usually performed prior to that determination.

C. Barrier Analysis

A barrier analysis, using the EEO definition, would result in a comparison between M³ Consulting’s Marketplace Analysis and M³ Consulting’s RWASM analysis. This analysis may also be akin to the elusive “but-for discrimination” analysis pursued and attempted under *Croson* analysis. While the barrier analysis computation is simple, interpreting the causes of any differences is quite complex.

For example, RWASM Availability often yields higher percentages or proportions of availability than a Marketplace or Custom Census analysis. The differences may be caused simply by the differences in the two sample sizes. For example, for a public entity that used Dun & Bradstreet for Marketplace Analysis,

²⁵⁵ No. 13-1371, 576 U. S. ____ (2015)

²⁵⁶ Slip Op., at 19-20.

²⁵⁷ Slip Op., at 22.

the pool contained 6.88 percent DBEs of a total of 28,701 firms after refining the sample to extract relevant NAICS codes and limiting it to the relevant market, while the public entity's bidder pool (inclusive of awardees for which bid data was not available) consisted of 14.82 percent of DBEs in comparison.

Some argue that the cause for larger RWASM availability measures could be the impact of race- and gender-conscious programs on the bidder pool. However, in some instances, public entities with mature race- and gender-conscious programs have discouraged DBE bidders due to the continuous and repeated use of the same vendors or continued discriminatory policies and practices, even in light of the existence of race- and gender-conscious goals.²⁵⁸ DBE bidders often view this type of procurement environment as a "closed-shop."

Alternatively, DBEs often pursue opportunities in the public sector because public entities are often seen as more inclusive, based on their mission and their diverse make-up of political representatives, and not simply the presence of race- and gender-conscious goals. For example, in reviewing building permits data for a particular public entity, we found that only 8.96 percent of building permits were obtained by DBEs in the private sector, as opposed to 19.59 percent of the public sector firms for the study period.

Additionally, other economic factors can impact firm choices of where to do business. After the Recession of 2008, many large private sector firms around the country, including those who rarely worked in the public sector, turned to the public sector for opportunities, pushing many DBEs out of contention for opportunities in the competitive bidding process.

As such, findings from a barrier analysis under *Croson* necessitate **a deep dive** into the public entity's procurement operation and selection processes to determine whether the barriers are caused by internal or external factors or active vs. passive discrimination. This deep dive also encompasses the public entity's prime vendors who select sub-vendors to participate on the public entity's opportunities. This deep dive into the procurement and contracting activity of prime vendors is a direct means of measuring "passive participation" in private sector discrimination. Under 49 CFR Part 26, a barrier analysis is somewhat anticipated under Step 2: Adjusted Baseline Availability.

D. Selection Analysis

M³ Consulting's RWASM Availability analysis, a primarily bidder-based analysis, is most akin to the Selection Analysis under EEO, established to determine if the public entity's policies and procedures are producing any noted disparity. M³ Consulting draws conclusions of disparity that the public entity may need to

²⁵⁸ In response to the *Western Paving* case, DOT appears to have addressed this concern by stating that "the study should not rely on numbers that may have been inflated by race-conscious programs that *may not have been narrowly tailored*." Emphasis added.

address through race- and gender-conscious goals from this analysis, not its Marketplace Analysis. In the EEO environment, if disparity is found under the Selection Analysis and an employer:

“...has reason to believe that its selection procedures have the exclusionary effect described in paragraph 2 above, it should initiate affirmative steps to remedy the situation. Such steps, which in design and execution may be race, color, sex, or ethnic “conscious,” include, but are not limited to, the following: (a) the establishment of a long-term, and short-range, interim goals and timetables for specific job-classifications, all of which should take into account the availability of basically qualified persons in the relevant job market...”

While some would argue that Marketplace or Custom Census represents a proxy group under a Selection Analysis for incomplete bidder data or bidder data impacted by discrimination, these firms may not meet the ready, willing, and able definition. Furthermore, Marketplace Availability can also be impacted by discrimination and exclusion, particularly in the construction industry. M³ Consulting’s RWASM Availability Model, discussed supra, is a cascading model, designed to be extended beyond ready, willing, and able firms (actual availability) only when necessary. If earlier levels were deemed completely unreliable, prior to moving to Public Sector or Marketplace Availability augmented by DBE lists (firms that are “ready”), M³ Consulting would focus on a public entity’s vendor registration list augmented by its DBE lists (firms that are “ready and willing.”). U.S. DOT seeks to address this issue through Step 2: Adjusted Baseline Availability.

Further, when calculating a disparity ratio using RWASM Availability, M³ Consulting is using Actual Utilization compared to Actual Availability. If Potential Availability is utilized instead of Actual Availability, the resulting disparity ratio assumes that, if outreach was done, more available firms would be included in Actual Availability. This could be akin to “but-for-discrimination”, but it could also be “but-for-outreach” and have nothing to do with discrimination. Furthermore, it is possible that they were not included purely due to random chance, which is the essence of the significance tests.

Given that M³ Consulting computes disparity based on RWASM Availability (actual availability reflecting the City’s selection process), if disparity is found using RWASM Availability, the City’ legal staff would then determine if the City **may or must** utilize race- and gender-conscious goals to remedy this disparity.

4.2.2 RELEVANT MARKET MEASUREMENTS

The *Croson* statistical analysis begins with the identification of the relevant market. The relevant market establishes geographical limits to the calculation of DBE availability and utilization. Most courts and disparity study consultants characterize the relevant market as the geographical area encompassing most

of a public entity's commercial activity. The *Croson* Court required that an MBE program cover only those groups that have been affected by discrimination within the public entity's jurisdiction.²⁵⁹

Two methods of establishing the relevant market area have been used in disparity studies. The first utilizes vendor and contract awardee location of dollars expended by an entity in the relevant industry categories. In the second method, vendors and contractors from an entity's vendor or bidder list are surveyed to determine their location. The former is based on approaches implemented under the U.S. Justice Department guidelines for defining relevant geographic markets in antitrust and merger cases. M³ Consulting has developed an alternative method for determining an entity's relevant market by combining the above methods and using an entity's bidder lists, vendor lists, and awardee lists as the foundation for market definition.

By examining the locations of bidders, vendors, and winners of contract awards, M³ Consulting seeks to determine the area containing a preponderance of commercial activity pertaining to an entity's contracting activity. While case law does not indicate a specific minimum percentage of vendors, bidders, or contract awardees that a relevant market must contain, M³ Consulting has determined a reasonable threshold is somewhere around 70 percent, each, for bidders, vendors, and contract award winners. Further analysis may be necessary if there are "large" differences in the percentages of these three measures.

4.2.3 AVAILABILITY ANALYSIS

The fundamental comparison to be made in disparity studies is between firms owned by Disadvantaged Business Enterprises ("DBEs") and other firms ("Non-DBEs") *ready, willing and able* to perform a specific service (i.e., are "available"), and the number of such businesses being utilized by the locality or its prime contractors. This section presents a discussion of the availability estimates for DBEs who are *ready, willing, and able* to perform work on contracts for the City.

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

A. Miller³ Consulting, Inc. Availability Model

²⁵⁹ Richmond v. Croson, at 725.

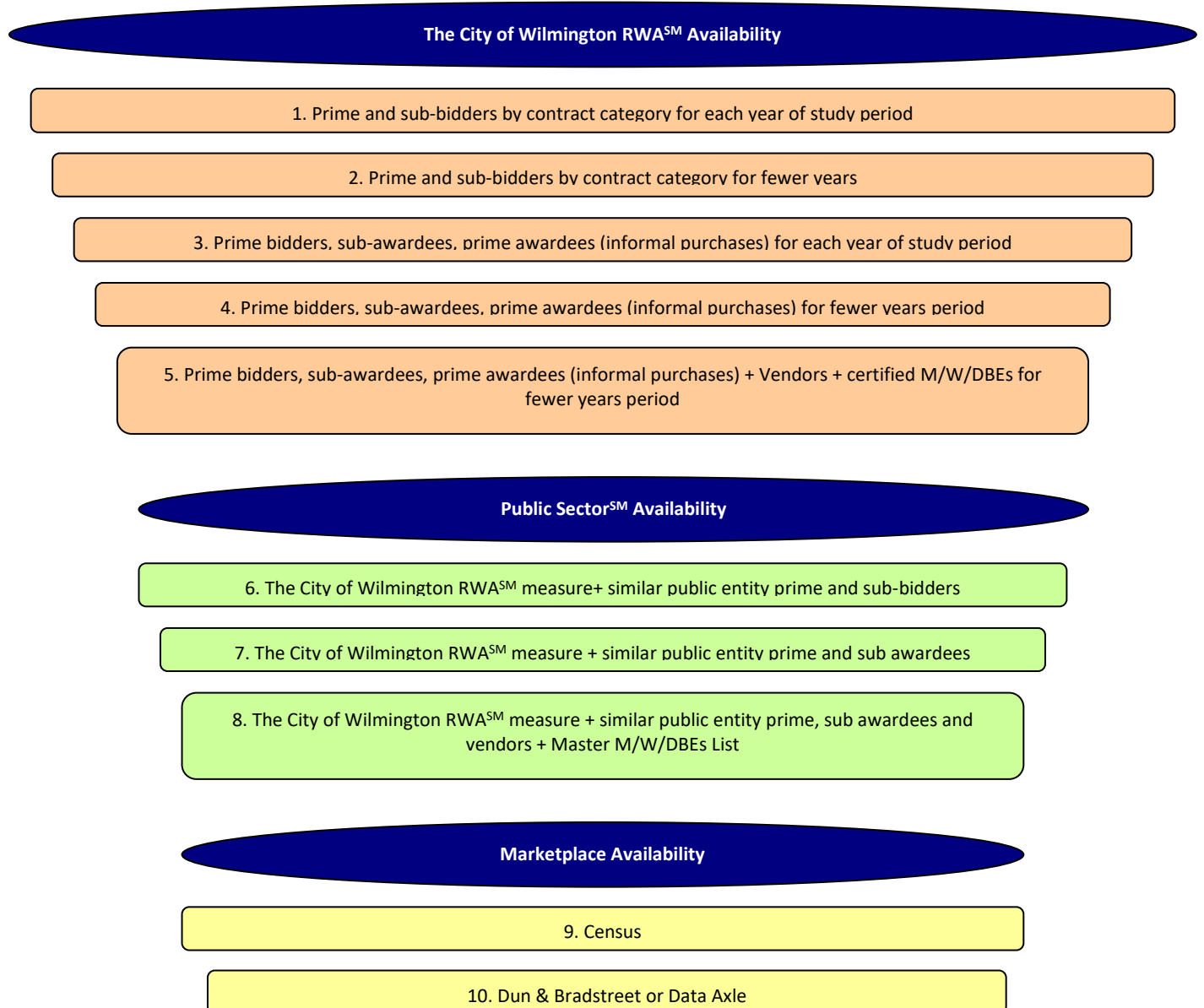
M³ Consulting employs two general approaches to measuring availability: the Ready, Willing and Able (RWASM) Model, and Marketplace Availability. In summary, the Availability measures can fall into the following categories:

- **RWASM**—Those firms who are ready, willing and able to do business with the City;
- **Public Sector Availability**—Those firms who are ready, willing, and able to do business with similar public sector agencies within the City’s marketplace²⁶⁰; and,
- **Marketplace Availability**—All firms’ available in the City’s marketplace, as measured by U.S. Census Annual Survey of Entrepreneurs, Data Axle or Dun & Bradstreet and Dodge Construction.

The Availability matrix below in Figure 4.1 outlines M³ Consulting’s Availability Model. The matrix starts with the optimum availability measure of those firms “ready, willing and able” to do business with the City and cascades down to less optimum measures. Factors that determine which level of availability best suits the City’s environment include quality of available data, legal environment, and previous levels of inclusion of DBE in bidding and contracting activity.

²⁶⁰ This analysis requires inter-governmental cooperation between public entities providing bidder, vendor and awardee data, thus is not performed, unless such agreement is developed for individual agencies, or a consortium of agencies conducted a consortium disparity study.

Figure 4.1
RWASM Availability Model



Source: M³ Consulting, Inc.

When refined to the City' data, the RWASM Availability Model levels are defined as follows:

Table 4.1. City of Wilmington Specific RWASM Availability Levels	
RWASM Availability Level	RWASM Availability Definition
Level 1	City of Wilmington Bidders and Sub-bidders
Level 2	City of Wilmington Bidders and Sub-bidders + AP/PO firms
Level 3	The City of Wilmington Vendor Inquiry Report + M/W/DBE Master List

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

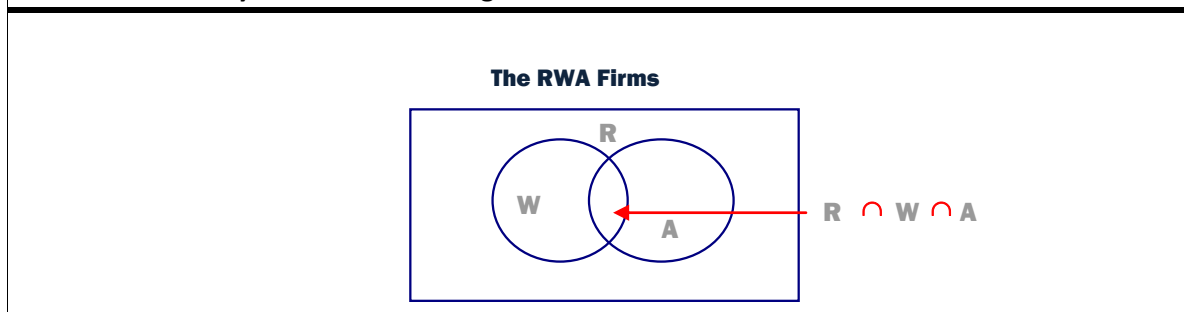
B. Ready, Willing and Able (RWASM) Model²⁶¹

The concept of the “*Ready, Willing and Able*” (RWASM) estimate model is derived from the U.S. Supreme Court’s statement that:

Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise.²⁶²

The basic assumption underpinning RWASM estimates is that a business must exist and actively seek to do business with a specific entity and have the capacity to perform contracts of the types that the City awards, to be included in the pool of businesses “actually available” to perform on the entity’s contracts. The M³ Consulting RWASM estimate is illustrated in Figure 4.2.

Figure 4.2
RWASM Availability Estimate Venn Diagram



Source: M³ Consulting, Inc.

²⁶¹ M³ Consulting developed the RWASM model in 1992.

²⁶² *City of Richmond v. J.A. Croson*, 109 S.Ct. 706, at 729 (1989).

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

Readiness

“*Readiness*”, as used in the City’s Disparity Study, is an indication that a firm is present in the market area studied. M³ Consulting uses Census ASE and Data Axle estimates of the number of firms in a specific area to measure firms “*ready*” to do business with the City.

Willingness

“*Willingness*” to engage in procurement opportunities with a public entity, as understood for purposes of this study, is a concept that cannot be observed directly, but must be inferred through volitional behavior on the part of a firm. It is possible that not all existing (ready) firms want to contract in the public sector, in general and with the City, specifically. The “*willing*” requirement reduces the Census ASE and Data Axle estimate to the number of firms interested in doing business with the City, as discussed later in this chapter. Willingness can be affected greatly by the type of service area under which a potential project may be classified, the general level of market demand, previous contracting and management practices utilized by a contracting entity, legal and other administrative requirements that must be adhered to, as well as other factors.

Ability

The third component, “*able*”, defines the group of firms with the capacity to perform the tasks necessary to complete the job. The “*able*” requirement further reduces the number of firms available to do business with an entity. “*Ability*”, as used in this study, is synonymous with “capacity,” and refers to the measure of additional work a firm can take on at a given point in time.²⁶³ Ability is only imperfectly observable directly and must also largely be inferred through external proxies such as number of employees, size of past revenues, and number of years in business. A firm may have the “ability” to perform a contract:

- Either because it already has the staff and resources to perform the work,
- Or because it can readily hire sufficient staff and acquire sufficient resources for that purpose.

Parties who are seeking to explain what the Supreme Court meant usually raise the capacity issue of qualified minorities. In *Concrete Works v. Denver Fd.* 823 F. Supp. 821 (D.Colo.1993), the Colorado district

²⁶³ The appropriate definition of capacity should be closely related to objective criteria used to determine qualifications, as discussed above. Ideally, one wants to identify and use “discrimination-free” measures of capacity in determining the pool of available firms.

court reviewed the challenged availability/utilization analysis submitted by the City and County of Denver. The Concrete Works Company challenged the use of availability measures and suggested that the appropriate standard was capacity. The court provided a lengthy discussion of the capacity arguments, stating that:

“Capacity is a function of many subjective, variable factors. Second, while one might assume size reflects capacity, it does not follow that smaller firms have less capacity; most firms have the ability and desire to expand to meet demand. A firm’s ability to break up a contract and subcontract its parts make capacity virtually meaningless.”²⁶⁴

- In *Rothe Development Co. v. U.S. Department of Defense and the U.S. Department of the Air Force*, the Federal District Court found the most reliable way for accounting for firm size, without changing the disparity-ratio methodologies was to employ “regression analysis to determine whether there was a statistically significant correlation between the size of a firm and the share of contract dollars awarded to it.”²⁶⁵ Utilizing survey data, M³ Consulting conducts regression analysis to buttress its RWASM Availability and Disparity findings.

M³ Consulting’s RWASM model focuses on firms “actually available” to do business with the City. The overriding consideration for specifying availability estimates for the City’s disparity analysis is to include firms that have actively sought to contract or provide goods and services to the City. “Actual availability” refers to firms that have affirmatively shown interest in doing business with the City in one or more of the following ways: bidding for a City contract; being awarded a City contract by the City; or, being included on the City’s vendor or plan holder’s list. Additionally, M³ Consulting’s RWASM methodology seeks to define similarly those DBEs and Non-DBEs to be included in the availability analysis.

The RWASM estimates define availability conservatively and include only those firms that have presented themselves to the City as *ready, willing* and *able* to conduct the work requested by the City.

In the arena of City contracting, based on available data, M³ Consulting conducted an RWASM availability analysis (*i.e.*, an analysis of “actual availability”) using lists of prime bidders, prime awardees, sub bidders and sub-awardees for FY 2016 – FY 2020.

C. Potential Availability Calculations

²⁶⁴ *Concrete Works v. Denver*, 823 F. Supp. 821 (D.Colo.1993)

²⁶⁵ 2008-1017, Federal Circuit at 36.

In contrast to “actually available” firms, M³ Consulting also defines firms that may exist in the relevant market and may in the future express an interest in doing business with the City. Hence, we treat these firms as “potentially available.”

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

M³ Consulting discusses two types of “potential availability”— “public sector availability”²⁶⁶ and “marketplace availability.” These measures may be used as benchmarks in setting targets or in developing outreach initiatives to encourage firms to come forward and express an interest in the City contracting opportunities. M³ Consulting primarily focuses on Marketplace Availability because of the limitations of Public Sector Availability.²⁶⁷

1. **Public Sector AvailabilitySM** – Includes lists of available firms known to various public sector agencies, including, but not limited to, the City in the relevant market region. These firms are closer to RWASM, having expressed an interest in contracting opportunities with other public sector agencies with similar standards and limitations as the City. This availability measure includes a compilation of:
 - a. Lists of public agencies’ bidders, vendors, and awardees; and,
 - b. List of DBEs certified by other public agencies.
2. **Marketplace Availability** – Including these firms in the availability measure expresses the ‘universe’ of all firms in the relevant market. These firms may or may not be considered RWASM. The lists that represent this availability measure are:
 - a. Census Data
 - b. Data Axle Data
 - c. Dodge Data

1. U.S. Census Bureau Potential Availability Data

²⁶⁶ M³ Consulting developed the “Public Sector Availability” Model in 2006.

²⁶⁷ Public Sector Availability requires intergovernmental cooperation; thus M³ Consulting performs this analysis only upon the request of the client and the proper implementation of appropriate agreements among affected public entities.

Measures of “potential availability” may be found in data provided by the Bureau of the Census. The standard source of evidence for firms owned by minorities and women is the 2016 Economic Census – Annual Survey of Entrepreneurs (ASE).

M³ Consulting typically develops census-based availability estimates using data provided by the Bureau of the Census (U.S. Census Bureau). The U.S. Census Bureau estimates are determined by firms with paid employees, which are a more conservative estimate of availability than the set of total firms (*i.e.*, including firms without employees) and ensures a better baseline level of firm capacity in comparison to an analysis based upon a total of all U.S. Census Bureau firms. The Census database utilized is the ASE Survey that is broken down by category descriptions into the appropriate industry.²⁶⁸ The ASE survey has been discontinued by U.S. Census Bureau. The Annual Business Survey (ABS) replaces the five-year Survey of Business Owners (SBO) for employer businesses, the Annual Survey of Entrepreneurs (ASE), and the Business R&D and Innovation for Microbusinesses (BRDI-M) surveys. The new ABS was not utilized for this study because it does not breakdown the data to a detailed level like the ASE does. The 2016 ASE data is utilized for this analysis.

2. Data Axle Availability Data

Data Axle is a good alternate source of business data. M³ Consulting analyzes this data set as a potential availability measure that reflects all businesses, inclusive of micro-businesses in the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD (CBSA). The Data Axle data includes capacity data, such as average sales revenues and average full-time employees.

We note that, small and micro home-based are difficult to identify and are thus somewhat less likely than other businesses to be included in Data Axle listings. A large number of small and micro, home-based businesses are more likely than large businesses to be minority- or women-owned, which suggests that DBEs might be underrepresented in the availability database.

Both the U.S. Census Bureau and Data Axle lists include the “universe” of firms in the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD (CBSA). potentially available to do business with the City.

3. Dodge Availability Data

In addition to the above two sources, Dodge maintains a database of construction activity across the country that includes construction projects in the planning phase, with the information on the owner of the project, description, value, and location of the project. If the project goes to fruition, the general contractor, subcontractors, and the architect and engineer that bid are listed with the projects, thus creating an additional list of ‘potentially available’ firms. This analysis is included in Chapter 10: Marketplace Analysis.

²⁶⁸ M³ Consulting has utilized Census Survey of Business Owners in the past for the Census Availability Analysis. However, this database has been discontinued and the most recent data available is 2012.

4. Other Lists

Other lists, such as certification lists, chamber of commerce lists, and licensing lists are often not compiled by any statistical technique and are not reliable in the accuracy of the information presented. Therefore, M³ Consulting does not rely upon these lists for availability measurement, for purposes of calculating disparity.

D. “Actual Availability” vs. “Potential Availability”

In summary, the difference between “*actual availability*” and “*potential availability*” may help identify and narrow down the area of availability that may be affected by discrimination, lack of outreach, lack of interest, lack of specific expertise required by the public entity, and lack of capacity. See also Barriers Analysis *infra*.

4.2.4 UTILIZATION ANALYSIS

A. Numbers of Contracts, Dollar Value of Contracts or Numbers of Firms

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

1. The number of contracts awarded;
3. The dollar value of contracts received; and,
4. The raw numbers of firms receiving contracts.

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

For instance, if a single firm, owned by a Non-DBE, received thirty contracts for \$5 million, and ten African American-owned firms received one contract each worth \$100,000, measured by the number of firms, African American-owned firms would appear to be over utilized, and Non-DBEs underutilized. Using the number of contracts and the dollar value of contracts awarded, the aforementioned result would reverse (depending on relative availability).

M³ Consulting’s position in regard to percentage estimates of utilization, by the dollar value of contracts and number of contracts, is that discrimination would more likely affect the dollars awarded than the number of contracts awarded to DBEs or the number of DBEs utilized, particularly if there are stereotypical

attitudes that DBEs cannot handle larger contracts, and the largest volume of contracts awarded are smaller contracts.

B. Prime Contracting and Subcontracting

Because prime contractors, especially in Construction, Construction-Related Professional Services and Architecture and Engineering, often subcontract work to other contractors/consultants and because the utilization of DBEs in the absence of a set-aside or goal provision usually occurs at the subcontract level, assembling data on subcontract work is critical to utilization analysis.

In the area of Construction and Construction-Related Services and Architecture and Engineering contracting, the standard presentation of utilization data by M³ Consulting is to show Total “Pure Prime + Subcontractor” utilization and Subcontractor utilization in separate tables, if data allows. “Pure prime utilization” based on dollar value of contracts is defined here differently from “prime contract award value” due to the necessity to avoid double-counting of subcontract awards when examining subcontractor utilization. “Pure prime utilization” is correctly defined as the value of prime contracts *net of subcontract value*. This magnitude, when added to the value of subcontractor utilization, results in a correct measurement of “total” utilization, by the DBE category. The results of the “Pure Prime + Subcontractor” utilization is highly contingent upon the completeness of contracts data provided to M³ Consulting. In a situation where the data is not fully available, M³ Consulting tries to capture this data through a data collection process. Completeness of this data collection process is also dependent on hardcopy data available to be collected.

We note that, for this disparity study, there is limited contracting and subcontracting data, based on the procurement categories under review: Architecture and Engineering, Construction and Construction-Related Services, Goods and Supplies, Non-Professional Services and Professional Services. This will be discussed further in section 4.3.

4.2.5 DISPARITY ANALYSIS

The Notion of Disparity: The Concept and Its Measurement

A straightforward approach to establishing statistical evidence of disparity between the availability of DBEs and the utilization of DBEs by the City is to compare the utilization *percentage* of DBEs with their availability *percentage* in the pool of total businesses in the relevant market area. M³ Consulting’s specific

approach, the “Disparity Ratio,” consists of a ratio of the percentage of dollars spent with DBEs (utilization), to the percentage of those businesses in the market (availability).²⁶⁹

Disparity ratios are calculated by actual availability measures. The following definitions are utilized in the M³ Consulting ratio:

A	=	Availability proportion or percentage
U	=	Utilization proportion or percentage
D	=	Disparity ratio
N _w	=	Number of women-owned firms
N _m	=	Number of minority-owned firms
N _t	=	Total number of firms

Availability (A) is calculated by dividing the number of minority and/or women-owned firms by the total number of firms. Utilization (U) is calculated by dividing total dollars expended with minority and women-owned firms by the total expenditures.²⁷⁰

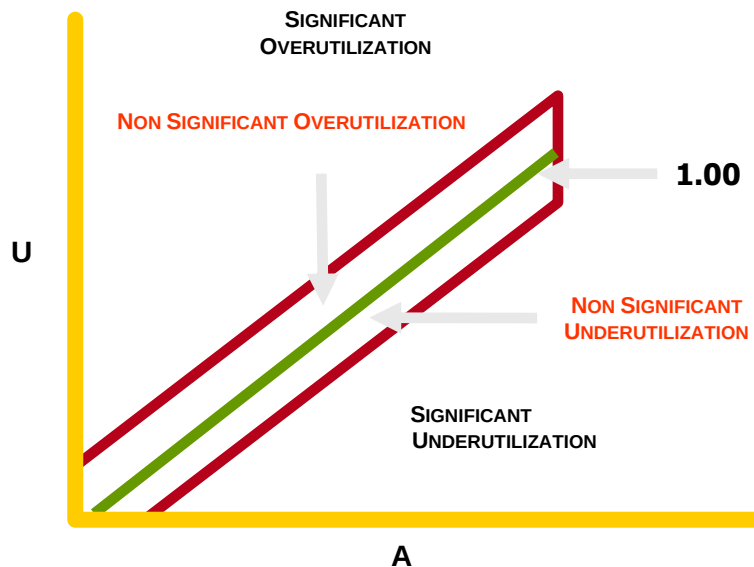
$$\begin{aligned}A_w &= N_w / N_t \\A_m &= N_m / N_t \\D &= U / A\end{aligned}$$

When D=1, there is no disparity, (*i.e.*, utilization equals availability). As D approaches zero, the implication is that utilization is disproportionately low compared to availability. As D gets larger (and greater than one), utilization becomes disproportionately higher compared to availability. Statistical tests are used to determine whether the difference between the actual value of D and 1 are statistically significant, (*i.e.*, whether it can be stated with confidence that the difference in values is not due to chance (see Figure 4.3).

²⁶⁹See DJMA, A Fact Finding Study Prepared for the New York Metropolitan Transit Authority (January 1990).

²⁷⁰Alternative utilization measures based on numbers of firms and numbers of contracts can be calculated in a similar fashion.

Figure 4.3
Disparity Ratio Indicating Areas of Significant and Non-Significant Disparity and Overutilization



Source: M³

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

1. Statistical Significance

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

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

2. Practical Significance

The concept of statistical significance should not be confused with practical significance. According to Mansfield, even if there is a statistically significant difference between a sample value and a postulated value of a parameter, the difference may not really matter.²⁷¹ This means disparities not statistically significant are not necessarily caused by chance. It also means that chance cannot be ruled out as a cause.

The most used practical significance measure in the EEO context is the 4/5th or eighty percent rule, which indicates how large or small a given disparity is. An index less than one hundred percent indicates that a given group is being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission's "80 percent" rule, that is, that a ratio less than eighty percent presents a prima facie case of discrimination²⁷².

Under the EEOC's "four-fifths" rule, a disparity ratio is substantively significant if it is 0.8 or less on a scale of zero to one or eighty or less on a scale of one to one hundred (i.e., Group A selection rate divided by Group B selection rate). Codified in the Uniform Guidelines on Employee Selection Procedures (UGESP, section 4D), the rule is described as follows:

"A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact. Smaller differences in selection rate may nevertheless constitute adverse impact, where they are significant in both statistical and practical terms and where a user's actions have discouraged applicants disproportionately on grounds of race, sex, or ethnic group. Greater differences in selection rate may not constitute adverse impact where the differences are based on small numbers and are not statistically significant."

Thus, the 4/5th rule is a measure of the size of the disparity but may need to be interpreted considering context (e.g., sample size, in combination with statistical significance testing). However, case law suggests that the 4/5th rule can be interpreted as adequate stand-alone evidence in some situations, although it is

²⁷¹ Mansfield, Edwin, *Statistics for Business and Economics*, p. 322. Two standard deviations imply 95 percent confidence level which is the norm of the courts.

²⁷² *Engineering Contractors II*, 122 F3d at 914; see 29 C.F.R. § 1607.4(D) ("A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.")

unclear exactly what circumstances warrant such interpretation. The eighty percent rule is a general rule, and other factors such as statistical significance, sample size, discouraged applicants, etc., should be analyzed. The rationale for combining practical and statistical significance results is an intuitive one. In situations where the measures come to identical conclusions, the analyst can usually feel very confident in a finding of meaningful impact or no impact. In other situations, context may play an important role when statistical and practical significance measures produce different conclusions (i.e., when a standard deviation analysis is greater than 2.0 but the 4/5th rule is not violated)²⁷³.

²⁷³ See Tables 1 and 2 that explain this in, "A Consideration of Practical Significance in Adverse Impact Analysis," Eric M. Dunleavy, July 2010, <http://dciconsult.com/whitepapers/PracSig.pdf>

4.3 DATA SOURCES UTILIZED FOR STATISTICAL ANALYSIS FOR THE CITY OF WILMINGTON

To conduct the statistical analysis, M³ Consulting collected and analyzed data from the City for the period covering FY 2016 through FY 2020. the City's fiscal year extends from July 1 to June 30, so FY 2016 covers a period of July 1, 2015, to June 30, 2016, through FY 2020 from July 1, 2019, to June 30, 2020. This section discusses the degree of completeness of the data sources, data sources used, and the data collection process including the issues, if any, M³ Consulting encountered with these data sources. For this disparity study, M³ Consulting collected and analyzed electronic and hard-copy files.

M³ Consulting sought to verify data provided, to the degree possible, within the time constraints of the study. Under employment discrimination law, a finding of adverse impact and inference of discrimination may be issued, if data is not maintained in formats that allow for on-going analysis of decisions made that may be impacted by race, gender, or ethnicity.²⁷⁴ The question remains if a similar holding of adverse impact and inference of discrimination, based on poor data tracking systems or lack of data required for disparity analysis, may be issued under a *Croson* analysis.

4.3.1 DATA SOURCES FOR RELEVANT MARKET

In calculating relevant market, M³ Consulting sought to determine where about 70 percent of firms were located. We utilized the following market areas by procurement type to determine inclusively where the bulk of commercial activity by the City occurs.

- City of Wilmington, DE
- Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA —consists of the following eleven counties: New Castle, DE; Bucks, Montgomery, Chester, Delaware, and Philadelphia, PA; Burlington, Camden, Gloucester, and Salem, NJ; Cecil County, MD;
- State of Delaware; and,
- Nationwide.

Within these market areas, M³ Consulting determined the percentage of firms meeting the 70 percent threshold based on:

- Bidder and Awardees—Counts of bidders, sub-bidders, awardees, and sub-awardees; and,
- PO and AP data—Dollar values and counts of PO and Payments.

²⁷⁴ 29 CFR §1607.4.D.—“Where the user has not maintained data on adverse impact as required by the documentation section of applicable guidelines, the Federal enforcement agencies may draw an inference of adverse impact of the selection process from the failure of the user to maintain such data, if the user has an underutilization of a group in the job category, as compared to the group's representation in the relevant labor market or, in the case of jobs filled from within, the applicable work force.”

While other measures were considered, little weight was placed on these sources of data, as firms in the vendor lists do not meet the ready, willing, and able definition; P cards are largely for small informal purchases that do not go through the RWASM litmus test. Contract dollars and counts while reported, often did not fully represent the procurement categories for this report, thus making the PO and Payment data more reliable to determine relevant market.

4.3.2 DATA SOURCES FOR AVAILABILITY

A. RWASM Data Sources

1. Bidders

By bidding, firms demonstrate that they are “*ready*”, “*willing*”, and assert that they are “*able*.” The City, in its bid review, ranking and decision-making process of responsive and responsible bidders determines “*ability*.”

To identify projects bid by the City, M³ Consulting queried the City regarding two potential sources of bidder data:

- Bidders and Sub-bidders on Formal Purchases; and,
- Quotes on Informal Purchases.

Like most public agencies, the City’s Procurement Office maintains a contracts list (solicitation list), as well as records of bid and contract award data (bid tabulations) in hard copy format. The City does not track quotes—written or verbal—on informal contracts.

The City’s Point of Contact (POC) provided M³ Consulting access to the shared site where staff uploaded

- The solicitation list, which reflected all formal contracts let by the City during the study period of FY 2016—FY 2020, and
- Bid tabulations containing bidders and sub bidders that bid on the formal contracts let by the City during the study period.

M³ Consulting sought to collect hard copy bidder and award information from these contract data sources that was comparable to purchase order and payments data from the MUNIS financial management system. Additional discussion of the data from MUNIS is discussed later in this chapter.

Solicitation lists were provided for each fiscal year under review and included only contract title, contract number and department information. No contract value or awarded prime information was provided on

the contract list. Based on the solicitation lists, 238 contracts were let during the study period. M³ Consulting utilized the solicitation list as our contract log, or log of the total number of formal contracts to be search and reviewed for bidder and award data at the prime and subcontractor levels.

Using the solicitation lists, M³ Consulting searched and collected data on bidder activity and award activity from the hardcopy bid tabulations. The bid tabulations contained details of bid solicitation, prime bidders and proposed sub-bidder, along with the identification of the winning bidder (awardee). Some solicitations during this period were rejected, rescinded, or simply withdrawn. Other solicitations had no prime bidder or award information. Data on these bids, where the information was available, was captured to ensure bidder availability robustness.

Table 4.2. Summary of Bid Activity on City of Wilmington Solicitations FY 2016 to FY 2020		
	#	%
Bids Awarded	238	73.46
Bids Canceled	4	1.23
Bids Rejected	17	5.25
Bids Blank*	65	20.06
Total Bids	324	100.00

*Bids that could not be located or were without awarded dollar values

M³ Consulting assigned procurement categories using the project's title. Bidder and award activity was defined in the procurement categories of Architecture and Engineering, Goods and Supplies, Construction & Construction-Related Services, Professional Services and Non-Professional Services. The bidders and sub-bidders were cross matched against the City's vendor inquiry report, and the Master M/W/DBE list to identify the race, gender, or ethnicity of firms. In a situation where the bidder or sub-bidder is not available as a DBE firm on these lists, M³ Consulting defaulted to assigning such as Non-DBEs.

2. Awardees

Awardees satisfy the same RWASM criteria as bidders. However, the availability pool is smaller because it only includes bidders who received an award. The awardees availability pool was determined using the awarded bidder in the contract awards data, as well as purchase order and accounts payable data. All firms listed on the bid tabulations as the winning bidder were considered awardees.

All vendors to whom a purchase order is issued, and a payment is made against formal or informal contracts are also awardees. All firms paid by the City were captured in MUNIS, the financial management system, which tracks purchase order commitments and payments. MUNIS data includes both informal awardees and formal awardees based on contracts let during the study period of FY 2016–FY 2020. M³

Consulting removed all activity related to non-commercial vendors (i.e., non-profits, governmental entities, and employees) from the purchase order and accounts payable data uploaded. M³ Consulting also reviewed the contracts let by the City to ensure all non-commercial activity was excluded from the analysis.

M³ Consulting deemed the Purchase Order data in the financial management system as the most comprehensive source of firm award/commitment data at the formal and informal level. While Payments data is accurate based on actual disbursements, it may not include all firms under contract during the study period if they have yet to be paid and may include firms contracted outside of the study period.

3. Vendors

Enrollment as a vendor interested in receiving solicitations from the City is an additional criterion that may be used to measure availability. Companies included on the vendor list (“vendors”) are a broader measure of availability than bidders and awardees. While vendors meet the “*ready*” and “*willing*” test, they may not have the capability to perform on all projects. As such, vendors are a less desired dataset to measure RWASM availability. Capacity proxies could be established if the City captured relevant data on its vendor registration application, which may be useful for future analysis.²⁷⁵

The City utilizes and maintains its own vendor directory, the vendor inquiry report, which consist of active and inactive vendors (active, one time pay, self-service, stop and temporary) in MUNIS that have been paid. The vendor inquiry report has 26,349 records and contains information on vendors such as name, location, and class. However, the vendor inquiry report does not indicate the goods or services the vendor would like to provide to the City. Furthermore, the vendor inquiry report does not contain prospective vendors. As such, M³ Consulting was unable to conduct a vendor level availability analysis.

4. City of Wilmington Certified Firms

The City provided a list of 94 DBEs vendors currently certified as eligible to participate in its DBE programmatic efforts. While certified DBEs undergo significant vetting and meet the “*ready, willing and able*” criteria, only DBEs are subject to the certification process. There is no such equivalent listing of Non-DBEs. Using the certification list alone to measure availability would cause bias in the availability measurement.

²⁷⁵ DOT requires capacity proxies to be captured on bidder and sub-bidder data. We do note, that, firms, unless required as part of the bid evaluation process, do not tend to voluntarily provide financial data.

5. Master S/M/W/DBE List

M³ Consulting sought certified lists from public agencies within the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA business area. Typically, membership list from non-profits or private organization are not available to non-members or without paying a fee. In compiling the Master S/M/W/DBE list, M³ Consulting utilized the following directories:

- City of Wilmington DBE,
- State of DE Certified Vendors – Office of Supplier Diversity, Small Business Focus Certified Vendors,
- City of Philadelphia OEO Directory,
- MD DOT Directory of MBE, DBE, SBE and ACDBE firms,
- NJ Selective Assistance Vendor Directory,
- NJ DOT ESBE Directory, and
- New Jersey Unified Certification Program Directory.

When using the Master S/M/W/DBE list to identify the race, ethnicity, or gender of a business owner, for firms with multiple agency certifications, precedence was given in the order in which the certifying bodies are list above with the City DBE certification taking precedence over all other lists and NJ Unified Certification Program directory the least.

This Master S/M/W/DBE List was used to identify the race or gender of firm owners in other databases where such information was missing.

B. Potential (Marketplace) Availability Data Sources

1. U.S. Census Bureau ASE Data

The U.S. Census Bureau conducts the Annual Survey of Entrepreneurs. The ASE collects statistics on the characteristics of businesses and their owners. Additionally, estimates are produced for employer businesses on the number of firms, sales and receipts, annual payroll, and employment. Data are presented by gender, ethnicity, race, and veteran status for the United States by 2-digit 2012 North American Industry Classification System (NAICS), states, the top 50 metropolitan statistical areas, employment size, receipts size, and number of years in business. Content for the ASE includes questions from the 2012 Survey of Business Owners (SBO) (form SBO-1). M³ Consulting removed SIC and NAICS codes that were not relevant to the City's procurement activity, such as agriculture and mining.

2. Data Axle

Data Axle provided a list of firms from its database for the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD (CBSA). The database consists of 100,518 registered firms by SIC and NAICS code, ethnicity, and

gender, when available. All 100,518 firms were classified into procurement categories using the primary NAICS code provided by Data Axle. M³ Consulting sorted the SIC and NAICS codes into the categories of Architecture and Engineering, Construction and Construction-Related Services, Goods and Supplies, Non-Professional Services and Professional Services to calculate Marketplace availability. The Data Axle's database also provided data for these same firms on sales volumes and employees. M³ Consulting utilized this data as a measure of firm capacity.

3. Dodge Construction Data

Dodge maintains a database of construction activity across the country. The data includes construction projects for publicly-owned and privately-owned projects:

- Owner of Project with Address
- Description of Project
- Value of Project
- Location of Project

It also includes information on the general contractor, subcontractors, and the architect and engineer that bid on each project. M³ Consulting collected five years of data covering construction activity captured by Dodge in bid activity for the State of Delaware. In terms of the value of the work, the only available information was the overall value of the project. The specific value of work performed by subcontractors was not available.

The project description, prime contractor, subcontractor, bidder, and architect/engineer, *when available*, were all provided in Microsoft Excel spreadsheets, with the common link being a unique Dodge-assigned number for each project in their database. Since Dodge does not track the race or gender of the contractors, such information had to be created into the database by manual comparison of names to the Master S/M/W/DBE list.

4.3.3 DATA SOURCES FOR UTILIZATION

Utilization measures the distribution of dollars and contracts to commercial DBEs and Non-M/W/D/SBEs by the City. The sources of data sought from the City on DBE utilization for this report were Contract Awards, Subcontractor Data, Purchase Orders (PO), Accounts Payables (AP) and P-Card data. The following are descriptions of utilization databases.

A. Contract Awards and Subcontractor Data

M³ Consulting obtained the City's contract awards data from the City solicitations list and bid tabulations for the study period of FY 2016 – FY 2020. The solicitations list represents the universe of formal competitive contracts permitted by the City. Any contract valued greater than \$60,000 is required to be

procured using formal competitive procurement methods. The solicitations list served as the contract log for this effort and a guide to data collection efforts.

The solicitations list only included information regarding the contract name, contract title and department. Other contract information such as the value of contract award, and the awarded firm were not included. Using the solicitations list, M³ Consulting searched bid tabulations and manually entered in relevant information such as contract amount, prime bidders' information, awarded prime bidder and sub-bidder information where available.

Based on the solicitation name, M³ Consulting classified each contract award into the procurement categories of Goods and Supplies, Professional Services, Non-Professional Services, Construction and Construction-Related Services and Architecture and Engineering. The classifications determined the allocation of the contract awards dollars within each procurement category. We note that, based on this allocation, only one contract of the 238 formal contracts outlined previously in Table 4.2 and below in Table 4.3 was allocated to Architecture and Engineering. In addition, some of the awarded contracts were awarded to more than one prime bidder. In such a case, each awarded contract was counted as one.

Table 4.3.						
Commercial Activities/Contract Awards						
	Amount		Solicitations		Contract Awards	
	\$	%	#	%	#	%
Awarded	109,448,027	99.82	237	99.58	252	99.60
Architecture & Engineering	545,055	0.50	1	0.42	1	0.40
Construction	69,894,296	63.75	66	27.73	68	6.88
Goods & Supplies	24,720,366	22.55	99	41.60	109	43.08
Non-Professional Services	13,903,243	12.68	67	28.15	70	27.67
Professional Services	385,067	0.35	4	1.68	4	1.58
Canceled	194,700	0.18	1	0.42	1	0.40
Construction	194,700	0.18	1	0.42	1	0.40
Grand Total	109,642,727	100.00	238	100.00	253	100.00

NB: 10 solicitations were awarded to more than one prime bidder or split into more than one award

The bid tabulation, when available, was used to obtain the award amount for each solicitation. The awarded firm would subsequently have a purchase order issued for the contracted amount. It is important to note that contract amount, awarded prime bidder information, and sub-bidder information were not available in all cases and thus not included in the contract awards analysis. This is especially true for itemized contracts. As such, dollars for contract awards may be understated. Therefore, the contract analysis for the City can only be considered as a best effort analysis based on data that was available to be captured. Based on the analysis, contract award information is most robust for the category of Construction and Construction-Related Services.

B. Purchase Orders

Purchase Orders (POs) represent the total value of a specific good or service for which payments may be made against. These are contract commitments representing the actual firm with which the City executed a contract, as compared to contract award, which represents vendors identified as the winning bidder, resulting from the bid and evaluation process. Unless there is a justifiable and legitimate business reason (i.e., negotiations with winning bidder that may have caused changes in scope and final cost), the winning bidder and winning bid amount, and contracted firm and contracted amount, should be the same. Differences may necessitate a deeper dive and further analysis to ensure that these differences are not due to discriminatory reasons. M³ Consulting leaned toward relying upon PO data commitments, as it included all change orders, informal purchases commitments and other procurement opportunities not competitively bid.

M³ Consulting collected purchase order data from the City for the study period FY 2016 – FY 2020. The purchase order data contained no NIGP or commodity codes that could be used in assigning procurement categories. M³ Consulting assigned procurement categories using the account description and submitted these assignments to the City for review and confirmation. Collaboratively, M³ Consulting and the City made appropriate adjustments to the assignments based on the City's familiarity with awarded activities and M³ Consulting's classification of procurement categories, along with consideration of the City's procurement policies and procedures and federal and state contracting laws.

Upon obtaining the corrections, M³ Consulting used the defined procurement categories as the basis for allocating bidder and award activity into the procurement types of Architecture and Engineering, Goods and Supplies, Construction & Construction-Related Services, Professional Services and Non-Professional Services. The vendors were then cross-matched against the City's vendor inquiry report, and the Master DBE list to identify the race, gender or ethnicity of firms. In a situation where the bidder or sub-bidder is not available as a DBE firm on these lists, M³ Consulting defaulted to assigning such as Non-DBE firms. This allocation served as the basis of purchase order distribution presented in the statistical chapters.

C. Accounts Payable

Accounts Payable data, uploaded to the shared folder by the City, permitted utilization analysis based on actual payments to the City's vendors. M³ Consulting historically allocates payments using commodity codes, NAICS, SIC or object codes. Given each payment by the City must have an underlying purchase order, the same account description classifications used for the purchase orders were used to allocate payments in the procurement types. Thus, the account descriptions were utilized for allocation of both POs and payments into procurement types.

M³ Consulting requested that all non-commercial payments to vendors be excluded from the analysis. To ensure that the non-commercial transactions were not included, M³ Consulting randomly selected

vendors to ensure they were not governmental entities, non-profit entities, or employees to the degree possible. The City's vendor inquiry report also provided the type of vendor, which assisted M³ Consulting in identifying those non-commercial entities that received payments.

4.4 SUMMARY OF FINDINGS

This statistical methodology and data collection discussion provides the foundation for subsequent statistical chapters. It details the types of analysis used in disparate impact studies, as well as disparity analysis in contracting. The basic comparison to be made in disparity studies is between firms owned by disadvantaged businesses (“DBEs”) and other firms (“non-DBEs”) ready, willing, and able to perform a specific service (or, available firms) and the actual utilization of such businesses within the geographic parameters of both its vendors and the political and legal jurisdiction for the city.

The chapter details the method of defining the geographic market area for the city, outlines the availability model used by m³ consulting, and provides a detailed explanation of alternate measures of utilization of firms in contracting by the City.

Following the model, a thorough discussion of the data sources used in the study, starting with the data collection process, the issues encountered in the process and the caveats that presented itself due to data limitations are laid out. This section discusses the degree of completeness of the data source and the limitation in analysis that result from the same.

CHAPTER 5: STATISTICAL ANALYSIS OF RELEVANT MARKET AND DBE AVAILABILITY

5.1 INTRODUCTION

This chapter presents data on relevant market and DBE availability in the City of Wilmington (hereafter, the City). The conceptual issues in measuring availability are discussed in detail in Chapter IV, Statistical Methodology. The accurate calculation of availability is critical in disparity analysis. “*Actual availability*,” as defined by M³ Consulting for purposes of this study, provides the measure of the number of DBEs who are *ready, willing, and able* to do business with the city. An overcount or undercount of the pool of available DBEs can significantly alter findings of disparity. As such, M³ Consulting has developed an availability model that best captures those DBEs who are available to the city.

The first section of this chapter discusses the determination of the relevant market for the City. The second section presents the estimates of DBE availability for five procurement categories: Architecture and Engineering; Construction and Construction-Related Services; Goods & Supplies; Professional Services; and Non-Professional Services. The following availability measures are presented for each procurement category:

- **Ready, Willing and Able Availability (*RWASM*)**
 - Level 1: Bidders and Sub-bidders
 - Level 2: Bidders, Sub-bidders, Formal and Informal Awards from MUNIS Data
- **Marketplace Availability**
 - Data Axle

The chapter summarizes availability findings in the conclusions section.

5.2 RELEVANT MARKET

In the context of disparity studies, the relevant market establishes the geographical boundaries where a bulk of commercial transactions by the public entity is conducted. The analysis of DBE availability and utilization are examined within this defined geographical market area. Based on the U.S. Supreme Court requirement that a DBE program covers only those groups that have been affected by discrimination within the public entity's jurisdiction,²⁷⁶ most courts and disparity study consultants characterize the relevant market as the geographical area encompassing the majority of a public entity's commercial activity, commonly determined by a representation of over seventy percent of an entity's contract dollars.

The Supreme Court's *Croson* decision did not provide specific guidance on the estimation of relevant market for the purposes of constructing a factual predicate study. Based upon lower court rulings, however, there are two requirements for determining the relevant market that have emerged:

1. The boundaries of the relevant market must be geographically close to that of the political jurisdiction enacting the program; and,
2. The relevant market must include the bulk of the commercial activity of the said political jurisdiction.

Consequently, many disparity studies of local areas have identified the metropolitan statistical area as the relevant market.²⁷⁷ Certain other entities, however, (*e.g.*, Dallas and Los Angeles) have restricted the relevant market to those firms within their jurisdictional boundaries.

Relevant Market for the City of Wilmington

To estimate availability, the marketplace in which the City of Wilmington purchases from vendors needs to be defined. This enables a practical count of "available" firms and facilitates policy implementation.

Based on the data provided for this study, four relevant markets were defined and are presented below.

- City of Wilmington
- Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA (hereinafter, Wilmington MSA)²⁷⁸
- State of Delaware

²⁷⁶ *Richmond v. Croson*, 488 U.S. 469, 109 S.Ct. 706, 725 (1989).

²⁷⁷ See, for example, *Concrete Works v. Denver*, 823 F Supp 821, at 836, n. 11; rev'd on other grounds, 36 F3d 1513 (10th Cir. 1994). Some earlier studies followed antitrust precedent in using an 85 percent benchmark as the relevant market. See, *e.g.*, DJMA, *Disparity Study for the Orange County Consortium* (1993). The 2nd circuit has not provided any substantive guidance on the calculation of the relevant market for disparity studies.

²⁷⁸ Bucks County, Burlington County, Camden County, Cecil County, Chester County, Delaware County, Gloucester County, Montgomery County, New Castle County, Philadelphia County, Salem County

- Nationwide

The relevant market is summarized in Table 5.1, by procurement category and by location. The summary table represents the percentage of bidders, awardees and firms paid for each procurement category by the relevant market determinations outlined in Tables 5.2 through 5.6.

1. Architecture and Engineering, Professional Services, and Goods and Supplies Relevant Market—Nationwide

For A&E, as shown in Table 5.1, M³ Consulting concluded that, when all measures are viewed in totality, the data pointed to the Nation as the relevant market, even with approximately 65 percent of the bidders and awardees being from within the MSA (see Table 5.2). While the majority (about 60 percent) of the PO and AP dollars are paid within the MSA, these payments do not reach the 70 percent threshold.

In Professional Services, while many of the bidders/sub-bidders and awardees are from within the MSA, the dollars paid to professional service firms, distinctly pointing beyond the MSA to the Nation as the relevant market.

Goods and Supplies for the City of Wilmington are procured from bidders and sub-bidders across the nation. While over 60 percent of the bidders/sub-bidders are from within the MSA, less than 50 percent of bidders/awardees are in within the boundaries of the MSA. Only slightly over 40 percent of the dollars are invoiced and paid from within the MSA. Therefore, relevant market for Goods and Supplies is defined as the nation for this study period.

2. Construction and Construction-Related Services and Non-Professional Services Relevant Market—Wilmington MSA

Both in terms of the number of bidders/sub-bidders and awardees as well as the dollars awarded, the relevant market for Construction and Construction-Related Services is the MSA. Over 80 percent of PO and AP dollars are paid within the MSA to Construction and Construction-Related business enterprises.

The number of bidders/sub-bidders and awardees who seek Non-Professional Service contracts with the City of Wilmington reside within the MSA which defines the relevant market. This is further reinforced by the fact that over 86 percent of dollars are invoiced and paid within the MSA.

Table 5.1.
Summary of Relevant Market Determination

	City	MSA	State	Nationwide
Architecture and Engineering				✓
Construction and Construction-Related Services		✓		
Professional Services				✓
Non-Professional Services		✓		
Goods and Supplies				✓

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data

Table 5.2.
Relevant Market Summary: Architecture and Engineering
FY 2016 - FY 2020

	City	MSA	State	Nationwide
	%	%	%	
Bidders/Sub-bidders	0.00	42.86	0.00	7
Bidders/Awardees	21.88	65.63	37.50	64
PO Dollars	13.77	61.69	22.19	\$15,406,365
PO Counts	19.16	54.87	31.17	308
Payment Dollars	16.20	57.93	21.99	\$10,270,895
Payment Counts	16.94	60.10	26.73	797

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data, MSA percentages are larger than State percentages because several Counties that make up the MSA are outside of the State.

Table 5.3.
Relevant Market Summary: Construction and Construction-Related Services
FY 2016 - FY 2020

	City	MSA	State	Nationwide
	%	%	%	
Bidders/Sub-bidders	25.00	68.69	51.80	444
Bidders/Awardees	26.88	69.55	52.44	532
PO Dollars	9.06	85.68	54.42	\$143,798,337
PO Counts	28.77	76.37	49.89	914
Payment Dollars	9.45	83.28	62.96	\$82,970,142
Payment Counts	3.28	74.34	11.24	11,045

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data, MSA percentages are larger than State percentages because several Counties that make up the MSA are outside of the State.

Table 5.4.				
Relevant Market Summary: Professional Services				
FY 2016 - FY 2020				
	City	MSA	State	Nationwide
	%	%	%	
Bidders/Sub-bidders	33.33	96.67	60.00	30
Bidders/Awardees	35.77	68.67	53.52	383
PO Dollars	31.09	56.60	37.58	\$64,866,425
PO Counts	35.06	62.81	47.61	2,342
Payment Dollars	31.92	57.68	38.02	\$48,396,863
Payment Counts	49.19	75.86	63.79	7,191

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data, MSA percentages are larger than State percentages because several Counties that make up the MSA are outside of the State.

Table 5.5.				
Relevant Market Summary: Non-Professional Services				
FY 2016 - FY 2020				
	City	MSA	State	Nationwide
	%	%	%	
Bidders/Sub-bidders	25.60	74.40	52.38	168
Bidders/Awardees	29.61	56.78	45.92	1,557
PO Dollars	59.77	86.86	76.88	\$244,424,403
PO Counts	34.32	63.43	56.32	12,583
Payment Dollars	63.42	87.04	78.87	\$185,535,249
Payment Counts	26.73	80.31	72.72	37,523

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data, MSA percentages are larger than State percentages because several Counties that make up the MSA are outside of the State.

Table 5.6. Relevant Market Summary: Goods & Supplies FY 2016 - FY 2020				
	City	MSA	State	Nationwide
	%	%	%	
Bidders/Sub-bidders	14.06	60.42	35.42	192
Bidders/Awardees	20.43	48.02	36.47	935
PO Dollars	12.98	40.62	28.60	\$80,212,234
PO Counts	10.92	24.72	19.72	19,340
Payment Dollars	11.96	44.84	27.42	\$65,674,586
Payment Counts	20.23	37.67	31.17	21,189

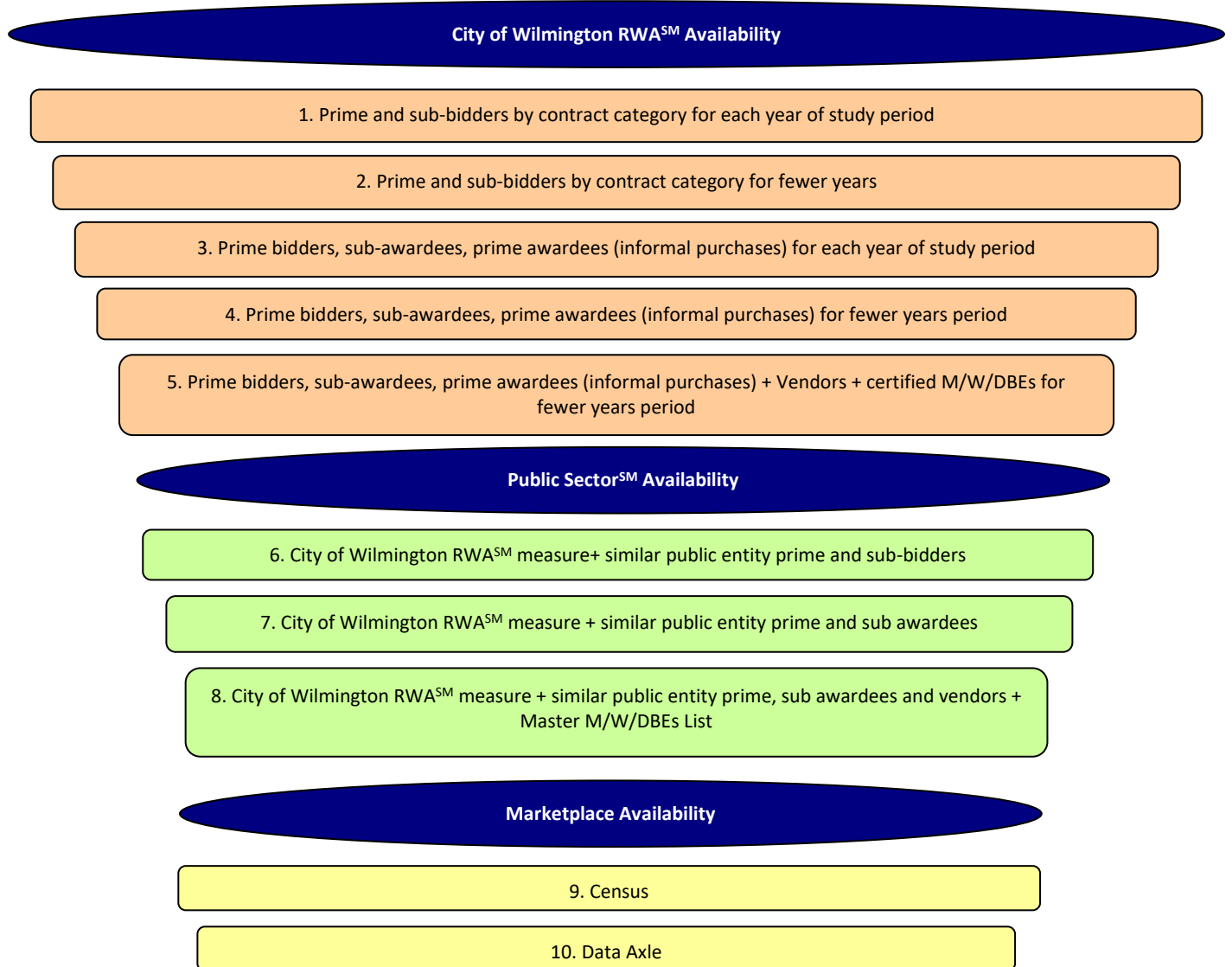
Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data, MSA percentages are larger than State percentages because several Counties that make up the MSA are outside of the State.

5.3 AVAILABILITY DEFINITION

The availability measure is often in dispute and critical to defining disparity. One must be careful not to include all businesses as *ready, willing, and able*, as such a calculation could produce a very broad pool of available firms, including those who are not interested or able to provide goods or services purchased by the City of Wilmington. Similarly, a very narrowly tailored measure of availability may exclude some potential bidders, by falsely classifying them as unable to perform the requirements of contracts. A detailed discussion about the availability model and measurement of Availability are provided in Chapter 4: Statistical Methodology.

The Ready, Willing and Able (RWASM) Availability Model levels are defined as follows:

Figure 5.1
RWASM Availability Model



Source: M³ Consulting, Inc.

M³ Consulting's RWASM Availability Model is further tailored to the robustness of the City's specific databases available for analysis. RWASM availability is defined at Level 2 for the FY 2016 – FY 2020 period, which includes prime and sub-bidders, informal and non-competitive awardees, and formal prime and sub awardees to comprise this availability pool. Level 2 RWASM Availability will be compared to utilization when determining disparity in Chapter 7, Statistical Analysis of DBE Disparity in Contracting.

Levels 1-2 are presented independently and cumulatively in Figure 5.2, as two measures of RWASM availability, with Level 2 being a combined pool of discrete available firms across these measures. In addition, the Total Available Firms are presented below, followed by availability by procurement type.

Figure 5.2. Wilmington Specific RWASM Availability Levels	
RWA SM Availability Level	RWA SM Availability Definition
Level 1	City of Wilmington Bidders and Sub-bidders
Level 2	City of Wilmington Bidders and Sub-bidders + AP/PO Firms

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data

5.4 TOTAL AVAILABILITY

5.4.1 TOTAL RWASM AVAILABILITY

RWASM Availability measures are presented in Table 5.7 for the study period of FY 2016 to FY 2020.

There is a total pool of 706 available firms with the City of Wilmington that include bidders and sub-bidders (Level 1). When the pool of prime and sub-bidders is expanded to include informal and non-competitive awardees and formal prime and sub awardees (Level 2), there are a total of 2,593 firms. 268 (10.34 percent) of these firms are DBEs; 37 (1.43 percent) and 12 (0.46 percent) are SBE and VBE firms respectively. Woman-owned firms make up 2.62 percent (68 firms) of the pool, while African American-owned firms represent 122 firms (4.70 percent), Hispanic American-owned 30 firms (1.16 percent) and 19 firms (0.73 percent) are owned by Asian American-owned firms. Firms owned by other race/ethnic groups are less than 1 percent each (0.15 percent Native American-owned firms and 0.96 percent Other MBEs).

Although the percent of Non-DBEs increased significantly from only 497 firms in Level 1 to 2,276 in Level 2, this increase is predominantly due to the incomplete data sources (contract awards and bidder data) utilized to calculate Level 1. Contract awards, containing both bidder and awardee data was most robust for Construction and Construction-Related Services. While African American-owned and Woman-owned firms also have a slightly higher number of available firms under Level 1, their proportions decline due to the disproportionate number of Non-DBEs in Level 2 that includes formal and informal awardees from PO and AP data. For African American-owned firms there is a substantial decline in their availability proportion from 11.61 percent (82 firms) at Level 1 to only 4.70 percent (122 firms) at Level 2.

Table 5.7.
RWASM Availability: Levels 1-2
Total Availability
City of Wilmington
Nationwide, FY 2016 - FY 2020

	Level 1		Level 2	
Race/Ethnicity/Gender	#	%	#	%
<i>Non-DBE</i>	497	70.40	2,276	87.77
African American	82	11.61	122	4.70
Asian American	11	1.56	19	0.73
Hispanic American	22	3.12	30	1.16
Native American	4	0.57	4	0.15
Other MBEs	19	2.69	25	0.96
<i>Total MBE</i>	138	19.55	200	7.71
Woman-Owned (WBEs)	41	5.81	68	2.62
Unknown DBE	-	0.00	-	0.00
Total DBE	179	25.35	268	10.34
SBE	21	2.97	37	1.43
VBE	9	1.27	12	0.46
Grand Total	706	100.00	2,593	100.00

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data, Wilmington Vendor data; Other Minority is a firm identified as MBE, with no specific race/ethnicity identified; Unknown DBE is a firm identified as DBE, with no specific race/ethnicity/gender identified.

5.4.2 MARKETPLACE AVAILABILITY—TOTAL AVAILABILITY

As a benchmark to RWASM Availability in the relevant market and the broadest measure of availability, we present Marketplace Availability using Data Axle data. The limitation of this dataset is that firms in the Data Axle data do not reflect those that may have necessarily expressed interest in bidding with the City. Based on the Marketplace list, as presented in Table 5.8, a total of 59,667 firms are available in Wilmington MSA; 66.20 percent of which are Non-DBE firms. Among the 14,839 DBE firms, 2,851 (or 4.78 percent of total) are Hispanic American-owned firms; 1,800 (3.02 percent of total) are Asian American-owned, 646 (1.08 percent of total) are African American-owned and 31 (0.05 percent) are Native American-owned firms. The majority of DBE firms were WBEs at 14,839 (24.87 percent). There are no SBEs or VBEs that are listed separately using this database. In comparing RWASM Availability for the City of Wilmington, the Marketplace measure for DBEs (33.80 percent) is significantly higher than the Level 2 RWASM measure (10.34 percent), with differences evident in the minority group availability proportions.

Table 5.8. Data Axle Availability Total Availability Wilmington MSA, 2021		
Ethnicity	#	%
Non-DBE	39,500	66.20
African American	646	1.08
Asian American	1,800	3.02
Hispanic American	2,851	4.78
Native American	31	0.05
Other MBEs	-	0.00
<i>Total MBE</i>	<i>5,328</i>	<i>8.93</i>
Woman-Owned (WBEs)	14,839	24.87
Unknown DBE	-	0.00
Total DBE	20,167	33.80
SBE	-	0.00
VBE	-	0.00
Grand Total	59,667	100.00

Source: Data Axle, 2021; M³ Consulting.

5.5 AVAILABILITY IN ARCHITECTURE AND ENGINEERING

5.5.1 RWASM AVAILABILITY IN ARCHITECTURE AND ENGINEERING

The availability in Architecture & Engineering Services is displayed in Table 5.9. Using Level 2 to define availability, the relevant market includes a very limited number of firms available to the City; a majority of these being Non-DBE firms. Only eleven DBE firms, 2 SBE firms and 1 VBE firm were available for A&E work with the City. These firms accounted for 17.19 percent, 3.13 percent, and 1.56 percent respectively. Among the minority- and Woman-owned A&E firms were 6 African American-owned firms, 2 WBEs, one Asian American-owned and one Hispanic American-owned firm available.

Table 5.9. RWASM Availability: Levels 1-2 Architecture and Engineering City of Wilmington Nationwide, FY 2016-FY 2020				
	Level 1		Level 2	
Race/Ethnicity/ Gender	#	%	#	%
<i>Non-DBE</i>	4	57.14	50	78.13
African American	2	28.57	6	9.38
Asian American	-	0.00	1	1.56
Hispanic American	-	0.00	1	1.56
Native American	-	0.00	-	0.00
Other MBEs	-	0.00	1	1.56
<i>Total MBE</i>	2	28.57	9	14.06
Woman-Owned (WBEs)	-	0.00	2	3.13
Unknown DBE	-	0.00	-	0.00
Total DBE	2	28.57	11	17.19
SBE	-	0.00	2	3.13
VBE	1	14.29	1	1.56
Grand Total	7	100	64	100

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data, Wilmington Vendor data; Relevant Market—Nationwide; Other Minority is a firm identified as MBE, with no specific race/ethnicity identified; Unknown DBE is a firm identified as DBE, with no specific race/ethnicity/gender identified

5.5.2 MARKETPLACE AVAILABILITY—ARCHITECTURE AND ENGINEERING

Table 5.10 below depicts A&E Marketplace Availability for the Wilmington MSA in 2021. There were 1,417 A&E firms, of which 933 were Non-DBE firms representing 65.84 percent of the total. 385 WBEs made up 27.17 percent of A&E firms. A total of 99 Minority-owned firms made up the remaining A&E firms, with

25 African American-owned (1.76 percent), 35 Asian American-owned (2.47 percent), 38 Hispanic American-owned (2.68 percent) and 1 Native-American owned firm.

Table 5.10.		
Data Axle Availability		
Architecture and Engineering		
Wilmington MSA, 2021		
Ethnicity	#	%
Non-DBE	933	65.84
African American	25	1.76
Asian American	35	2.47
Hispanic American	38	2.68
Native American	1	0.07
Other MBEs	-	0.00
<i>Total MBE</i>	99	6.99
Woman-Owned (WBEs)	385	27.17
Unknown DBE	0	0.00
Total DBE	484	34.16
SBE	0	0.00
VBE	0	0.00
Grand Total	1,417	100

Source Data Axle, 2021; M³ Consulting.

5.6 AVAILABILITY IN CONSTRUCTION AND CONSTRUCTION-RELATED SERVICES

5.6.1 RWASM AVAILABILITY IN CONSTRUCTION AND CONSTRUCTION-RELATED SERVICES

Level 1 and Level 2 RWASM Availability estimates for Construction and Construction-Related Services are displayed in Table 5.11 for the Wilmington MSA. Considering Level 2 to measure RWASM Availability, which includes both bidders/sub-bidders and formal/informal awardees, 370 construction contractors were available to the City of Wilmington for fiscal years 2016 through 2020. Among these, 117 (31.62 percent) were DBEs, with minority firms accounting for 88 firms (23.78 percent) and 29 (7.84 percent) WBEs. In addition, there were 11 (2.97 percent) SBEs and 4 (1.08 percent) VBEs of the total construction firms.

African American-owned construction companies amounted to 60 (16.22 percent) of the 370 firms; 8 Asian American- and 13 Hispanic American-owned firms accounted for 2.16 percent and 3.5 percent respectively, with one Native American-owned firm accounting for 0.27 percent and 6 (1.62 percent) Other MBE-owned construction firms.

Table 5.11.

RWASM Availability: Levels 1-2

Construction and Construction-Related Services

City of Wilmington

Wilmington MSA, FY 2016 - FY 2020

	Level 1		Level 2	
Race/Ethnicity/ Gender	#	%	#	%
<i>Non-DBE</i>	186	60.98	238	64.32
African American	56	18.36	60	16.22
Asian American	7	2.30	8	2.16
Hispanic American	13	4.26	13	3.51
Native American	1	0.33	1	0.27
Other MBEs	6	1.97	6	1.62
<i>Total MBE</i>	83	27.21	88	23.78
Woman-Owned (WBEs)	22	7.21	29	7.84
Unknown DBE	-	0.00	-	0.00
Total DBE	105	34.43	117	31.62
SBE	10	3.28	11	2.97
VBE	4	1.31	4	1.08
Grand Total	305	100.00	370	100

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data, Wilmington Vendor data; Relevant Market— Wilmington MSA; Other Minority is a firm identified as MBE, with no specific race/ethnicity identified; Unknown DBE is a firm identified as DBE, with no specific race/ethnicity/gender identified.

5.6.2 MARKETPLACE AVAILABILITY—CONSTRUCTION AND CONSTRUCTION-RELATED SERVICES

Table 5.12 below depicts Construction Marketplace Availability for the MSA in 2021. There were 5,470 construction firms in the MSA. Non-DBE construction firms represented 86.27 percent of the total. In comparison to the RWASM DBE availability at 31.62 percent, the Marketplace Availability of Construction and Construction-related firms in Table 5.12 shows a much smaller percentage of DBE firms at 13.73 percent in the MSA.

DBE firms include 488 WBEs (8.92 percent), 192 (3.51 percent of total) Hispanic American-owned firms with roughly 0.6 percent Asian American-owned and African American-owned construction firms that include those that may or may not have bid with the City of Wilmington. The Marketplace indicates that there is a larger pool of DBE contractors in this procurement category at 751 firms, as compared to RWASM at 117 firms. These firms may potentially be available to the City through outreach. African American-owned and Asian American-owned firms have lower availability percentages in the Marketplace relative

to RWASM, whereas Hispanic American-owned firms are proportionately the same in the Marketplace Availability measure (3.51 percent) compared to RWASM (3.51 percent).

Table 5.12.
Data Axle Availability
Construction and Construction-Related Services
Wilmington MSA, 2021

Ethnicity	#	%
Non-DBE	4,719	86.27
African American	36	0.66
Asian American	34	0.62
Hispanic American	192	3.51
Native American	1	0.02
Other MBEs	-	0.00
<i>Total MBE</i>	<i>263</i>	<i>4.81</i>
Woman-Owned (WBEs)	488	8.92
Unknown DBE	0	0.00
Total DBE	751	13.73
SBE	0	0.00
VBE	0	0.00
Grand Total	5,470	100

Source: Data Axle, 2021; M³ Consulting

5.7 AVAILABILITY IN PROFESSIONAL SERVICES

5.7.1 RWASM AVAILABILITY IN PROFESSIONAL SERVICES

The availability in Professional Services is displayed in Table 5.13. The assessment of Level 2 RWASM Availability shows that there were 383 firms in this procurement category Nationwide from 2016 to 2020.

Non-DBEs represent 86.68 percent or 332 firms. There were 44 DBEs (11.49 percent) of total firms in this category during the study period, including 23 African American-owned firms that accounted for 6.01 percent and 8 WBEs representing 2.09 percent respectively of the total Professional Services firms during the study period. There were 5 (1.31 percent) Asian American-owned firms, 6 (1.57 percent) Hispanic American-owned firms, 4 (1.04 percent) SBEs and 3 (0.78 percent) VBE firms actively available to the City.

Table 5.13. RWASM Availability: Levels 1-2 Professional Services City of Wilmington Nationwide, FY 2016 - FY 2020				
	Level 1		Level 2	
Race/Ethnicity/ Gender	#	%	#	%
<i>Non-DBE</i>	23	76.67	332	86.68
African American	4	13.33	23	6.01
Asian American	-	0.00	5	1.31
Hispanic American	-	0.00	6	1.57
Native American	-	0.00	-	0.00
Other MBEs	1	3.33	2	0.52
<i>Total MBE</i>	5	16.67	36	9.40
Woman-Owned (WBEs)	2	6.67	8	2.09
Unknown DBE	-	0.00	-	0.00
Total DBE	7	23.33	44	11.49
SBE	-	0.00	4	1.04
VBE	-	0.00	3	0.78
Grand Total	30	100	383	100

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data, Wilmington Vendor data; Relevant Market—Nationwide; Other Minority is a firm identified as MBE, with no specific race/ethnicity identified; Unknown DBE is a firm identified as DBE, with no specific race/ethnicity/gender identified.

5.7.2 MARKETPLACE AVAILABILITY—PROFESSIONAL SERVICES

The Marketplace Availability for Professional Service firms in Table 5.14 shows a higher number and proportionately larger percentage of DBE firms at 5,888 (37.97 percent) firms in the Wilmington MSA

compared to the 44 RWASM DBE availability of 11.49 percent. There were 15,505 Professional Service firms and the vast majority of these companies were Non-DBEs, accounting for 62.03 percent.

WBEs had the highest levels of availability among DBEs at 29.15 percent, followed by Hispanic American-owned firms at 3.92, Asian American-owned firms at 3.82 percent and African American-owned firms at 1 percent. There were 3 (0.02 percent) Native American-owned firms that also were included in the pool of DBE firms in the marketplace.

Table 5.14.
Data Axle Availability
Professional Services
Wilmington MSA, 2021

Ethnicity	#	%
Non-DBE	9,617	62.03
African American	165	1.06
Asian American	592	3.82
Hispanic American	608	3.92
Native American	3	0.02
Other MBEs	-	0.00
<i>Total MBE</i>	<i>1,368</i>	<i>8.82</i>
Woman-Owned (WBEs)	4,520	29.15
Unknown DBE	0	0.00
Total DBE	5,888	37.97
SBE	0	0.00
VBE	0	0.00
Grand Total	15,505	100

Source: Data Axle, 2021; M³ Consulting

5.8 AVAILABILITY IN NON-PROFESSIONAL SERVICES

5.8.1 RWASM AVAILABILITY IN NON-PROFESSIONAL SERVICES

When assessing availability at the RWASM Level 2, 884 Non-professional firms were available to the City, within the MSA. Non-DBE firms accounted for a majority (86.65 percent) of the total firms that included both formal and informal firms that were awarded contracts and paid by the City. There were 23 WBE firms available at 2.6 percent. Further, 77 minority firms accounted for 8.71 percent of Non-Professional Service firms in the MSA that were ready, willing and able to do business with the City. Fifty-nine (6.67 percent) of the minority firms were African American-owned firms. There were 3 Asian American- (0.34 percent) and 11 Hispanic American-owned (1.24 percent) firms in this procurement category available to the City of Wilmington. The remaining MBEs included 1 (0.11 percent) Native American-owned firm and 3 (0.34 percent) Other MBEs. In addition, 14 SBEs (1.58 percent) and 4 (0.45 percent) VBE firms.

Table 5.15.
RWASM Availability: Levels 1-2
Non-Professional Services
City of Wilmington
Wilmington MSA, FY 2016-FY 2020

	Level 1		Level 2	
Race/Ethnicity/ Gender	#	%	#	%
<i>Non-DBE</i>	92	73.60	766	86.65
African American	20	16.00	59	6.67
Asian American	-	0.00	3	0.34
Hispanic American	4	3.20	11	1.24
Native American	1	0.80	1	0.11
Other MBEs	1	0.80	3	0.34
<i>Total MBE</i>	26	20.80	77	8.71
Woman-Owned (WBEs)	6	4.80	23	2.60
Unknown DBE	-	0.00	-	0.00
Total DBE	32	25.60	100	11.31
SBE	-	0.00	14	1.58
VBE	1	0.80	4	0.45
Grand Total	125	100.00	884	100

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data, Wilmington Vendor data; Relevant Market— Wilmington MSA; Other Minority is a firm identified as MBE, with no specific race/ethnicity identified; Unknown DBE is a firm identified as DBE, with no specific race/ethnicity/gender identified.

5.8.2 MARKETPLACE AVAILABILITY— NON-PROFESSIONAL SERVICES

The Marketplace Availability for Non-Professional Service firms is shown in Table 5.16. Non-DBE firms accounted for 67.38 percent of the total 25,765 firms in the MSA. DBEs represented 36.13 percent of the total, with 27.97 percent of DBE firms being WBEs. Hispanic American-owned firms represented the largest proportion of minority firms at 5.09 percent (1,311 firms), followed by Asian American-owned firms that represented 1.90 percent (490 firms), while 285 African American-owned firms represented 1.11 percent and the remaining 17 Native American-owned firms represented 0.07 percent.

Due to WBE representation, Table 5.16 shows a higher percentage of DBE firms at 36.13 percent, compared to RWASM availability of 11.31 percent in Table 5.15, with WBE representation of only 2.60 percent. The differences in availability percentages in the City of Wilmington's RWASM compared to Marketplace Availability is also visible among MBEs. The RWASM measure includes a larger proportion of African American-owned firms, whereas the Marketplace shows a greater proportion of Hispanic American-owned firms. This may imply that Hispanic American-owned firms are not participating formally or informally in the City's bidding process and greater outreach may be warranted.

The larger pool of firms in the Marketplace provides an indication of potentially available firms that the City can reach out to for the services that they offer. While these firms fall into NAICS codes representing City products, through outreach efforts, the City of Wilmington could determine if these firms provide services utilized by the City and meet RWASM requirements and encourage them to bid on Non-Professional Service contracts.

Table 5.16. Data Axle Availability Non-Professional Services Wilmington MSA, 2021		
Ethnicity	#	%
Non-DBE	16,455	63.87
African American	285	1.11
Asian American	490	1.90
Hispanic American	1,311	5.09
Native American	17	0.07
Other MBEs	-	0.00
<i>Total MBE</i>	<i>2,103</i>	<i>8.16</i>
Woman-Owned (WBEs)	7,207	27.97
Unknown DBE	0	0.00
Total DBE	9,310	36.13
SBE	0	0.00
VBE	0	0.00
Grand Total	25,765	100

Source: Data Axle, 2021; M³ Consulting

5.9 AVAILABILITY IN GOODS & SUPPLIES

5.9.1 RWASM AVAILABILITY IN GOODS & SUPPLIES

Using Level 2 to define availability, the relevant market includes a total of 935 Goods & Supplies vendors that attempted to or presently do business with the City of Wilmington; 77 (8.24 percent) of these firms are DBEs, which include 22 (2.35 percent) WBEs, 34 (3.64 percent) African American-owned firms, four (0.43 percent) Asian American-owned firms and 10 (1.07) Hispanic American-owned firms. In addition, there were 11 SBEs (1.18 percent) and 4 (0.43 percent) VBEs.

Table 5.17.
RWASM Availability: Levels 1-2
Goods & Supplies
City of Wilmington
Nationwide, FY 2016 - FY 2020

	Level 1		Level 2	
Race/Ethnicity/Gender	#	%	#	%
<i>Non-DBE</i>	145	75.52	843	90.16
African American	26	13.54	34	3.64
Asian American	1	0.52	4	0.43
Hispanic American	5	2.60	10	1.07
<i>Native American</i>	-	0.00	-	0.00
<i>Other MBEs</i>	2	1.04	7	0.75
Total MBE	34	17.71	55	5.88
Woman-Owned (WBEs)	6	3.13	22	2.35
Unknown DBE	-	0.00	-	0.00
Total DBE	40	20.83	77	8.24
SBE	5	2.60	11	1.18
VBE	2	1.04	4	0.43
Grand Total	192	100	935	100

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data, Wilmington Vendor data; Relevant Market—Nationwide; Other Minority is a firm identified as MBE, with no specific race/ethnicity identified; Unknown DBE is a firm identified as DBE, with no specific race/ethnicity/gender identified.

5.9.2 MARKETPLACE AVAILABILITY – GOODS & SUPPLIES

Using the marketplace to define availability, there were 11,510 Goods & Supply firms in the MSA, and Non-DBEs represented 67.56 percent. DBE suppliers represent 32.44 percent of total Goods and Supply firms, which is considerably higher than the Level 2 RWASM availability percentage of 8.24 percent. WBEs account for most of the DBE availability at 19.45 percent. Total MBE firms included 135 (1.17 percent)

African American-owned firms, 649 (5.64 percent) and 702 (6.10 percent) Asian American- and Hispanic American-owned respectively, while 9 Native American-owned MBEs represented 0.08 percent.

Table 5.18.		
Data Axle Availability		
Goods & Supplies		
Wilmington MSA, 2021		
Ethnicity	#	%
Non-DBE	7,776	67.56
African American	135	1.17
Asian American	649	5.64
Hispanic American	702	6.10
Native American	9	0.08
Other MBEs	-	0.00
<i>Total MBE</i>	<i>1,495</i>	<i>12.99</i>
Woman-Owned (WBEs)	2,239	19.45
Unknown DBE	0	0.00
Total DBE	3,734	32.44
SBE	0	0.00
VBE	0	0.00
Grand Total	11,510	100

Source: Data Axle, 2021; M³ Consulting

5.10 SUMMARY OF FINDINGS

Table 5.19 below summarizes the availability estimates for DBEs within the relevant market for the City of Wilmington. It provides the estimates along with the source of the information. M³ Consulting places emphasis on the availability estimates, based on bidders, sub-bidders, and awardees data at Level 2 of the RWASM model. The tables and the discussion are presented for the relevant markets by procurement type for all industries.

M³ Consulting typically places credence on RWASM estimates derived from bidders, sub-bidders, and awardees in that order of importance. Marketplace Availability measures, based on Data Axle, are presented as a benchmark of minority- and woman-owned firm availability and for the City of Wilmington to consider potentially available firms for outreach purposes.

For A&E, the RWASM availability of Total MBEs was at 14.06 percent, while WBE and SBE availability was at only 3.13 percent, for Total DBE availability of 17.09. Total DBE Marketplace Availability for A&E was significantly higher in proportion at 34.16 percent that included WBEs at 27.17 percent and MBEs at 6.99 percent.

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

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

DBE availability based on RWASM Availability was at 11.31 percent for Non-Professional Services, in comparison to the Marketplace Availability at 36.13 percent. The RWASM pool reflected a pool of 844 firms; Marketplace however reflected a pool of 25,765 firms. African American-owned firms followed by WBEs, under RWASM Availability reflected the highest availability at 6.67 percent and 2.60 percent respectively. In comparison, based on Marketplace Availability, WBEs had the highest availability at 27.97 percent, and African American-owned firms were barely represented, reflecting less than 1.2 percent. Hispanic American-owned firms had the highest presence among MBEs at 5.09 percent in Marketplace Availability, but they were barely represented within the RWASM availability with only 11 firms at 1.24

percent. This presents a window of opportunity for the City of Wilmington to consider potentially available Hispanic American-owned firms for outreach purposes.

For Goods & Supplies, DBE RWASM Availability represented only 8.24 percent, while Marketplace Availability for DBEs reflected 37.97 percent. For RWASM, both African American-owned firms and WBEs represented 3.64 percent and 2.35 percent respectively. For Marketplace, DBE availability was driven by WBEs at 29.15, followed by Asian American-owned firms at 3.82 percent and Hispanic American-owned firms at 3.92 percent. As in the case of Non-Professional firms, the City of Wilmington could conduct outreach out to these two groups that are well-represented based on Marketplace but are lowly represented in RWASM availability.

Except for Construction, DBEs reflect a lower proportion of bidders and awardees in City of Wilmington's procurement process, as noted in the RWASM measures for A&E, Professional and Non-Professional Services compared to Marketplace Availability, largely due to high WBE representations in Marketplace. These proportions change for MBEs in A&E, Construction and Non-Professional Services, with higher RWASM Availability than Marketplace.

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

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Table 5.19.
Summary Table - RWASM Level 2 Availability Percentage Participation
City of Wilmington
Relevant Market; FY 2016 – FY 2020

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

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data, Wilmington Vendor data; Other Minority is a firm identified as MBE, with no specific race/ethnicity identified; Unknown DBE is a firm identified as DBE, with no specific race/ethnicity/gender identified.

¹Nationwide

²Wilmington MSA Area

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Table 5.20.
Data Axle Availability
Wilmington MSA, 2021

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

Source: Data Axle, 2021; M³ Consulting

CHAPTER 6: STATISTICAL ANALYSIS OF DBE UTILIZATION

6.1 INTRODUCTION

This chapter presents the utilization of Disadvantaged Business Enterprise (DBEs) by the City of Wilmington (the City) in the procurement categories of Architecture and Engineering; Construction and Construction-Related Services; Goods and Supplies; Professional Services; and Non-Professional Services. Utilization is measured and analyzed using contract awards, purchase order awards, and payments to Disadvantaged Business Enterprises (DBEs) from the City for the period FY 2016 — FY 2020.²⁸⁰ This covers the universe of all dollars and contracts awarded and paid by the City of Wilmington.

DBE utilization in each of the major procurement categories listed above are discussed separately. Utilization tables are presented for the relevant market in each procurement category. The overall tables are presented in the Appendix A. Within each procurement category section, tables and discussions are presented to cover the data source, upon which M³ Consulting relies for conclusions and recommendations; tables representing other data sources considered are reflected in Appendix A. DBE utilization is also broken down by specific race, ethnicity and gender and is hereinafter referred to in text and tables as Disadvantaged Business Enterprises (DBEs) when discussing overall levels of participation for MBEs and WBEs.

Contract awards data reflects both prime and subcontractor award dollars, to the degree available.²⁸¹ Accounts payable and purchase order data reflect prime vendor/contractor PO and payments only.

The final section of this chapter covers threshold analysis and top ten awardees to further decipher any patterns in utilization of DBEs.

The following are some salient features of the overall chapter presentation:

- Utilization will be presented using the data collected from the City of Wilmington’s Financial ERP System.
- The tables and discussions within the body of the chapter cover data pertaining to firms located within the relevant market for each procurement type.

²⁸⁰ The City of Wilmington’s fiscal years run from July 1 to July 150, so FY 2016 runs from July 1, 2016 to July 150, 2017.

²⁸¹ The calculation of “prime + subcontractor awards data” reflects a reduction of the Prime Contractor award dollars by any subcontractor dollars. Subcontractor dollars are placed into the appropriate race/ethnicity/gender category.

6.2 TOTAL UTILIZATION BASED ON CONTRACT AWARDS, PURCHASE ORDERS AND PAYMENTS

This section provides a summary of total contract awards (Table 6.1), purchase orders (POs) (Table 6.2) and payments (AP) (Table 6.3) by race/ethnic/gender group for the period FY 2016—FY 2020, by procurement category. This view provides an overall picture of utilization of Disadvantaged Business Enterprises by Wilmington. The analysis is then detailed by each procurement type by year.

Architecture & Engineering

The analysis of Contract Awards is displayed in Table 6.1. The majority of the A&E contract dollars went to VBE firms, at \$375,000 (68.80 percent) of the total \$545,055 paid during the study period by the City. The remaining awards were divided among African American-owned firms at 4.22 percent and Non-DBEs that received 26.98 percent of the dollars. We note that Contract Awards data is most robust for Construction and Construction-Related data and is fairly incomplete for the other procurement categories.

Examining the PO dollars in Table 6.2 and Accounts Payable data in Table 6.3, in contrast to Contract Awards, SBEs received only 3.07 percent of the total A&E PO dollars and were paid only 3.66 percent of the total dollars. The majority of the payments were made to Non-DBE firms that were cut over \$12 million in POs (78.42 percent) and received about \$7.87 million (76.68 percent) of total payments for the study period. Among MBEs, African American-owned firms received the largest POs for about \$1.65 million (10.68 percent) and were paid about \$1.36 million (or 13.21 percent); Hispanic American-owned firms received \$529,600 (3.44 percent) and were paid \$429,600 (4.18 percent); Asian American-owned firms were paid only \$39,505 (0.38 percent) having received about twice that amount for \$70,000 (0.45 percent) and WBEs were cut a little over \$400,000 in POs, but received only \$79,986 (0.78 percent) in payments.

Construction and Construction-Related Services

Over \$69.8 million in contract dollars were awarded to Construction and Construction-Related Service contractors for the study period of FY 2016—FY 2020. Non-DBEs received 73.10 percent of these contract dollars awarded by the City of Wilmington during the study period. African American-owned firms received 11.23 percent (\$7.85 million) of the total dollars awarded during the study period and WBEs received 11.48 percent (\$8.02 million), while a little over \$1.29 million (1.86 percent) of these dollars were paid to SBE firms. The other minority groups were not very successful in securing contracting dollars in Construction and Construction-Related Services, receiving less than 1 percent of the dollars in this procurement type for the entire study period.

Over \$143.7 million in POs was cut to construction contractors to the City of Wilmington and \$82.97 million was made in payments for the study period. The majority of these dollars were to Non-DBEs and WBEs with 71.79 percent and 23.33 percent in POs respectively and 59.48 percent and 34.65 percent in payments made respectively. SBEs received about 2.49 percent in POs and were paid about 2.94 percent of the total dollars. All MBEs received \$1 million or less in POs, accounting for less than 1 percent of the dollars invoiced by each of the minority groups; they were paid no more than \$800,000, which accounted for less than 1 percent of the dollars each paid to Minority construction contractors for the entire study period.

Professional Services

Contract awards reflected only \$385,067 in Professional Services. These dollars were divided between three groups – African American-owned firms receiving 32.59 percent, WBEs receiving 16.94 percent and Non-DBEs receiving 49.17 percent. A very small remnant of 1.3 percent went to Other MBEs.

In contrast to Contract Awards, POs for Professional Services reflected \$64.86 million, of which 92.32 percent (\$159.8 million) went to Non-DBEs. DBEs received 7.22 percent of PO dollars, of which 6.67 percent were cut to MBEs and 0.55 (\$358,501) percent to WBEs. Among MBEs, African American-owned firms received the highest level of POs at \$2.1 million (3.35 percent), followed by Asian American-owned firms at \$1.5 million (2.42 percent) and Hispanic American-owned firms at \$545,600 (0.55 percent).

Payments amounted to \$48.39 million, of which 93.16 percent (\$45.09 million) were made to Non-DBEs. While Asian American-owned firms received the second highest proportion of POs among DBEs, they received the highest proportion of payments at 2.68 percent (\$1.29 million), followed by African American-owned firms at 2.34 percent (\$1.13 million). Hispanic American-owned firms and WBEs each received less than 1 percent of payments.

Non-Professional Services

Almost \$39 million was awarded to Non-Professional firms by the City of Wilmington over the study period, based on Contract Awards in table 6.1. Non-DBEs received 93.60 percent of contract awards. DBEs received \$792,523 or 5.7 percent of these dollars. African American- and Hispanic American-owned firms received 3.56 percent and 0.69 percent respectively and WBE firms received the remaining 1.46 percent.

\$244.42 million was cut in POs for the study period. 87.75 percent (\$214.48 million) of this amount was cut to Non-DBEs, while 10.53 percent (\$25.74 million) was cut to DBEs. WBEs received more POs at 6.94 percent (\$16.97 million) than MBEs, who received 3.50 percent. African American-owned firms received the highest amount of PO dollars among MBEs at \$6.2 million (2.55 percent).

Non-DBEs received 88.18 percent (\$163.59 million) of the \$185.53 million paid to Non-Professional Services firms. DBEs were paid 10.19 percent (\$18.91 million), with WBEs receiving 6.48 percent (\$12.02

million), followed by African American-owned firms at 2.47 percent (\$4.58 million). Hispanic American-owned firms and Asian American-owned firms each reached less than one percent of payments.

Goods and Supplies

Goods and Supplies' firms received almost \$24.7 million in contract awards from the City of Wilmington for the study period (Table 6.1). Non-DBEs were awarded almost 98 percent of the dollars. WBEs received 1.27 percent and Hispanic American-owned firms, the only MBE group to receive contract awards, secured only \$40,000 (0.16 percent). DBEs represented \$353,891 (1.43 percent) of awards over the five years of the study period.

Suppliers received over \$80 million in POs for the study period, 93.26 percent of which was to Non-DBEs. DBEs received 5.59 percent of the total POs, of which WBEs represented 1.64 percent (about \$1.3 million) and MBEs represented a total of 3.95 percent amounting to a little over \$3 million. SBEs and VBEs had POs worth \$826,199 (1.03 percent) and \$94,518 (0.12 percent) respectively.

Payments to Suppliers from the City of Wilmington was consistent with POs, with close to 94 percent of payments made to Non-DBEs and only 5.02 percent to DBEs. Except for African American-owned firms who were paid about 3.28 percent of the dollars to Suppliers, the remaining groups received less than 1 percent of the payments for the entire study period.

Table 6.1.
Total Utilization
Contract Awards—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	Architecture & Engineering		Construction and Construction-Related Services		Professional Services		Non-Professional Services		Goods and Supplies		Total	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	147,055	26.98	51,089,878	73.10	189,338	49.17	13,012,755	93.60	24,150,317	97.69	88,589,343	80.94
African American	23,000	4.22	7,850,601	11.23	125,510	32.59	494,644	3.56	-	0.00	8,493,755	7.76
Asian American	-	0.00	418,591	0.60	-	0.00	-	0.00	-	0.00	418,591	0.38
Hispanic American	-	0.00	687,429	0.98	-	0.00	95,350	0.69	40,000	0.16	822,779	0.75
Native American	-	0.00	163,000	0.23	-	0.00	-	0.00	-	0.00	163,000	0.15
Other MBE	-	0.00	172,730	0.25	5,000	1.30	-	0.00	-	0.00	177,730	0.16
<i>Total MBE</i>	<i>23,000</i>	<i>4.22</i>	<i>9,292,351</i>	<i>13.29</i>	<i>130,510</i>	<i>33.89</i>	<i>589,994</i>	<i>4.24</i>	<i>40,000</i>	<i>0.16</i>	<i>10,075,855</i>	<i>9.21</i>
WBE	-	0.00	8,023,950	11.48	65,219	16.94	202,529	1.46	313,891	1.27	8,605,589	7.86
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
<i>Total DBE</i>	<i>23,000</i>	<i>4.22</i>	<i>17,316,301</i>	<i>24.77</i>	<i>195,729</i>	<i>50.83</i>	<i>792,523</i>	<i>5.70</i>	<i>353,891</i>	<i>1.43</i>	<i>18,681,443</i>	<i>17.07</i>
SBE	-	0.00	1,299,572	1.86	-	0.00	97,966	0.70	216,158	0.87	1,613,696	1.47
VBE	375,000	68.80	188,545	0.27	-	0.00	-	0.00	-	0.00	563,545	0.51
Grand Total	545,055	100.00	69,894,296	100.00	385,067	100.00	13,903,243	100.00	24,720,366	100.00	109,448,027	100.00

Source: Wilmington Contracts Data, M³ Consulting

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Table 6.2.
Total Utilization
Purchase Orders—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	Architecture & Engineering		Construction and Construction-Related Services		Professional Services		Non-Professional Services		Goods and Supplies		Total	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	12,082,287	78.42	103,233,763	71.79	59,881,684	92.32	214,475,488	87.75	74,808,258	93.26	464,481,480	84.65
African American	1,645,543	10.68	1,050,140	0.73	2,172,511	3.35	6,227,557	2.55	2,269,949	2.83	13,365,700	2.44
Asian American	70,000	0.45	806,528	0.56	1,572,509	2.42	1,766,806	0.72	88,264	0.11	4,304,107	0.78
Hispanic American	529,600	3.44	727,580	0.51	545,600	0.84	403,634	0.17	278,145	0.35	2,484,559	0.45
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	133,635	0.87	623,473	0.43	32,969	0.05	377,068	0.15	532,827	0.66	1,699,972	0.31
Total MBE	2,378,778	15.44	3,207,722	2.23	4,323,588	6.67	8,775,064	3.59	3,169,185	3.95	21,854,337	3.98
WBE	471,603	3.06	33,552,640	23.33	358,501	0.55	16,967,035	6.94	1,314,074	1.64	52,663,853	9.60
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	2,850,380	18.50	36,760,363	25.56	4,682,089	7.22	25,742,099	10.53	4,483,259	5.59	74,518,190	13.58
SBE	473,697	3.07	3,584,044	2.49	106,250	0.16	4,042,921	1.65	826,199	1.03	9,033,111	1.65
VBE	-	0.00	220,167	0.15	196,403	0.30	163,895	0.07	94,518	0.12	674,983	0.12
Grand Total	15,406,365	100.00	143,798,337	100.00	64,866,425	100.00	244,424,403	100.00	80,212,234	100.00	548,707,764	100.00

Source: Wilmington Contracts Data, M³ Consulting

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Statistical Analysis of DBE Utilization

Table 6.3.
Total Utilization
Accounts Payable—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	Architecture & Engineering		Construction and Construction-Related Services		Professional Services		Non-Professional Services		Goods and Supplies		Total	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	7,875,885	76.68	49,349,019	59.48	45,087,911	93.16	163,599,295	88.18	61,687,541	93.93	327,599,650	83.39
African American	1,356,798	13.21	659,379	0.79	1,132,639	2.34	4,580,576	2.47	2,151,212	3.28	9,880,605	2.52
Asian American	39,505	0.38	808,639	0.97	1,296,936	2.68	1,724,454	0.93	81,941	0.12	3,951,475	1.01
Hispanic American	429,400	4.18	481,603	0.58	370,867	0.77	310,379	0.17	150,865	0.23	1,743,114	0.44
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	112,989	1.10	289,752	0.35	25,969	0.05	271,476	0.15	314,314	0.48	1,014,500	0.26
<i>Total MBE</i>	<i>1,938,693</i>	<i>18.88</i>	<i>2,239,374</i>	<i>2.70</i>	<i>2,826,411</i>	<i>5.84</i>	<i>6,886,885</i>	<i>3.71</i>	<i>2,698,333</i>	<i>4.11</i>	<i>16,589,695</i>	<i>4.22</i>
WBE	79,986	0.78	28,746,425	34.65	229,538	0.47	12,024,741	6.48	598,381	0.91	41,679,071	10.61
Unknown DBE	-	0.00	-	0.0	-	0.00	-	0.00	-	0.00	90,340,473	23.00
<i>Total DBE</i>	<i>2,018,678</i>	<i>19.65</i>	<i>30,985,799</i>	<i>37.34</i>	<i>3,055,949</i>	<i>6.31</i>	<i>18,911,626</i>	<i>10.19</i>	<i>3,296,713</i>	<i>5.02</i>	<i>148,609,239</i>	<i>37.83</i>
SBE	376,332	3.66	2,440,790	2.94	97,380	0.20	2,907,573	1.57	624,402	0.95	6,446,477	1.64
VBE	-	0.00	194,534	0.23	155,624	0.32	116,755	0.06	65,930	0.10	532,843	0.14
Grand Total	10,270,895	100.00	82,970,142	100.00	48,396,863	100.00	185,535,249	100.00	65,674,586	100.00	392,847,735	100.00

Source: Wilmington Contracts Data, M³ Consulting

6.3 UTILIZATION BY PROCUREMENT TYPE

The tables on the following pages summarize the relevant contract award, purchase order and payments data by procurement type within the relevant market. The relevant market or the geographic area where Wilmington vendors are located is the City of Wilmington, Wilmington MSA, the State of Delaware, and Nationwide (All Counties). The relevant market, as was discussed in the Availability Section, is the Nationwide for Architecture and Engineering, Professional Services, and Goods and Supplies; and Wilmington MSA for Construction and Construction-Related Services and Non-Professional Services. The table below summarizes this information for each procurement type:

Table 6.4. Summary of Relevant Market Determination				
	City	MSA	State	Nationwide
Architecture and Engineering				✓
Construction and Construction-Related Services		✓		
Professional Services				✓
Non-Professional Services		✓		
Goods and Supplies				✓

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data

6.4 ARCHITECTURE AND ENGINEERING UTILIZATION

For Architecture and Engineering utilization, DBE utilization is presented in this section using dollars for purchase orders by year and for the study period (Table 6.5), as well as for contract awards, purchase orders and payments for the study period (Table 6.6). Counts of purchase orders, contract awards and payments are reflected in Appendix A. The relevant market for Architecture and Engineering is Nationwide.

6.4.1 Architecture and Engineering Utilization Based on Purchase Orders

A total of \$15.4 million in POs was cut to A&E contractors, with about \$2.4 million or greater each year. Over 71 percent of the PO dollars went to Non-DBEs across the years. FY 2019 reflected the highest value of POs for the study period, at about \$4.25 million. Non-DBEs received their greatest proportion of dollars at 87.02 percent in this year. FY 2020 saw a drop in the total PO dollars to \$3.0 million and a drop in the Non-DBE proportion to 71.43 percent of the total.

MBE PO dollars reflected a reducing proportion each year from 24.84 percent in FY 2016 to 10.14 percent in FY 2019. WBEs were hardly utilized in this procurement type, with only \$40,000 (1.67 percent) in POs cut in FY 2018 and \$431,603 (14.37 percent) in FY 2020. SBEs received at least 2.8 percent of the total dollars each year in A&E POs, but the amount never exceeded \$120,597 in any year.

6.4.2 Architecture and Engineering Utilization Comparison

In comparing Contract Awards, POs and Payments, A&E Contract Awards resulted in only \$545,055 in contract awards, in contrast to POs and Payments that reflect over \$15.4 million and \$10.27 million respectively. As such, POs and Payments are more representative of the utilization of firms in this procurement category. POs and Payments data point to a majority of dollars going to Non-DBEs as discussed above. DBEs received about \$2.85 million accounting for 18.5 percent of POs and were paid about \$2.01 million or 19.65 percent of all payments. African American-owned firm receive a majority of the dollars paid among DBEs.

Table 6.5.
Architecture & Engineering Utilization
Purchase Order—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	1,857,719	71.84	2,413,610	76.24	1,967,873	81.92	3,698,189	87.02	2,144,897	71.43	12,082,287	78.42
African American	642,294	24.84	659,565	20.83	173,684	7.23	170,000	4.00	-	0.00	1,645,543	10.68
Asian American	-	0.00	-	0.00	-	0.00	-	0.00	70,000	2.33	70,000	0.45
Hispanic American	-	0.00	-	0.00	132,000	5.50	198,000	4.66	199,600	6.65	529,600	3.44
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	-	0.00	-	0.00	-	0.00	63,000	1.48	70,635	2.35	133,635	0.87
Total MBE	642,294	24.84	659,565	20.83	305,684	12.73	431,000	10.14	340,235	11.33	2,378,778	15.44
WBE	-	0.00	-	0.00	40,000	1.67	-	0.00	431,603	14.37	471,603	3.06
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	642,294	24.84	659,565	20.83	345,684	14.39	431,000	10.14	771,838	25.70	2,850,380	18.50
SBE	85,784	3.32	92,639	2.93	88,500	3.68	120,597	2.84	86,178	2.87	473,697	3.07
VBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Grand Total	2,585,796	100.00	3,165,813	100.00	2,402,057	100.00	4,249,787	100.00	3,002,912	100.00	15,406,365	100.00

Source: Wilmington Purchase Order Data, M³ Consulting

Chapter VI

Statistical Analysis of DBE Utilization

Table 6.6.
Architecture & Engineering Utilization
Comparison
Contract Awards, Purchase Orders, Payments—Dollars
City of Wilmington
Nationwide, For the Period FY 2016 – FY 2020

	Contract Awards		Purchase Orders		Payments	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%
Non-DBE	147,055	26.98	12,082,287	78.42	7,875,885	76.68
African American	23,000	4.22	1,645,543	10.68	1,356,798	13.21
Asian American	-	0.00	70,000	0.45	39,505	0.38
Hispanic American	-	0.00	529,600	3.44	429,400	4.18
Native American	-	0.00	-	0.00	-	0.00
Other MBE	-	0.00	133,635	0.87	112,989	1.10
Total MBE	23,000	4.22	2,378,778	15.44	1,938,693	18.88
WBE	-	0.00	471,603	3.06	79,986	0.78
Unknown DBE	-	0.00	-	0.00	-	0.00
Total DBE	23,000	4.22	2,850,380	18.50	2,018,678	19.65
SBE	-	0.00	473,697	3.07	376,332	3.66
VBE	375,000	68.80	-	0.00	-	0.00
Grand Total	545,055	100.00	15,406,365	100.00	10,270,895	100.00

Source: Wilmington MUNIS Data, M³ Consulting,

6.5 CONSTRUCTION AND CONSTRUCTION-RELATED SERVICES UTILIZATION

In the area of Construction and Construction-Related Services, DBE utilization is presented in this section using dollars for Contract Awards by year and for the study period (Table 6.7), as well as for contract awards, purchase orders and payments for the study period (Table 6.8). Counts of purchase orders, contract awards, and payments are reflected in Appendix A. The relevant market for Construction and Construction-Related Services is the Wilmington MSA.

6.5.1 Construction and Construction-Related Services Utilization Based on Contract Awards

A total of \$64 million was awarded in construction contracts by the City of Wilmington during FY 2016-2020 as reflected in Table 6.7; 26.19 percent of these dollars or \$17 million were awarded to DBE firms, 0.96 percent (\$621,907) to SBEs and 0.24 percent (155,950) to VBEs. Among DBEs, African American-owned firms and WBEs took the giant share of the award dollars, receiving 11.65 percent (\$7.5 million) and 12.36 percent (\$8.02 million) respectively. The remaining MBEs received at or less than 1 percent of the total awards.

FY 2016 showed Non-DBEs receiving over 96 percent of the dollars. This was flipped the following year, FY 2017, with WBEs receiving over 56 percent of the dollars and MBEs receiving about 17 percent of the awards, reducing the share of award dollars to Non-DBEs to just 26.61 percent. This pattern from FY 2017 continued the following year, although Non-DBEs received 57.5 percent, while DBEs received most of the remaining dollars for that year, with WBEs at 17.10 percent and MBEs at 20.97 percent. FY 2019 showed an increase in award dollars to Non-DBEs; WBEs share of contract awards dropped dramatically to 0.41 percent, while MBEs received 14.12 percent. The following year reversed that pattern again with WBEs taking a close second to Non-DBEs at 25.13 percent.

Among the minority firms in this procurement category, African American-owned firms received almost 10 percent or more of contract awards every year, except for FY 2016. Hispanic American-owned firms received a maximum of 3.04 percent of the dollars in FY 2020, which was the highest they receive in the 5-year study period. Asian American-owned firms received awards in Construction and Construction-Related Services only in FY 2018 for 3.94 percent or \$418,591. SBEs received contract award dollars in three of the five years, whereas SDV/VOPEs received dollars only in 3 of the 5 years that ranged from 0.16 percent to 1.91 percent of the total dollar awards for that year.

M³ Consulting calculates Construction and Construction-Related Services for Contract Awards by subtracting subcontractor awards from the Prime Contractor amount, which provides a Net Pure Prime number. To view overall Contract Award dollars, subcontractor dollars are added to pure prime dollars. Table 6.8 illustrates the components of this calculation separately, providing a picture of subcontractor utilization as well. Based on this analysis, Non-DBE proportions drop from 76.54 percent based on the

original prime contract amount to 72.61 percent, based on pure prime + sub calculation. While African American-owned contractors took over 40 percent of subcontracts (\$6.39 million), they only had 2.68 percent of original prime awards, reflecting that African American-owned firms work primarily as subcontractors on the City's Construction opportunities. Hispanic American-owned firms showed a similar trend with only 0.17 percent of original prime awards and 3.57 percent of subcontractor awards. Conversely, most of WBEs participation was at the prime level, with 16.96 percent of original prime awards and only 3.26 of subcontractor awards. While in smaller proportions, Asian American-owned firms followed this pattern, with 2.63 percent of original prime awards and no subcontractor awards.

Table 6.7.
Construction and Construction-Related Services Utilization
Contract Awards—Pure Prime + Subcontractor Dollars
City of Wilmington
Wilmington MSA, FY 2016 – FY 2020

	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	7,790,636	96.47	2,000,155	26.61	6,104,516	57.50	27,422,148	85.08	3,827,017	59.03	47,144,472	72.61
African American	36,250	0.45	1,187,500	15.80	1,504,431	14.17	4,187,814	12.99	647,011	9.98	7,563,006	11.65
Asian American	-	0.00	-	0.00	418,591	3.94	-	0.00	-	0.00	418,591	0.64
Hispanic American	-	0.00	95,350	1.27	206,369	1.94	161,475	0.50	197,235	3.04	660,429	1.02
Native American	-	0.00	-	0.00	-	0.00	163,000	0.51	-	0.00	163,000	0.25
Other MBE	1,850	0.02	-	0.00	96,500	0.91	40,135	0.12	34,245	0.53	172,730	0.27
Total MBE	38,100	0.47	1,282,850	17.07	2,225,891	20.97	4,552,424	14.12	878,491	13.55	8,977,756	13.83
WBE	234,380	2.92	4,214,500	56.06	1,815,222	17.10	130,846	0.41	1,629,002	25.13	8,023,950	12.36
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	272,480	3.37	5,497,350	73.13	4,041,113	38.06	4,683,270	14.53	2,507,493	38.68	17,001,706	26.19
SBE	-	0.00	-	0.00	471,150	4.44	125,934	0.39	24,823	0.38	621,907	0.96
VBE	12,500	0.16	19,800	0.26	-	0.00	-	0.00	123,650	1.91	155,950	0.24
Grand Total	8,075,616	100.00	7,517,305	100.00	10,616,779	100.00	32,231,352	100.00	6,482,983	100.00	64,924,034	100.00

Source: Wilmington Contract Awards Data, M³ Consulting,

Table 6.8. Construction and Construction-Related Services Utilization Contract Awards City of Wilmington Wilmington MSA, FY 2016 – FY 2020								
	Original Award Amount		Pure Prime Contractors (net of subcontractors)		Subcontractors Only		Pure Prime + Subcontractors	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%
Non-DBE	49,693,254	76.54	39,547,109	79.91	7,597,363	49.21	47,144,472	72.61
African American	1,739,842	2.68	1,234,492	2.49	6,328,514	40.99	7,563,006	11.65
Asian American	1,710,000	2.63	418,591	0.85	-	-	418,591	0.64
Hispanic American	109,219	0.17	109,219	0.22	551,210	3.57	660,429	1.02
Native American	-	-	-	-	163,000	1.06	163,000	0.25
Other MBE	130,745	0.20	130,745	0.26	41,985	0.27	172,730	0.27
Total MBE	3,689,806	5.68	1,893,047	3.83	7,084,709	45.89	8,977,756	13.83
WBE	11,009,441	16.96	7,521,057	15.79	502,893	3.26	8,023,950	12.36
Unknown DBE	-	-	-	-	-	-	-	-
Total DBE	14,699,247	22.64	9,414,104	19.61	7,587,602	49.15	17,001,706	26.19
SBE	493,234	0.76	493,234	1.00	128,673	0.83	621,907	0.96
VBE	38,300	0.06	32,300	0.07	123,650	0.80	155,950	0.24
Grand Total	64,924,035	100.00	49,486,746	100.00	15,437,288	100.00	64,924,034	100.00

Source: Wilmington Contract Awards Data, M³ Consulting,

6.5.2 Construction and Construction-Related Services Utilization Comparison

Table 6.9 shows a comparison of Contract Awards, Purchase Orders and Payments. It is important to note that Contract Awards does not reflect the original award amount, because of the adjustments made for subcontracting activity. Purchases Orders and Payments do not reflect subcontractor data.

As shown in Table 6.9, Non-DBEs received about 70 percent overall in contract awards and POs, but about 54.72 percent in payments. WBEs were paid over 41.60 percent of dollars for the study period and received 27.23 percent of POs, in comparison to 12.36 percent of contract awards. In contrast only 2.46 percent of the payment (\$1.7 million) went to MBEs during the study period while they won over \$8.9 million and received over \$2.3 million in POs. We note that, because African American-owned firms and Hispanic American-owned firms were largely subcontractors, we cannot confirm payment at the subcontractor level, due to the absence of available pay applications.

Table 6.9.
Construction and Construction-Related Services Utilization
Comparison
Contract Awards, Purchase Orders, Payments—Dollars
City of Wilmington
Wilmington MSA, FY 2016 – 2020

	Contract Awards		Purchase Orders		Payments	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%
Non-DBE	47,144,472	72.61	86,439,989	70.16	37,809,759	54.72
African American	7,563,006	11.65	1,050,140	0.85	659,379	0.95
Asian American	418,591	0.64	695,152	0.56	695,152	1.01
Hispanic American	660,429	1.02	589,377	0.48	344,609	0.50
Native American	163,000	0.25	-	0.00	-	0.00
Other MBE	172,730	0.27	-	0.00	-	0.00
<i>Total MBE</i>	<i>8,977,756</i>	<i>13.83</i>	<i>2,334,669</i>	<i>1.89</i>	<i>1,699,140</i>	<i>2.46</i>
WBE	8,023,950	12.36	33,552,640	27.23	28,746,425	41.60
Unknown DBE	-	0.00	-	0.00	-	0.00
Total DBE	17,001,706	26.19	35,887,309	29.13	30,445,565	44.06
SBE	621,907	0.96	663,042	0.54	648,627	0.94
VBE	155,950	0.24	220,167	0.18	194,534	0.28
Grand Total	64,924,034	100.00	123,210,507	100.00	69,098,486	100.00

Source: Wilmington MUNIS Data, M³ Consulting, Relevant Market—Wilmington MSA

6.6 PROFESSIONAL SERVICES UTILIZATION

In the area of Professional Services, DBE utilization is presented in this section using dollars for purchase orders by year and for the study period, as well as for contract awards and payments for the study period. Counts of purchase orders, contract awards and payments are reflected in Appendix A. The relevant market for Professional Services is Nationwide.

6.6.1 Professional Services Utilization Based on Purchase Orders

Purchase orders captured a large proportion of the dollars spent in the Professional Services category at \$64.86 million as reflected in Table 6.10. The PO amounts increased over the five-year period from \$10.5 million in FY 2016 to \$15.2 million in FY 2020, with Non-DBEs accounting for almost 91 percent or greater every year during the study period. MBEs received 6.67 percent overall for the study period, with their lowest utilization at 5.53 percent in FY 2018 to their highest in FY 2017 at 7.30 percent.

Though utilization for African American-owned firms never exceeded 4.65 percent and 2.59 percent for Asian American-owned firms, these two groups were utilized every year based on purchase orders. Hispanic American-owned firms were utilized only in very small proportions for FY 2016 and FY 2017 at \$8,030 (about 0.07 percent), in FY 2019 at \$88,378 (0.61 percent) and \$441,162 (2.91 percent) in FY 2020. Other MBE utilization ranged from 0.02 percent to 0.14 percent. Overall WBE Professional Service firms were utilized at very low levels (0.55 percent overall) for the study period, with their highest utilization in FY 2016 at 1.47 percent and lowest in FY 2019 at 0.08 percent. While SBEs and VBEs were utilized every year, they never exceeded 0.64 percent in any year.

Table 6.10.
Professional Services Utilization
Purchase Order—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	9,523,874	91.12	10,889,524	91.41	12,042,253	93.18	13,416,129	93.02	14,009,903	92.44	59,881,684	92.32
African American	434,725	4.16	554,137	4.65	385,316	2.98	473,354	3.28	324,979	2.14	2,172,511	3.35
Asian American	266,595	2.55	291,145	2.44	326,416	2.53	372,872	2.59	315,480	2.08	1,572,509	2.42
Hispanic American	8,030	0.08	8,030	0.07	-	0.00	88,378	0.61	441,162	2.91	545,600	0.84
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	3,300	0.03	16,569	0.14	3,000	0.02	3,100	0.02	7,000	0.05	32,969	0.05
<i>Total MBE</i>	<i>712,650</i>	<i>6.82</i>	<i>869,881</i>	<i>7.30</i>	<i>714,732</i>	<i>5.53</i>	<i>937,704</i>	<i>6.50</i>	<i>1,088,621</i>	<i>7.18</i>	<i>4,323,588</i>	<i>6.67</i>
WBE	153,590	1.47	113,565	0.95	37,348	0.29	11,498	0.08	42,500	0.28	358,501	0.55
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	866,240	8.29	983,446	8.25	752,080	5.82	949,202	6.58	1,131,121	7.46	4,682,089	7.22
SBE	3,200	0.03	2,825	0.02	82,495	0.64	10,230	0.07	7,500	0.05	106,250	0.16
VBE	58,625	0.56	37,568	0.32	46,685	0.36	46,685	0.32	6,840	0.05	196,403	0.30
Grand Total	10,451,939	100.00	11,913,363	100.00	12,923,513	100.00	14,422,245	100.00	15,155,364	100.00	64,866,425	100.00

Source: Wilmington Purchase Order Data, M³ Consulting,

6.6.2 Professional Services Utilization Comparison

Both POs and payments in Table 6.11 show that DBE utilization is about 7.22 percent and 6.31 percent respectively for the study period, compared to 50.83 for Contract Awards. However, Professional Service Contract Awards were only \$385,067, in comparison to \$64.86 million and \$48.39 million in POs and Payments respectively. In Contract Awards, Non-DBEs received 49.17 percent (\$189,338), African American-owned MBEs received 32.59 percent (\$125,510), WBEs received \$62,219 (16.94 percent) and Other MBEs received \$5,000 (1.30 percent).

Table 6.11.
Professional Services Utilization
Comparison
Contract Awards, Purchase Orders, Payments—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	Contract Awards		Purchase Orders		Payments	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%
Non-DBE	189,338	49.17	59,881,684	92.32	45,087,911	93.16
African American	125,510	32.59	2,172,511	3.35	1,132,639	2.34
Asian American	-	0.00	1,572,509	2.42	1,296,936	2.68
Hispanic American	-	0.00	545,600	0.84	370,867	0.77
Native American	-	0.00	-	0.00	-	0.00
Other MBE	5,000	1.30	32,969	0.05	25,969	0.05
<i>Total MBE</i>	<i>130,510</i>	<i>33.89</i>	<i>4,323,588</i>	<i>6.67</i>	<i>2,826,411</i>	<i>5.84</i>
WBE	65,219	16.94	358,501	0.55	229,538	0.47
Unknown DBE	-	0.00	-	0.00	-	0.00
Total DBE	195,729	50.83	4,682,089	7.22	3,055,949	6.31
SBE	-	0.00	106,250	0.16	97,380	0.20
VBE	-	0.00	196,403	0.30	155,624	0.32
Grand Total	385,067	100.00	64,866,425	100.00	48,396,863	100.00

Source: Wilmington MUNIS Data, M³ Consulting, Relevant Market—Nationwide

6.7 NON-PROFESSIONAL SERVICES UTILIZATION

Non-Professional Services. DBE utilization is presented in this section using dollars for Purchase Orders by year and for the study period; For contract awards, purchase orders and payments, a comparison of dollars for the study period is shown. The relevant market for Non-Professional Services is Wilmington MSA.

6.7.1 Non-Professional Services Utilization Based on Purchase Orders

Based on Table 6.12, a total of over \$212 million in POs was cut to Non-Professional Service providers for the five-year study period of FY 2016—FY 2020. 86.51 percent of total POs went to Non-DBEs and 11.97 percent went to DBEs, which included 4.11 percent for MBEs and 7.85 percent for WBEs. SBEs received 1.44 percent and VBEs 0.08 percent overall for the same period. African American-owned firms were utilized every year, ranging from a low of 2.43 percent in FY 2019 to a high of 3.39 percent in FY 2020 over the period, never exceeding \$1,519,566 in any year. Asian American-owned firm utilization was close to 0.01 percent for all years, except FY 2018, when they were utilized at 4.37 percent. Hispanic American-owned firms similarly hovered around 0.03 to 0.39 percent utilization for the study period. Other MBEs were utilized each year around 0.18 percent overall. WBEs were cut about \$2 million to \$5.4 million in Non-Professional Service POs over the study period, with their utilization proportion ranging from 5 percent in FY 2016 to 12.07 percent in FY 2020.

Table 6.12.
Non-Professional Services Utilization
Purchase Order—Dollars
City of Wilmington
Wilmington MSA, FY 2016– FY 2020

	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	36,703,033	90.98	38,386,871	87.88	32,913,401	82.32	38,556,934	88.78	37,107,929	82.71	183,668,168	86.51
African American	1,156,886	2.87	1,352,594	3.10	1,141,993	2.86	1,056,298	2.43	1,519,566	3.39	6,227,337	2.93
Asian American	174	0.00	-	0.00	1,748,172	4.37	5,962	0.01	1,850	0.00	1,756,159	0.83
Hispanic American	64,254	0.16	12,525	0.03	155,572	0.39	58,963	0.14	77,440	0.17	368,754	0.17
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	36,547	0.09	26,076	0.06	116,658	0.29	118,908	0.27	75,884	0.17	374,072	0.18
<i>Total MBE</i>	<i>1,257,861</i>	<i>3.12</i>	<i>1,391,194</i>	<i>3.19</i>	<i>3,162,395</i>	<i>7.91</i>	<i>1,240,131</i>	<i>2.86</i>	<i>1,674,740</i>	<i>3.73</i>	<i>8,726,321</i>	<i>4.11</i>
WBE	2,021,461	5.01	3,209,102	7.35	3,016,781	7.55	3,011,552	6.93	5,416,522	12.07	16,675,418	7.85
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	3,279,322	8.13	4,600,296	10.53	6,179,176	15.45	4,251,683	9.79	7,091,262	15.81	25,401,739	11.97
SBE	292,165	0.72	613,863	1.41	887,801	2.22	603,108	1.39	667,375	1.49	3,064,312	1.44
VBE	68,790	0.17	77,900	0.18	1,500	0.00	15,705	0.04	-	0.00	163,895	0.08
Grand Total	40,343,311	100.00	43,678,930	100.00	39,981,877	100.00	43,427,430	100.00	44,866,566	100.00	212,298,114	100.00

Source: Wilmington Purchase Order Data, M³ Consulting

6.7.2 Non-Professional Services Utilization Comparison

While over \$12 million was awarded in Non-Professional Service contracts for the study period, as shown in Table 6.13, it reflected only a small proportion of what was procured. In comparison, POs (at \$212.3 million) and Payments (at \$161.5 million) reflected a larger proportion of dollars spent in this procurement category. Non-DBE utilization far exceeded other groups at 97.98 percent (in contracts), 86.51 percent (in POs) and 87.06 percent (in payments). Among DBEs, contract dollars largely went to African American-owned firms at 4.06 percent and WBEs at 0.18 percent. POs included 11.97 percent (\$25.4 million) utilization by DBEs, with 4.11 percent (\$8.7 million) by MBEs and 7.85 percent (\$16.66 million) by WBEs. African American-, Asian American- and Hispanic American-owned firms were utilized at 2.93 percent (\$6.2 million), 0.83 percent (\$1.76 million) and 0.17 percent (\$368,754) for the study period. Payments presented a similar picture for these groups with 2.84 percent, 1.07 percent, and 0.18 percent for these three groups respectively. WBEs received 7.33 percent (\$11.8 million) of the payments and MBEs received 11.58 percent (\$18.7 million).

Table 6.13.
Non-Professional Services Utilization
Comparison
Contract Awards, Purchase Orders, Payments—Dollars
City of Wilmington
Wilmington MSA, FY 2016 – FY 2020

	Contract Awards		Purchase Orders		Payments	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%
Non-DBE	11,566,241	94.98	183,668,168	86.51	140,593,137	87.06
African American	494,644	4.06	6,227,337	2.93	4,580,356	2.84
Asian American	-	0.00	1,756,159	0.83	1,724,454	1.07
Hispanic American	95,350	0.78	368,754	0.17	290,299	0.18
Native American	-	0.00	-	0.00	-	0.00
Other MBE	-	0.00	374,072	0.18	271,476	0.17
<i>Total MBE</i>	<i>589,994</i>	<i>4.84</i>	<i>8,726,321</i>	<i>4.11</i>	<i>6,866,585</i>	<i>4.25</i>
WBE	21,651	0.18	16,675,418	7.85	11,840,694	7.33
Unknown DBE	-	0.00	-	0.00	-	0.00
Total DBE	611,645	5.02	25,401,739	11.97	18,707,279	11.58
SBE	-	0.00	3,064,312	1.44	2,081,881	1.29
VBE	-	0.00	163,895	0.08	116,755	0.07
Grand Total	12,177,886	100.00	212,298,114	100.00	161,499,052	100.00

Source: Wilmington MUNIS Data, M³ Consulting, Relevant Market—Wilmington MSA

6.8 GOODS AND SUPPLIES UTILIZATION

In the area of Goods and Supplies, DBE utilization is presented in this section using dollars for Purchase Orders by year and for the study period. For contract awards, purchase orders and payments, a comparison of dollars for the study period is shown. The relevant market for Goods and Supplies is Nationwide.

6.8.1 Goods and Supplies Utilization Based on Purchase Orders

As shown in Table 6.14, a total of \$80 million was procured on Goods and Supplies by the City of Wilmington over the five-year study period, ranging from \$12.5 million in FY 2017 to \$21.9 million in FY 2019. Across the years, DBE utilization was from 1.16 percent to 6.80 percent. Utilization of WBEs never exceeded 1 percent in the first three years of the study period; in FY 2019, utilization of WBEs rose to 4.08 percent and went down to 1.21 percent the following year. MBE utilization similarly ranged from 1.16 percent to 6.40 percent.

Of a total of \$3.17 million to MBEs, \$2.27 million in POs was received by African American-owned firms, mainly in the FY 2017 through FY 2019. Asian American-owned firms never exceeded 0.5 percent in any year, with only \$165 in FY 2020. Hispanic American-owned firms saw their highest utilization in FY 2020 at 1.03 percent. SBEs had a total utilization of 1.03 percent over the five-year period with no year exceeding over 1.22 percent for the year.

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Table 6.14.
Goods and Supplies Utilization
Purchase Order—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	13,940,342	97.13	11,593,036	92.40	14,981,973	92.20	19,871,646	90.56	14,421,261	95.37	74,808,258	93.26
African American	8,362	0.06	511,692	4.08	918,434	5.65	719,109	3.28	112,353	0.74	2,269,949	2.83
Asian American	788	0.01	61,278	0.49	1,070	0.01	24,964	0.11	165	0.00	88,264	0.11
Hispanic American	57,218	0.40	16,124	0.13	21,514	0.13	27,919	0.13	155,370	1.03	278,145	0.35
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	100,000	0.70	112,612	0.90	98,706	0.61	114,774	0.52	106,735	0.71	532,827	0.66
<i>Total MBE</i>	<i>166,367</i>	<i>1.16</i>	<i>701,706</i>	<i>5.59</i>	<i>1,039,724</i>	<i>6.40</i>	<i>886,765</i>	<i>4.04</i>	<i>374,623</i>	<i>2.48</i>	<i>3,169,185</i>	<i>3.95</i>
WBE	74,144	0.52	99,074	0.79	61,640	0.38	896,140	4.08	183,075	1.21	1,314,074	1.64
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	240,511	1.68	800,780	6.38	1,101,364	6.78	1,782,905	8.13	557,698	3.69	4,483,259	5.59
SBE	171,542	1.20	152,440	1.22	156,405	0.96	203,626	0.93	142,185	0.94	826,199	1.03
VBE	-	0.00	-	0.00	9,500	0.06	85,018	0.39	-	0.00	94,518	0.12
Grand Total	14,352,396	100.00	12,546,256	100.00	16,249,243	100.00	21,943,195	100.00	15,121,145	100.00	80,212,234	100.00

Source: Wilmington Purchase Order Data, M³ Consulting

6.8.2 Goods and Supplies Utilization Comparison

Purchase orders may better reflect utilization of Goods and Supplies, as most contracts in this procurement type are multi-year requirements contracts and purchase orders may better reflect the dollar awards within a year. POs cut to Suppliers was over \$80 million for the five-year period, whereas Payments was about \$65.7 million. Contract Awards accounted for \$24.7 million for the study period. Contract Awards were largely to Non-DBE firms (97.69 percent) with the remaining paid to WBEs (1.27 percent), Hispanic American-owned firms (0.16 percent) and SBEs (0.87 percent). As reflected in POs and Payments, there was marginally greater utilization of DBEs than in Contract Awards. Non-DBEs' utilization was over 93 percent using POs or payments. WBEs had higher utilization (1.64 percent) in POs compared to Payments (0.91 percent). Utilization of MBEs did not differ much using POs (3.95 percent) or Payments (4.11 percent) with the distribution for payments similar to that observed with POs in the aforementioned discussion.

Table 6.15.
Goods and Supplies Utilization
Comparison
Contract Awards, Purchase Orders, Payments—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	Contract Awards		Purchase Orders		Payments	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%
Non-DBE	24,150,317	97.69	74,808,258	93.26	61,687,541	93.93
African American	-	0.00	2,269,949	2.83	2,151,212	3.28
Asian American	-	0.00	88,264	0.11	81,941	0.12
Hispanic American	40,000	0.16	278,145	0.35	150,865	0.23
Native American	-	0.00	-	0.00	-	0.00
Other MBE	-	0.00	532,827	0.66	314,314	0.48
<i>Total MBE</i>	<i>40,000</i>	<i>0.16</i>	<i>3,169,185</i>	<i>3.95</i>	<i>2,698,333</i>	<i>4.11</i>
WBE	313,891	1.27	1,314,074	1.64	598,381	0.91
Unknown DBE	-	0.00	-	0.00	-	0.00
Total DBE	353,891	1.43	4,483,259	5.59	3,296,713	5.02
SBE	216,158	0.87	826,199	1.03	624,402	0.95
VBE	-	0.00	94,518	0.12	65,930	0.10
Grand Total	24,720,366	100.00	80,212,234	100.00	65,674,586	100.00

Source: Wilmington MUNIS Data, M³ Consulting, Relevant Market—Nationwide

6.9 UTILIZATION THRESHOLDS

Below are utilization thresholds presented for each procurement type. Purchase order dollars are utilized to calculate threshold values. Thresholds presented are: Below \$75; \$75-\$15K; \$15K-\$60K; \$60K-\$100K; \$100K-\$150K; \$150K-\$250K; \$250K-\$500K; \$500K-\$1M; \$1M-\$5M; \$5M-\$10M; and Above \$10M. The informal threshold is below \$60K, where there is more discretion and flexibility in the buy decision. As such, DBE participation at this level may provide insight into the City's inclusion efforts.

A. Architecture & Engineering Thresholds

Table 6.16 presents utilization dollars by race/ethnicity/gender by thresholds for A&E. DBEs received 26.88 percent of contracts in the \$250K-\$500K range, the threshold with the highest DBE proportion. Except Non-DBEs, no other race/gender/ethnic group had any purchase orders over \$500,000 for the study period in Architecture and Engineering. In the smaller thresholds below \$250K, MBE utilization ranged from a little over 16 percent to a little over 23 percent, whereas WBEs ranged from 1.39 percent to a high of 11.14 percent in the \$15K-\$250K range.

Using the informal threshold of below \$60K, Non-DBEs saw no change in their proportion at 78.11 percent for \$15K-\$60K, almost the same as their proportion overall. African American-owned firms reflected higher proportions beyond \$60K, although the \$15K-\$60K range represented their highest dollar value. Asian American-owned firms only reflected participation in the \$15K-\$60K threshold. Hispanic American-owned firms had participation above \$60K, with \$15K-\$60K being their lowest dollar value. WBEs reflected higher dollars above \$60K.

B. Construction and Construction-Related Services Thresholds

In Construction and Construction-Related Services in Table 6.17, there were no MBEs utilized above \$1 million. African American-owned firms received \$693,277 in the \$500K-\$1M dollar range. Other MBEs reflected small amounts in the \$100K to \$250K ranges, but no other MBEs were utilized in this range. African American-owned firms were utilized in contracts below \$100K and Asian American-owned firms below \$1M. WBEs received POs in every threshold up to \$5 million and SBEs received POs in every threshold up to \$500K.

Non-DBEs saw no change in their proportion for POs below \$60K from their proportions in other thresholds. Most African American-owned dollars for Construction and Construction-Related Services was in the lower thresholds at about 9 percent and 3.57 percent in \$60K-\$100K. There was no utilization thereafter. Asian American-owned firms did have some utilization above \$60K and the dollar value was higher. Hispanic American-owned firms had no utilization above \$60K. WBEs were utilized in every threshold, with larger dollar values and proportions above \$60K.

C. Professional Services Thresholds

Only Non-DBEs received POs in Professional Services above \$250K. WBEs received no PO dollars above \$60K and African American-owned firms above \$150K. Hispanic American- and Asian American-owned firms were utilized up to \$250K in Professional Service contracts. SBEs and VBEs were utilized only up to \$60K during the study period.

Non-DBEs showed slightly lower proportion in thresholds below \$60K. While African American-owned firms had utilization above \$60K, their largest utilization at \$1M was in the \$15K-\$60K threshold. Asian American-owned firms had \$1M in \$150K-\$250K. Hispanic American-owned firms were utilized above \$60K, while WBEs had no utilization above \$60K.

D. Non-Professional Services Thresholds

Non-DBEs were represented in every threshold ranging from 80.50 percent in \$150K-\$250K to 100 percent in above \$10M range. WBEs were represented in every threshold up to \$5M. In the \$1M-\$5M, only WBEs were utilized. The \$500K to \$1M range included Non-DBEs, WBEs and Asian American-owned firms. African American-owned firms were utilized in all ranges below \$500K.

Non-DBE proportions reflected no change in the lower ranges. All DBEs were utilized above \$60K to some degree.

E. Goods and Supplies Thresholds

There was Non-DBE representation in every threshold category for Goods and Supplies, while DBE firms did not receive PO dollars above \$500K and SBEs and VBEs above \$100K. The lower ranges below \$250K did not see any greater participation of DBEs.

Non-DBEs saw no change in their proportion in the lower thresholds at a little over 94 percent. African American-owned firms and WBEs had some utilization above \$60K up to \$500K threshold. Asian American-owned firms and Hispanic American-owned firms had no utilization above \$60K.

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Table 6.16. (1 of 2)
Architecture & Engineering Utilization Thresholds
Purchase Orders—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	Below \$75		\$75-\$15K		\$15K-\$60K		\$60K-\$100K		\$100K-\$150K		\$150K-\$250K	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	-	0.00	392,487	71.97	3,302,898	78.11	2,335,017	81.25	2,174,904	71.89	1,157,000	65.62
African American	-	0.00	66,789	12.25	478,335	11.31	125,000	4.35	315,734	10.44	409,684	23.24
Asian American	-	0.00	-	0.00	70,000	1.66	-	0.00	-	0.00	-	0.00
Hispanic American	-	0.00	-	0.00	32,000	0.76	264,000	9.19	233,600	7.72	-	0.00
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	-	0.00	23,635	4.33	110,000	2.60	-	0.00	-	0.00	-	0.00
Total MBE	-	0.00	90,424	16.58	690,335	16.33	389,000	13.54	549,334	18.16	409,684	23.24
WBE	-	0.00	15,380	2.82	58,600	1.39	-	0.00	201,116	6.65	196,506	11.14
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	-	0.00	105,804	19.40	748,935	17.71	389,000	13.54	750,450	24.81	606,191	34.38
SBE	-	0.00	47,044	8.63	176,818	4.18	149,835	5.21	100,000	3.31	-	0.00
VBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Grand Total	-	0.00	545,335	100.00	4,228,651	100.00	2,873,852	100.00	3,025,354	100.00	1,763,191	100.00

Source: Wilmington Purchase Order Data, M³ Consulting

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Table 6.16 cont. (2 of 2)
Architecture & Engineering Utilization Thresholds
Purchase Orders—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	\$250K-\$500K		\$500K-\$1M		\$1M-\$5M		\$5M-\$10M		Above \$10M		TOTAL	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	679,982	73.12	540,000	100.00	1,500,000	100.00	-	0.00	-	0.00	12,082,287	78.42
African American	250,000	26.88	-	0.00	-	0.00	-	0.00	-	0.00	1,645,543	10.68
Asian American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	70,000	0.45
Hispanic American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	529,600	3.44
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	133,635	0.87
Total MBE	250,000	26.88	-	0.00	-	0.00	-	0.00	-	0.00	2,378,778	15.44
WBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	471,603	3.06
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	250,000	26.88	-	0.00	-	0.00	-	0.00	-	0.00	2,850,380	18.50
SBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	473,697	3.07
VBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Grand Total	929,982	100.00	540,000	100.00	1,500,000	100.00	-	0.00	-	0.00	15,406,365	100.00

Source: Wilmington Purchase Order Data, M³ Consulting

Table 6.17. (1 of 2)
Construction and Construction-Related Services Utilization Thresholds
Purchase Orders—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	Below \$75		\$75-\$15K		\$15K-\$60K		\$60K-\$100K		\$100K-\$150K		\$150K-\$250K	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	20	100.00	1,279,570	71.67	5,019,676	67.23	3,934,820	82.64	3,665,391	73.96	3,508,952	60.69
African American	-	0.00	165,877	9.29	714,495	9.57	169,768	3.57	-	0.00	-	0.00
Asian American	-	0.00	15,241	0.85	98,011	1.31	-	0.00	-	0.00	-	0.00
Hispanic American	-	0.00	95,584	5.35	631,996	8.46	-	0.00	-	0.00	-	0.00
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	-	0.00	-	0.00	130,000	1.74	-	0.00	100,000	2.02	393,473	6.81
<i>Total MBE</i>	-	<i>0.00</i>	<i>276,702</i>	<i>15.50</i>	<i>1,574,502</i>	<i>21.09</i>	<i>169,768</i>	<i>3.57</i>	<i>100,000</i>	<i>2.02</i>	<i>393,473</i>	<i>6.81</i>
WBE	-	0.00	85,176	4.77	331,432	4.44	414,215	8.70	624,052	12.59	949,142	16.42
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	-	0.00	361,879	20.27	1,905,934	25.52	583,983	12.26	724,052	14.61	1,342,615	23.22
SBE	-	0.00	76,722	4.30	388,313	5.20	242,699	5.10	566,757	11.44	930,083	16.09
VBE	-	0.00	67,118	3.76	153,049	2.05	-	0.00	-	0.00	-	0.00
Grand Total	20	100.00	1,785,288	100.00	7,466,972	100.00	4,761,503	100.00	4,956,199	100.00	5,781,650	100.00

Source: Wilmington Purchase Order Data, M³ Consulting

Table 6.17 cont. (2 of 2)
Construction and Construction-Related Services Utilization Thresholds
Purchase Orders—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	\$250K-\$500K		\$500K-\$1M		\$1M-\$5M		\$5M-\$10M		Above \$10M		TOTAL	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	14,126,698	68.20	10,745,597	66.85	55,426,262	77.27	5,526,776	52.50	-	0.00	103,233,763	71.79
African American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	1,050,140	0.73
Asian American	-	0.00	693,277	4.31	-	0.00	-	0.00	-	0.00	806,528	0.56
Hispanic American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	727,580	0.51
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	623,473	0.43
<i>Total MBE</i>	<i>-</i>	<i>0.00</i>	<i>693,277</i>	<i>4.31</i>	<i>-</i>	<i>0.00</i>	<i>-</i>	<i>0.00</i>	<i>-</i>	<i>0.00</i>	<i>3,207,722</i>	<i>2.23</i>
WBE	5,208,449	25.14	4,634,172	28.83	16,306,003	22.73	5,000,000	47.50	-	0.00	33,552,640	23.33
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	5,208,449	25.14	5,327,448	33.15	16,306,003	22.73	5,000,000	47.50	-	0.00	36,760,363	25.56
SBE	1,379,470	6.66	-	0.00	-	0.00	-	0.00	-	0.00	3,584,044	2.49
VBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	220,167	0.15
Grand Total	20,714,618	100.00	16,073,045	100.00	71,732,265	100.00	10,526,776	100.00	-	0.00	143,798,337	100.00

Source: Wilmington Purchase Order Data, M³ Consulting

Table 6.18. (1 of 2)
Professional Utilization Thresholds
Purchase Orders—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	Below \$75		\$75-\$15K		\$15K-\$60K		\$60K-\$100K		\$100K-\$150K		\$150K-\$250K	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	933	73.21	5,409,558	82.95	15,595,947	88.93	5,793,727	98.50	6,025,383	90.89	5,773,228	82.32
African American	130	10.22	564,761	8.66	1,019,220	5.81	88,400	1.50	500,000	7.54	-	0.00
Asian American	91	7.15	235,092	3.61	316,016	1.80	-	0.00	-	0.00	1,021,310	14.56
Hispanic American	-	0.00	89,793	1.38	133,397	0.76	-	0.00	103,920	1.57	218,490	3.12
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	-	0.00	32,969	0.51	-	0.00	-	0.00	-	0.00	-	0.00
<i>Total MBE</i>	<i>221</i>	<i>17.37</i>	<i>922,615</i>	<i>14.15</i>	<i>1,468,632</i>	<i>8.37</i>	<i>88,400</i>	<i>1.50</i>	<i>603,920</i>	<i>9.11</i>	<i>1,239,800</i>	<i>17.68</i>
WBE	-	0.00	72,933	1.12	285,568	1.63	-	0.00	-	0.00	-	0.00
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	221	17.37	995,548	15.27	1,754,201	10.00	88,400	1.50	603,920	9.11	1,239,800	17.68
SBE	120	9.42	33,899	0.52	72,231	0.41	-	0.00	-	0.00	-	0.00
VBE	-	0.00	82,140	1.26	114,263	0.65	-	0.00	-	0.00	-	0.00
Grand Total	1,274	100.00	6,521,144	100.00	17,536,641	100.00	5,882,127	100.00	6,629,303	100.00	7,013,028	100.00

Source: Wilmington Purchase Order Data, M³ Consulting

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Table 6.18 cont. (2 of 2)
Professional Utilization Thresholds
Purchase Orders—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	\$250K-\$500K		\$500K-\$1M		\$1M-\$5M		\$5M-\$10M		Above \$10M		TOTAL	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	7,943,131	100.00	1,408,388	100.00	11,931,389	100.00	-	0.00	-	0.00	59,881,684	92.32
African American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	2,172,511	3.35
Asian American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	1,572,509	2.42
Hispanic American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	545,600	0.84
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	32,969	0.05
<i>Total MBE</i>	-	<i>0.00</i>	-	<i>0.00</i>	-	<i>0.00</i>	-	<i>0.00</i>	-	<i>0.00</i>	<i>4,323,588</i>	<i>6.67</i>
WBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	358,501	0.55
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	4,682,089	7.22
SBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	106,250	0.16
VBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	196,403	0.30
Grand Total	7,943,131	100.00	1,408,388	100.00	11,931,389	100.00	-	0.00	-	0.00	64,866,425	100.00

Source: Wilmington Purchase Order Data, M³ Consulting

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Table 6.19. (1 of 2)
Non-Professional Services Utilization Thresholds
Purchase Orders—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	Below \$75		\$75-\$15K		\$15K-\$60K		\$60K-\$100K		\$100K-\$150K		\$150K-\$250K	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	45,286	83.78	17,018,120	87.47	19,489,509	87.72	8,272,794	86.28	9,710,050	83.59	14,856,088	80.50
African American	80	0.15	1,086,593	5.58	1,392,226	6.27	786,589	8.20	854,128	7.35	1,512,831	8.20
Asian American	-	0.00	22,582	0.12	15,130	0.07	87,569	0.91	-	0.00	570,969	3.09
Hispanic American	30	0.06	170,105	0.87	124,280	0.56	-	0.00	109,219	0.94	-	0.00
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	317	0.59	26,407	0.14	190,344	0.86	160,000	1.67	-	0.00	-	0.00
<i>Total MBE</i>	<i>427</i>	<i>0.79</i>	<i>1,305,687</i>	<i>6.71</i>	<i>1,721,979</i>	<i>7.75</i>	<i>1,034,157</i>	<i>10.79</i>	<i>963,347</i>	<i>8.29</i>	<i>2,083,800</i>	<i>11.29</i>
WBE	7,124	13.18	712,744	3.66	464,972	2.09	203,842	2.13	942,471	8.11	1,109,319	6.01
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	7,551	13.97	2,018,430	10.37	2,186,951	9.84	1,238,000	12.91	1,905,818	16.41	3,193,119	17.30
SBE	1,214	2.25	386,802	1.99	409,809	1.84	77,534	0.81	-	0.00	406,100	2.20
VBE	-	0.00	32,205	0.17	131,690	0.59	-	0.00	-	0.00	-	0.00
Grand Total	54,051	100.00	19,455,557	100.00	22,217,959	100.00	9,588,328	100.00	11,615,868	100.00	18,455,307	100.00

Source: Wilmington Purchase Order Data, M³ Consulting

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Table 6.19 cont. (2 of 2)
Non-Professional Services Utilization Thresholds
Purchase Orders—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	\$250K-\$500K		\$500K-\$1M		\$1M-\$5M		\$5M-\$10M		Above \$10M		TOTAL	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	17,604,021	77.66	19,578,342	80.01	35,001,436	81.40	-	0.00	72,899,844	100.00	214,475,488	87.75
African American	595,110	2.63	-	0.00	-	0.00	-	0.00	-	0.00	6,227,557	2.55
Asian American	427,500	1.89	643,056	2.63	-	0.00	-	0.00	-	0.00	1,766,806	0.72
Hispanic American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	403,634	0.17
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	377,068	0.15
<i>Total MBE</i>	<i>1,022,610</i>	<i>4.51</i>	<i>643,056</i>	<i>2.63</i>	-	<i>0.00</i>	-	<i>0.00</i>	-	<i>0.00</i>	<i>8,775,064</i>	<i>3.59</i>
WBE	1,279,889	5.65	4,247,874	17.36	7,998,800	18.60	-	0.00	-	0.00	16,967,035	6.94
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	2,302,499	10.16	4,890,930	19.99	7,998,800	18.60	-	0.00	-	0.00	25,742,099	10.53
SBE	2,761,463	12.18	-	0.00	-	0.00	-	0.00	-	0.00	4,042,921	1.65
VBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	163,895	0.07
Grand Total	22,667,982	100.00	24,469,272	100.00	43,000,236	100.00	-	0.00	72,899,844	100.00	244,424,403	100.00

Source: Wilmington Purchase Order Data, M³ Consulting

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Table 6.20. (1 of 2)
Goods and Supplies Utilization Thresholds
Purchase Orders—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	Below \$75		\$75-\$15K		\$15K-\$60K		\$60K-\$100K		\$100K-\$150K		\$150K-\$250K	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	201,027	99.01	12,484,504	91.71	14,173,305	94.21	5,945,822	88.46	7,065,182	93.92	11,358,703	95.53
African American	185	0.09	158,688	1.17	222,578	1.48	75,150	1.12	457,000	6.08	531,315	4.47
Asian American	75	0.04	32,974	0.24	55,215	0.37	-	0.00	-	0.00	-	0.00
Hispanic American	102	0.05	170,895	1.26	107,148	0.71	-	0.00	-	0.00	-	0.00
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	-	0.00	38,053	0.28	19,774	0.13	475,000	7.07	-	0.00	-	0.00
Total MBE	362	0.18	400,610	2.94	404,714	2.69	550,150	8.18	457,000	6.08	531,315	4.47
WBE	1,122	0.55	290,053	2.13	134,670	0.90	75,000	1.12	-	0.00	-	0.00
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	1,484	0.73	690,663	5.07	539,384	3.59	625,150	9.30	457,000	6.08	531,315	4.47
SBE	530	0.26	415,274	3.05	331,794	2.21	78,601	1.17	-	0.00	-	0.00
VBE	-	0.00	22,318	0.16	-	0.00	72,200	1.07	-	0.00	-	0.00
Grand Total	203,041	100.00	13,612,758	100.00	15,044,483	100.00	6,721,773	100.00	7,522,182	100.00	11,890,018	100.00

Source: Wilmington Purchase Order Data, M³ Consulting

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Goods and Supplies Utilization Thresholds
Purchase Orders—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

	\$250K-\$500K		\$500K-\$1M		\$1M-\$5M		\$5M-\$10M		Above \$10M		TOTAL	
Race/Ethnicity/Gender	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Non-DBE	14,035,069	89.55	4,959,280	100.00	4,585,367	100	-	0.00	-	0.00	74,808,258	93.26
African American	825,034	5.26	-	0.00	-	0.00	-	0.00	-	0.00	2,269,949	2.83
Asian American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	88,264	0.11
Hispanic American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	278,145	0.35
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	532,827	0.66
<i>Total MBE</i>	<i>825,034</i>	<i>5.26</i>	<i>-</i>	<i>0.00</i>	<i>-</i>	<i>0.00</i>	<i>-</i>	<i>0.00</i>	<i>-</i>	<i>0.00</i>	<i>3,169,185</i>	<i>3.95</i>
WBE	813,229	5.19	-	0.00	-	0.00	-	0.00	-	0.00	1,314,074	1.64
Unknown DBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	1,638,263	10.45	-	0.00	-	0.00	-	0.00	-	0.00	4,483,259	5.59
SBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	826,199	1.03
VBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	94,518	0.12
Grand Total	15,673,332	100.00	4,959,280	100.00	4,585,367	100.00	-	0.00	-	100.00	80,212,234	100.00

Source: Wilmington Purchase Order Data, M³ Consulting

6.10 TOP TEN BIDDERS AND AWARDEES

In trying to decipher patterns of utilization of firms by their race, ethnicity and/or gender within each procurement type, the analysis below seeks to determine whether the same awardees repeatedly received City of Wilmington contracts, as well as the success rate of the City's top ten bidders in obtaining the City's contracts.

A. Top Ten Bidders and Awardees for Architecture & Engineering

Architecture and Engineering reflects a limited picture in Table 6.21 that only includes only 2 bids with firms that participated in the formal bidding process. Both firms were Non-DBE firms and Grindline Skateparts had a success rate of 100 percent for the study period (Table 6.23).

Table 6.21.
Top Ten Bidders
Architecture & Engineering
Nationwide; FY 2016 - FY 2020

	Count of Bids	% of Counts	Race/Ethnicity/Gender	Location
Grindline Skateparks, Inc	1	50.00	Non-DBE	Nationwide
Adira Construction, Inc.	1	50.00	Non-DBE	Nationwide
A&E	2	100.00		

Source: Wilmington Contracts Data, M³ Consulting

Table 6.22.
Top Ten Awardees
Architecture & Engineering
Contract Awards
Nationwide; FY 2016 - FY 2020

	Dollars	% of Dollars	Count	% of Counts	Race/ Ethnicity/ Gender	Location
Grindline Skateparks, Inc	545,055	100.00	1	100.00	Non-DBE	Nationwide
Grand Total	545,055	100.00	1	100.00		

Source: Wilmington MUNIS Data, M³ Consulting

Table 6.23.
Success Rate of Top Ten Bidders: Architecture & Engineering
Nationwide; FY 2016 - FY 2020

Architecture & Engineering		% Of Bids	Race/Ethnicity/ Gender	Location	# Of Awards	% Success Rate
Total	2	100.00			1	50.00
Grindline Skateparks, Inc	1	50.00	Non-DBE	Nationwide	1	100.00

Source: Wilmington Contracts and MUNIS Data, M³ Consulting

B. Top Ten Bidders and Awardees for Construction and Construction-Related Services

In Construction and Construction-Related Services, the demographic mix of the Top Ten Bidders (Table 6.24) is varied with four Non-DBEs, four African American-owned firms, one WBE and one VOB, located either within the MSA or within the City. The Top Ten Awardees in Table 6.25 show a mix of six Non-DBEs, one African American-owned firm, one Asian American-owned firm, one WBE and one SBE for the study period.

However, only three of the Top Ten Bidders are on the list of Top Ten Awardees; one of them a Non-DBE, one WBE and one African American-owned firm from within the City.

Table 6.25 reflects the success rate of the top ten bidders in Construction and Construction-Related Services. While the success rate ranged significantly for each group, the pattern of success was even across race/ethnic and gender groups. Except for one SBE firm that was nationwide, all firms were within the relevant market and largely within the State or City.

Table 6.24. Top Ten Bidders Construction and Construction-Related Services Wilmington MSA; FY 2016 - FY 2020				
	Count of Bids	% of Counts	Race/Ethnicity/Gender	Location
Grass Busters Landscaping Co., Inc.	11	5.26	Non-DBE	MSA in State
Diamond Materials LLC	8	3.83	Non-DBE	MSA in State
Allan Myers, L.P.	7	3.35	Non-DBE	MSA
Dependable Construction of Delaware	7	3.35	African American	City
Carolina Construction LLC.	7	3.35	African American	MSA in State
Brandywine Construction Co., Inc. (BCCI)	6	2.87	WBE	MSA in State
Design Contracting, Inc.	6	2.87	VOBE	City
Param General Construction Co., Inc.	5	2.39	Non-DBE	MSA in State
DNC Global Contracting, LLC	5	2.39	African American	MSA
Rock Solid Contracting & Development, Inc	5	2.39	African American	City
Grand Total	209	100.00		

Source: Wilmington Contracts Data, M³ Consulting

Table 6.25.

Top Ten Awardees

Construction and Construction-Related Services

Contract Awards

Wilmington MSA; FY 2016 - FY 2020

	Dollars	% of Dollars	Counts	% of Counts	Race/Ethnicity/ Gender	Location
Diamond Materials LLC	21,575,849	30.87	4	5.88	Non-DBE	MSA in State
Allan Myers, L.P.	15,314,572	21.91	5	7.35	Non-DBE	MSA
Brandywine Construction Co., Inc. (BCCI)	10,524,460	15.06	3	4.41	WBE	MSA in State
Harmony Construction, Inc	5,066,196	7.25	2	2.94	Non-DBE	City
Willier Electric Motor Repair Company	1,725,825	2.47	3	4.41	Non-DBE	MSA
Commonwealth Construction Co., Inc.	1,710,000	2.45	1	1.47	Asian American	City
Rock Solid Contracting & Development, Inc	1,471,342	2.11	4	5.88	African American	City
Ventresca Bros Inc	965,200	1.38	1	1.47	Non-DBE	MSA in State
Gaudelli Bros, Inc	943,400	1.35	2	2.94	SBE	Nationwide
Joseph T. Hardy & Sons, Inc	874,800	1.25	1	1.47	Non-DBE	MSA in State
Grand Total	69,894,296	100.00	68	100.00		

Source: Wilmington MUNIS Data, M³ Consulting

Table 6.26.
Success Rate of Top Ten Bidders: Construction and Construction-Related Services
Wilmington MSA; FY 2016 - FY 2020

		% of Bids	Race/Ethnicity/Gender	Location	# of Awards	% Success rate
Construction and Construction-Related Services						
TOTAL	209	100.00			68	32.54
Diamond Material LLC	8	3.83	Non-DBE	MSA in State	4	50.00
Allan Myers, L.P.	7	3.35	Non-DBE	MSA	5	71.43
Brandywine Construction Co., Inc. (BCCI)	6	2.87	WBE	MSA in State	3	50.00
Harmony Construction, Inc	3	1.44	Non-DBE	City	2	66.67
Willier Electric Motor Repair Company	3	1.44	Non-DBE	MSA	3	100.00
Commonwealth Construction Co., Inc.	4	1.91	Asian American	City	1	25.00
Rock Solid Contracting & Development, Inc	5	2.39	African American	City	4	80.00
Ventresca Bros Inc	5	2.39	Non-DBE	MSA in State	1	20.00
Gaudelli Bros, Inc	3	1.44	SBE	Nationwide	2	66.67
Joseph T. Hardy & Sons, Inc	1	0.48	Non-DBE	MSA in State	1	100.00

Source: Wilmington Contracts and MUNIS Data, M³ Consulting

C. Top Ten Bidders and Awardees for Professional Services

Of the few formal Professional Services contracts, the 8 top bidders included four Non-DBEs, two African American-owned firm and one WBE (Table 6.27). Similarly, the top four Awardees (Table 6.28) included two Non-DBEs, one WBE and one African American-owned firm.

Furthermore, all of the top ten bidders and awardees are located within the MSA and one was within the City. All 4 awardees were among those that bid for the contracts in Professional Services.

Table 6.29 presents the success rate of the top bidders in Professional Services' procurement. Three firms had a success rate of 100.00 percent and one a success rate of 50 percent.

Table 6.27. Top Ten Bidders Professional Services Nationwide; FY 2016 - FY 2020				
	Count of Bids	% of Counts	Race/Ethnicity/ Gender	Location
Asset Management Alliance	2	25.00	Non-DBE	City
East Coast Minority Supply	1	12.50	African American	City
Advantage Management	1	12.50	Non-DBE	MSA
Omega Medical Center	1	12.50	Non-DBE	MSA in State
PMA Management Corp	1	12.50	Non-DBE	MSA
Advantage Building & Facility Services, LLC	1	12.50	WBE	MSA
Dr. Oluseyi Senu-Oke, MD	1	12.50	African American	MSA in State
Grand Total	8	100.00		

Source: Wilmington Contracts Data, M³ Consulting

Table 6.28.
Top Ten Awardees
Professional Services
Purchase Orders
Nationwide; FY 2016 - FY 2020

	Dollars	% of Dollars	Counts	% of Counts	Race/Ethnicity/ Gender	Location
Dr. Oluseyi Senu-Oke, MD	125,000	32.46	1	25.00	African American	MSA in State
Advantage Building & Facility Services, LLC	98,629	25.61	1	25.00	WBE	MSA
Asset Management Alliance	98,508	25.58	1	25.00	Non-DBE	City
PMA Management Corp	62,930	16.34	1	25.00	Non-DBE	MSA
Grand Total	385,067	100.00	4	100.00		

Source: Wilmington Contracts Data, M³ Consulting

Table 6.29.
Success Rate of Top Ten Bidders: Professional Services
Nationwide; FY 2016 - FY 2020

		% of Bids	Race/Ethnicity/Gender	Location	# of Awards	% Success rate
Professional Services						
TOTAL	8	100			4	50
Dr. Oluseyi Senu-Oke, MD	1	12.5	African American	MSA in State	1	100
Advantage Building & Facility Services, LLC	1	12.5	WBE	MSA	1	100
Asset Management Alliance	2	25	Non-DBE	City	1	50
PMA Management Corp	1	12.5	Non-DBE	MSA	1	100

Source: Wilmington Contracts Data, M³ Consulting

D. Top Ten Bidders and Awardees for Non-Professional Services

The top ten bidders in Non-Professional Services reflected in Table 6.30 consists of eight Non-DBEs, one MBE and one African American-owned firm. Comparing these firms to Table 6.31, Top Ten Awardees for Non-Professional Services are not markedly different than those on the Top Ten Bidders list.

Furthermore, apart from one bidder, seven of the Top Ten bidders are located within the MSA and two firms within the City of Wilmington. There is a similar picture for the Top Ten Awardees.

Among Non-Professional services, we see that, three of the Top Ten bidder firms, A.A. Duckett, Security Guard Inc and R & A contractors were among the Top Ten Awardees. The three firms had the largest number of bids and the greatest percentage of wins as well. Except for Security Guard Inc, which is nationwide, the other firms are within the MSA. R & A Contractors is an African American-owned firm, located within the City of Wilmington. In Table 6.33, all firms represented had success rates above 50 percent.

Table 6.30. Top Ten Bidders Non-Professional Services Wilmington MSA; FY 2016 - FY 2020				
	Count of Bids	% of Counts	Race/Ethnicity/ Gender	Location
A.A. Duckett, Inc	8	4.60	Non-DBE	MSA
Security Guard, Inc. T/A Gettier Security, Inc.	8	4.60	Non-DBE	Nationwide
Bradley Schiocchetti, Inc	6	3.45	Non-DBE	MSA
Diamond Materials LLC	5	2.87	Non-DBE	MSA in State
Param General Construction Co., Inc.	5	2.87	Non-DBE	MSA in State
B & F Towing Co.	5	2.87	Non-DBE	MSA in State
First State Towing LLC	5	2.87	Non-DBE	MSA in State
Clean & Safe Services, Inc	4	2.30	Non-DBE	City
R & A Contractors, LLC	4	2.30	African American	City
Summit Mechanical, Inc	4	2.30	MBE	MSA in State
Total	174	100.00		

Source: Wilmington Contracts Data, M³ Consulting

Table 6.31.
Top Ten Awardees
Non-Professional Services
Purchase Orders
Wilmington MSA; FY 2016 - FY 2020

	Dollars	% of Dollars	Counts	% of Counts	Race/Ethnicity/ Gender	Location
First Vehicle Services, Inc.	5,582,384	40.15	1	1.43	Non-DBE	City
Integrity Staffing Solutions, Inc.	1,137,000	8.18	1	1.43	Non-DBE	MSA in State
A.A. Duckett, Inc	1,092,689	7.86	5	7.14	Non-DBE	MSA
Mobile Dredging & Pumping Co.	922,133	6.63	1	1.43	Non-DBE	MSA
Joseph T. Hardy & Sons, Inc	799,800	5.75	1	1.43	Non-DBE	MSA in State
Municipal Maintenance Company, Inc.	526,100	3.78	3	4.29	Non-DBE	MSA
McCloskey Mechanical Contractors, Inc	407,900	2.93	2	2.86	Non-DBE	MSA
Security Guard, Inc. T/A Gettier Security, Inc.	405,255	2.91	8	11.43	Non-DBE	Nationwide
R & A Contractors, LLC	404,450	2.91	4	5.71	African American	City
Asset Management Alliance	282,883	2.03	1	1.43	Non-DBE	City
Total	13,903,243	100.00	70	100.00		

Source: Wilmington MUNIS Data, M³ Consulting

Table 6.32.
Success Rate of Top Ten Bidders: Non-Professional Services
Wilmington MSA; FY 2016 - FY 2020

Non-Professional Services		% of Bids	Race/Ethnicity/Gender	Location	# of Awards	Success rate
TOTAL	174	100.00			70	40.23
First Vehicle Services, Inc.	1	0.57	Non-DBE	City	1	100.00
Integrity Staffing Solutions, Inc.	1	0.57	Non-DBE	MSA in State	1	100.00
A.A. Duckett, Inc	8	4.60	Non-DBE	MSA	5	62.50
Mobile Dredging & Pumping Co.	1	0.57	Non-DBE	MSA	1	100.00
Joseph T. Hardy & Sons, Inc	2	1.15	Non-DBE	MSA in State	1	50.00
Municipal Maintenance Company, Inc.	3	1.72	Non-DBE	MSA	3	100.00
McCloskey Mechanical Contractors, Inc	3	1.72	Non-DBE	MSA	2	66.67
Security Guard, Inc. T/A Gettier Security, Inc.	8	4.60	Non-DBE	Nationwide	8	100.00
R & A Contractors, LLC	4	2.30	African American	City	4	100.00
Asset Management Alliance	1	0.57	Non-DBE	City	1	100.00

Source: Wilmington Contracts and MUNIS Data, M³ Consulting,

E. Top Ten Bidders and Awardees for Goods and Supplies

As shown in Table 6.33, the Top Ten Bidders in Goods and Supplies procurement by City of Wilmington include only Non-DBE firms both within the MSA and nationwide. The Top Ten Awardees were also Non-DBEs, but one of the firms, Ferguson Waterworks is located within the City, while three other firms are within the MSA. Five of the ten awardees were among Top Ten Bidders and had a higher rates of bidding success.

Table 6.33.				
Top Ten Bidders				
Goods and Supplies				
Nationwide; FY 2016 - FY 2020				
	Count of Bids	% of Counts	Race/Ethnicity/ Gender	Location
George S. Coyne Chemical Co, Inc	11	3.46	Non-DBE	MSA
Kemira Water Solutions, Inc	10	3.14	Non-DBE	Nationwide
Shannon Chemical Corporation	10	3.14	Non-DBE	MSA
Bayshore Ford Truck Sales, Inc	10	3.14	Non-DBE	MSA in State
Beltway International LLC	10	3.14	Non-DBE	Nationwide
Transteck, Inc. dba Freightliner of Bridgeport	9	2.83	Non-DBE	MSA
Buckman's, Inc	8	2.52	Non-DBE	MSA
Univar USA, Inc	8	2.52	Non-DBE	Nationwide
Belair Road Supply	7	2.20	Non-DBE	MSA in State
Dover Plumbing Supply Co.	6	1.89	Non-DBE	State
Total	318	100.00		

Source: Wilmington Contracts Data, M³ Consulting

Table 6.34.
Top Ten Awardees
Goods and Supplies
Purchase Orders
Nationwide; FY 2016 - FY 2020

	Dollars	% of Dollars	Counts	% of Counts	Race/Ethnicity/ Gender	Location
Preferred Meal Systems, Inc.	2,837,415	11.48	4	3.67	Non-DBE	Nationwide
Transteck, Inc. dba Freightliner of Bridgeport	2,411,087	9.75	6	5.50	Non-DBE	MSA
Atlantic Emergency Solutions	2,277,694	9.21	1	0.92	Non-DBE	Nationwide
Riggins, Inc.	2,189,460	8.86	2		Non-DBE	Nationwide
Kemira Water Solutions, Inc	1,799,600	7.28	6	5.50	Non-DBE	Nationwide
Securitas Electronic Security, Inc	1,259,500	5.09	1	0.92	Non-DBE	Nationwide
Municipal Maintenance Company, Inc.	1,020,900	4.13	2	1.83	Non-DBE	MSA
Ferguson Waterworks	871,632	3.53	4	3.67	Non-DBE	City
Beltway International LLC	860,983	3.48	4	3.67	Non-DBE	Nationwide
Buckman's, Inc	809,080	3.27	7	6.42	Non-DBE	MSA
Total	24,720,366	100.00	109	100.00		

Source: Wilmington MUNIS Data, M³ Consulting

Table 6.35.
Success Rate of Top Ten Bidders: Goods and Supplies
Nationwide; FY 2016 - FY 2020

Goods and Supplies		% of Bids	Race/Ethnicity/Gender	Location	# of Awards	Success rate
TOTAL	318	100.00			109	34.28
Preferred Meal Systems, Inc.	5	1.57	Non-DBE	Nationwide	4	80.00
Transtech, Inc. dba Freightliner of Bridgeport	9	2.83	Non-DBE	MSA	6	66.67
Atlantic Emergency Solutions	1	0.31	Non-DBE	Nationwide	1	100.00
Riggins, Inc.	2	0.63	Non-DBE	Nationwide	2	100.00
Kemira Water Solutions, Inc	10	3.14	Non-DBE	Nationwide	6	60.00
Securitas Electronic Security, Inc	1	0.31	Non-DBE	Nationwide	1	100.00
Municipal Maintenance Company, Inc.	2	0.63	Non-DBE	MSA	2	100.00
Ferguson Waterworks	5	1.57	Non-DBE	City	4	80.00
Beltway International LLC	10	3.14	Non-DBE	Nationwide	4	40.00
Buckman's, Inc	8	2.52	Non-DBE	MSA	7	87.50

Source: Wilmington Contracts and MUNIS Data, M³ Consulting,

6.11 SUMMARY OF FINDINGS

Table 6.36 summarizes utilization of Disadvantaged Business Enterprise (DBEs) by the three utilization measures – Purchase Orders, Accounts Payables and Contract Awards. Table 6.37 reflects Purchase Orders by race and gender breakdowns.

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

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

In Professional Services, MBE utilization is higher than WBE utilization for the three measures, with 6.67 percent based on POs, 5.84 percent based on Payments and 33.89 percent based on Contract Awards. WBEs had about .50 percent based on both POs and Payments. Among MBEs, African American-owned firms had 3.35 percent of Professional Services dollars based on POs, followed by Asian American-owned firms at 2.42 percent. Hispanic American-owned firms garnered less than one percent at .84 percent.

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

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

Table 6.36.
DBE Utilization in Percent of Dollars of Purchase Orders, Payments, and Contract Awards
City of Wilmington
Summary of DBE Utilization; FY 2016 - FY 2020
By Relevant Market

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

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data, Wilmington Vendor data;

¹Nationwide

²Wilmington MSA

³State of Delaware

⁴Includes unknown Disadvantaged Business Enterprise (DBEs)

Chapter VI Statistical Analysis of DBE Utilization

Table 6.37.
Total Utilization
Purchase Orders—Dollars
City of Wilmington
Nationwide, FY 2016 – FY 2020

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

Source: Wilmington Contracts Data, Wilmington MUNIS data, M³ Consulting

1-Nationwide

2-Wilmington MSA

3-Contract Awards

4-Purchase Orders

CHAPTER 7 STATISTICAL ANALYSIS OF DBE DISPARITY

7.1 INTRODUCTION

This chapter begins by reporting the statistical evidence of disparities between DBE availability in the relevant market of the City of Wilmington (Wilmington) and DBE utilization by year, using the measure relied upon for decision-making, followed by a comparison of disparity based on Contract Awards, Purchase Orders and Accounts Payable for the period. Disparities are analyzed in the industry categories of Architecture and Engineering, Construction and Construction-Related Services, Non-Professional Services, Professional Services, and Goods and Supplies. Disparity ratios using Data Axle Availability (Marketplace Availability) are also provided, showing the difference, if any, between actual availability and potential availability.

M³ Consulting presents the disparity ratios for Wilmington's Ready, Willing and Able (RWASM) availability. For all industries, RWASM availability will consist of firms that have bid for prime contracts awarded by Wilmington during the study period; firms awarded prime contracts during the study period; and firms that have bid on or been awarded subcontracts during the study period. The measure of availability used to calculate disparity is the Wilmington RWASM availability, Level 2, consisting of bidders/sub bidders and prime awardees/sub awardees.

Utilization for each industry is measured via Purchase Order, Accounts Payables and Contract Award data as maintained by Wilmington's procurement department. The utilization percentage used to calculate the disparity ratios are based on formal and informal purchases by race and gender.

7.2 DISPARITY RATIOS METHODOLOGY

Disparity ratios compare the percentage utilization of various race and gender groups to the percentage availability of these same groups. The disparity ratio is calculated by dividing the former percentage by the latter. A resulting ratio greater than one indicates overutilization; conversely, a ratio less than one indicates underutilization. The methodologies for calculating availability, utilization, disparity, and significance testing, specifically for this study are presented in Chapter IV, Statistical Methodology.

7.3 DISPARITIES IN ARCHITECTURE AND ENGINEERING

Purchase Orders (Table 7.1) represent the best measure of utilization for Architecture and Engineering. Overall, for A&E, the disparity ratios indicate that Hispanic American-owned firms were statistically significantly overutilized for the study period. Native American-owned firms, as well as VBEs are underutilized, and these results are statistically significant for the study period. None of the other groups show any statistically significant underutilization. African American-owned firms show statistically significant overutilization for FY 2016 and FY 2017, but underutilization for the remaining years that was not statistically significant.

The three metrics for utilization, Contract Awards, Purchase Orders and Payments, are shown in aggregate for the study period in Table 7.2. African American-owned firms are statistically significantly over utilized based on payments; but POs and contract awards are not significant and reflect overutilization and underutilization, respectively. Hispanic American-owned firms show significant over utilization based on both Payments and POs. Asian American- and Native American-owned firms show statistically significant underutilization based on all utilization measures, but the Asian American-owned firms only show significance with payments data. WBEs reflect underutilization across the three metrics, and statistical significance for Payments.

Table 7.3 presents results with Marketplace availability which indicates statistically significant overutilization of African American-owned firms and statistically significant underutilization of WBEs and Asian American-owned firm. Hispanic American-owned firms are overutilized and Native American-owned firms are under-utilized, but neither group reached significance. Other groups show underutilization, but the results do not reach statistical significance.

Chapter VII

Statistical Analysis of DBE Disparity

Table 7.1.
Purchase Order Utilization vs. RWASM Availability Level 2
Architecture & Engineering
City of Wilmington
Nationwide; FY 2016—FY 2020

	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	0.92	NS	0.96	NS	1.03	NS	1.10	NS	0.91	NS	1.00	NS
African American	2.65	S	2.19	S	0.76	NS	0.42	NS	0.00	S	1.14	NS
Asian American	0.00	NS	0.00	NS	0.00	NS	0.00	NS	1.49	NS	0.29	NS
Hispanic American	0.00	NS	0.00	NS	3.46	S	2.94	NS	4.25	S	2.20	S
Native American	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Other MBE	0.00	NS	0.00	NS	0.00	NS	0.93	NS	1.51	NS	0.56	NS
<i>Total MBE</i>	<i>1.77</i>	<i>S</i>	<i>1.46</i>	<i>NS</i>	<i>0.89</i>	<i>NS</i>	<i>0.71</i>	<i>NS</i>	<i>0.81</i>	<i>NS</i>	<i>1.10</i>	<i>NS</i>
WBE	0.00	NS	0.00	NS	0.52	NS	0.00	NS	4.60	S	0.98	NS
Unknown DBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Total DBE	1.45	NS	1.19	NS	0.82	NS	0.58	NS	1.50	NS	1.08	NS
SBE	1.06	NS	0.92	NS	1.16	NS	0.89	NS	0.92	NS	0.98	NS
VBE	0.00	NS	0.00	NS	0.00	NS	0.00	NS	0.00	NS	0.00	S

Source: M³ Consulting; Wilmington MUNIS PO; M³ Consulting

-Ratio is Less than 1 –Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1 –Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1 –Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1 – Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1—Overutilized, but not Statistically Significant

-ND: Not Defined

Table 7.2.
Architecture and Engineering
Summary Disparity Ratios by Race, Ethnicity and Gender
Utilization vs. *RWA*SM Availability Level 2
City of Wilmington
Nationwide; FY 2016—FY 2020

	Contract Awards		Purchase Order		Payments	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	0.35	S	1.00	NS	0.98	NS
African American	0.45	NS	1.14	NS	1.41	S
Asian American	0.00	NS	0.29	NS	0.25	S
Hispanic American	0.00	NS	2.20	S	2.68	S
Native American	0.00	S	0.00	S	0.00	S
Other MBE	0.00	NS	0.56	NS	0.70	NS
<i>Total MBE</i>	<i>0.30</i>	<i>NS</i>	<i>1.10</i>	<i>NS</i>	<i>1.34</i>	<i>S</i>
WBE	0.00	NS	0.98	NS	0.25	S
Unknown DBE	0.00	S	0.00	S	0.00	S
Total DBE	0.25	NS	1.08	NS	1.14	NS
SBE	0.00	NS	0.98	NS	1.17	NS
VBE	44.03	S	0.00	S	0.00	S

Source: Wilmington Contracts Data, MUNIS PO and AP data; M³ Consulting

-Ratio is Less than 1 –Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1 –Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1 – Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1 – Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1— Overutilized, but not Statistically Significant

-ND: Not Defined

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Table 7.3.
Purchase Order Utilization vs. Data Axle Availability MSA
Architecture and Engineering
City of Wilmington
Nationwide; FY 2016—FY 2020

	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	1.09	NS	1.16	NS	1.25	S	1.32	S	1.09	NS	1.19	S
African American	14.06	S	11.79	S	4.09	S	2.26	NS	0.00	NS	6.05	S
Asian American	0.00	NS	0.00	NS	0.00	NS	0.00	NS	0.94	NS	0.18	S
Hispanic American	0.00	NS	0.00	NS	2.05	NS	1.73	NS	2.48	S	1.28	NS
Native American	0.00	NS	0.00	NS	0.00	NS	0.00	NS	0.00	NS	0.00	NS
Other MBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Total MBE	3.55	S	2.98	S	1.82	NS	1.45	NS	1.62	NS	2.21	S
WBE	0.00	S	0.00	S	0.06	S	0.00	S	0.53	S	0.11	S
Unknown DBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Total DBE	0.73	NS	0.61	S	0.42	S	0.30	S	0.75	NS	0.54	S
SBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
VBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S

Source: M³ Consulting; Wilmington MUNIS PO; Data Axle, 2021; M³ Consulting

-Ratio is Less than 1 –Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1 –Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1 –Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1 – Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1—Overutilized, but not Statistically Significant

-ND: Not Defined

7.4 DISPARITIES IN CONSTRUCTION AND CONSTRUCTION-RELATED SERVICES

Contract Awards represent the best measure of utilization and are presented in Table 7.4. All three-utilization metrics in aggregate for the study period are presented in Table 7.5. Marketplace Availability is presented in Table 7.6.

For Construction, all DBE and SBE groups are underutilized, but only disparity ratios for Hispanic American-owned firms and WBEs reach statistical significance, using Contract Awards. When POs and Payments are the utilization measure, we find statistically significant disparity for all DBEs, SBEs and VBEs. However, Contract Awards includes subcontractor data, as such Table 7.4 is most reflective of disparities in Construction. While African American-owned firms show statistical significance in FY 2016, the remaining years show underutilization, but the disparity ratios do not reach statistical significance. We note that African American-owned Contract Awards utilization is driven by subcontracting dollars. One firm represented 51.38 percent of these subcontracting dollars; 3 firms represented 79.63 percent.

All three utilization measures are presented in Table 7.5. For POs and payments, all DBEs and VBEs show underutilization or zero utilization. African American-, Asian American- and Hispanic American-owned firms show significant underutilization using payments and POs, which reflect that these groups are not securing contracts at the prime level consistent with their availability. WBEs consistently show significant overutilization for all three utilization measures.

Table 7.6 presents disparity ratio based on Marketplace Availability, which shows African American-owned firms and Native American-owned firms as significantly overutilized overall and in every period, except FY 2016 and WBEs, except FY 2016 and FY 2019. This is because African American-owned firms show a much higher availability using RWASM availability (16.22 percent) compared to only 0.64 percent using the Marketplace Availability measure. However, since the Marketplace measure reflects all firms that are available in the relevant market and not just those that actively participate in procurement with the City of Wilmington, the RWASM reflects a more accurate picture of availability. Asian American-owned firm disparity ratio also shows overutilization, but the disparity ratio does not reach statistical significance. However, this measure of availability is limited by the fact that the firms included in Data Axle (Marketplace Availability) may not be ready or willing to bid for projects with City of Wilmington.

Chapter VII

Statistical Analysis of DBE Disparity in Contracting

Table 7.4.
Contract Awards Utilization vs. RWASM Availability Level 2
Construction and Construction-Related Services
City of Wilmington
Relevant Market; FY 2016—FY 2020

	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	1.50	S	0.41	S	0.89	NS	1.32	S	0.92	NS	1.13	S
African American	0.03	S	0.97	NS	0.87	NS	0.80	NS	0.62	NS	0.72	NS
Asian American	0.00	NS	0.00	NS	1.82	NS	0.00	NS	0.00	NS	0.30	NS
Hispanic American	0.00	NS	0.36	NS	0.55	NS	0.14	NS	0.87	NS	0.29	S
Native American	0.00	NS	0.00	NS	0.00	NS	1.87	NS	0.00	NS	0.93	NS
Other MBE	0.01	NS	0.00	NS	0.56	NS	0.08	NS	0.33	NS	0.16	NS
<i>Total MBE</i>	<i>0.02</i>	<i>S</i>	<i>0.72</i>	<i>NS</i>	<i>0.88</i>	<i>NS</i>	<i>0.59</i>	<i>S</i>	<i>0.57</i>	<i>NS</i>	<i>0.58</i>	<i>S</i>
WBE	0.37	NS	7.15	S	2.18	S	0.05	S	3.21	S	1.58	S
Unknown DBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Total DBE	0.11	S	2.31	S	1.20	NS	0.46	S	1.22	NS	0.83	NS
SBE	0.00	NS	0.00	NS	1.49	NS	0.13	NS	0.13	NS	0.32	NS
VBE	0.14	NS	0.24	NS	0.00	NS	0.00	NS	1.76	NS	0.22	NS

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data; M³ Consulting; Relevant Market—Wilmington MSA;

-Ratio is Less than 1—Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1—Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1—Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1—Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1—Overutilized, but not Statistically Significant

-ND: Not Defined

Table 7.5.
Construction and Construction-Related Services
Summary Disparity Ratios by Race, Ethnicity and Gender
Utilization vs. *RWASM* Availability Level 2
City of Wilmington
Relevant Market; FY 2016—FY 2020

	Contract Awards		Purchase Order		Payments	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	1.13	S	1.09	S	0.85	S
African American	0.72	NS	0.05	S	0.06	S
Asian American	0.30	NS	0.26	S	0.47	S
Hispanic American	0.29	S	0.14	S	0.14	S
Native American	0.93	NS	0.00	NS	0.00	S
Other MBE	0.16	NS	0.00	S	0.00	S
<i>Total MBE</i>	<i>0.58</i>	<i>S</i>	<i>0.08</i>	<i>S</i>	<i>0.10</i>	<i>S</i>
WBE	1.58	S	3.47	S	5.31	S
Unknown DBE	0.00	S	0.00	S	0.00	S
Total DBE	0.83	NS	0.92	NS	1.39	S
SBE	0.32	NS	0.18	S	0.32	S
VBE	0.22	NS	0.17	S	0.26	S

Source: Wilmington Contracts Data, MUNIS PO and AP data; M³ Consulting

-Ratio is Less than 1 –Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1 –Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1 – Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1 – Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1— Overutilized, but not Statistically Significant

-ND: Not Defined

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Table 7.6.
Contract Awards Utilization vs. Data Axle Availability MSA
Construction and Construction-Related Services
City of Wilmington
Relevant Market; FY 2016—FY 2020

	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	1.12	NS	0.31	S	0.67	S	0.99	NS	0.68	S	0.84	S
African American	0.68	NS	23.79	S	21.34	S	19.57	S	15.03	S	17.54	S
Asian American	0.00	NS	0.00	NS	6.29	S	0.00	NS	0.00	NS	1.03	NS
Hispanic American	0.00	NS	0.36	NS	0.55	NS	0.14	NS	0.86	NS	0.29	S
Native American	0.00	NS	0.00	NS	0.00	NS	27.42	S	0.00	NS	13.61	S
Other MBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
<i>Total MBE</i>	<i>0.10</i>	<i>NS</i>	<i>3.53</i>	<i>S</i>	<i>4.34</i>	<i>S</i>	<i>2.92</i>	<i>S</i>	<i>2.80</i>	<i>NS</i>	<i>2.86</i>	<i>S</i>
WBE	0.32	NS	6.25	S	1.91	S	0.05	S	2.80	S	1.38	NS
Unknown DBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Total DBE	0.24	NS	5.30	S	2.76	S	1.05	NS	2.80	S	1.90	S
SBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
VBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data; M³ Consulting; Relevant Market—Wilmington MSA;

-Ratio is Less than 1—Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1—Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1—Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1—Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1—Overutilized, but not Statistically Significant

-ND: Not Defined

7.5 DISPARITIES IN NON-PROFESSIONAL SERVICES

Purchase orders represent the best measure of utilization for Non-Professional Services and are presented in Table 7.7. All three-utilization metrics in aggregate for the study period are presented in Table 7.8.

In Table 7.7, Non-Professional Services reflected a greater participation by WBEs across all years in the study period. Except Asian American-owned firms, all other groups are significantly underutilized. Asian American-owned firms are overutilized for the overall period, but this is perhaps due to their overutilization in FY 2018. The other four years had either zero utilization or significant underutilization of Asian American-owned firms. African American-owned firms were underutilized for three of the five years when the disparity ratios reached statistical significance, whereas Hispanic American-owned firms were statistically significantly underutilized in every year and for the overall period. Native American-owned firms were not utilized in any of the five years in the study period. SBEs showed overutilization in 2 of the 5 years of the study period and for the period but the disparity ratios did not reach statistical significance.

Table 7.8 presents three measures of utilization, but most Non-Professional Services are procured via informal bids and hence POs and Payments are more relevant than contracts that reflect formal bids. The latter shows underutilization of WBEs and Hispanic American-owned firms and overutilization of African American-owned firms for the period but none of the disparities reach statistical significance. Payments data reflect the same patterns of disparities and statistical significance for all groups as noted in Table 7.7 with POs as the measure of utilization.

Using Data Axle as the measure of Marketplace Availability in Table 7.9, DBEs overall are significantly underutilized. African American-owned firms are the only DBE that is overutilized. This is because in the Marketplace, African American-owned firm availability percentage appears lower than RWASM (1.23 percent compared to 6.67 percent in RWA). As RWASM is more reflective of firms that have shown interest in doing business with the City of Wilmington, the disparities using RWASM measures (Table 7.7) may be more relevant.

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Table 7.7. Purchase Order Utilization vs. <i>RWA</i>SM Availability Level 2 Non-Professional Services City of Wilmington Relevant Market; FY 2016—FY 2020												
	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	1.05	S	1.01	NS	0.95	S	1.02	S	0.95	S	1.00	NS
African American	0.43	S	0.46	S	0.43	S	0.36	S	0.51	S	0.44	S
Asian American	0.00	S	0.00	S	12.88	S	0.04	S	0.01	S	2.44	S
Hispanic American	0.13	S	0.02	S	0.31	S	0.11	S	0.14	S	0.14	S
Native American	0.00	NS	0.00	NS	0.00	NS	0.00	NS	0.00	NS	0.00	S
Other MBE	0.27	NS	0.18	S	0.86	NS	0.81	NS	0.50	NS	0.52	S
Total MBE	0.36	S	0.37	S	0.91	NS	0.33	S	0.43	S	0.47	S
WBE	1.93	S	2.82	S	2.90	S	2.67	S	4.64	S	3.02	S
Unknown DBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Total DBE	0.72	S	0.93	NS	1.37	S	0.87	NS	1.40	S	1.06	NS
SBE	0.46	S	0.89	NS	1.40	S	0.88	NS	0.94	NS	0.91	NS
VBE	0.38	NS	0.39	NS	0.00	S	0.08	S	0.00	S	0.17	S

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data; M³ Consulting; Relevant Market—Wilmington MSA;

-Ratio is Less than 1—Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1—Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1—Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1—Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1—Overutilized, but not Statistically Significant

-ND: Not Defined

Table 7.8.
Non-Professional Services
Summary Disparity Ratios by Race, Ethnicity and Gender
Utilization vs. *RWASM* Availability Level 2
City of Wilmington
Relevant Market; FY 2016—FY 2020

	Contract Awards		Purchase Orders		Payments	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	1.09	S	1.00	NS	1.00	S
African American	0.06	NS	0.44	S	0.42	S
Asian American	0.00	NS	2.44	S	3.15	S
Hispanic American	0.62	NS	0.14	S	0.14	S
Native American	0.00	NS	0.00	S	0.00	S
Other MBE	0.00	NS	0.52	S	0.50	S
<i>Total MBE</i>	<i>0.55</i>	<i>NS</i>	<i>0.47</i>	<i>S</i>	<i>0.49</i>	<i>S</i>
WBE	0.32	NS	3.02	S	2.82	S
Unknown DBE	0.00	S	0.00	S	0.00	S
Total DBE	0.50	NS	1.06	NS	1.02	NS
SBE	0.00	NS	0.91	NS	0.81	S
VBE	0.00	NS	0.17	S	0.16	S

Source: Wilmington Contracts Data, MUNIS PO and AP data; M³ Consulting;

-Ratio is Less than 1 –Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1 –Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1 – Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1 – Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1—Overutilized, but not Statistically Significant

-ND: Not Defined

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Table 7.9.
Purchase Order Utilization vs. Data Axle Availability MSA
Non-Professional Services
City of Wilmington
Relevant Market; FY 2016—FY 2020

	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	1.42	NS	1.38	S	1.29	S	1.39	S	1.29	S	1.35	S
African American	2.58	S	2.79	S	2.57	S	2.19	S	3.05	S	2.64	S
Asian American	0.00	S	0.00	S	2.30	S	0.01	S	0.00	S	0.43	S
Hispanic American	0.03	S	0.01	S	0.08	S	0.03	S	0.03	S	0.03	S
Native American	0.00	NS	0.00	NS	0.00	NS	0.00	NS	0.00	NS	0.00	S
Other MBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Total MBE	0.38	S	0.39	S	0.97	NS	0.35	S	0.46	S	0.50	S
WBE	0.18	S	0.26	S	0.27	S	0.25	S	0.43	S	0.28	S
Unknown DBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Total DBE	0.22	S	0.29	S	0.43	S	0.27	S	0.44	S	0.33	S
SBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
VBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data; M³ Consulting; Relevant Market—Wilmington MSA;

-Ratio is Less than 1 –Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1 –Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1 –Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1 – Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1—Overutilized, but not Statistically Significant

-ND: Not Defined

7.6 DISPARITIES IN PROFESSIONAL SERVICES

Purchase orders represent the best measure of utilization for Professional Services and are presented in Table 7.10. All three utilization metrics in aggregate for the study period are presented in Table 7.11.

For Professional Services, only Non-DBEs and Asian American-owned firms were overutilized, while all other groups were underutilized using RWASM availability as the measure of availability. Asian American-owned firms were significantly overutilized in 4 of the 5 years in the study period. African American-owned firms were underutilized every year, but the disparity ratio reached significance in 3 of the 5 years. For Hispanic American-owned firms, except in FY 2019, all other years had significant underutilization with zero utilization in FY 2018. WBEs were underutilized in all years but in FY 2016 and FY 2017 the disparity ratios did not reach statistical significance. Disparity ratios for SBEs did not reach statistical significance overall but they were significantly underutilized 3 of the 5 years. VBEs were underutilized in every year, but only reach statistical significance in FY 2020 and for the period.

Disparity results in Table 7.11 were similar using RWASM Availability and Payments utilization. Contract awards show significant overutilization for African American-owned firms and Other MBEs resulting in DBEs overall showing statistically significant overutilization. However, Asian American-, Hispanic American- and Native-American owned firms were not utilized in formal contracts. Since professional services procurement is largely done via informal bids, the disparity ratios in Table 7.11 may be more reflective of the disparities in professional services procurement.

Disparities using marketplace availability in Table 7.12 is similar to Table 7.11 where majority of disparity ratios are statistically significant. But unlike RWA availability, Asian American owned firms are significantly underutilized and African American owned firms are overutilized for every year. In comparing availabilities, Asian Americans are only lower availability in RWA (1.31 percent) as opposed to marketplace availability at 5.12 percent) therefore resulting in significant overutilization of Asian American owned firms using the RWA measure. In contrast, African Americans show much higher availability in RWA at 6.01 percent compared to marketplace availability at only 1 percent. This we see much higher disparity ratios for this MBE group using marketplace availability.

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Table 7.10.
Purchase Order Utilization vs. *RWA*SM Availability Level 2
Professional Services
City of Wilmington
Relevant Market; FY 2016—FY 2020

	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	1.05	S	1.05	S	1.07	S	1.07	S	1.07	S	1.06	S
African American	0.69	NS	0.77	NS	0.50	S	0.55	S	0.36	S	0.56	S
Asian American	1.95	S	1.87	S	1.93	S	1.98	S	1.59	NS	1.86	S
Hispanic American	0.05	S	0.04	S	0.00	S	0.39	NS	1.86	S	0.54	S
Native American	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Other MBE	0.06	NS	0.27	NS	0.04	NS	0.04	NS	0.09	NS	0.10	S
<i>Total MBE</i>	<i>0.73</i>	<i>NS</i>	<i>0.78</i>	<i>NS</i>	<i>0.59</i>	<i>S</i>	<i>0.69</i>	<i>S</i>	<i>0.76</i>	<i>NS</i>	<i>0.71</i>	<i>S</i>
WBE	0.70	NS	0.46	NS	0.14	S	0.04	S	0.13	S	0.26	S
Unknown DBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
<i>Total DBE</i>	<i>0.72</i>	<i>NS</i>	<i>0.72</i>	<i>S</i>	<i>0.51</i>	<i>S</i>	<i>0.57</i>	<i>S</i>	<i>0.65</i>	<i>S</i>	<i>0.63</i>	<i>S</i>
SBE	0.03	NS	0.02	S	0.61	NS	0.07	S	0.05	S	0.16	S
VBE	0.72	NS	0.40	NS	0.00	NS	0.41	NS	0.06	S	0.39	S

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data; M³ Consulting; Relevant Market— Nationwide;

-Ratio is Less than 1 –Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1 –Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1 –Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1 – Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1—Overutilized, but not Statistically Significant

-ND: Not Defined

Table 7.11.
Professional Services
Summary Disparity Ratios by Race, Ethnicity and Gender
Utilization vs. *RWASM* Availability Level 2
City of Wilmington
Relevant Market; FY 2016—FY 2020

	Contract Awards		Purchase Orders		Payments	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	0.57	S	1.06	S	1.07	S
African American	5.43	S	0.56	S	0.39	S
Asian American	0.00	NS	1.86	S	2.05	S
Hispanic American	0.00	NS	0.54	S	0.49	S
Native American	0.00	S	0.00	S	0.00	S
Other MBE	2.49	NS	0.10	S	0.10	S
<i>Total MBE</i>	<i>3.61</i>	<i>S</i>	<i>0.71</i>	<i>S</i>	<i>0.62</i>	<i>S</i>
WBE	8.11	S	0.26	S	0.23	S
Unknown DBE	0.00	S	0.00	S	0.00	S
Total DBE	4.42	S	0.63	S	0.55	S
SBE	0.00	NS	0.16	S	0.19	S
VBE	0.00	NS	0.39	S	0.41	S

Source: Wilmington Contracts Data, MUNIS PO and AP data; M³ Consulting;

-Ratio is Less than 1 –Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1 –Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1 – Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1 – Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1—Overutilized, but not Statistically Significant

-ND: Not Defined

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Table 7.12.
Purchase Order Utilization vs. Data Axle Availability MSA
Professional Services
City of Wilmington
Relevant Market; FY 2016—FY 2020

	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	1.47	S	1.47	S	1.50	S	1.50	S	1.49	S	1.49	S
African American	3.95	S	4.42	S	2.83	S	3.12	S	2.04	S	3.18	S
Asian American	0.67	NS	0.64	NS	0.66	NS	0.68	NS	0.54	S	0.63	S
Hispanic American	0.02	S	0.02	S	0.00	S	0.16	S	0.74	NS	0.21	S
Native American	0.00	NS	0.00	NS	0.00	NS	0.00	NS	0.00	NS	0.00	NS
Other MBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Total MBE	0.77	NS	0.83	NS	0.63	S	0.74	NS	0.81	NS	0.76	S
WBE	0.05	S	0.03	S	0.01	S	0.00	S	0.01	S	0.02	S
Unknown DBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Total DBE	0.22	S	0.22	S	0.15	S	0.17	S	0.20	S	0.19	S
SBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
VBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data; M³ Consulting; Relevant Market— Nationwide;

-Ratio is Less than 1 –Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1 –Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1 –Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1 – Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1—Overutilized, but not Statistically Significant

-ND: Not Defined

7.7 DISPARITIES IN GOODS & SUPPLIES

For Goods & Supplies shown in Table 7.13, Purchase Order data better reflects the utilization because of requirements contracts that are prevalent in this procurement category, along with capturing informal purchases. All three utilization metrics in aggregate for the study period are presented in Table 7.14.

As reflected in Table 7.13, Non-DBEs reflected overutilization for every year of the study period, with statistical significance in 4 of the 5 years in the study period. This was consistent with Asian American-, Hispanic American-owned firms and VBEs showing significant underutilization in 4 of the 5 years, whereas African American-owned firms had significant disparity in 2 of the 5 years of the study period. WBEs were significantly underutilized in all five years, whereas SBEs have disparity ratios that are not significant in any of the five years or for the overall period. All DBEs showed significant disparity overall. When Payments data is used as the measure of utilization, disparity ratios reflect similar patterns of under and over utilization in Table 7.14 as noted in POs in Table 7.13.

While little procurement is done via formal contracts for Goods and Supplies, we see underutilization of WBEs and Hispanic American-owned firms and SBEs although none of the disparities reach statistical significance. All other MBE groups are not utilized in procuring goods and supplies. Non-DBEs are significantly overutilized.

Results based on Data Axle that reflects Marketplace Availability, shown in Table 7.15, reflected similar results in terms of both ratio and significance in all cases but for African American-owned firms that shows overutilization. This is a result of overutilization of African American-owned firms for FY 2017, FY 2018 and FY 2019 and a lower availability percentage of African Americans using Marketplace availability (1.23 percent) compared to RWA availability (3.64 percent) for this group.

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Table 7.13.
Purchase Order Utilization vs. *RWA*SM Availability Level 2
Goods & Supplies
City of Wilmington
Relevant Market; FY 2016—FY 2020

	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	1.08	S	1.02	S	1.02	S	1.00	NS	1.06	S	1.03	S
African American	0.02	S	1.12	NS	1.55	S	0.90	NS	0.20	S	0.78	S
Asian American	0.01	S	1.14	NS	0.02	S	0.27	S	0.00	S	0.26	S
Hispanic American	0.37	S	0.12	S	0.12	S	0.12	S	0.96	NS	0.32	S
Native American	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Other MBE	0.93	NS	1.20	NS	0.81	NS	0.70	NS	0.94	NS	0.89	NS
<i>Total MBE</i>	<i>0.20</i>	<i>S</i>	<i>0.95</i>	<i>NS</i>	<i>1.08</i>	<i>NS</i>	<i>0.69</i>	<i>S</i>	<i>0.42</i>	<i>S</i>	<i>0.67</i>	<i>S</i>
WBE	0.22	S	0.34	S	0.16	S	1.74	S	0.51	S	0.70	S
Unknown DBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
<i>Total DBE</i>	<i>0.20</i>	<i>S</i>	<i>0.78</i>	<i>S</i>	<i>0.82</i>	<i>S</i>	<i>0.99</i>	<i>NS</i>	<i>0.45</i>	<i>S</i>	<i>0.68</i>	<i>S</i>
SBE	1.02	NS	1.03	NS	0.81	NS	0.79	NS	0.80	NS	0.88	NS
VBE	0.00	S	0.00	S	0.00	S	0.91	NS	0.00	S	0.28	S

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data; M³ Consulting; Relevant Market— Nationwide;

-Ratio is Less than 1 –Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1 –Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1 –Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1 – Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1—Overutilized, but not Statistically Significant

-ND: Not Defined

Table 7.14.
Goods & Supplies
Summary Disparity Ratios by Race, Ethnicity and Gender
Utilization vs. *RWASM* Availability Level 2
City of Wilmington
Relevant Market; FY 2016—FY 2020

	Contract Awards		Purchase Orders		Payments	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	1.08	S	1.03	S	1.04	S
African American	0.00	S	0.78	S	0.90	S
Asian American	0.00	NS	0.26	S	0.29	S
Hispanic American	0.15	NS	0.32	S	0.21	S
Native American	0.00	S	0.00	S	0.00	S
Other MBE	0.00	NS	0.89	NS	0.64	S
<i>Total MBE</i>	0.03	S	0.67	S	0.70	S
WBE	0.54	NS	0.70	S	0.39	S
Unknown DBE	0.00	S	0.00	S	0.00	S
Total DBE	0.17	S	0.68	S	0.61	S
SBE	0.74	NS	0.88	NS	0.81	S
VBE	0.00	NS	0.28	S	0.23	S

Source: Wilmington Contracts Data, MUNIS PO and AP data; M³ Consulting;

-Ratio is Less than 1 –Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1 –Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1 – Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1 – Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1— Overutilized, but not Statistically Significant

-ND: Not Defined

Chapter VII

Statistical Analysis of DBE Disparity in Contracting

Table 7.15.
Purchase Order Utilization vs. Data Axle Availability MSA
Goods & Supplies
City of Wilmington
Relevant Market; FY 2016—FY 2020

	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Period	
Ethnicity	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-DBE	1.44	S	1.37	S	1.37	S	1.34	S	1.41	S	1.38	S
African American	0.05	S	3.49	S	4.84	S	2.80	S	0.64	NS	2.42	S
Asian American	0.00	S	0.09	S	0.00	S	0.02	S	0.00	S	0.02	S
Hispanic American	0.07	S	0.02	S	0.02	S	0.02	S	0.17	S	0.06	S
Native American	0.00	NS	0.00	NS	0.00	NS	0.00	NS	0.00	NS	0.00	S
Other MBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Total MBE	0.09	S	0.43	S	0.49	S	0.31	S	0.19	S	0.30	S
WBE	0.03	S	0.04	S	0.02	S	0.21	S	0.06	S	0.08	S
Unknown DBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
Total DBE	0.05	S	0.20	S	0.21	S	0.25	S	0.11	S	0.17	S
SBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S
VBE	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S	0.00	S

Source: M³ Consulting; Wilmington Contracts Data, MUNIS PO and AP data; M³ Consulting; Relevant Market— Nationwide;

-Ratio is Less than 1 –Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1 –Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1 –Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1 – Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1—Overutilized, but not Statistically Significant

-ND: Not Defined

7.8 SUMMARY OF FINDINGS

Table 7.16 summarizes the disparity ratios discussed in this chapter for each procurement categories at the race/ethnic/gender group level, for Wilmington procurements for the period FY 2016 - FY 2020. Based on the foregoing analysis and the summary below, findings of statistically significant disparity are made for the following groups in the following procurement categories:

- Architecture and Engineering—None.
- Construction and Construction-Related Services—Hispanic American-owned firms.
- Non-Professional Services—African American-owned firms, Hispanic American-owned firms.
- Professional Services—African American-owned firms, Hispanic American-owned firms, WBEs.
- Goods and Supplies—African American-owned firms, Asian American-owned firms, Hispanic American-owned firms, WBEs.

Table 7.16.
Summary Disparity Ratios by Race, Ethnicity and Gender
Utilization vs. *RWASM* Availability Level 2
City of Wilmington
Relevant Market; FY 2016—FY 2020

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

Source: Wilmington Contracts Data, MUNIS PO and AP data; M³ Consulting;

-Ratio is Less than 1 –Underutilization; Ratio is greater than 1—Overutilization

-Significance is S and Ratio is Less than 1 –Statistically Significant Underutilization or Disparity; Significance is S and Ratio is Greater than 1 – Statistically Significant Overutilization.

-Significance is NS and Disparity Ratio is Less than 1 – Disparity, but not Statistically Significant; Significance is NS and Ratio is Greater than 1—Overutilized, but not Statistically Significant

-ND: Not Defined

CHAPTER 8: CAPACITY AND REGRESSION ANALYSIS

8.1 INTRODUCTION

Disparities as seen in Chapter VII, Statistical Analysis of DBE Disparities in Contracting are often attributed to differences in capacity of Non-DBE and DBE firms. As such, this capacity analysis sought to examine if there were any differences in capacity of firms based on race or gender that could hinder firms from being actually and potentially available to the City of Wilmington.

8.2 CAPACITY ANALYSIS

The analysis of business capacity is complicated because capacity is difficult to define, measure, and is an elastic concept. Given that proxies of capacity cannot adequately capture the ability of firms using any single measure, M³ Consulting will examine differences in the capacity of firms based on race and gender, using established statistical methods, once a set of variables that measure capacity are controlled for.

8.2.1 Capacity Analysis Based on Average Employees and Average Sales Revenues from U.S. Census Annual Survey of Entrepreneurs

U.S. Census Annual Survey of Entrepreneurs reflects capacity measures by number of paid employees and annual payroll in the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA area. We report these measures for Construction, Goods and Supplies, Non-Professional Services and Professional Services.

Construction

For Construction, as shown in Table 8.1, Total M/WBEs represented 12.21 percent of the total 12,505 firms with paid employees in the MSA. Minority-owned firms account for 7.96 percent, WBEs, 3.94 percent and VBEs 6.43 percent respectively of the total firms. Among the MBEs, African American-owned firms were about 2.0 percent, while Hispanic American-owned firms were 3.25 percent; Asian and Native American-owned firms were less than two percent of firms with paid employees. Other than Hispanic American-owned firms and WBEs, other M/WBEs did not have any paid employees. If capacity were to be measured by number of paid employees, Hispanic American-owned firms had 1,199 employees (1.32 percent of the total) and WBEs had 3,467 (3.81 percent of the total). In line with that, these two latter groups accounted for 1.08 percent and 3.93 percent of the total annual payroll respectively.

Goods and Supplies

With 18.20 percent of firms with paid employees, Asian American-owned firms have the highest capacity among M/WBEs for Goods and Supplies reflected in Table 8.2. They are followed closely by WBEs at 11.62 percent. Hispanic American-owned firms accounted for 3.37 percent of firms with paid employees, while

Other MBEs came in at 1.18 percent. VBEs were at 6.01 percent while African American- and Native American-owned firms both reflected less than one percent. Results were similar for capacity based on number of paid employees and annual payroll, except to a lesser degree. Asian American-owned firms and WBEs reflected 6.47 percent and 6.20 percent of number of paid employees and 2.60 percent and 4.34 percent of annual payroll.

Non-Professional Services

Amongst M/WBEs in Non-Professional Services (Table 8.3), Asian American- African American-owned firms and WBEs represented 13.96 percent, 3.01 percent, and 14.23 percent of firms with paid employees, respectively. Hispanic American-owned firms came in at 1.69 percent while Other MBEs were at less than 1 percent. VBEs represented 5.38 percent of firms with paid employees. Results for number of paid employees and annual payroll were less representative of MBEs. WBEs reflected 10.07 percent for number of paid employees and 9.05 percent of annual payroll. Asian American- and African American-owned firms reflected 5.76 percent and only 0.24 percent of number of paid employees and less than 3 percent of annual payroll. VBEs represented 0.59 percent of paid employees and only 0.22 percent of payroll.

Professional Services

Based on Table 8.4, in Professional Services, WBEs had 6,115 firms with paid employees that represented 18.28 percent of the total while there are 4,813 MBEs that represent 14.39 percent of firms with paid employees. MBEs that led this were Asian American-owned (8.20 percent), African American-owned (3.81 percent) and Hispanic American-owned (1.76 percent). Remaining MBEs represented less than 1 percent of firms with paid employees. WBEs also had a good number of paid employees and annual payroll at 22.62 percent and 12.61 percent, compared to MBEs at 5.23 percent and 5.50 percent. Asian American-owned firms accounted for majority of the paid employees and annual payroll among minority firms. VBEs represented 8.50 percent of firms with paid employees with 23,194 (8.42 percent of total) paid employees and 8.11 percent of the annual payroll among professional firms in the MSA.

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Table 8.1. Census Capacity Construction Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metro Area, 2016						
Ethnicity	# Firms with Paid Employees		Number of paid employees		Annual payroll (\$1,000)	
	#	%	#	%	#	%
Non-M/WBE	10,174	81.36	86,256	94.87	5,369,751	94.99
African American	250	2.00	-	0.00	-	0.00
Asian American	190	1.52	-	0.00	-	0.00
Hispanic American	406	3.25	1,199	1.32	61,184	1.08
Native American	17	0.14	-	0.00	-	0.00
Other MBE	133	1.06	-	0.00	-	0.00
Total MBE	996	7.96	1,199	1.32	61,184	1.08
WBE	493	3.94	3,467	3.81	222,292	3.93
Other M/WBE	38	0.30	-	0.00	-	0.00
Total M/WBE	1,527	12.21	4,666	5.13	283,476	5.01
VBE	804	6.43	-	0.00	-	0.00
Total	12,505	100.00	90,922	100.00	5,653,227	100.00

Source: M³ Consulting; Census ASE

*Does not include: 1. Estimates withheld to avoid disclosing data for individual companies; 2. Estimate that does not meet publication standards because of high sampling variability, poor response quality, or other concerns about the estimate quality.

Table 8.2. Census Capacity Goods and Supplies Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, 2016						
Ethnicity	# Firms with Paid Employees		Number of paid employees		Annual payroll (\$1,000)	
	#	%	#	%	#	%
Non-M/WBE	11,084	58.88	136,593	84.25	6,252,979	91.07
African American	96	0.51	-	0.00	-	0.00
Asian American	3,427	18.20	10,491	6.47	178,478	2.60
Hispanic American	635	3.37	-	0.00	-	0.00
Native American	18	0.10	-	0.00	-	0.00
Other MBE	223	1.18	-	0.00	-	0.00
Total MBE	4,399	23.37	10,491	6.47	178,478	2.60
WBE	2,188	11.62	10,058	6.20	297,945	4.34
Other M/WBE	23	0.12	-	0.00	-	0.00
Total M/WBE	6,610	35.11	20,549	12.67	476,423	6.94
VBE	1,132	6.01	4,986	3.08	136,637	1.99
Total	18,826	100.00	162,128	100.00	6,866,039	100.00

Source: M³ Consulting; Census ASE

*Does not include: 1. Estimates withheld to avoid disclosing data for individual companies; 2. Estimate that does not meet publication standards because of high sampling variability, poor response quality, or other concerns about the estimate quality.

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**Table 8.3. Census Capacity
Non-Professional Services
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, 2016**

Ethnicity	# Firms with Paid Employees		Number of paid employees		Annual payroll (\$1,000)	
	#	%	#	%	#	%
Non-M/WBE	25,271	60.57	387,208	83.34	13,559,906	87.90
African American	1,255	3.01	1,111	0.24	28,911	0.19
Asian American	5,825	13.96	26,756	5.76	408,330	2.65
Hispanic American	704	1.69	-	0.00	-	0.00
Native American	53	0.13	-	0.00	-	0.00
Other MBE	321	0.77	-	0.00	-	0.00
Total MBE	8,158	19.55	27,867	6.00	437,241	2.83
WBE	5,937	14.23	46,773	10.07	1,395,595	9.05
Other M/WBE	111	0.27	-	0.00	-	0.00
Total M/WBE	14,206	34.05	74,640	16.07	1,832,836	11.88
VBE	2,245	5.38	2,747	0.59	33,513	0.22
Total	41,722	100.00	464,595	100.00	15,426,255	100.00

Source: M³ Consulting; Census ASE

*Does not include: 1. Estimates withheld to avoid disclosing data for individual companies; 2. Estimate that does not meet publication standards because of high sampling variability, poor response quality, or other concerns about the estimate quality.

**Table 8.4. Census Capacity
Professional Services
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, 2016**

Ethnicity	# Firms with Paid Employees		Number of paid employees		Annual payroll (\$1,000)	
	#	%	#	%	#	%
Non-M/WBE	19,650	58.75	175,567	63.73	12,186,054	73.78
African American	1,274	3.81	-	0.00	-	0.00
Asian American	2,743	8.20	12,346	4.48	850,826	5.15
Hispanic American	587	1.76	2,051	0.74	58,301	0.35
Native American	9	0.03	-	0.00	-	0.00
Other MBE	200	0.60	-	0.00	-	0.00
Total MBE	4,813	14.39	14,397	5.23	909,127	5.50
WBE	6,115	18.28	62,312	22.62	2,083,453	12.61
Other M/WBE	23	0.07	-	0.00	-	0.00
Total M/WBE	10,951	32.74	76,709	27.85	2,992,580	18.12
VBE	2,844	8.50	23,194	8.42	1,338,937	8.11
Total	33,445	100.00	275,470	100.00	16,517,571	100.00

Source: M³ Consulting; Census ASE

*Does not include: 1. Estimates withheld to avoid disclosing data for individual companies; 2. Estimate that does not meet publication standards because of high sampling variability, poor response quality, or other concerns about the estimate quality.

8.2.2 Capacity Analysis Based on Average Employees and Average Sales Revenues from Data Axle

Below are measures of sales and employees from firms in the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, which provide a measure of the capacity of the race, ethnic and gender groups of firms measured by these proxies for capacity. Firms included in the Data Axle analysis is refined to those that fall into NAICS code areas under review for this Disparity Study.

Capacity Based on Number of Employees

Total Firms

Using Table 8.5 to compare capacity of firms measured by the number of employees, for firms in the lowest range of 1-19 employees, there are close to 25,000 M/WBE firms, with nearly 18,000 of these as WBEs and nearly 7,000 MBEs and over 43,000 Non-M/WBE firms. As capacity (number of employees) increases, M/WBEs remain slightly lower than the Non-M/WBE firms, with 574 Non-M/WBE firms with 100-249 employees compared to 230 M/WBE firms. For capacity measured as 500-1,000 employees, only 4 MBEs, 28 WBEs compared to 46 Non-M/WBE firms, whereas this slightly evens out for firms with 5,000-9,999 employees, where there are 4 Non-M/WBE firms and 2 M/WBE firms.

Architecture and Engineering

Based on Table 8.6, for Architecture and Engineering, the highest range was 5,000-9,999, where there were only two Non-M/WBEs. For firms with 500-999 employees, there are two WBEs in addition as well. For the 250-499 employee range, there is an additional Hispanic American-owned architectural firm along with 1 WBE and 2 Non-M/WBEs. Most firms were in the 1-19 employee range, with Non-M/WBEs representing about 33 percent of firms, as compared to M/WBEs at 17.46 percent, the majority (14.18 percent) of which are WBEs. Hispanic American-owned firms were represented up to 250-499 range, Asian American-owned firms were represented up to 100-249 employees. African American-owned firms were only represented up to the 50-99 employee range.

Construction

For Construction (Table 8.7), only one firm, Non-M/WBE, was represented in the range 500-999. Non-M/WBEs represented about 37-54 percent in other lower ranges. African American-owned firms were the only ones represented in the 500-999 employee range among M/WBEs. In addition, African American owned firms had employees in the 1-19 and 20-49, with two firms in 100-249 range. Asian American-owned firms were represented up to 20-49 and Hispanic American-owned firms were in all ranges until 50-99 employees. Unknown/Multi-ethnic firms represented between 38-50 percent of firms, with their highest percentage representation in the ranges of 250-499.

Goods and Supplies

Table 8.8 shows that most Goods and Supplies' companies have 1,000 employees. Only 4 Non-M/WBE firms and 10 of Unknown Multi-Ethnic-owned firms have over 1,000 employees. Six WBE firms have 500-999 employees and WBE firms are included in every lower category of employees, representing 13.2 percent of firms with 1-19 employees. The majority of the African American-owned firms had less than 19 employees, with only 1 firm with 250-499 employees and 4 firm in the 100-249 employee size. In the MSA, the majority of Asian American-owned firms had less than 250 employees. While there was one firm in 250-499 employee size, 8 Hispanic American-owned firms were in the 100-249 size and this group had firms in every category up to 500 employees. Unknown/Multi-Ethnic-owned firms represented between 38 percent to 69 percent for the lower ranges, and even 71.43 percent in the 1,000-4,999 employee size range.

Non-Professional Services

In Table 8.9, WBEs and Unknown/Multi-Ethnic-owned firms were most consistently represented across all ranges in Non-Professional Services. Non-M/WBEs included 8 firms with 1,000-4,999 employees and more than 8 firms in every range below that. MBEs included one Hispanic American-, one African American- and one Asian American-owned firm with over 500 employees, but there was at least one African American-owned firm with the capacity of 1,000-4,999 employees. There were no Native American-owned firms with over 100 employees.

Professional Services

Professional Services, in Table 8.10, saw Non-M/WBE firms reflect between 20-35 percent across all employee ranges and WBEs represented 11-18 percent across all ranges. African American-owned firms were represented in all the ranges up to 500-999 ranges, with one firm in the higher range. Asian American- and Hispanic American-owned firms were represented up to 100-249 employee size range. Unknown/Multi-Ethnic-owned firms mirrored Non-M/WBEs, with between 40 percent and 67 percent across the ranges.

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Capacity and Regression Analysis

Table 8.5.
Data Axle
Capacity Based on Total Number of Employees
Total
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	1-19		20-49		50-99		100-249		250-499	
Ethnicity	#	%	#	%	#	%	#	%	#	%
Non-M/WBE	43,475	38.19	3,001	29.57	975	28.87	574	27.37	89	21.24
African American	754	0.66	52	0.51	8	0.24	9	0.43	3	0.72
Asian American	2,722	2.39	94	0.93	20	0.59	14	0.67	-	0.00
Hispanic American	3,252	2.86	169	1.67	44	1.30	26	1.24	6	1.43
Native American	26	0.02	10	0.10	3	0.09	2	0.10	-	0.00
<i>Total MBE</i>	<i>6,754</i>	<i>5.93</i>	<i>325</i>	<i>3.20</i>	<i>75</i>	<i>2.22</i>	<i>51</i>	<i>2.43</i>	<i>9</i>	<i>2.15</i>
WBE	18,148	15.94	1,416	13.95	341	10.10	179	8.54	44	10.50
Total M/WBE	24,902	21.87	1,741	17.15	416	12.32	230	10.97	53	12.65
Unknown Multi-Ethnic	45,467	39.94	5,408	53.28	1,986	58.81	1,293	61.66	277	66.11
Grand Total	113,844	100.00	10,150	100.00	3,377	100.00	2,097	100.00	419	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Table 8.5 cont.

Data Axle

Capacity Based on Total Number of Employees

Total

Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	500-999		1,000-4,999		5,000-9,999		Grand Total	
Ethnicity	#	%	#	%	#	%	#	%
Non-M/WBE	46	23.00	29	28.16	4	30.77	48,193	37.01
African American	2	1.00	1	0.97	-	0.00	829	0.64
Asian American	1	0.50	-	0.00	-	0.00	2,851	2.19
Hispanic American	1	0.50	-	0.00	-	0.00	3,498	2.69
Native American	-	0.00	-	0.00	-	0.00	41	0.03
<i>Total MBE</i>	<i>4</i>	<i>2.00</i>	<i>1</i>	<i>0.97</i>	<i>-</i>	<i>0.00</i>	<i>7,219</i>	<i>5.54</i>
WBE	28	14.00	12	11.65	2	15.38	20,170	15.49
Total M/WBE	32	16.00	13	12.62	2	15.38	27,389	21.04
Unknown Multi-Ethnic	122	61.00	61	59.22	7	53.85	54,621	41.95
Grand Total	200	100.00	103	100.00	13	100.00	130,203	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Table 8.6.
Data Axle
Capacity Based on Total Number of Employees
Architecture and Engineering
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	1-19		20-49		50-99		100-249		250-499	
Ethnicity	#	%	#	%	#	%	#	%	#	%
Non-M/WBE	855	32.67	74	27.92	32	33.68	12	19.35	2	13.33
African American	19	0.73	1	0.38	1	1.05	-	0.00	-	0.00
Asian American	28	1.07	5	1.89	-	0.00	1	1.61	-	0.00
Hispanic American	38	1.45	5	1.89	1	1.05	-	0.00	1	6.67
Native American	1	0.04	-	0.00	-	0.00	-	0.00	-	0.00
<i>Total MBE</i>	<i>86</i>	<i>3.29</i>	<i>11</i>	<i>4.15</i>	<i>2</i>	<i>2.11</i>	<i>1</i>	<i>1.61</i>	<i>1</i>	<i>6.67</i>
WBE	371	14.18	21	7.92	9	9.47	4	6.45	1	6.67
Total M/WBE	457	17.46	32	12.08	11	11.58	5	8.06	2	13.33
Unknown Multi-Ethnic	1,305	49.87	159	60.00	52	54.74	45	72.58	11	73.33
Grand Total	2,617	100.00	265	100.00	95	100.00	62	100.00	15	100.00

Source: 2016 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.6 cont. Data Axle Capacity Based on Total Number of Employees Architecture and Engineering Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021								
	500-999		1,000-4,999		5,000-9,999		Grand Total	
Ethnicity	#	%	#	%	#	%	#	%
Non-M/WBE	2	33.33	1	20.00	2	100.00	980	31.95
African American	-	0.00	-	0.00	-	0.00	21	0.68
Asian American	-	0.00	-	0.00	-	0.00	34	1.11
Hispanic American	-	0.00	-	0.00	-	0.00	45	1.47
Native American	-	0.00	-	0.00	-	0.00	1	0.03
<i>Total MBE</i>	-	<i>0.00</i>	-	<i>0.00</i>	-	<i>0.00</i>	<i>101</i>	<i>3.29</i>
WBE	2	33.33	1	20.00	-	0.00	409	13.34
Total M/WBE	2	33.33	1	20.00	-	0.00	510	16.63
Unknown Multi-Ethnic	2	33.33	3	60.00	-	0.00	1,577	51.42
Grand Total	6	100.00	5	100.00	2	100.00	3,067	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.7.
Data Axle
Capacity Based on Total Number of Employees
Construction
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	1-19		20-49		50-99		100-249		250-499	
Ethnicity	#	%	#	%	#	%	#	%	#	%
Non-M/WBE	4,541	53.40	251	42.40	85	43.15	28	46.67	3	37.50
African American	33	0.39	1	0.17	-	0.00	2	3.33	-	0.00
Asian American	33	0.39	2	0.34	-	0.00	-	0.00	-	0.00
Hispanic American	184	2.16	10	1.69	3	1.52	-	0.00	-	0.00
Native American	1	0.01	-	0.00	-	0.00	-	0.00	-	0.00
<i>Total MBE</i>	<i>251</i>	<i>2.95</i>	<i>13</i>	<i>2.20</i>	<i>3</i>	<i>1.52</i>	<i>2</i>	<i>3.33</i>	<i>-</i>	<i>0.00</i>
WBE	475	5.59	27	4.56	8	4.06	2	3.33	1	12.50
Total M/WBE	726	8.54	40	6.76	11	5.58	4	6.67	1	12.50
Unknown Multi-Ethnic	3,237	38.06	301	50.84	101	51.27	28	46.67	4	50.00
Grand Total	8,504	100.00	592	100.00	197	100.00	60	100.00	8	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.7 cont.

Data Axle

Capacity Based on Total Number of Employees

Construction

Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	500-999		1,000-4,999		5,000-9,999		Grand Total	
Ethnicity	#	%	#	%	#	%	#	%
Non-M/WBE	1	25.00	-	0.00	-	0.00	4,909	52.41
African American	-	0.00	-	0.00	-	0.00	36	0.38
Asian American	-	0.00	-	0.00	-	0.00	35	0.37
Hispanic American	-	0.00	-	0.00	-	0.00	197	2.10
Native American	-	0.00	-	0.00	-	0.00	1	0.01
<i>Total MBE</i>	-	<i>0.00</i>	-	<i>0.00</i>	-	<i>0.00</i>	<i>269</i>	<i>2.87</i>
WBE	-	0.00	-	0.00	-	0.00	513	5.48
Total M/WBE	-	0.00	-	0.00	-	0.00	782	8.35
Unknown Multi-Ethnic	3	75.00	2	100.00	-	0.00	3,676	39.24
Grand Total	4	100.00	2	100.00	-	0.00	9,367	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.8.
Data Axle
Capacity Based on Total Number of Employees
Goods and Supplies
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	1-19		20-49		50-99		100-249		250-499	
Ethnicity	#	%	#	%	#	%	#	%	#	%
Non-M/WBE	8,084	39.08	673	30.04	187	27.95	177	26.54	25	23.58
African American	160	0.77	7	0.31	1	0.15	4	0.60	1	0.94
Asian American	901	4.36	20	0.89	3	0.45	3	0.45	-	0.00
Hispanic American	776	3.75	27	1.21	12	1.79	8	1.20	1	0.94
Native American	3	0.01	6	0.27	1	0.15	2	0.30	-	0.00
<i>Total MBE</i>	<i>1,840</i>	<i>8.89</i>	<i>60</i>	<i>2.68</i>	<i>17</i>	<i>2.54</i>	<i>17</i>	<i>2.55</i>	<i>2</i>	<i>1.89</i>
WBE	2,731	13.20	288	12.86	53	7.92	49	7.35	6	5.66
Total M/WBE	4,571	22.09	348	15.54	70	10.46	66	9.90	8	7.55
Unknown Multi-Ethnic	8,033	38.83	1,219	54.42	412	61.58	424	63.57	73	68.87
Grand Total	20,688	100.00	2,240	100.00	669	100.00	667	100.00	106	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.8 cont.

Data Axle

Capacity Based on Total Number of Employees

Goods and Supplies

Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	500-999		1,000-4,999		5,000-9,999		Grand Total	
Ethnicity	#	%	#	%	#	%	#	%
Non-M/WBE	12	25.53	4	28.57	-	0.00	9,162	37.50
African American	-	0.00	-	0.00	-	0.00	173	0.71
Asian American	-	0.00	-	0.00	-	0.00	927	3.79
Hispanic American	-	0.00	-	0.00	-	0.00	824	3.37
Native American	-	0.00	-	0.00	-	0.00	12	0.05
<i>Total MBE</i>	-	<i>0.00</i>	-	<i>0.00</i>	-	<i>0.00</i>	<i>1,936</i>	<i>7.92</i>
WBE	6	12.77	-	0.00	-	0.00	3,133	12.82
Total M/WBE	6	12.77	-	0.00	-	0.00	5,069	20.75
Unknown Multi-Ethnic	29	61.70	10	71.43	-	0.00	10,200	41.75
Grand Total	47	100.00	14	100.00	-	0.00	24,431	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.9.
Data Axle
Capacity Based on Total Number of Employees
Non-Professional Services
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	1-19		20-49		50-99		100-249		250-499	
Ethnicity	#	%	#	%	#	%	#	%	#	%
Non-M/WBE	16,206	37.36	1,442	28.51	532	28.98	239	27.13	35	20.59
African American	315	0.73	34	0.67	3	0.16	2	0.23	-	0.00
Asian American	543	1.25	48	0.95	15	0.82	5	0.57	-	0.00
Hispanic American	1,358	3.13	97	1.92	19	1.03	11	1.25	4	2.35
Native American	16	0.04	4	0.08	2	0.11	-	0.00	-	0.00
<i>Total MBE</i>	<i>2,232</i>	<i>5.14</i>	<i>183</i>	<i>3.62</i>	<i>39</i>	<i>2.12</i>	<i>18</i>	<i>2.04</i>	<i>4</i>	<i>2.35</i>
WBE	7,589	17.49	716	14.16	195	10.62	78	8.85	15	8.82
Total M/WBE	9,821	22.64	899	17.78	234	12.75	96	10.90	19	11.18
Unknown Multi-Ethnic	17,355	40.01	2,716	53.71	1,070	58.28	546	61.98	116	68.24
Grand Total	43,382	100.00	5,057	100.00	1,836	100.00	881	100.00	170	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.9 cont.
Data Axle
Capacity Based on Total Number of Employees
Non-Professional Services
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	500-999		1,000-4,999		5,000-9,999		Grand Total	
Ethnicity	#	#	#	%	#	%	#	%
Non-M/WBE	19	27.14	8	25.00	-	0.00	18,481	35.93
African American	1	1.43	1	3.13	-	0.00	356	0.69
Asian American	1	1.43	-	0.00	-	0.00	612	1.19
Hispanic American	1	1.43	-	0.00	-	0.00	1,490	2.90
Native American	-	0.00	-	0.00	-	0.00	22	0.04
<i>Total MBE</i>	<i>3</i>	<i>4.29</i>	<i>1</i>	<i>3.13</i>	-	<i>0.00</i>	<i>2,480</i>	<i>4.82</i>
WBE	9	12.86	3	9.38	1	50.00	8,606	16.73
Total M/WBE	12	17.14	4	12.50	1	50.00	11,086	21.56
Unknown Multi-Ethnic	39	55.71	20	62.50	1	50.00	21,863	42.51
Grand Total	70	100.00	32	100.00	2	100.00	51,430	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.10.

Data Axle

Capacity Based on Total Number of Employees

Professional Services

Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	1-19		20-49		50-99		100-249		250-499	
Ethnicity	#	%	#	%	#	%	#	%	#	%
Non-M/WBE	13,789	35.67	561	28.11	139	23.97	118	27.63	24	20.00
African American	227	0.59	9	0.45	3	0.52	1	0.23	2	1.67
Asian American	1,217	3.15	19	0.95	2	0.34	5	1.17	-	0.00
Hispanic American	896	2.32	30	1.50	9	1.55	7	1.64	-	0.00
Native American	5	0.01	-	0.00	-	0.00	-	0.00	-	0.00
<i>Total MBE</i>	<i>2,345</i>	<i>6.07</i>	<i>58</i>	<i>2.91</i>	<i>14</i>	<i>2.41</i>	<i>13</i>	<i>3.04</i>	<i>2</i>	<i>1.67</i>
WBE	6,982	18.06	364	18.24	76	13.10	46	10.77	21	17.50
Total M/WBE	9,327	24.13	422	21.14	90	15.52	59	13.82	23	19.17
Unknown Multi-Ethnic	15,537	40.20	1,013	50.75	351	60.52	250	58.55	73	60.83
Grand Total	38,653	100.00	1,996	100.00	580	100.00	427	100.00	120	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.10 cont.

Data Axle

Capacity Based on Total Number of Employees

Professional Services

Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	500-999		1,000-4,999		5,000-9,999		Grand Total	
Ethnicity	#	%	#	%	#	%	#	%
Non-M/WBE	12	16.44	16	32.00	2	22.22	14,661	34.98
African American	1	1.37	-	0.00	-	0.00	243	0.58
Asian American	-	0.00	-	0.00	-	0.00	1,243	2.97
Hispanic American	-	0.00	-	0.00	-	0.00	942	2.25
Native American	-	0.00	-	0.00	-	0.00	5	0.01
<i>Total MBE</i>	<i>1</i>	<i>1.37</i>	<i>-</i>	<i>0.00</i>	<i>-</i>	<i>0.00</i>	<i>2,433</i>	<i>5.81</i>
WBE	11	15.07	8	16.00	1	11.11	7,509	17.92
Total M/WBE	12	16.44	8	16.00	1	11.11	9,942	23.72
Unknown Multi-Ethnic	49	67.12	26	52.00	6	66.67	17,305	41.29
Grand Total	73	100.00	50	100.00	9	100.00	41,908	100.00

Source: 2021 Data Axle Data; M³ Consulting

Capacity Based on Sales Volume

Total Firms

If capacity were to be measured using sales volume (Table 8.11), then MBEs, WBEs, and Non-M/WBEs are represented in all sales ranges up to \$500 million. Five WBEs are in the capacity range of \$500 million - \$1 billion and above that range includes only Non-M/WBE firms. So, based on sales volume, differences in capacity are not vast based on race or gender groups, although the number and proportion of M/WBE firms is smaller, overall.

Architecture and Engineering

Based on Table 8.12, Non-M/WBEs, WBEs and Unknown/Multi-ethnic-owned firms are represented in every revenue range till \$500 million. One African American-owned firm is in the \$10-\$20 million sales volume range and four Hispanic American- and one Asian American-owned firms up to \$10 million.

Construction

In Table 8.13, Unknown multi-ethnic construction firms are reflected in every revenue range showing that there are firms with capacity ranging from less than \$500k to \$1 billion. Non-M/WBEs, based on sales volume range up to \$100 million and 3 WBEs and 1 Asian American-owned firm up to \$50 million. There are no African American- and Hispanic American-owned construction firms over the \$20 million and one Native American-owned firm who reached sales capacity of \$1 million.

Goods and Supplies

All firms show capacity in Goods and Supplies, up to \$50 million (Table 8.14). 3 WBEs show capacity up to \$1 billion along with 10 Non-M/WBEs and 7 Unknown/Multi-ethnic-owned firms. Asian American-, Hispanic American- and Native American-owned firms include those that have sales capacity of \$100 million.

Non-Professional Services

In Table 8.15, there are firms in all race/gender groups with capacity up to \$50 million in sales volume, except for Native American-owned firms with capacity up to \$10 million and African American-owned firms up to \$20 million. While African American-, Hispanic American-owned and Asian American-owned firms reflect capacity up to \$50 million, WBEs have at least one firm with a capacity in the range of \$500million to \$1 billion.

Professional Services

Among Professional Service M/WBEs shown in Table 8.16, only WBEs reflected capacity up to \$1 billion, although one Unknown multi-ethnic-owned firm and Non-M/WBEs are shown for the revenue range over \$1 billion. Hispanic American- and Asian American-owned firms had capacity up to \$50 million, while one African American-owned firms had capacity up to \$100 million. Native American-owned firms trailed, with capacity only up to \$2.5 million. Unknown/Multi-ethnic-owned firms were reflected in Over \$1 billion, even though it was one firm, and no representation in \$500M-\$1 billion.

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Capacity and Regression Analysis

Table 8.11. Data Axle Capacity Based on Sales Volume Total Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021												
	LESS THAN \$500,000		\$500,000-\$1 MILLION		\$1-2.5 MILLION		\$2.5-5 MILLION		\$5-10 MILLION		\$10-20 MILLION	
Ethnicity	#	%	#	%	#	%	#	%	#	%	#	%
Non-M/WBE	18,023	40.49	12,473	37.68	8,528	36.10	3,420	35.09	1,995	33.38	960	33.01
African American	334	0.75	189	0.57	171	0.72	38	0.39	28	0.47	13	0.45
Asian American	965	2.17	1,095	3.31	431	1.82	169	1.73	67	1.12	27	0.93
Hispanic American	1,618	3.64	890	2.69	537	2.27	176	1.81	86	1.44	52	1.79
Native American	13	0.03	7	0.02	5	0.02	4	0.04	1	0.02	6	0.21
<i>Total MBE</i>	<i>2,930</i>	<i>6.58</i>	<i>2,181</i>	<i>6.59</i>	<i>1,144</i>	<i>4.84</i>	<i>387</i>	<i>3.97</i>	<i>182</i>	<i>3.05</i>	<i>98</i>	<i>3.37</i>
WBE	8,168	18.35	5,212	15.74	3,218	13.62	1,116	11.45	611	10.22	237	8.15
Total M/WBE	11,098	24.93	7,393	22.33	4,362	18.47	1,503	15.42	793	13.27	335	11.52
Unknown Multi-Ethnic	15,387	34.57	13,239	39.99	10,730	45.43	4,824	49.49	3,189	53.35	1,613	55.47
Grand Total	44,508	100.00	33,105	100.00	23,620	100.00	9,747	100.00	5,977	100.00	2,908	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.11 cont.

Data Axle

Capacity Based on Sales Volume

Total

Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	\$20-50 MILLION		\$50-100 MILLION		\$100-500 MILLION		\$500M-\$1 BILLION		OVER \$1 BILLION		Grand Total	
Ethnicity	#	%	#	%	#	%	#	%	#	%	#	%
Non-M/WBE	558	30.58	191	31.06	100	31.45	11	33.33	6	37.50	46,265	37.71
African American	6	0.33	1	0.16	1	0.31	-	0.00	-	0.00	781	0.64
Asian American	18	0.99	2	0.33	3	0.94	-	0.00	-	0.00	2,777	2.26
Hispanic American	23	1.26	5	0.81	-	0.00	-	0.00	-	0.00	3,387	2.76
Native American	2	0.11	2	0.33	-	0.00	-	0.00	-	0.00	40	0.03
<i>Total MBE</i>	<i>49</i>	<i>2.68</i>	<i>10</i>	<i>1.63</i>	<i>4</i>	<i>1.26</i>	<i>-</i>	<i>0.00</i>	<i>-</i>	<i>0.00</i>	<i>6,985</i>	<i>5.69</i>
WBE	127	6.96	36	5.85	23	7.23	5	15.15	-	0.00	18,753	15.29
Total M/WBE	176	9.64	46	7.48	27	8.49	5	15.15	-	0.00	25,738	20.98
Unknown Multi-Ethnic	1,091	59.78	378	61.46	191	60.06	17	51.52	10	62.50	50,669	41.30
Grand Total	1,825	100.00	615	100.00	318	100.00	33	100.00	16	100.00	122,672	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.12.

Data Axle

Capacity Based on Sales Volume

Architecture and Engineering

Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	LESS THAN \$500,000		\$500,000-\$1 MILLION		\$1-2.5 MILLION		\$2.5-5 MILLION		\$5-10 MILLION		\$10-20 MILLION	
Ethnicity	#	%	#	%	#	%	#	%	#	%	#	%
Non-MSWBE	391	35.00	221	32.99	198	27.50	72	33.33	36	30.25	19	25.33
African American	6	0.54	5	0.75	7	0.97	1	0.46	-	0.00	1	1.33
Asian American	12	1.07	7	1.04	8	1.11	4	1.85	1	0.84	-	0.00
Hispanic American	17	1.52	10	1.49	9	1.25	4	1.85	4	3.36	-	0.00
Native American	1	0.09	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
<i>Total MBE</i>	<i>36</i>	<i>3.22</i>	<i>22</i>	<i>3.28</i>	<i>24</i>	<i>3.33</i>	<i>9</i>	<i>4.17</i>	<i>5</i>	<i>4.20</i>	<i>1</i>	<i>1.33</i>
WBE	174	15.58	94	14.03	92	12.78	19	8.80	8	6.72	7	9.33
Total M/WBE	210	18.80	116	17.31	116	16.11	28	12.96	13	10.92	8	10.67
Unknown Multi-Ethnic	516	46.20	333	49.70	406	56.39	116	53.70	70	58.82	48	64.00
Grand Total	1,117	100.00	670	100.00	720	100.00	216	100.00	119	100.00	75	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.12 cont.
Data Axle
Capacity Based on Sales Volume
Architecture and Engineering
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	\$20-50 MILLION		\$50-100 MILLION		\$100-500 MILLION		\$500M-\$1 BILLION		OVER \$1 BILLION		Grand Total	
Ethnicity	#	%	#	%	#	%	#	%	#	%	#	%
Non-MSWBE	5	17.24	2	18.18	3	37.50	-	0.00	-	0.00	947	31.94
African American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	20	0.67
Asian American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	32	1.08
Hispanic American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	44	1.48
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	1	0.03
<i>Total MBE</i>	-	<i>0.00</i>	-	<i>0.00</i>	-	<i>0.00</i>	-	<i>0.00</i>	-	<i>0.00</i>	<i>97</i>	<i>3.27</i>
WBE	2	6.90	2	18.18	2	25.00	-	0.00	-	0.00	400	13.49
Total M/WBE	2	6.90	2	18.18	2	25.00	-	0.00	-	0.00	497	16.76
Unknown Multi-Ethnic	22	75.86	7	63.64	3	37.50	-	0.00	-	0.00	1,521	51.30
Grand Total	29	100.00	11	100.00	8	100.00	-	0.00	-	0.00	2,965	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.13.
Data Axle
Capacity Based on Sales Volume
Construction
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	LESS THAN \$500,000		\$500,000-\$1 MILLION		\$1-2.5 MILLION		\$2.5-5 MILLION		\$5-10 MILLION		\$10-20 MILLION	
Ethnicity	#	%	#	%	#	%	#	%	#	%	#	%
Non-MSWBE	1,582	63.05	1,297	50.82	1,339	48.44	381	47.63	169	45.31	69	36.70
African American	10	0.40	6	0.24	15	0.54	2	0.25	1	0.27	2	1.06
Asian American	8	0.32	12	0.47	9	0.33	5	0.63	-	0.00	-	0.00
Hispanic American	53	2.11	62	2.43	54	1.95	16	2.00	5	1.34	4	2.13
Native American	-	0.00	1	0.04	-	0.00	-	0.00	-	0.00	-	0.00
<i>Total MBE</i>	<i>71</i>	<i>2.83</i>	<i>81</i>	<i>3.17</i>	<i>78</i>	<i>2.82</i>	<i>23</i>	<i>2.88</i>	<i>6</i>	<i>1.61</i>	<i>6</i>	<i>3.19</i>
WBE	107	4.26	159	6.23	172	6.22	39	4.88	17	4.56	9	4.79
Total M/WBE	178	7.09	240	9.40	250	9.04	62	7.75	23	6.17	15	7.98
Unknown Multi-Ethnic	749	29.85	1,015	39.77	1,175	42.51	357	44.63	181	48.53	104	55.32
Grand Total	2,509	100.00	2,552	100.00	2,764	100.00	800	100.00	373	100.00	188	100.00

Source: 2021 Data Axle Data; M³ Consulting

Chapter VIII

Capacity and Regression Analysis

Table 8.13 cont.												
Data Axle												
Capacity Based on Sales Volume												
Construction												
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021												
	\$20-50 MILLION		\$50-100 MILLION		\$100-500 MILLION		\$500M-\$1 BILLION		OVER \$1 BILLION		Grand Total	
Ethnicity	#	%	#	%	#	%	#	%	#	%	#	%
Non-MSWBE	31	46.97	6	54.55	-	0.00	-	0.00	-	0.00	4,874	52.59
African American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	36	0.39
Asian American	1	1.52	-	0.00	-	0.00	-	0.00	-	0.00	35	0.38
Hispanic American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	194	2.09
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	1	0.01
Total MBE	1	1.52	-	0.00	-	0.00	-	0.00	-	0.00	266	2.87
WBE	3	4.55	-	0.00	-	0.00	-	0.00	-	0.00	506	5.46
Total M/WBE	4	6.06	-	0.00	-	0.00	-	0.00	-	0.00	772	8.33
Unknown Multi-Ethnic	31	46.97	5	45.45	3	100.00	2	100.00	-	0.00	3,622	39.08
Grand Total	66	100.00	11	100.00	3	100.00	2	100.00	-	0.00	9,268	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.14.
Data Axle
Capacity Based on Sales Volume
Goods and Supplies
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	LESS THAN \$500,000		\$500,000-\$1 MILLION		\$1-2.5 MILLION		\$2.5-5 MILLION		\$5-10 MILLION		\$10-20 MILLION	
Ethnicity	#	%	#	%	#	%	#	%	#	%	#	%
Non-MSWBE	2,298	38.21	1,616	40.03	1,993	38.30	1,151	37.09	892	36.23	461	34.87
African American	49	0.81	33	0.82	50	0.96	15	0.48	14	0.57	5	0.38
Asian American	302	5.02	216	5.35	231	4.44	101	3.25	46	1.87	17	1.29
Hispanic American	380	6.32	176	4.36	124	2.38	62	2.00	33	1.34	26	1.97
Native American	-	0.00	2	0.05	-	0.00	1	0.03	1	0.04	4	0.30
<i>Total MBE</i>	<i>731</i>	<i>12.15</i>	<i>427</i>	<i>10.58</i>	<i>405</i>	<i>7.78</i>	<i>179</i>	<i>5.77</i>	<i>94</i>	<i>3.82</i>	<i>52</i>	<i>3.93</i>
WBE	1,057	17.58	521	12.91	663	12.74	342	11.02	268	10.89	110	8.32
Total M/WBE	1,788	29.73	948	23.48	1,068	20.52	521	16.79	362	14.70	162	12.25
Unknown Multi-Ethnic	1,928	32.06	1,473	36.49	2,143	41.18	1,431	46.12	1,208	49.07	699	52.87
Grand Total	6,014	100.00	4,037	100.00	5,204	100.00	3,103	100.00	2,462	100.00	1,322	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.14 cont.
Data Axle
Capacity Based on Sales Volume
Goods and Supplies
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	\$20-50 MILLION		\$50-100 MILLION		\$100-500 MILLION		\$500M-\$1 BILLION		OVER \$1 BILLION		Grand Total	
Ethnicity	#	%	#	%	#	%	#	%	#	%	#	%
Non-MSWBE	337	30.42	147	34.11	69	34.50	10	50.00	4	36.36	8,978	37.55
African American	3	0.27	-	0.00	1	0.50	-	0.00	-	0.00	170	0.71
Asian American	6	0.54	2	0.46	-	0.00	-	0.00	-	0.00	921	3.85
Hispanic American	14	1.26	5	1.16	-	0.00	-	0.00	-	0.00	820	3.43
Native American	2	0.18	2	0.46	-	0.00	-	0.00	-	0.00	12	0.05
<i>Total MBE</i>	<i>25</i>	<i>2.26</i>	<i>9</i>	<i>2.09</i>	<i>1</i>	<i>0.50</i>	<i>-</i>	<i>0.00</i>	<i>-</i>	<i>0.00</i>	<i>1,923</i>	<i>8.04</i>
WBE	84	7.58	17	3.94	11	5.50	3	15.00	-	0.00	3,076	12.86
Total M/WBE	109	9.84	26	6.03	12	6.00	3	15.00	-	0.00	4,999	20.91
Unknown Multi-Ethnic	662	59.75	258	59.86	119	59.50	7	35.00	7	63.64	9,935	41.55
Grand Total	1,108	100.00	431	100.00	200	100.00	20	100.00	11	100.00	23,912	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.15.
Data Axle
Capacity Based on Sales Volume
Non-Professional Services
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	LESS THAN \$500,000		\$500,000-\$1 MILLION		\$1-2.5 MILLION		\$2.5-5 MILLION		\$5-10 MILLION		\$10-20 MILLION	
Ethnicity	#	%	#	%	#	%	#	%	#	%	#	%
Non-MSWBE	9,012	38.81	3,354	38.05	2,835	35.63	1,095	33.50	625	31.13	290	32.08
African American	185	0.80	48	0.54	64	0.80	14	0.43	10	0.50	2	0.22
Asian American	309	1.33	109	1.24	89	1.12	37	1.13	15	0.75	9	1.00
Hispanic American	908	3.91	214	2.43	184	2.31	55	1.68	32	1.59	18	1.99
Native American	11	0.05	1	0.01	4	0.05	3	0.09	-	0.00	2	0.22
Total MBE	1,413	6.09	372	4.22	341	4.29	109	3.33	57	2.84	31	3.43
WBE	4,849	20.88	1,252	14.20	1,010	12.69	325	9.94	169	8.42	60	6.64
Total M/WBE	6,262	26.97	1,624	18.43	1,351	16.98	434	13.28	226	11.25	91	10.07
Unknown Multi-Ethnic	7,946	34.22	3,836	43.52	3,770	47.39	1,740	53.23	1,157	57.62	523	57.85
Grand Total	23,220	100.00	8,814	100.00	7,956	100.00	3,269	100.00	2,008	100.00	904	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.15 cont.

Data Axle

Capacity Based on Sales Volume

Non-Professional Services

Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	\$20-50 MILLION		\$50-100 MILLION		\$100-500 MILLION		\$500M-\$1 BILLION		OVER \$1 BILLION		Grand Total	
Ethnicity	#	%	#	%	#	%	#	%	#	%	#	%
Non-MSWBE	133	30.43	32	28.57	21	25.00	-	0.00	1	33.33	17,398	37.16
African American	2	0.46	-	0.00	-	0.00	-	0.00	-	0.00	325	0.69
Asian American	7	1.60	-	0.00	3	3.57	-	0.00	-	0.00	578	1.23
Hispanic American	7	1.60	-	0.00	-	0.00	-	0.00	-	0.00	1,418	3.03
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	21	0.04
<i>Total MBE</i>	<i>16</i>	<i>3.66</i>	<i>-</i>	<i>0.00</i>	<i>3</i>	<i>3.57</i>	<i>-</i>	<i>0.00</i>	<i>-</i>	<i>0.00</i>	<i>2,342</i>	<i>5.00</i>
WBE	23	5.26	8	7.14	6	7.14	1	14.29	-	0.00	7,703	16.45
Total M/WBE	39	8.92	8	7.14	9	10.71	1	14.29	-	0.00	10,045	21.46
Unknown Multi-Ethnic	265	60.64	72	64.29	54	64.29	6	85.71	2	66.67	19,371	41.38
Grand Total	437	100.00	112	100.00	84	100.00	7	100.00	3	100.00	46,814	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.16.
Data Axle
Capacity Based on Sales Volume
Professional Services
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	LESS THAN \$500,000		\$500,000-\$1 MILLION		\$1-2.5 MILLION		\$2.5-5 MILLION		\$5-10 MILLION		\$10-20 MILLION	
Ethnicity	#	%	#	%	#	%	#	%	#	%	#	%
Non-MSWBE	4,740	40.69	5,985	35.14	2,163	31.01	721	30.56	273	26.90	121	28.88
African American	84	0.72	97	0.57	35	0.50	6	0.25	3	0.30	3	0.72
Asian American	334	2.87	751	4.41	94	1.35	22	0.93	5	0.49	1	0.24
Hispanic American	260	2.23	428	2.51	166	2.38	39	1.65	12	1.18	4	0.95
Native American	1	0.01	3	0.02	1	0.01	-	0.00	-	0.00	-	0.00
<i>Total MBE</i>	<i>679</i>	<i>5.83</i>	<i>1,279</i>	<i>7.51</i>	<i>296</i>	<i>4.24</i>	<i>67</i>	<i>2.84</i>	<i>20</i>	<i>1.97</i>	<i>8</i>	<i>1.91</i>
WBE	1,981	17.01	3,186	18.71	1,281	18.36	391	16.57	149	14.68	51	12.17
Total M/WBE	2,660	22.84	4,465	26.22	1,577	22.61	458	19.42	169	16.65	59	14.08
Unknown Multi-Ethnic	4,248	36.47	6,582	38.64	3,236	46.39	1,180	50.02	573	56.45	239	57.04
Grand Total	11,648	100.00	17,032	100.00	6,976	100.00	2,359	100.00	1,015	100.00	419	100.00

Source: 2021 Data Axle Data; M³ Consulting

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Capacity and Regression Analysis

Table 8.16 cont.

Data Axle

Capacity Based on Sales Volume

Professional Services

Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, FY 2021

	\$20-50 MILLION		\$50-100 MILLION		\$100-500 MILLION		\$500M-\$1 BILLION		OVER \$1 BILLION		Grand Total	
Ethnicity	#	%	#	%	#	%	#	%	#	%	#	%
Non-MSWBE	52	28.11	4	8.00	7	30.43	1	25.00	1	50.00	14,068	35.42
African American	1	0.54	1	2.00	-	0.00	-	0.00	-	0.00	230	0.58
Asian American	4	2.16	-	0.00	-	0.00	-	0.00	-	0.00	1,211	3.05
Hispanic American	2	1.08	-	0.00	-	0.00	-	0.00	-	0.00	911	2.29
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	5	0.01
<i>Total MBE</i>	<i>7</i>	<i>3.78</i>	<i>1</i>	<i>2.00</i>	<i>-</i>	<i>0.00</i>	<i>-</i>	<i>0.00</i>	<i>-</i>	<i>0.00</i>	<i>2,357</i>	<i>5.94</i>
WBE	15	8.11	9	18.00	4	17.39	1	25.00	-	0.00	7,068	17.80
Total M/WBE	22	11.89	10	20.00	4	17.39	1	25.00	-	0.00	9,425	23.73
Unknown Multi-Ethnic	111	60.00	36	72.00	12	52.17	2	50.00	1	50.00	16,220	40.84
Grand Total	185	100.00	50	100.00	23	100.00	4	100.00	2	100.00	39,713	100.00

Source: 2021 Data Axle Data; M³ Consulting

8.2.3 Capacity Analysis Based on Survey Data

To analyze capacity of DBEs compared to Non-DBEs, M³ Consulting conducted a survey of firms on the City of Wilmington vendor registry and Master M/WBE/SBE list, with a focus on gathering capacity data that was to be used in the regression analysis to examine for differences in capacity based on race/gender/ethnicity, if any. These may include firms that may never have done business with the City. The results of the survey are discussed in this section of the report. The process involved creating a questionnaire, sample design, data collection and coding, analysis, and interpretation. Questions were designed with the specific purpose of collecting information about the availability of firms seeking to do business with City of Wilmington and the private sector and their capacity.

Typically, a sampling frame is defined based on vendors that registered to do business with City of Wilmington, Data Axle list and the Master M/WBE/SBE list and a random sample drawn, enabling M³ Consulting to obtain information to make inferences about capacity of vendors in the population being analyzed. However, since the survey was online and it was cost effective, instead of sending the survey to only a random sample of firms, we emailed the survey link to the entire population of firms in these two aforementioned lists to be able to maximize sample size.

A total of 50,407 firms were sent an online survey invitation with a unique link to the survey on February 22, 2022. There were 2,278 bounce-backs. Reminders were sent to non-responders four times over the subsequent nine weeks. Overall, 674 people clicked the survey link but 351 dropped out mid-survey (87% before question number two and the balance at subsequent places). The survey was closed on April 26, 2022, with a total of 325 completed responses.

For the analysis, the data are broken out by each of the following business types: White Male Owned, Total MBE/Women Owned, Minority Owned and Women Owned. The Total/Minority Owned is an aggregate of those who qualify as either a Minority Owned business or a Women Owned business.

A. Respondent demographics²⁸¹:

Firm characteristics:

Among the respondents, approximately a third of minority businesses are either owned or controlled by women and nearly three-quarters of minority businesses are majority held by African American business owners.

²⁸¹ Detailed tables are provided in the Appendix.

White male owned businesses are more likely to be structured as corporations or subchapter S corporations compared to minority owned businesses. Minority and women owned businesses are more likely to be structured as LLCs compared to white male owned businesses. Most businesses were established as startups, though white male owned businesses were more likely to be established through a buy-out of a previously existing enterprise than minority or women owned businesses. Moreover, White male owned businesses are also more likely to have been in business longer, on average, than minority or women owned businesses.

For approximately half of businesses, their primary market area is the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, approximately one-third or more describe their market area as nationwide. White male owned businesses primarily categorize their businesses as providing Goods and Supplies more so than minority owned businesses whereas minority owned businesses and women owned businesses are more likely to self-describe as providing Professional Services than white male owned firms.

White male owned businesses have more full-time employees (on average) than all other groups (over 80 in white male owned firms versus 29 for minority/women owned firms). Minority and women Owned businesses are more likely than male owned businesses to have ten or fewer full-time employees.

Start-up Financing:

Startups were primarily self-funded, particularly among minority and women owned businesses compared to white male owned businesses. White male owned businesses were more likely to have been funded by a financial institution compared to minority owned businesses.

Among those whose business began as a startup, the initial capital investments by minority and women owned businesses were more likely to be between \$25,000 and less than \$50,000 compared to white male owned businesses. On average, white male owned businesses invested more initially than women owned businesses.

Firm Principals' characteristics:

Company principals have often completed at least some college or earned an associate degree. Minority owned business principals are more likely to have completed post-graduate work or degree than white male owned business principals.

While most principals worked in the same profession prior to starting their business, nearly half of business principals had previous public and private sector experience. Compared to white male owned business principals, Minority owned business principals are more likely to have had public sector experience. In addition, while most principals were previously involved in a managerial or supervisory

capacity, white male owned principals were less likely to have done so than minority owned business principals

Contracting:

Of the respondents, White male owned business are more likely to have contracted with various entities in the past five years than minority and women owned businesses overall in the public and private sector. This holds true when white males are compared to minority owned businesses (87% versus 66% in private sector and 58% versus 19 % in public sector agencies within Delaware). White male owned businesses do more contracting (49%) with the City of Wilmington than both minority owned businesses (at 12%) and women owned businesses (at 25%). Furthermore, White male owned businesses are more likely to have begun contracting with the City of Wilmington for a longer period on average than minority owned businesses (8.5 years ago vs. 6.3 years ago respectively) and women owned businesses (8.5 years ago vs. 7.8 years ago respectively). This held true for any public sector agency and not just the City of Wilmington as well as in doing business with private sector agencies.

B. Business Capacity²⁸²:

Revenue:

In 2021, white male owned businesses had higher average gross receipts particularly due to higher number of businesses with gross receipts totaling \$10,000,000 or more. Among respondents, on average, women owned firms had gross receipts totaling over \$700,000 while Minority-owned businesses averaged less than \$300,000 in gross receipts.

Bonding, Loans and Lines of Credit:

Minority and women owned businesses are more likely to have used small business loan programs to get help with financing in the past five years. At least one-third of companies applied for a loan/line of credit or bond in the past five years. Women owned businesses are less likely than male owned businesses to have applied for either a loan/line of credit or bond.

While data on loan and bond applications by firms is limited and the results may not be generalized, among only the forty-eight respondents who applied for a bond in the past five years, white male owned businesses did so more frequently on average than minority owned businesses and most of them who applied were approved for the bond. Most of those who applied for a loan/line of credit did so once or

²⁸² Detailed tables are provided in the Appendix.

twice with minority owned businesses applying more times on average than white male owned businesses. Though denial for a loan/line of credit in the past five years is not common, minority owned businesses were declined more often on average than white male owned businesses.

Within this limited number of respondents on loan applications, approximately one-third of minority owned businesses noted that the loan application process was a challenge (more than white male owned businesses). They also faced challenges from a bank/financial institution manager's attitude. In line with that, White male owned businesses are more likely than minority owned businesses to report facing no challenges at all when attempting to secure a loan or line of credit from a financial institution.

As in case of loan applications, albeit limited respondents, among those who acquired a bond, the largest amount acquired in the past 5 years was between \$1.9 million and \$2.6 million.

Bidding and Contract Awards:

White male owned businesses were more likely to provide a quote or bid as a prime contractor in the past two years than minority owned businesses for both private sector companies and public sector agencies within and outside of the State of Delaware. The average bids submitted in the past two years were between \$464,000 and \$670,000. White male owned businesses were more likely to submit bids less than \$25,000 compared to minority owned businesses. Minority owned businesses were more likely to submit bids between \$100,000 to less than \$250,000.

White male owned businesses did not bid as a prime contractor to the City of Wilmington in the past two years primarily because they did not have a relationship with the City. Minority and women owned businesses were just as likely as white male owned firms to not bid, as they did not receive notice of bids from the City. Only two to five percent considered the bid requirements unfair whereas a greater percentage of minority and women owned businesses felt that there was too much bureaucracy and were discouraged to bid with the City.

Slightly more than half have quoted or bid as a subcontractor in the past two years, though white male owned businesses are more likely to have done so with the City of Wilmington than minority or women owned businesses. When describing why they have not bid with the City of Wilmington as a subcontractor in the past two years, minority owned businesses are more likely than white male owned businesses to state that they had no relationship with the prime contractor or were not certified by the City of Wilmington. White male owned businesses were more likely to say there were no bids for what they sell.

In the past two years, white male owned businesses were more likely to win contracts as a prime contractor and subcontractors from the private sector, City of Wilmington, and other public sector agencies in Delaware compared to minority owned businesses. Among the thirty-nine respondents who received contracts as prime contractors from the City of Wilmington, white male owned businesses had a

higher single contract amount (on average) compared to minority owned businesses. The largest single contract dollar award in the private sector for prime contractors and subcontractors among white male owned businesses on average is higher than that of minority owned businesses. The largest single contract dollar award from the public sector among prime contractors' ranges between \$1.4m and \$1.9m on average.

Subcontractor awards received by minority/women owned businesses are more likely to be less than \$25,000 compared to white male owned business among the twenty-one respondents who received City of Wilmington contracts. The largest single contract subcontractor award from the public sector ranges from \$590,000 to \$1.1m on average.

C. City of Wilmington Policies and Experiences²⁸³:

Approximately half of the respondents feel that the City of Wilmington policy to discourage discrimination against MBEs and WBEs is very fair. Although limited respondents expressed their opinion on the City of Wilmington's policies to promote inclusion of DBEs and SBEs, those who did found it to be at least fair or had neutral sentiments. Many of the respondents did see an improvement in the City's bidding and awards process over the past five years and between 15 and 39 percent of respondents felt that it was fairer at present.

Those respondents who bid as a prime contractor for the City of Wilmington generally felt that officials followed bid procedures. Approximately one-third of minority owned businesses report always or frequently experiencing unfair or discriminatory treatment during the bid, solicitation of subcontractor bids after contract awards, and unfair or discriminatory treatment on the jobsite, each of these is higher than the reported levels by white male owned businesses. White male owned businesses were more likely to say they always or frequently experienced officials following bid procedures, officials fairly evaluating sub-bids, and receiving timely notification of bid opportunities compared to minority owned businesses.

Comments from respondents included minority businesses noting they want more support for SBE/WBE/DBE/BME/SDVOSB and better notifications about open bids more so than white male owned businesses. Women owned businesses are also more likely to mention wanting better notifications about open bids compared to white male owned businesses.

²⁸³ Detailed tables are provided in the Appendix.

8.3 MULTIVARIATE REGRESSION ANALYSIS

While survey data presents differences in capacities of M/WBEs and Non-M/WBEs using z-tests of differences in percentages and t-tests of differences in means, other social science research suggests multiple factors in understanding the relationships among factors affecting firm revenues that may include race and gender. Multivariate regression analysis may help analyze variables, including race and gender that can affect a firm's success.

M³ Consulting conducted a multivariate statistical regression analysis to identify disparities between Non-M/WBE and M/WBE groups. We employed the Blinder-Oaxaca decomposition²⁸⁴, a widely used and well-established method for exploring discrimination between groups, to estimate the extent of disparity in the revenues between Non-M/WBE and M/WBE companies after accounting for other influencing factors.

8.3.1 GROSS REVENUES REGRESSION

In this analysis, we measure firm success utilizing gross revenues as the dependent variable in line with social science research²⁸⁵ to determine if revenue differences are attributable to discrimination between the two groups or simply due to other factors such as experience or education. We estimated log-linear regression models for each group using the natural log of the companies' total gross receipts from all sources for Fiscal year (FY) 2021 as the dependent variable and other explanatory factors such as number of full-time employees, age of business, principal's prior public and prior private business experience, and the average past two-year bid size for each company as the independent variables.

For the independent variables that may explain variation in gross revenues, the following variables were included:

- Number of full-time employees: This variable is a proxy for size of a firm in that, the more employees a company has, the greater volume it is likely to generate, resulting in higher revenues.
- Age of Business: This is a proxy for experience of a firm. It may be argued that a company's longevity is an indicator of success and increased business, thus generating increased revenues.
- Principal's prior private and public sector experience: It is often noted that companies with greater experience in the private sector may be less likely to bid and be successful in the public

²⁸⁴ Neumark D (1988). "Employers' Discriminatory Behavior and the Estimation of Wage Discrimination." *Journal of Human Resources*, 23(3), 279–295. Oaxaca RL (1973). "Male-Female Wage Differentials in Urban Labor Markets." *International Economic Review*, 14(3), 693–709. Oaxaca RL, Ransom MR (1999). "Identification in Detailed Wage Decompositions." *Review of Economics and Statistics*, 81(1), 154–157.

²⁸⁵ Bates, Timothy, "The declining status of minorities in the New York City Construction Industry," Reprinted from *Economic Development Quarterly*, Vol 12, No. 1, Feb 1998, 88-100. "Race and Gender Discrimination across Urban Labor Markets," 1996., Ed. Susan Schmitz. Garland Publishers, New York, NY, p 184. Becker, Gary, *The Economics of Discrimination*, 1971, 2nd ed. The University of Chicago Press, Chicago.

sector. We examine to see whether the owners had any prior experience in public sector (2) and whether that has any bearing on gross revenues of the firm.

- The average past two-year bid size: As noted above, bid size is often used to determine the capacity of a firm in applications for contracts. Thus, companies with greater bid size may indicate greater likelihood of winning contracts and hence greater gross revenues.

Regression Results

The following tables of results are from log-linear models, where the independent variable is the natural logarithm of the companies' total gross receipts from all sources for Fiscal Year (FY) 2021, (in 100 thousand dollars) and the independent variables as described in the tables below. The first table shows the overall results and the next two are for the Non-M/WBE and M/WBE groups²⁸⁶.

Table 8.17.				
All respondents				
Variable Description	Level	Coef	t-ratio	Xbar
		-0.031	-0.109	1.000
How many full-time, full year employees does your company have presently across all locations it controls and operates? Your best estimate is fine. Base = 10 or fewer	11 to 50	1.689	9.481	0.203
	More than 50	2.807	11.147	0.095
How many years has your firm been in business? Base = 1 to 3 years	3 to 5 years	0.626	2.126	0.105
	5 to 10 years	0.683	2.475	0.138
	10 to 25 years	1.143	4.620	0.302
	More than 25 years	1.793	7.035	0.357
Principal prior private experience. Base = No	Yes	-0.156	-0.999	0.612
Principal prior public experience. Base = No	Yes	-0.183	-1.186	0.412
P2Yr avg bid size. Base= Less than \$100K	\$100K up to \$1MM	0.259	1.388	0.455
	\$1MM or more	0.470	1.912	0.151
	Unknown	-0.219	-1.016	0.212

Source: M³ Consulting, Q&A Research
R-squared: 0.5987

²⁸⁶ Other controlling variables such as whether the company was a start-up and the principal's level of education were removed as they had no significant impact on the results.

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Table 8.18. Non-M/WBE				
Variable Description	Level	Coef	t-ratio	Xbar
		0.572	0.594	1.000
How many full-time, full year employees does your company have presently across all locations it controls and operates? Your best estimate is fine. Base = 10 or fewer	11 to 50	1.741	5.246	0.267
	More than 50	2.779	7.607	0.200
How many years has your firm been in business? Base = 1 to 3 years	3 to 5 years	2.167	1.411	0.011
	5 to 10 years	0.403	0.395	0.067
	10 to 25 years	0.885	0.951	0.233
	More than 25 years	1.234	1.337	0.667
Principal prior private experience. Base = No	Yes	-0.026	-0.076	0.522
Principal prior public experience. Base = No	Yes	-0.493	-1.353	0.300
P2Yr avg bid size. Base= Less than \$100K	\$100K up to \$1MM	0.356	1.080	0.467
	\$1MM or more	0.040	0.092	0.144
	Unknown	-0.751	-1.528	0.100

Source: M³ Consulting, Q&A Research
R-squared: 0.5963

Table 8.19. M/WBE				
Variable Description	Level	Coef	t-ratio	Xbar
		-0.136	-0.416	1.000
How many full-time, full year employees does your company have presently across all locations it controls and operates? Your best estimate is fine. Base = 10 or fewer	11 to 50	1.577	7.240	0.179
	More than 50	2.608	6.501	0.055
How many years has your firm been in business? Base = 1 to 3 years	3 to 5 years	0.630	2.099	0.140
	5 to 10 years	0.687	2.373	0.166
	10 to 25 years	1.156	4.467	0.328
	More than 25 years	1.902	6.714	0.238
Principal prior private experience. Base = No	Yes	-0.213	-1.184	0.647
Principal prior public experience. Base = No	Yes	-0.098	-0.561	0.455
P2Yr avg bid size. Base= Less than \$100K	\$100K up to \$1MM	0.237	0.997	0.451
	\$1MM or more	0.726	2.264	0.153
	Unknown	-0.060	-0.233	0.255

Source: M³ Consulting, Q&A Research
R-squared: 0.5636

On average, the total gross receipts were \$2,305,231 which divided into \$4,079,444 and \$1,625,745 for Non-M/WBE and M/WBE respectively. A priori there is a large difference, but the question is whether

these can be explained by education, experience, or number of employees. While the overall regression above in Tables 8.17 shows that number of full-time employees more so than experience and the size of the bid impact gross revenues. In the case of Non-MWSBE, between 3 to 10 years of experience also seems to positively impact gross receipts.

The Blinder-Oaxaca (BO) decompositions are a tool for estimating how differences in the gross receipts (natural logarithm) across groups can be separated into explain and unexplained portions. So, this method is a tool for estimating the extent of discriminating between different groups. There are several assumptions that can be made, however the decomposition employed in this research is that the pooled sample estimated from both groups²⁸⁷ serves as the non-discriminatory total gross receipts from all sources for Fiscal Year 2021 structure.

The results of the Blinder-Oaxaca methodology as shown in Table 8.20 below suggests that a portion of the difference between the M/WBE and Non-M/WBE in the logarithmic total gross receipts from all sources for the Fiscal Year 2021 can be accounted for. The balance is most likely due to discrimination.

The BO method decomposes the gross logarithmic revenue differential between the explained part (1.1480) and the unexplained part (0.1145) to determine whether some form of discrimination is taking place. The 'explained' part is in reference to the independent variables (education, experience, or number of employees etc.) that account for the variation in gross revenues. Having accounted for all relevant factors that may result in variance in gross revenues, one would expect the 'unexplained' portion to be close to zero. So, any variation from zero most likely is a result of discriminatory practices. Table 8.20 presents the results of the decomposition of the 'unexplained' portion²⁸⁸.

²⁸⁷ Neumark D (1988). "Employers' Discriminatory Behavior and the Estimation of Wage Discrimination." *Journal of Human Resources*, 23(3), 279–295. Oaxaca RL, Ransom MR (1999). "Identification in Detailed Wage Decompositions." *Review of Economics and Statistics*, 81(1), 154–157.

²⁸⁸ These were estimated using the R software and the Oaxaca package (i.e., Hlavac 2022). Hlavac, Marek (2022). Oaxaca: Blinder-Oaxaca Decomposition in R. R package version 0.1.5. <https://CRAN.R-project.org/package=oaxaca>

Table 8.20. Blinder Oaxaca decomposition of gross logarithmic revenue differentials among M/WBEs and Non-M/WBEs							
Total Explained		Total Unexplained		Non-M/WBE		M/WBE	
Coef (explained)	Standard Error (explained)	Coef (unexplained)	Standard Error (unexplained)	Coef (unexplained)	Standard Error (unexplained)	Coef (unexplained)	Standard Error (unexplained)
1.1480	0.1849	0.1145	0.1267	0.0828	0.0919	-0.0317	0.0355

Source: M³ Consulting, Q&A Research

From Table 8.20, the total **unexplained coefficient** is 12.13 percent ($\exp(0.1145) - 1$) that can be explained as follows. Non-M/WBE received 8.63 percent ($\exp(0.0828) - 1$) **greater** total gross receipts from all sources in 2021 than can be accounted for based on the relevant explanatory variables but this result is not statistically significant. In addition, accounting for all relevant factors, the M/WBE group received 3.12 percent ($\text{ABS}(\exp(-0.0317) - 1)$) **less than** they should have in gross revenues had discrimination not occurred²⁸⁹.

²⁸⁹ 12% is $(\exp(0.1177) - 1)$ 8.87 percent is $\exp(0.08494) - 1$ and 3.23 percent is $\text{ABS}(\exp(-0.03283) - 1)$ because of the log-linear transformation

8.4 DISPARITIES IN BUSINESS FORMATION: PUMS ANALYSIS

8.4.1 PUMS ANALYSES

Public Use Microdata Samples (PUMS) [from U.S. Census data] analysis is undertaken by M³ Consulting to examine the impact of race and gender, along with other demographic and economic factors that impact: (1) the choice of self-employment and (2) the level of self-employment income.

Promoting entrepreneurship is often a beneficial means to improve the economic status of minorities and women. Disparities in business formation often limit the development and growth of firms. In their research on this topic, Black, Holtz-Eakin and Rosenthal [2000]²⁹⁰ found that there was considerable spatial variation in self-employment rates (and self-employment earnings), especially for minority-owned firms—among metropolitan areas. Black, Holtz-Eakin and Rosenthal noted that the variation is seventy percent among Black Americans, 166 percent among Hispanics, and one hundred percent among Asians. A central point of the literature in self-employment has been on the degree to which access to capital limits the ability of individuals to attain self-employment, especially the role of such constraints in explaining racial differences in self-employment. Meyer [1990]²⁹¹. Black, Holtz-Eakin and Rosenthal [2000], in analyzing regional rates of self-employment for the prime-age males (25 to 64) found:

- Overall, in the United States, the self-employment rate is 10.4 percent, which includes a range from 9.9 percent in the Northeast to 12.7 percent in the Pacific region; a difference of nearly 30 percent.
- The rate of self-employment differs greatly across races, ranging from a low of 4.3 percent among Black Americans to 12.7 among Whites.

Blanchflower and Shadforth (2007) and others²⁹² provide an excellent summary of the research in self-employment. The findings in summary are that self-employment is higher among men than women; among older workers than younger workers; and is particularly high in construction and retailing. It is also especially high among some immigrant groups and varies by region and state being especially high in construction occupations, agriculture, and retailing. Fairlie and Robb (2007b) found that black business owners were much less likely than white counterparts to have had a self-employed family member owner prior to starting their business and are less likely to have worked in that family member's business. Fairlie and Robb noted that the lack of prior work experience in a family business among black business owners,

²⁹⁰Black, D., D. Holtz-Eakin and S. Rosenthal (2001), "Racial Minorities, economic scale and the geography of Self-employment," Brookings-Wharton Papers on Urban Affairs, pp 245-286.

²⁹¹ Meyer, B. 1990. "Why Are There So Few Black Entrepreneurs?" National Bureau of Economic Research, Working Paper No. 3537.

²⁹²Blanchflower, D.G., Levine, P., Zimmerman, D.: Discrimination in the small business credit market. *Rev Econ Stat* 85(4), 930–943 (2003); Blanchflower, D.G., Shadforth, C.: Entrepreneurship in the UK. *Found Trends Entrepreneurship* 3(4), 257–364 (2007)

perhaps by limiting their acquisition of general and specific business human capital, negatively affects black business outcomes.

Blanchflower (2009)²⁹³ studied minority self-employment overall and particularly in the construction industry and examined the role that affirmative action programs have played in this context. Blanchflower points out that while the *Croson* case in 1989 made it very difficult to maintain affirmative action programs since the turn of the millennium multiple cases have changed the course of that discussion in the other direction, with courts declaring a number of programs constitutional²⁹⁴. It is also noted that the low representation of minorities, specifically, among the ownership of firms in construction compared to their representation in the population. Based on the 2002 Economic Census Survey of Business Owners, of the 2,770,888 firms in construction, 2.4 percent were owned by African Americans; 7.0 percent by Hispanics; 1.1 percent by American Indians or Alaskan natives; 1.4 percent by Asians and Pacific Islanders and 10.5 percent by women compared to their proportional representation in the population²⁹⁵ wherein African Americans were 12.8 percent; white Hispanics 13.7 percent; Asian/Pacific Islanders 4.6 percent; American Indians/Alaskan Native 1.0 percent and two or more races 1.8 percent.

Blanchflower (2009) study provides new evidence on self-employment rates by race and gender (using data for the period 1983–2006) as follows.

- Across all industries: 15.5 percent of white males were self-employed compared with 7.4 percent of White females, 3.6 percent of African Americans, and 7.8 percent of Hispanics.
- In Construction: Self-employment rates of White males were 28 percent compared with 21 percent for White females, 17 percent for African Americans and 13 percent for Hispanic Americans.
- The gap between the earnings of White males and all groups, other than Asian Americans remains large.
- The differential between the overall self-employment rates of White males and White females in construction has narrowed dramatically over time. The narrowing is more apparent than is found for 'all industries'.
- The differential between the overall self-employment rates in construction of White males and African Americans has narrowed but less than it has for White females. The differential between

²⁹³ Blanchflower, D.G., "Minority self-employment in the United States and the impact of affirmative action programs", *Ann Finance* (2009) 5:361–396.

²⁹⁴ Also worth noting is Blanchflower, D.G., Wainwright, J.: An analysis of the impact of affirmative action programs on self-employment in the construction industry. National Bureau of Economic Research, Inc, NBER Working Papers # 11793 (2005)

²⁹⁵ Based on the 2008 Statistical Abstract of the United States, population in 2006.

the overall self-employment rates in construction of white males and Hispanic Americans has widened over time.

This section describes the two types of statistical analyses conducted to examine the impact of race and gender on self-employment, controlling for economic and demographic characteristics. The first analysis, undertaken via binary logistic regression, examines the likelihood that the individual will be self-employed. The second analysis, conducted via linear regression, examines the determinants of self-employment income. The analysis uses variables from the Integrated Public Use Microdata Series (IPUMS) data for 2019 ACS 5-year survey²⁹⁶. The labor force participants were selected for the sample if they satisfied the following criteria:

- Were residents of the State of Delaware; and
- Were 18 years of age or older.

A. Self-Employment Decision

First, M³ Consulting attempted to examine the factors that impact the self-employment decision and whether there are differences in the probability of self-employment among the different races and genders.

We examine the self-employment decision using a statistical technique called binary logistic regression model. In a logistic regression model, the dependent variable is a categorical variable where “yes” is equal to 1 and “no” is equal to 0. The binary logistic regression allows the statistician to determine if a specific characteristic increases or decreases the likelihood that the dependent variable will be a “yes” or a “no.” For instance, a statistician can use a logistic regression model to examine if a certain set of characteristics (called independent variables) will increase the likelihood of teen pregnancy in a certain population. Thus, the independent variables will allow the researcher to determine whether they contribute to the “yes” or “no” response, and whether these variables impact the response variable by increasing or decreasing the likelihood. For example, the logistic regression may show that parental involvement may decrease the incidence of teen pregnancy, while single family home (lack of monitoring) may increase this likelihood. Similarly, we attempt to examine if a certain set of characteristics (called independent variables) will increase the likelihood of self-employment in a certain population (in this case, Delaware). Mathematically, the logistic regression model can be written as:

²⁹⁶ IPUMS USA collects, preserves and harmonizes U.S. census microdata and provides easy access to this data with enhanced documentation. Data includes decennial censuses from 1790 to 2010 and American Community Surveys (ACS) from 2000 to the present.

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$$\ln(\pi/1-\pi) = \alpha + \beta_1 X_1 + \varepsilon_1$$

where:

- $(\pi/1-\pi)$ = the probability of self-employment
- α = a constant
- β_1 = the coefficient for each of the independent variables
- X = the independent variable, namely race, gender, education level, age, income, and property value
- ε_1 = the error term that captures the variation in the variables

In this model, the binary logistic regression investigates if a set of independent variables such as race, gender, age, education, household type and other economic and demographic characteristics contribute to the likelihood of self-employment. This model is estimated for the entire sample from the IPUMS 2019 ACS 5-year database for the State of Delaware, and then separately for self-employment in areas of Construction, Goods & Supplies, and Non-Professional Services.

Secondly, M³ Consulting analyzed the factors that impact self-employment income and whether self-employment income is impacted by race and/or gender.

Linear regression is used to answer the question of whether the earnings of self-employed minority and white women owners are different from those of non-minorities, given a set of economic and demographic characteristics. The dependent variable in this analysis is the amount of self-employment earnings.

Mathematically, the linear regression model can be written as follows:

$$Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \beta_3 X_3 + \beta_4 X_4 + \dots + \varepsilon_1$$

where,

- Y = the self-employment income
- β_0 = a constant
- β_1 = the coefficient for each of the independent variables, representing the impact of that variable on the dependent variable, self-employment income
- X = the independent variable, race, gender, education level, age, income, and property value, etc.
- ε_1 = the error term that captures the variation in the variables

In the linear regression model, the impact of race and gender on the dependent variable is estimated, (earnings received by owners), controlling for the independent variables (economic and demographic characteristics).

B. Results and Discussion of the Analyses

This section provides the results of the binary logistic regression for impact of race and gender on the likelihood of self-employment.

The binary logistic regression analysis examined the impact of economic and demographic characteristics on the probability of self-employment across all industries. Specifically, the analysis examined if minorities and White females were more or less likely to be self-employed. The analysis includes minority indicator variables: African American, Asian American, Hispanic American, Other Race, White Female. Research finds that minorities and females are less likely to be self-employed, perhaps due to factors such as limited access to capital and other resources. Other factors, such as level of education attained, marital status, age, Last Employment status, Nativity, Income (Wages and Salaries), Property value as well as Industry may be contributing factors to self-employment. Thus, the likelihood of self-employment was determined to be a function of race and gender, a subset of economic and demographic variables that allow for self-employment.

The logistic regression is first estimated for the full PUMS sample for the State. The results of the logistic regression provide estimates of the independent variables and the probability of self-employment. The analysis allows the computation of the odds of self-employment or not, given this set of independent variables. The results of odds ratios for minority groups being self-employed are presented in the following table. The odds ratio estimates the probability of self-employment for the various race and gender groups after accounting for economic and rank demographic variables that may impact self-employment. Alternately, if minority groups who are similarly situated with White males, with respect to economic and demographic variables are compared, the odds ratio estimates the probability of each group's likelihood of self-employment compared to White males.

Table 8.21.
"Odds Ratio" For Self-Employment for Minority Groups Relative to Non-Minority Males
Controlling for Economic and Demographic Factors

Race/Ethnic Group	Odds Coefficient	Odds Ratio Inverse
African American	0.538	1.860
American Indian or Alaska Native	1.152	0.868
Asian Pacific Islander	1.993	0.502
Other Race	0.937	1.067
Hispanic American	0.868	1.152
White Female	0.666	1.502

Source: M³ Consulting, Inc.; IPUMS 2019 ACS 5-year Data;

From the results listed in Table 8.21, comparing similarly situated individuals (in terms of economic and demographic variables), a White male is more than 1.86 times likely to be self-employed compared to an African American and 1.2 times as likely as a Hispanic American. However, a white male is only little over 0.5 times as likely as an Asian American or almost as likely as an individual from 'Other races' to be self-employed in Delaware. Also, White males are 1.5 times as likely as white females to be self-employed.

The full results of the binary logistic regression are presented in the following table.

Table 8.22. Results of the Binary Logistic Regression Analysis for the Full Sample				
Dependent Variable: Self-employed (or not) Variables	Coefficient (β)	Standard Error	Significance (p-value)	Significance
(Intercept)	-6.7899797	0.7856164	0.0000000	Yes
African American	-0.6205107	0.2318095	0.0074326	Yes
American Indian or Alaska Native	0.1415510	0.6473359	0.8269094	No
Asian Pacific Islander	0.6894158	0.3144168	0.0283303	Yes
Other Race	-0.0655013	0.4366480	0.8807573	No
Hispanic Origin	-0.1412465	0.3604325	0.6951464	No
White Female	-0.4066305	0.1296485	0.0017103	Yes
Age	0.1420436	0.0328541	0.0000154	Yes
Age Squared	-0.0012026	0.0003348	0.0003282	Yes
Bachelor's Degree	0.1732613	0.1464263	0.2367038	No
Advanced Degree	0.3984721	0.1692375	0.0185469	Yes
Architecture & Engineering	-1.2148561	0.7270407	0.0947295	Yes*
Construction	2.0506769	0.2041884	0.0000000	Yes
Goods & Supplies	0.6876737	0.1912636	0.0003239	Yes
Non-Professional Services	0.9230432	0.1433383	0.0000000	Yes
Food Stamp Recipient	-0.4884884	0.2440128	0.0452958	Yes
Property Value	0.0000005	0.0000001	0.0002603	Yes
Looked for work within the past month	-0.2161802	0.1811464	0.2327127	No
Total Personal Income	-0.0000019	0.0000011	0.0892812	Yes*

Source: M³ Consulting, Inc.; IPUMS 2019 ACS 5-year Data;

*Significant at 90% confidence level (10 percent significance level).

Professional Services omitted due to insufficient number of records

The logistic regression estimates the likelihood of self-employment based on race and gender characteristics, controlling for variables related to economic and demographic factors. Based on the results above, African Americans and White females are significantly less likely to be self-employed whereas being Asian Americans increases the likelihood of being self-employed in Delaware. As one ages it increases the likelihood of self-employment, but this reduces as one gets older. Those with a bachelor's degrees are less likely to be self-employed as it is possible that they are more easily able to secure

employment. However, as they are more educated with Advanced degrees, they are more likely to start their own business. Among additional demographic factors, while property value increases the likelihood of self-employment as it can be used as collateral to access capital, the opposite holds true for those on food stamps, as they may be financially constrained to be self-employed. Total personal income is marginally significant but lowers the likelihood of self-employment. All the procurement types have a probability of self-employment, except A&E that perhaps has more constraints due to professional licensing and apprenticeship requirements.

Those in Construction are highly likely to be self-employed whereas those in Goods and Supplies and Non-Professional services in Delaware appear to be favor self-employment as well.

B. Self-Employment Earnings

Following are the results of the linear regression for the impact of race and gender on self-employment earnings.

The linear regression analyses estimated the impact of race and gender on self-employment earnings, controlling for economic and demographic characteristics. The dependent variable for this analysis is self-employment earnings. The independent variables and the hypothesized relation to self-employment earnings are as follows:

- **Age:** Research shows that age proxies for experience, and self-employment earnings should be positively related to age.
- **Gender (Male vs. Female):** Research shows that males are more likely to receive higher earnings than females.
- **Race:** Research shows that non-minorities earn more than minorities, and minority status should be negatively related to earnings.
- **College Education:** Research shows that individuals with higher educational levels earn more, and college educated individuals should receive higher earnings.
- **Age-Squared:** Research shows a non-linear relation between earnings and age. This variable captures the fact that earnings increase up to a certain age, and then tend to level off.
- **Income:** Research shows a negative relation between earnings and income status.
- **Marital Status:** Research shows that married individuals tend to earn more than those single individuals.
- **Disability:** Research shows that those with disability will tend to have lower self-employment incomes.

Full Sample Results: The results of the linear regression of self-employment earnings are first estimated for the full sample for the State of Delaware.

The results in Table 8.23 below lead us to note the following:

- All other variables kept constant, a self-employed African American will earn about \$27,765 less than a similarly situated non-minority; a self-employed Hispanic American will earn about \$19,529 less (but this result is only marginally significant), a White Female will earn about \$27,361 less. A Female who is self-employed in the State of Delaware will earn \$28,143 less than a self-employed Male.
- A disabled individual who is self-employed earns about \$16,702 less, whereas someone who is educated will earn more if self-employed in Delaware. A person with a bachelor's degree will earn \$14,454 more being self-employed whereas a person with an Advanced degree will earn \$47,336 more in self-employment earnings in Delaware. Those with a mortgage payment that choose to be self-employed earn very slightly more within the State. Age that perhaps proxies experience tends to increase self-employment income but as a person gets older, this reduces.
- Among the industries, individuals in, Construction, Non-Professional Services and Goods & Supplies are less likely to earn more in self-employment.

Table 8.23.
Linear Regression Results for the Determinants of Self-Employment Income by Race and Gender for the Full Sample

Variables	Coefficients (β)	Standard Error	t-statistic	p-value	Significant
Intercept	-39829.95855	39961.09171	-0.99672	0.31904	No
African American	-27765.44994	11165.52672	-2.48671	0.01299	Yes
American Indian or Alaska Native	-21272.86105	35272.37321	-0.60310	0.54652	No
Asian Pacific Islander	-10695.84728	12555.23171	-0.85190	0.39439	No
Other Race	-19503.03729	16947.27894	-1.15081	0.24997	No
Hispanic Origin	-19529.45773	11860.82213	-1.64655	0.09984	Yes*
White Female	-27361.10988	13011.80585	-2.10279	0.03563	Yes
Age	4594.88950	1418.46007	3.23935	0.00122	Yes
Age Squared	-44.39073	14.34791	-3.09388	0.00201	Yes
Bachelor's Degree	14454.24145	5815.65638	2.48540	0.01304	Yes
Advanced Degree	47336.85282	7049.15240	6.71525	0.00000	Yes
Property Value	0.03344	0.00662	5.05095	0.00000	Yes
All Female	-28143.03259	12050.26003	-2.33547	0.01964	Yes
Architecture & Engineering	-42501.34154	24422.01020	-1.74029	0.08199	Yes*
Construction	-52327.29971	8026.29302	-6.51949	0.00000	Yes
Goods & Supplies	-37297.80973	8548.99154	-4.36283	0.00001	Yes
Non-Professional Services	-29944.70854	6192.76555	-4.83543	0.00000	Yes
First mortgage payment	15.89142	2.57304	6.17613	0.00000	Yes
Second mortgage payment	22.93619	8.45824	2.71170	0.00676	Yes
Disabled	-16702.92311	8249.94288	-2.02461	0.04306	Yes
Speaks English	11810.82012	19812.40051	0.59613	0.55117	No
Unmarried	-2468.60150	5023.12239	-0.49145	0.62317	No

Source: M³ Consulting, Inc.; IPUMS 2019 ACS 5-year Data;

Dependent Variable: SEMP Self-employment income past 12 months

*Significant at 90% confidence level (10 percent significance level).

Professional Services omitted due to insufficient number of records

8.5 SUMMARY OF FINDINGS

The purpose of this analysis is to determine if there are any differences in the capacity of race, gender, and ethnic groups and after accounting for any differences in the capacity of firms, if race and gender are contributing factors to any disparities found.

Capacity Based on Census Annual Survey of Entrepreneurs

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

With 18.20 percent of firms with paid employees, Asian American-owned firms have the highest capacity among M/WBEs for Goods and Supplies followed by WBEs at 11.62 percent. Amongst M/WBEs in Non-Professional Services, Asian American- African American-owned firms and WBEs represented 13.96 percent, 3.01 percent, and 14.23 percent of firms with paid employees, respectively. In Professional Services, WBEs had 6,115 firms with paid employees that represented 18.28 percent of the total while there are 4,813 MBEs that represent 14.39 percent of firms with paid employees.

Capacity Based on Data Axle

In the MSA, to compare capacity of firms measured by the number of employees, there are close to 25,000 M/WBE firms with 1-19 employees. Nearly 18,000 of these are WBEs and near 7,000 are MBEs and over 43,000 Non-M/WBE firms. As capacity (number of employees) increases, the M/WBE firms remains lower than the Non-M/WBE firms. For capacity measured as 500-1,000 employees, only 4 MBEs, 28 WBEs compared to 46 Non-M/WBE firms whereas this slightly evens out for firms with 5,000-9,999 employees, where there are 4 Non-M/WBE firms and 2 M/WBE firms.

In A&E, most firms were in the 1-19 employee range, with Non-M/WBEs representing about 33 percent of firms, as compared to M/WBEs at 17.46 percent, majority (14.18 percent) of which are WBEs. In the highest range, 5000-9999, there were only two Non-M/W/SBEs and for firms with 500-999 employees, there are two WBE firms in addition as well.

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

Most Goods and Supplies' companies have 1,000 employees. Only 4 Non-M/WBEs firms and 10 of unknown multi-ethnic owned firms have over 1,000 employees. WBEs and Unknown/Multi-ethnic firms were most consistently represented across all ranges in Non-Professional Services. In Professional Services, Non- M/WBEs firms reflect between 20-35 percent across all employee ranges and WBEs represented 11-18 percent across all ranges. No MBEs had 1,000 or more employees in professional services.

If capacity were based on sales revenues, in A&E, only Non-M/WBEs firms, WBEs and Unknown/Multi-ethnic-owned firms are represented in every revenue range until \$500 million. In construction, Non-M/WBEs, based on sales volume range up to \$100 million along with WBEs and Asian American-owned firms. All firms showed capacity in Goods and Supplies, up to \$50 million; Only Non-M/WBEs and WBEs and those with unknown racial ethnicity show capacity up to \$1 billion. There are firms in all race/gender groups with capacity up to \$50 million in sales volume, except for Native American-owned firms with capacity up to \$10 million and African American-owned firms up to \$20 million in the case of Non-professional service firms. Among Professional Service firms, only WBEs reflected capacity up to \$1 billion, although one Unknown multiethnic owned firm and Non- M/WBEs are shown for the revenue range over \$1 billion.

Capacity Based on Survey Regressions

Based on the results from the survey,

- Startups in the MSA were primarily self-funded, particularly among minority and women owned businesses compared to white male owned businesses. White male owned businesses were more likely to have been funded by a financial institution compared to minority owned businesses.
- Of the respondents, White male owned business are more likely to have contracted with various entities in the past five years than minority and women owned businesses overall in the public and private sector. Perhaps as a result, in 2021, white male owned businesses had higher average gross receipts particularly due to higher number of businesses with gross receipts totaling \$10,000,000 or more.
- Minority and women owned businesses are more likely to have used small business loan programs to get help with financing in the past five years. Women owned businesses are less likely than male owned businesses to have applied for either a loan/line of credit or bond.
- White male owned businesses were more likely to provide a quote or bid as a prime contractor in the past two years than minority owned businesses for both private sector companies and public sector agencies within and outside of the State of Delaware.

Using a log-linear model, we measure if gross revenue differences are attributable to discrimination between the M/WBEs and Non-M/WBE groups or simply due to other factors such as experience or education. Explanatory factors such as number of full-time employees, age of business, principal's prior public and prior private business experience, and the average past two-year bid size for each company were included to explain the differences in gross revenue differences. Utilizing the Blinder-Oaxaca (BO) decomposition method for estimating the extent of discriminating between different groups, we find that Non-M/WBEs received 8.87 percent ($\exp(0.08494)-1$) **greater** total gross receipts from all sources in 2021 than can be accounted for based on the relevant explanatory variables. In addition, accounting for all relevant factors, the M/WBE group received 3.23 percent ($\exp(-0.03283)-1$) **less than** they should have in gross revenues had discrimination not occurred.

Capacity Based on PUMS

Using a binary logistic regression model and the IPUMS 2019 ACS 5-year database for the State of Delaware, M³ Consulting attempted to examine the impact of economic and demographic characteristics on the self-employment decision and whether there are differences in the probability of self-employment among the different race/ethnicities and genders. Additionally, M³ Consulting analysed the factors that impact self-employment income and whether self-employment income is impacted by race and/or gender.

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

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

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- All other variables kept constant, a self-employed African American will earn about \$27,765 less than a similarly situated non-minority; a self-employed Hispanic American will earn about \$19,529 less, a White Female will earn about \$27,361 less. A Female who is self-employed in the State of Delaware will earn \$28,143 less than a self-employed Male.
- A disabled individual who is self-employed earns about \$16,702 less, whereas a person with a bachelor's degree will earn \$14,454 more being self-employed and one with an Advanced degree will earn \$47,336 more in self-employment earnings in Delaware.
- Among the industries, individuals in, Construction, Non-Professional Services and Goods & Supplies are less likely to earn more in self-employment.

CHAPTER 9: ANECDOTAL COMMENTS FROM THE MARKETPLACE

9.1 INTRODUCTION

As part of the disparity study process, M³ Consulting sought to explore the experiences of business owners in the Wilmington and greater Delaware area who seek business opportunities with the City of Wilmington (the City). This chapter contains a categorized summary of anecdotal evidence collected concerning the issues and barriers small, minority and women business owners face as they attempt to transact business with the City.

A. Summary of Anecdotal Participants

The anecdotal data was gathered by conducting five focus groups. Due to the COVID pandemic, all interactions were hosted via Zoom or Microsoft Teams. The firm's owner race and gender along with the industry category is summarized in Tables 9.1 and 9.2.

The particularized accounts of business owner experiences contained in this chapter should be considered in tandem with the quantitative evidence regarding marketplace disparities discussed in the Availability, Utilization and Disparity chapters of this report. The anecdotal information may be used to further assess or identify the existence of racially-based or gender-based the City or marketplace barriers and to corroborate statistical findings.

The framework for the collection and analysis of anecdotal evidence for this study has been suggested by the U.S. Supreme Court in the case *City of Richmond v. J.A. Croson*, 488 U.S. 469 (1989). In that case, the Court held that particularized anecdotal accounts of discrimination could help establish a compelling interest for a local government to institute a race-conscious remedy. Moreover, such evidence can provide a local entity with a firm basis for fashioning a program that is narrowly tailored to remedy identified forms of marketplace discrimination and other barriers to minority and women business participation in contract opportunities.

9.2 ANECDOTAL INTERVIEW METHODOLOGY

The anecdotal evidence contained in this chapter was gathered by conducting five focus groups.

M³ Consulting proposed to conduct 20 one-on-one interviews, 3 focus groups and 1 public hearing. Due to the City's budget limitations, M³ Consulting worked with the City to develop an alternative strategy to garner anecdotal feedback. M³ Consulting determined the best value add would be found in conducting 3 focus groups and a public hearing, if needed. Using the sample from the combined list of City of Wilmington Vendors, Master M/W/DBE list and Data Axle, M³ Consulting contacted firms via phone and email to determine their interest in participating in the focus groups. M³ Consulting experienced low response and turn-out in the first 3 focus groups, 5 participants in the first two focus groups, none in third focus group. M³ Consulting conducted 3 additional focus groups, focusing on those 350 firms that responded to the survey. 21 participants were confirmed for the 3 additional focus groups. 3 participants attended focus group 1 and 6 participants attended focus group 2 and focus group 3, for a total of 15 participants for the second attempt of focus groups. In total, 20 participants participated in the 5 focus groups M³ Consulting conducted.

A minimum of four attempts were made to reach firms to participate in the focus groups, via email and phone. During those efforts, several reasons were provided by potential interviewees as to why they did not want to participate, including the following:

- Vendors were too busy and did not have the time.
- Vendors considered the focus groups to be a waste of time.
- Vendors had never responded to a bid or tried to do business with the City.

Each vendor listed was identified in one of four procurement categories: Goods and Supplies, Construction and Construction-Related Services, A&E, and Professional Services. If a vendor in the compiled list did not show a category, the researchers went back to the original list to identify the category code. A total of 20 attendees participated through the focus groups that were conducted. (See Tables 9.1 and 9.2).

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Table 9.1.
Focus Group Participants

Interview Count	Firm Owner Race and Gender
4	Non-DBE
1	Asian Indian Male-owned
6	African American Male-owned
5	African American Female-owned
0	Hispanic American Male-owned
0	Hispanic American Female-owned
4	Caucasian Female-owned
0	Minority/WBE/SBE
0	SBE
20	Total

Source: M³ Consulting

Table 9.2.
Focus Group Participants

Interview Count	Firm Industry Category
1	Goods & Supplies
5	Construction and Construction-Related Services
2	Architectural & Engineering (A&E)
12	Professional Services
20	Total

Source: M³ Consulting

The M³ Consulting team transcribed and analyzed all session transcripts. Common themes across the focus groups were grouped under nine topic headings. Focus group excerpts are provided to support

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each theme and the race and/or gender are indicated. The excerpts illustrate participant's discussion of experiences relating to each theme heading.

A. Participant Confidentiality

Each participant was informed that his or her identity and the identity of his/her company would remain confidential, unless M³ Consulting was required to disclose this information. We strongly note that efforts to verify or find corroborating data that supports any claim made during an anecdotal discussion may subject the participant to foreseen and unforeseen reprisals. Therefore, in using and following-up on the comments reflected in this chapter, the City should take measures to protect participants from any retaliatory actions by others.

9.3 ANECDOTAL INTERVIEW FINDINGS

The following sections indicate the recurrent themes in the discussions found throughout the focus group and public hearings. Each theme includes anecdotal comments directly from the participants' discussion illustrating the topic heading.

- Theme 1: Cooperation of Non-DBEs w. DBEs
- Theme 2: Access to Public Sector Opportunities
- Theme 3: Exclusionary Practices by the City of Wilmington that Create Barriers to Contracts
- Theme 4: Exclusionary Practices by Prime Contractors That Create Barriers to Contracts
- Theme 5: Impact of the City Bid Process
- Theme 6: Need for And Effectiveness of Minority and Women Business Enterprise Programs
- Theme 7: Experiences that are discriminatory and practices that favor Non-MWBEs
- Theme 8: Timely Payments and Incentives
- Theme 9: Suggestions and Comments

Theme 1: Cooperation of Non-DBEs w. DBEs

These remarks refer to vendors relationship with Non-DBE Primes

Focus Group 4, Participant 1 (P1), African American Female-Owned, Professional Services

FG4, P1 shared a unique method to foster relationships with Non-DBEs. “[W]e did a whole school on how to do business with XXX Construction, and that goes down to all of their subs. And when you complete their training course, you become a name that they recognize when they are looking for projects in certain cities.”

Focus Group 5, Participant 1 (P1), African American Female-Owned, Professional Services

FG5, P1 talks about her experience in being asked to unfairly reduce the prices of her services. “I’ve been in situations where one client that I had was trying to get me to come down on my pricing for services, but then, I was subcontracting another client that was a male agency, and I guess this person forgot that I was going to see the other company’s budget because I had to embed it with mine, and found that they were going to allow them to charge a lot more for a lot less service.” She also discussed “suits-to-skirts”

occurring in her marketplace “where white male-owned businesses would then put their wives in front of the business to get the WBE status.”

Focus Group 4, Participant 2 (P2), Non-DBE, Architect & Engineering

FG4, P2 identified an instance where his firm did not have to bid on an opportunity but was able to get a contract with another Non-DBE firm. “A lot of county or city, we can get on like a prequalified vendor list for the year and then RFPs come out within that. Other times we're directly responding to RFPs on projects. But I would say, within the government realm, there are some cases where we are collaborating as a partner and that often is in the realm of grant writing. So, we do assist clients with grant writing for various programs for free, like on spec, as long as XXX is a project partner and they don't have to go out to bid to directly award us the work. We'll help them land that funding to do the project. So, in that case, we're not going out to bid. We're more of a project partner on the grant application and working on it together.”

Theme 2: Access to Public Sector Opportunities

Focus Group 2, Participant 3 (P3), Caucasian Female-Owned, Professional Services

FG2, P3 talked about the organizations that have been very supportive of her firm, including DelDOT, MDOT, and PennDOT supportive services programs, SCORE and SBA. “I go to their [DOT] conferences. I can call people if I have questions or any concerns. I've actually filled out their surveys, talked to their assistance people at various times, and they've been great. And they were super-welcoming to everybody. The SCORE-- the Service Corps of Retired Executives has been awesome for me. I've had several SCORE counselors over the course of my business for different reasons. One when we were purchasing the company; one during the recession when we didn't have any work and we had to figure out how to get work quick. And so, they're free. And I don't know if every business knows about them, but they are amazing and super-helpful. The Small Business Administration—they work closely with SCORE, too, and they've been a big help. And also, they have awards that you could apply for. And we have won ‘Small Business Persons of the Year’ twice in Delaware, which was a way for other people to get—for us to get noticed by other people-- just by having that.”

Focus Group 4, Participant 1 (P1), African American Female-Owned, Professional Services

When asked what public sector agency does things well, FG4, P1 responded that she felt as though “NASA is top notch at reaching out. They are top notch at engaging small business. I mean, you don't have a month that goes by that they're not doing something. And they're good at making sure that their buying centers are doing targeted outreaches. Like, okay, if you're Marshall Space Flight Center in Alabama, there is a small business group that NASA helps oversee and say make sure that these people are coming together, and they know what you've got coming up over the next year to two years. And then we have

conversations around shaping the requirements at those. They're excellent at putting out requests for information."

Focus Group 4, Participant 2 (P2), Non-DBE, Architect & Engineering

FG4, P2 discussed public sector and professional organizations that have been helpful to his firm. "[W]e work a lot with the Army Corps of Engineers and as a DoD contractor, and they have been—in more recent times, they have a small business liaison in each district. And so, that person you can go to and you can ask questions, they can give you information. They've been actively sending out. If something gets posted in SAM.gov that's a set aside, they will send it to all the small businesses they have listed, which has been helpful."

FG4, P2 went on to say that "some of the professional organizations that work in the industry have been helpful resources. For me, I'm involved with the Society for American Military Engineers, SAME, and they often bring in both government representatives and a lot of the different consulting firms. And they do meet and greet or round tables or they have a small business conference every year that is excellent. If you're a small business and work in the military world, that is the conference to go to. I learned more about the procurement world, how to submit a proposal, how to respond to something, how to network with the government agencies from that conference that I have anywhere else. It was a game changer."

Focus Group 4, Participant 6 (P6), African American Male-Owned, Construction and Construction-Related Services

FG4, P6 talks about gaining access to small dollar contracts. "[W]e've been struggling with these government agencies to find opportunities, come to find out, there's a whole market of \$2,500 - \$5,000 - \$10,000 - dollar jobs. That's small scale, where the smaller contractors can start. But we don't seem to have any access to that. So, a lot of times they send these large government contracts. So, either we could attempt to bid as the prime or we would have to partner up with a larger prime. But that really doesn't work out too well with the larger primes."

Focus Group 5, Participant 3 (P3), African American Male-Owned, Professional Services

FG5, P3 talks about how he received a contract with the City of Wilmington Parks and Recreation department. "I was an organizer and, really, a volunteer because my pastor actually founded this organization that's all about trying to help people that are incarcerated, trying to help solve this problem of mass incarceration that we have here, not only in Delaware but throughout the nation. So, I'm giving out these books, these Black Lives Matter coloring books, and the superintendent of Parks and Rec comes in from Wilmington... And he takes one of my books. He likes the book. And that's how I got hired with the Department of Parks and Recreation. That's how I started that work."

Theme 3: Exclusionary and Insufficient Practices by City of Wilmington that Create Barriers to Contracting

Focus Group 1, Participant 1 (P1), African American Male-Owned, Construction and Construction-Related Services

FG1, P1 stated, “When you see an [large construction firm] that comes out, you don't see anything that goes out on the wire and say, ‘Hey, we got this big job over here. We're looking for construction management.’ What you see is you see a behind the scene, negotiated thing with just that one particular person. Then next thing you know, [large construction firm] has the whole job and we get next to none of it. And my thing is, why can't you sit down with four or five minorities and say, ‘Hey, we want to negotiate this job with you?’ I believe that's happening with the [list of four large construction firms] and all of them big companies that's just want it around here. Their stuff is negotiated out, and I don't know why ours can't be the same.”

FG1, P1 continued to explain how contracts that should be bid are negotiated out. “I would have to say it's on formal contracts that's supposed to be bided out. I would have to say yes to that. Right? And then when it comes down to all of the departments with the City of Wilmington, the only thing that I could say to that is the City of Wilmington have many departments that have budgets and construction that's tied into their budget. I'm only getting work from one department, and that's Licensing and Inspection. Real Estate and Housing and Public Works has a much, much larger budget... They are pitiful. They don't reach out. I've done nothing at all with Public Works, although I've tried. I've done nothing. But sometimes, you don't want to keep spinning your wheel, right, putting in effort, putting in time, preparing a price, and you know you're not even going to get in the game. ... in the 30 years that [we've] has been around, how much had estimators that said to me, ‘I don't want to go waste my time here. Let me go and get somewhere where I have an opportunity.’ You want to spend 20 hours of trying to search this there, and those 20 hours could be better spent sitting over here where you know you're going to get something. It's bad. It's really bad.”

FG1, P1 further stated that “You can't have a company in my caliber and has been around for years doing this—and I probably have the most equipment of any minority contractor in the state of Delaware, and you give me no work. You don't even talk to me. And the only work that I get is coming out of Licensing and Inspection, and they have the smallest budget of all of them... And I'm really more disappointed with the City of Wilmington because for as long as I've been around, and there ain't too many qualified minority companies in Delaware, but for as long as I've been around, I always found myself working outside of Delaware. Maryland, Pennsylvania, New Jersey. And it's horrible. We're tired of traveling. And if I do get a good job in the state of Delaware, it's from a company out of Philadelphia, Jersey or Maryland who's coming into Delaware to do work, and they bring me along with them... Horrible. I mean, it's like they got

the same players, the same people, and minorities can't grow, and they're not going to grow if they think they're going to stick around in Delaware and try to get some.”

Focus Group 1, Participant 2 (P2), African American Male-Owned, Architectural & Engineering (A&E)

FG1, P2 shares his experience doing business with the City. “I'm on the professional side, and So, I'll get calls from the colleagues that I see at engineering banquets or dinner club meetings, that kind of stuff, and they know my capabilities. In addition to that, I, oftentimes, check the website to the city just to see what's going on in terms of project and the same thing. I think one of the things that I surely do agree with FG1, P1, and actually, I agree with him on all of what he said. But one of the primary things that I think that is significant here is that the city has a lot of rules in place, but nobody follows them. The economic development folks on the third floor don't follow them. The DB equity people on the third floor, don't. I mean, you can get an exception to anything at the third floor. And that's what one of the problems is that nobody seems to want to do their job to make it so. And for me, right now, we do work with the Parks Department, and we do work with Public Works, we do work with Housing. But it's not like somebody is going to go out of their way and call you. Usually, like FG1, P1 say, I'm a sub to somebody, and this is something that I could do myself. You know what I mean?”

Focus Group 2, Participant 1 (P1), African American Male-Owned, Professional Services

When asked about his success getting contracts with the City of Wilmington, FG2, P1 talked about the nature of the City's DBE program. “The City of Wilmington's DBE is not directive... It is not like the federal DBE. The federal DBE program allows minorities and White women to be a part of their DBE program. The City, their program is based on the statistics that they did a study on, and in order to do that, you have to be either African-American or a Hispanic to be in their DDE program in the city within Wilmington.”

Focus Group 2, Participant 2 (P2), African American Male-Owned, Construction and Construction-Related Services

FG2, P2 discussed the lack of outreach by the City. “[T]he City of Wilmington has, on their website, a procurement area and so, that's how they make public to whatever type of opportunities that they are doing within the city. So, that's something—it doesn't take a lot of research. But they don't reach out to reach directly to individuals.”

Focus Group 2, Participant 3 (P3), Caucasian Female-Owned, Professional Services

FG2, P3 stated that “from a professional services side, which is what we do with the city, I think there are some firms that they work with routinely, I don't know if they're on a contract, like... those are like the big engineering firms; we can't compete with them. We would be subs or we just do the environmental work

that is specialty to our area and that they don't do. But I don't think there's any professional services contract. So, I would say we don't have a lot of information about that.”

Focus Group 3, Participant 2 (P2), Non-DBE, Professional Services

FG3, P2 has found that the “City of Wilmington, far as I know, they piggyback off the state contract. That's how we get in there without having to jump through hoops. Same thing with Newcastle County. They used to have their own bid, but then I guess they decided it was too much work, and now they just piggyback off the state contract. And I guess they seem to be able to find enough vendors on the state contract to satisfy their needs.”

Focus Group 3, Participant 3 (P3), Caucasian Female-Owned, Professional Services

FG3, P3 discussed state solicitation. “[O]n a state level, the way they were written, I even had to reach out to the point of contact and ask them for verification that I'm receiving it the way it's written. And what I've noticed between the budget that they offer against the tasking order that they're asking for and to have inside of this IFB that you might not get paid, or you have to wait a year to get paid.”

FG3, P3 goes on to say that “actually, because of a lot of these solicitations I've seen on the state level, I've actually drafted a template of refusal, a template letter of refusal just because of that. That way, I don't even have to go through-- and I've had different point of contacts reach out to me and say, ‘Hey, we were expecting to see your bid,’ and I just automatically send out the template. I can't do it.”

FG3, P3 continues to say “one particular solicitation that was put out, I watched it through its lifecycle when it was initially an invitation for a request for information. They had allocated \$400,000 to this effort. When the pre-solicitation came out, it knocked down to \$250,000. When the actual bid came out, it was down to \$100,000. So, this is the one I spoke of earlier where I said me and the point of contact, we were literally in the talks. I'm talking about good relationship, speaking on a weekly basis. And when they saw my letter of no intent to bid, they was in shock. And I'm like, ‘You can't do this.’”

Focus Group 3, Participant 4 (P4), Caucasian Female-Owned, Professional Services

FG3, P4 questioned the bid process throughout the Delaware and Philadelphia area. “[A] lot of times, this stuff gets submitted. I don't get acknowledgement that it's submitted, and that's really upsetting. It's really upsetting because you're like, I just put almost \$3,000 worth of work in this thing for nothing. The other thing, the reason I don't submit, I'm very particular about which RFPs I submit to because sometimes they're so open ended or they're too like, we might be doing between one and three reports in a year, and this is a hard cap of \$15,000. And we're doing smaller. We're doing the under \$100,000 bids. And the

way that the RFPs are written, they seem like they're written in a way that could really hurt my business if I did end up getting it.”

Focus Group 3, Participant 6 (P6), Non-DBE, Goods and Supplies

In discussing pursuit of opportunities, FG3, P6 stated that “I tried for the last three years. We did do one deal with the OEM within your city, but anytime the bids go out there—we're 12 people, and we have not been able to fit into their requirements.” The City of Wilmington continues to say “Because of being a solar solution and a battery solution, we don't fit under any code. Okay. They're going to say, ‘I want a generator,’ and then they talk about the specifics, not thinking that there's other ways of getting generators [inaudible] are fuel driven that could be green driven. And so, I don't fit. So, I do get a notice saying, ‘We're going to be looking for generators,’ or, ‘We're going to be looking for some other products, what we call hotspots or batteries, which could be used during a disaster,’ or even some of us are used during a get-together whereby you need power for an opportunity that's happening within the city or in the state. That doesn't fit into any of your codes. So, what I usually do is I'll search and go through what's available and see if I fit into any of your codes, and then I'll apply.”

FG3, P6 also feels as though, “They don't want to deal with a single source because they have to provide that nobody else meets their requirements out there. We're working to try to figure out how we can not just be a single source. But we don't have competition with our product right now and have not for 12 years.”

Focus Group 4, Participant 2 (P2), Non-DBE, A&E

FG4, P2 talked about the difficulty in doing business in the Delaware marketplace. “[I]t's very hard to get into Delaware... It's like who they know and who has been there a long time. That's who they keep using. And it's been extremely hard for us to break into that space, even though we are literally surrounding them in Maryland, Philly, New Jersey. Like, we're all around Delaware, and we just can't get it?” FG4, P2 further expressed his frustration at finding out the need to be certified to do engineering in the State of Delaware only when the RFP was released and not being able to get the certification within the 30 days that the RFP was open.

FG4, P2 feels as though “We can't check 700 municipalities over four States every day to see if they posted something on our website. So, having that email come in is like the most important thing to me at least. I mean, we have to sort through the emails, but even so, that's a lot easier than trying to check and see if whatever city or state or whatever has posted anything. I would say I echo the inviting us in to present

our capability to the right agencies within the city would be really important because we can cater to if it's the Parks Department and we can talk to them specifically about what we think they need.”

Focus Group 4, Participant 4 (P4), Non-DBE, Professional Services

FG4, P4 provided reason that his firm does not pursue government work. “Why we have not pursued government work is because of couple of things, lack of knowledge of how to go about doing that. We have found a lot of red tape in trying to apply for government jobs because we may not have the knowhow or the knowledge because most of the folks who gets the contract, the folks who are already in there. And we have found-- I've lived in Delaware now for 26 years, and we've been doing drywall for 30 years. 25 here and 5 in New York. But we have found Delaware to be a very closed-off city.”

Focus Group 4, Participant 5 (P5), Non-DBE, Professional Services

FG4, P5 stated that “Our biggest contracts are at the federal level, a lot with the military. On the city level, we have several cities throughout the United States. We work across the whole US, and we get contracts from cities, for instance, that have water departments that need to prevent their people from falling off of water towers or even at lower levels working in treatment plants. So, we've done a lot of work at the city level also. I've never had an invitation to bid from the City of Wilmington, never ever.”

Theme 4: Exclusionary Practices by Prime Contractors That Create Barriers to Contracts

Focus Group 2, Participant 3 (P3), Caucasian Female-Owned, Professional Services

FG2, P3 states her experience as a DBE pursuing work with prime contractors. “I’m not naive to it. With my success or not, I've went to prime contractors that have been awarded very large bids, and just wanted to introduce myself. And at the door, they wouldn't even let me in. They asked me to just speak, I guess, through the ring. So, I've seen that. And yes, they was just awarded a very large bid that had DBE compliances that they should've had to have federal money. I've seen it on contracts in Wilmington.”

Focus Group 3, Participant 3 (P3), Caucasian Female-Owned, Professional Services

FG3, P3 discussed her experience with a Prime and the City of Wilmington. “They will put a notice out to the larger companies, ‘Do not sub with them. If I see them on your subcontracting contract, you will not be awarded the contract.’ I've actually won contracts being a sub because of companies who were just a little too aggressive on how they approached the prime and then going back to the client who is the main agency for their invoicing, and they'll be the first to tell you, ‘That's not my responsibility. The prime on the contract, not you. So, if you had an issue with your invoice, it should be taken up with the prime. If you have an issue with the prime, you take it to the office of small business. It's not for the client to get in the middle of the relationship between the sub and the prime.’”

Focus Group 3, Participant 6 (P6), Non-DBE, Goods and Supplies

FG3, P6 feels as even though "we've also become a sub for [large mobile phone provider] to provide solutions for [large mobile phone provider] and once we get in there and they realize what our product offer and the ability to be helpful to their needs—they don't know enough about us to know what they need. And by [large mobile phone provider] being the big gun, brings us in, you bring a little bit of respect and reliability and say, 'We might want to deal with them' because they don't know who XXX is. It's 12 years old. It has 10 to 12 people. And they don't want to take a chance going with the smaller company that might cause them some challenges."

Theme 5: Impact of the City Bidding Process

Commentary in this section refers to the importance of the bid process in influencing DBE participation.

Focus Group 2, Participant 1 (P1), African American Male-Owned, Professional Services

FG2, P1 feels as though "I just wanted to note, when I spoke to the city, they said that they didn't have to put professional service bid contracts out, they could actually award those sole source. They put construction and other contracts out but professional service, when I spoke to them, they actually said that they could select pretty much who they wanted for those. So, that's also why you might not have seen a large professional awarded in that manner."

Focus Group 2, Participant 2 (P2), African American Male-Owned, Architect & Engineering

FG2, P2 states that the City of Wilmington's DBE program requires DBEs to be "Wilmington DBE." However, he is aware of contracts where the DBE's used by the winning firm "could have been a federal DBE, it could have been a state DBE, that they use, they just said DBE. And they won, and our prime contractor won the bid with such. We caught it in, they say, the ninth hour, and was able to remind the city of what their ruling says, and we were able to at least work on getting that changed."

FG2, P2 when on to discuss the City's practice of allowing bidders to declare that they will do the work in-house, as opposed to meeting DBE and resident employment requirements. "... Well, why, then, do you actually proclaim that you have a DBE department if it's going to be all inclusive then? And the reason why the state and other federal agencies have it—one is because it's the law—it's the federal money. Two is that it's supposed to help beef the economy within the city. So, to me, letting that outside firm come in--none of those individuals hired anybody from the city. And, yeah, you were working in the communities where your residents live, but none of the money went back to the city. I hire 80%—like I said, I probably got somewhere around 60—the season just starting. Probably somewhere around 60 or so employees. We will probably get as high as 90. I pay 40-some dollars an hour. That would be a great boost to the economy of the City of Wilmington."

Focus Group 3, Participant 2 (P2), Non-DBE, Professional Services

FG3, P2 compared the State's bid process. "The thing with most contracts is, at least with the state and the type of contract I'm on, I guess they can only have them for so many years. So, usually, if you win a bid for a contract, it's usually good for a year. They renew it for like two years, and then they have to go out and rebid it again. So, you have to keep your eye out. And the state and a lot of the other places have where you sign up."

Focus Group 3, Participant 4 (P4), Caucasian Female-Owned, Professional Services

FG3, P4 talked about the lack of usefulness of her certifications. "What we're finding is that I'm putting in a lot of effort and not getting any results. It feels like we're just being used to bid against the incumbent vendors and to keep pricing down. But we're not getting, really, any attraction or feedback or generally any acknowledgement that contracts or proposals are being reviewed."

FG3, P4 continues by saying "if I'm going to bid on something, I'm going to spend 10 or 15 or 20 hours pulling a proposal together. I want to be sure at least I have a 50 percent chance of getting it. And if these are open to the public proposals, and 100 people or 50 people are bidding on it, even though I'll be in the top, sometimes I'll—I mean, I just need to know I'll be in the top three or get some acknowledgement that I'll be in the top three because my work is superior. As a design studio, we have excellent work, but I just have to make sure that there's a reason for me to put the effort in and that there's a return on investment."

Focus Group 5, Participant (P1), African American Female-Owned, Professional Services

FG5, P1 feels as though "sometimes, I submit proposals. Sometimes, it's, I guess far more discretionary where I just get calls and I'm able to do the work without having to go through a bidding process. So, it just depends on the type of work and, really, the dollar amount. Here in New York, it really depends on the dollar amount."

Theme 6: Need for and Effectiveness of DBE Programs

This section refers to the perceptions of local businesspersons about the City's DBE Programs; the effect of outreach, or the lack of it, in encouraging and assisting DBEs to participate in contracts; effectiveness of management, financial and technical assistance programs, and concerns about the DBE certification process.

Focus Group 1, Participant 2 (P2), African American Male-Owned, Construction and Construction-Related Services

FG, P2 discussed the lack of enforcement of the City's initiatives. "[W]e have a minority business association that has been at the table trying to get the city and the state and the county to be more representative in terms of the way they give out projects. One of the things that I find is that the city, although it may be in writing, they don't have any enforcement of requirement. You know what I mean?"

FG, P2 went on to say that "if it's architecture and engineering, I can possibly do anything that they're asking. I usually don't have a problem, but for the folks that are in the construction part of it, there is a lack of enforcement of the rules and then the outreach to the minority community is lacking in terms of notifying. They say, 'We posted on the website,' but that's not enough if you're trying to reach folks who are trying to make ends meet daily. A lot of these folks are not the folks that can carry a job with bonding and insurance and all that stuff. So, their preoccupation is trying to get a job and get it done."

FG, P2 "I'm always surprised how the political structure in this state and city seem to go gravitate to the same people. We've been at this fight forever and it's the same dance but different music. You know what I mean? The mayor changes, but you have the same administrative people, essentially. So, nothing changes. And they have their friends. Let's be frank. They have their friends who they call...the big guys. Because in their view, we can't do anything big. You know what I mean? And so, there is a certain disqualification that we get because of just the color of our skins. And ...[the mayor] shrugs and says, 'Let me talk to my people,' but nothing happens."

FG, P2 continues "I get a significant amount of work in the private sector, in churches, developers, that kind of stuff. Yes. Just based on qualification. See that's the thing... We are qualified in the stuff that we do. So, that's a qualification-based selection that private entity uses. And then you have the DBE goal which is the government, both local, city, and state. But ... in Pennsylvania, New Jersey, Maryland, it's mandatory. In Delaware, it's a good faith effort. And that's because of the legislation."

Focus Group 2, Participant 2 (P2), African American Male-Owned, Construction and Construction-Related Services

FG2, P2 shared the City's DBE program is in name only. "...Because a DBE, the city runs it, just in title, simply. They say they have one, this is the title of it, and life goes on. So, that's as far as the City of Wilmington DBE program goes. After that, you're just another sub and you do have to do your homework."

FG2, P2 also discussed DBE firm lack of understanding of the City's payment terms. "What the city doesn't make clear is how the payment structure works...[T]he city will tell you, 'Well, you should have a check within 30 days for a short period after the prime contractor gets it.' The difficult part is this, the prime contractor doesn't get the contract until after he has 30 days [inaudible] his paperwork together, then he gets, I believe, another 15 days he has to send it to the inspector that worked the deal for the owner, which would be the City of Wilmington. So, then they got so many days to review it, that's another 15 days. And then the City has another 30 days. So, already, you are 60—somebody [inaudible] was at 75

days if I'm correct. So, you are already 75 days out before you can even think about getting a check from just in this whole process. Then once the prime contractor gets the check, and this is where the city always—this is their comment, they will say, 'Well, the prime contractor has 10 to 20 days to get you your check,' but he has 10 to 20 days after the 75 days you have already waited to get your money. So, yes, in theory, politicians have levied for it to be a 20-day process, but it's them not understanding the whole process."

Focus Group 2, Participant 1 (P1), African American Male-Owned, Professional Services

FG2, P1 talks about qualifications of City's MWBE Manager in the Office of Economic Development. "My gauge was, he wasn't really coming from the diversity world, he was coming more from a financial world and trying to adjust to it and trying to get his mind around it. And if you've been doing this long enough and you understand that there's a two to three-year learning curve if you really want to start helping people in this space, especially when you start talking about the diversity space and helping people navigate. So, I think he was more or maybe focused on some economic initiatives, something that he probably understood, or he could jump-start a little bit faster."

When asked about the availability of DBEs in general, FG2, P1 answered "I think it really depends on the niche or the work that you're looking for. You know what I mean? So, I think some skills, if you're looking for them, they might be light, but then there's other skills we have over concentration. Right? So, if you know that when you're looking at your jobs and your projects and setting your goals, then I'm going to say that there's more than enough M/W/DBEs to make sure that you include as long as you're not targeting those deficient areas and setting high DBE goal expectations in places where they just don't exist. But I would say, overall, there's more than enough to hit goals and to meet goals. But there are certain areas where there is going to be a lack of M/W/DBEs."

Focus Group 2, Participant 2 (P2), African American Male-Owned, Construction and Construction-Related Services

FG2, P2 was asked Does Wilmington have a requirement for a certain participation of DBEs, or MBEs, or WBEs, or on any of their contracts?

When asked whether the City has M/W/DBE goal requirements, FG2, P2 responded "They do. On your construction contract, it's 20 percent. That was one of the written in. If you look at your new guidelines, there's a guideline that they had, it used to be question number 17, said that they wanted 20 percent DBE participation. And then I think it was question number 16 that talked about they wanted so much of a city resident participation. It's been taken out; it hasn't been ruled out. It was taken out because somebody felt let's take that off the paperwork. That hasn't been ruled by committee or anything—excuse me, by Council. That's not something that's been voted on that has been removed."

FG2, P2 then goes on to say that “the city can be tough. I think you ... do have to know how to navigate to the city, and you do have to speak up. I think [my company’s] success has always been, once these bids are out, we reach out to all of the contractors, we encourage the DBE Department to advocate their roles and give DBEs an opportunity to be able to have a voice we advocate for.”

Focus Group 3, Participant 1 (P1), African American Female-Owned, Professional Services

FG3, P1 feels like effective programs are needed more than ever since “We've discovered that private companies will not hire—well, don't have a real commitment, generally, to MBE participation goals unless they're required. And if they're not required, they don't ask, they don't look for, they don't source. And since the federal government and my taxpayer dollars are paying for the contracts with government, federal, state, city, then they are required. And especially on the housing contracts, the section three provision, which they tried to get here recently. Whenever private companies can't afford to avoid participation goals of minorities, they do. And so, unless there is a true commitment, which is what I started out with, unless there's a true commitment in that organization for equity, then they will continue the same practices in purchasing, procurement as they always have. And if there are no consequences, then why should they do anything differently? So, yeah, that's why I say. But that's why we are so heavily vested in government contracting.”

Focus Group 3, Participant 4 (P4), Caucasian Female-Owned, Professional Services

FG3, P4 stated that “My WBE certification hooked me up with the City of Philadelphia. And then I think preferably through that is how I've gotten on this call is through my WBE certification. Other than that, it's through my professional networks...”

FG3, P4 finishes by concluding “I do think prioritizing WBE, minority certified businesses, and B Corps, and everything, it will help all of us. It's not just helping some of us. It will help all of us and, yeah, giving people a chance to actually have some face time with people instead of just blindly throwing these things out and uploading them to a site somewhere, faceless. I think it's a missed opportunity.”

Focus Group 4, Participant 1 (P1), African American Female-Owned, Professional Services

FG4, P1 feels as though “I know they're busy and they [the city] don't want 8,000 small businesses coming to the door, but if they would be a little bit more transparent about who is the person or the group that needs this to work, then we as small businesses can write better proposals which makes it easier for them to evaluate and then easier to make the award if we're deemed capable.”

Focus Group 5, Participant 1 (P1), African American Female-Owned, Professional Services

FG5, P1 thinks that part of having any effective program begins with being able to identify opportunities. “[H]onestly, it's just not knowing where to find opportunity. I know that, with New York City, they have procurement lists and stuff. So, when there's RFPs that come out, if there's an RFP that matches the work that I do, I'll get that. So, it's New York City Record, I think it's called. So, we have ways to find opportunities that come to you. And I couldn't remember how I got connected with Wilmington and got this email—which I'm happy I did, don't get me wrong. But yeah, but it's just not knowing the opportunities that are there.” FG5, P1 then stated how beneficial DBE programs can be when truly effective, “My first year after becoming certified, my revenue increased by 500 percent. So, it is definitely 100 percent yes. I'll say that.”

Focus Group 5, Participant 2 (P2), African American Female-Owned, Construction and Construction-Related Services

FG5, P2 gives insight on the challenges of DBEs and why effective programs are so necessary. “Definitely the process to get government contract ready. I think it becomes very discouraging because I do meet people along the way that stops. I do meet people who are discouraged. And then, even if they want to start, their business is not organized. Taxes are not done. They didn't do the renewal. Even with funding for COVID, tons of businesses didn't get funded. Also, what a lot of people don't realize is that the SBA and the federal government also contract with certain companies that, if you sign up with the companies, you can see every single contract, grants, and awards across the board. The only problem is, once you sign up, in order for you to see, you have to pay for it. And the fees are really high. So, I feel they should have some kind of waiver for certain-- So, with [inaudible], I'm considered disadvantaged this, woman that, woman, right? So, I'm the set-aside. But right now, I can't afford the plan for \$100 a month. So, I get limited, but they do give you really, really great training. You do have great access. So, you get to create your profile, and that's where one the companies found me. You get to create your profile, you get to put your capability statement on there, you get to put all your NAIC codes and stuff. But in order for you to really go and see all the federal, state, and local contracts for all the states, one of the good plans is \$400, of the top-tier plans is \$1,500, where you can go in as a subcontractor, you can go in as a prime contractor. You can even go in and see a contract that's expiring that you can reach out to these companies and say, Hey, I see your contract is expiring, but it's not completed. I can come in and help you...Thanks to SBA for having this company, but their prices and the top-tier plan is \$1,500 a month. So, they have companies out there that can afford it because they're getting millions and billions of dollars in funding.”

Theme 7: Experiences that are discriminatory and practices that favor Non-DBEs

Focus Group 2, Participant 1 (P1), African American Male-Owned, Professional Services

FG2, P1 states that, “the major thing that I see is the lack of recognition of discrimination that women and minorities face. It always seems to be the firms don't have the acumen. And these firms have been around for 30 years and have been successful in other states, other jurisdictions, but in the State of Delaware, for example, I don't think there's ever been a state goal, a hard goal for MBE or WBE participation. I don't

think it's ever been like that at the county either... And I think that instead of focusing on getting the legislation or doing the disparity studies to create programs that have hard and fast goals to recognize the discrimination that folks are facing, they'll just keep doing these business development initiatives and capacity building initiatives. And that's good but all small businesses need business development, all small businesses need capacity development, and when you keep targeting that at the diverse community, that's discrimination. That's saying that "No, you don't know how to do this, that's why you're not succeeding." All small businesses need that, that's great, but when you want to do something for us, do something to address the discrimination, right, that we're facing, remove that for us."

FG2, P1 then provided an example. His company was called in on a major project in a historically African American community. The community was upset that there were no goals on the project. "The community said, "Look, you're not going to build this library in our community if you're going to come in and bring a whole bunch of folks that don't look like us from other areas and get this \$16 million in our face and leave again." FG2, P1 volunteered to track participation on the project in light of the lack of goals. "And we did, we tracked the participation of a \$16 million project. And without those goals, without—it was less than 1% participation with no goals or with anything. And I think that 1 percent, the person admitted that they were a pass-through, that they were ended up subbing it out or giving it to somebody else."

Focus Group 2, Participant 2 (P2), African American Male-Owned, Construction and Construction-Related Services

FG2, P2 feels as though, "when you look at hurdles, I think DBEs, especially when you've got departments as large as what [City department head] runs, sometimes we can look like we are in the way, we are a bother...I think, with us, we are the ones to make sure that pricing is fair all the way around. But to a prime contractor, to those who are running departments, it might not feel that way to make that extra effort to hire someone, to babysit us as they might think. I think that could be the problem. [My company] success has been primarily on [my company]. Just because we won a bid doesn't mean that we don't have to do the work. And we do understand that because we are a DBE, the expectations of the bar for us is to be higher. That's acceptable. So, being that I am the largest minority contractor in the state of African-American descent, you have to raise the bar, you have to do more than what others would do, and you got to be a little bit more flexible than our competitors. That's the real world. That's the real world."

FG2, P2 then goes on to say that "what they [the city] used to do with this steering meeting was they had DelDOT-- they had the county-- they had all of the agencies meet prior to the community steering committee, and they had their own committee... And they literally did not let the community leaders in. They used to make them stand at the door." FG2, P2 was able to get the XXX to combine the meetings. "And now the community is at the table, and they're steering that meeting. But that's just an example of-

- it's an air, it's an institution, and it's an assumption that is accepted. And you know that it's of a discriminatory or a racial, at times, or a gender-based undertone, I would say.”

Focus Group 3, Participant 1 (P1), African American Female-Owned, Professional Services

FG3, P1 states that “the reason we turn down certain opportunities that come by is because, the way they're advertised, the way they're posted, we know that they're in for a particular company that's already there. Often, it's the incumbent. And we've also discovered that, often, not only are they looking for the incumbent, but they're looking for small businesses, which, they have certified white men as small businesses.”

FG3, P1 feels that “you really understand the priority and the commitment that these jurisdictions have to diversity and participation goals, it's when they put their small business program at the same level that they put their minority and women program So, that they can also continue to give the business to the same white men that they've always continued to give it to. And, also what we've realized is that sometimes the jurisdiction will use white women in order to continue to give business to white families. Okay, So, it really depends on the commitment to equity and participation. And we have come to understand and know it when we see it. So, those are a couple of things that we've recognized in our process.”

Focus Group 3, Participant 3 (P3), Caucasian Female-Owned, Professional Services

FG3, P3 has seen firsthand that there are “so many loopholes. And even if you get into the categories of the mentor program, the mentor-protege programs that the federal government and state governments offer, they use these loopholes and these backdoors to get other companies in where the minority businesses that they are actually intended for should be.”

Focus Group 4, Participant 3 (P3), Caucasian Female-Owned, Professional Services

FG4, P3 stated that “I am an alumnus of the University of Delaware. I'm from New Jersey, but Wilmington is its own group. I have a lot of friends from Delaware, and it is not what-you-know, it's a who-you-know city. And they've been known like that for a long time.”

Focus Group 4, Participant 4 (P4), African American Female-Owned, Construction and Construction-Related Services

FG4, P4 believes that “as far as City of Wilmington, you have to know each other. And if your name is not in there, you do not get the contract because many times we'll go around, and we're seeing all this construction going on in the city, and you look and you see the same names, the same contractors getting the contracts.”

Focus Group 4, Participant 5 (P5), Non-DBE, Professional Services

FG4, P5 feels as though “We go back every year on an annual basis and do what they need. But we've never had anybody from the city reach out. I do work for cities in Kansas, Nebraska, all over the United States. Cities reach out to us to come in and do training for them and do work for them. Our corporate headquarters are right in Delaware, in Wilmington, Delaware in Northern Wilmington, and nobody reaches out.”

Focus Group 4, Participant 6 (P6), African American Male-Owned, Construction and Construction-Related Services

FG4, P6 states that “we always believe that we can qualify as a small business, but I think it's kind of a sham. It may help you get an invitation to bid, but I've been in situations already where I bid as a small business against large companies like [company name]. And I said, how come [company name] has an invitation to bid when you're only supposed to be offering this to small companies? And they said, ‘Well, you know—’ and they end up going by whoever gives them the best bid. It doesn't matter whether you're small or woman owned or whatever. Bottom line is price and service.”

Focus Group 5, Participant 2 (P2), African American Female-Owned, Construction and Construction-Related Services

FG5, P2 shared an experience of being asked to be a front. “I was asked by two white males, my daughter's friend, her dad and his partner, if I can go in—because like I said, I can get a contract. If I can go in and get the contract. They're, ‘Don't worry about it. We'll fund the money. Don't worry about the bid. Don't worry about this. And when you get the check, we'll give you a percentage.’ And I'm sitting there—you see me. I [inaudible] the back of my head. So, no. Then I started realizing—then I started doing research and, a while ago, this company got in trouble. Although his wife was minority, he opened the business under his wife, and he was getting contracts under the business for his wife. When they found out, he got in trouble. So, although his wife was a minority, she had nothing to do with the business.”

FG5, P2 then continues on to state that “Oh, so you trying to use me as a front. You're trying to use this colored girl who's trying to build her business. So, here I'm bragging about all my accolades and they're, ‘Oh, oh, we're going to use this little colored girl.’ No, you're not. Because this colored girl going to get all her grants for herself and all her contracts.”

Theme 8: Timely Payments and Incentives

Focus Group 2, Participant 3 (P3), Caucasian Female-Owned, Professional Services

FG2, P3 stated that “It's hard to get paid on time from the city. And we don't go through a prime contractor at the city, but it seems like that the payment flow is very slow and we have to do a lot of work to contact

the project manager, bug people; another month goes by, bug people. Sometimes when it wasn't the pandemic, we just show up there and say, "Hey, I'm ready to take a check," and then there's a little bit of a scramble. But it is frustrating. I mean, we love the city, we love Wilmington, we want to see everyone succeed in Wilmington, and we maybe are a little bit bigger So, we can wait a little bit longer; we can still pay all our subs, but when we were really small, we couldn't do that, you had to have the cash flow to pay the subs. And right now, I mean, it's time value of money, we shouldn't be waiting to get the money."

Focus Group 3, Participant 3 (P3), Caucasian Female-Owned, Professional Services

FG3, P3 stated that "I witnessed this firsthand, they won't. They won't learn not to do it again. They'll switch companies and they'll tell them, 'Don't deal with them. Deal with them because they'll allow me to do what I feel like doing.' And even with our company working for the federal government, it's been times we've had some invoices that slip through the cracks. And it's an extra two to three weeks past the 30-day invoicing period that we have to call and say, "Hey, what happened? We sent it." "Oh, we lost in the mail. I got [inaudible] of emails." And so, it happens."

Focus Group 3, Participant 6 (P6), Non-DBE, Goods and Supplies

FG3, P6 stated that "traditionally, it's 60 days, we get paid."

Focus Group 4, Participant 1 (P1), African American Female-Owned, Professional Services

FG4, P1 adds that because "if you don't hold a prime accountable to a 10-day payment to their subs within them being paid, they could drag it out for as long as they want to."

Focus Group 4, Participant 2 (P2), Non-DBE, A&E

FG4, P2 noted that payment from "the federal government is usually pretty on time and quick. Sometimes when it comes to state or local—it depends on where the funding sources coming for the projects that we work on sometimes. So, if they're say grant funded, sometimes we can't get paid until the grant money is issued or the project is done. Sometimes there has been a 60, 90 even longer, in rare cases, a year lag on getting paid for some of the projects that we worked on, which is crazy, but it hasn't. Yeah, So, I would say for the most part, it's not a major issue for the government."

Focus Group 5, Participant 2 (P2), African American Female-Owned, Construction and Construction-Related Services

FG5, P2 has experience firsthand when it comes to late payments saying, "I'll see some of them and they're net 30, net 60, net 90, and I'm, 'Your contract, I will have to come up with like \$30,000 and then wait 60 days for you to pay me back.'"

Theme 9: Suggestions and Comments

This final section captures ideas presented by interviewees on how to improve and/or modify the DBE and procurement processes. This section also addresses the other issues that were not covered in the previous themes.

Focus Group 1, Participant 1 (P1), African American Male-Owned, Construction & Construction-Related Services

FG1, P1 “So, in the private sector in Delaware because of the rebellions a couple of years ago, and prior to that, they have in place equity and inclusion type things going on. So, I'll get a call from [large corporation] to the blue, which would not have happened pre-Trump. Okay? Just to be frank, and they're looking for inclusion. All right? There's not a goal. They're saying to me, ‘FG1,P1, I have two labs over here that I need to upgrade to a clean room, blah, blah, blah.’ And that's something that we can do. So, I'm getting those kinds of calls.” FG1, P1 stated that on the other hand, the public sector will go to the “big guys” and say they need to see DBE participation, “but there's no teeth in it. They can tell the city, the state, and the county that they reached out. They write a letter, they reach out to FG1,P1, and he's not available.”

Focus Group 2, Participant 1 (P1), African American Male-Owned, Professional Services

FG2, P1 stated the confusion or lack clarity around DBE programs in the Delaware. “[W]hat we were seeing was there was a lot of confusion because the City of Wilmington has a program that's called the DBE program, right, and every single state DOT has a program that is called the DBE program. Now, DeIDOT has a DBE program that's using, again, 49 CFR, Part 26, Part 23. Wilmington's DBE program isn't backed by 49 CFR, Part 26, Part 23 but with the exact same name, causing mass confusion. Because the City's program has no teeth or ability to force inclusion. People thinking because they have this DBE certification with the city that it works like the State and vice versa, and it doesn't because they're two different programs.”

FG2, P1 continues to say that “what we suggested was, if possible, maybe try to align more with 49 CFR So, that when you do call it a DBE program, then at least you're preparing folks to maybe streamline or have an easier experience for the UCP certification.”

Focus Group 2, Participant 2 (P2), African American Male-Owned, Construction and Construction-Related Services

FG2, P2 shared that “I think it's going to come down to the effort that whatever leadership that is in place - just to make a true, concerted effort to what the laws are. I think there are some unfair situations with the City of Wilmington, but even if they just followed the laws that [inaudible] already in place—you have

an economic development department. Just reach out and find out if they understand the City of Wilmington with prime contractors that are bidding—if they understand the plan and what their requirement is. And that takes more than just coming to a meeting, speaking for a minute, and say, ‘I’m from the DBE department,’ and walking away. There are some defined laws that have been voted on, and these are the laws. So, following that stage. And then, after that, staying true to-- if a prime contractor did not make a concerted effort, and having the prime contractor prove it. It’s just that simple. You would think, at this time, you wouldn’t just take the word of a prime contractor, just because this isn’t just a Wilmington thing.”

FG2, P2 adds that “I think the City of Wilmington will always say, ‘Well, hey. It’s fair. Everything is fair.’ And that makes it very, very difficult, because it’s not fair. This is not. Everybody going to do the right thing. The City of Wilmington don’t do the right—they don’t follow their laws within that department. So, I think they’re getting better, but that’s-- just follow the laws to the letter would definitely help us out.”

Focus Group 2, Participant 3 (P3), Caucasian Female-Owned, Professional Services

FG2, P3 commented that “I would suggest that they either reconsider rebranding their DBE program so that they can remove some of that confusion and ambiguity between the state DelDOT DBE program, or maybe try to align with it and streamline with that program and coordinate with DelDOT and maybe try to use 49 CFR whenever they can to work together...”

Focus Group 3, Participant 1 (P1), African American Female-Owned, Professional Services

FG3, P1 stated that “I believe that the jurisdictions should disaggregate data in terms of the results of who gets contracts in their jurisdiction. Disaggregate that data by race to see where they are so that they can establish goals that are representative. And also, the jurisdiction should have consequences for those agencies within that jurisdiction - you’d be surprised - that never meet any types of participation goals that the jurisdiction establishes. But the directors continue to keep their jobs, and there are no consequences. So, if you’re serious, if the jurisdiction is serious, they will disaggregate data, and they will have consequences for performance toward those results, because that’s the only reason people do anything is because it’s required and that there are consequences. I mean, that’s human nature.”

Focus Group 3, Participant 3 (P3), Caucasian Female Owned, Professional Services

FG3, P3 commented that “a lot of these solicitations that are being put out do need a monitoring agency that is not attached to the mother agency to make sure that compliance is met underneath the rules and regulations that set forth because. Without that, you have a lot of inter-agency cohabitation that’s going on that’s not allowing the smaller businesses to fulfill the goals or even introduce themselves to be eligible to help assist the government agency that’s putting out the solicitation.”

Focus Group 3, Participant 4 (P4), Caucasian Female-Owned, Professional Services

FG3, P4 believes that it should be maybe considered as part of a department's marketing or PR component to demonstrate that they are actually doing something, not just saying they're doing everything and making sure the procurement process appears a certain way, but actually making it rise to the top or giving a credit to these people who are building their communities, right? This is all about building the community and building an equitable economy and finding a way to have that information rise to the top, instead of getting buried under the pile of whatever, I think would be really important and mutually beneficial."

FG3, P4 then adds that "I say make sure that the people writing the proposals are knowledgeable on the materials that they're specifying or the services that they're specifying."

Focus Group 4, Participant 1 (P1), African American Female-Owned, Professional Services

FG4, P1 speaks to the ecosystem of the procurement environment and how it prevents the success of new vendors gaining opportunities. "I've worked with some contracting officers and purchasing people. They hear what it is, but they have different metrics. Their metrics is how fast can we get this contract awarded, how much risk can you minimize, and how much of this. So, for them, they go back to the - I'm showing my age - the rolodex of the people they already know who are doing the work. And so their performance metrics are not matching what the people in leadership are looking for. I think there's a disconnect that's happening somewhere between here such that everybody can embrace where you want to go, and then you don't feel like your purchasing people are going to be unduly punished because they're trying to bring forth a new contractor versus someone that the organization is familiar with."

Focus Group 4, Participant 1 (P1), African American Female-Owned, Professional Services

FG4, P1 shares that "if the city has a repository where all the names are kept and these are the people that when you're sending bids, if you've got a platform, then make sure that these folks are also getting it, maybe in a separate email. I know Prince George's County does it that way. If you're certified, they will go to the main state website, but you get a separate email that something is coming down the pike so that you know it's happening."

Focus Group 4, Participant 2 (P2), Non-DBE, A&E

FG4, P2 shared that they believe "where I guess the frustrating part, and like you said, keeping up all the certifications because there's not like a unified small business certification across local, state, and federal government."

FG4, P2 continues to add that “the first thing that is the most helpful to me is when a new RFP or anything comes out is that like the title and the short description of what it is comes directly into my email as soon as it's posted. Philadelphia does that and you can see immediately—you can scan to whether it's relevant to your business or not because a lot of times even within the NAICS codes, it's like irrelevant or the way that's set up.”

FG4, P2 concludes by stating that “I just looked at the City of Wilmington and small business and they have a small business support center like website. And all it is a bunch of links to the SBA and other Delaware small business that is absolutely not helpful. We want to know how a small business can work in the city, not giving us links to outside resources that we've already engaged with. So, I'd say updating that center to be actually Wilmington specific would be very helpful.”

Focus Group 4, Participant 3 (P3), Caucasian Female-Owned, Professional Services

FG4, P3 continues to go on and say “So, what I think the city can do is to invite, open up, because the City of Wilmington, like I said, is very closed off for folks like us. Invite small businesses in. Have round table discussions and find out what we can do with our capabilities so that when certain contracts comes in, there's like, ‘Okay, I have a group of folks here, they can handle these contracts.’ So, now they know.”

Focus Group 4, Participant 5 (P5), Non-DBE, Professional Services

FG4, P5 commented that “I mean we've done a lot of work all over... but I can't crack into the City of Wilmington.”

FG4, P5 made the statements “How do you get on the RFP list? You got to get—somebody has to ask you, send you a set of specifications and say, ‘Here's what we're interested in. Can you do this?’ And then you can make a decision. Like the other participant was saying, can I handle this job, or is it too big for me or too small? And then with that RFP comes a contact person who really understands what the scope and specifications are for the job. So, it's somebody you can talk to and get a good understanding of what it is you're bidding on. And then if you can establish a rapport with that person, you can generally at least have your foot in the door. But you got to get that RFP in the first place.”

Focus Group 4, Participant 6 (P6), African American Male-Owned, Construction and Construction-Related Services

FG4, P6 commented that “they don't have anything—they need to really have packages for emerging contractors. They're going to give you a big contract, but you can't do it. And sometimes I wonder, are they being [inaudible] when they're issuing these contracts, these large contracts with these small companies that are just getting started. Can't really do anything with it.”

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Focus Group 5, Participant 1 (P1), African American Female-Owned, Professional Services

FG5, P1 commented that “I think it's just the biggest opportunity really is access and information.”

9.4 SUMMARY OF FINDINGS

After analyzing the anecdotal evidence collected from 20 business owners and representatives in Delaware and the Tri-State Area, the following observations illustrate the possible barriers that interviewees perceive to exist for minority and women business owners as they attempt to transact business with the City.

- DBE certifications, although useful with the State of Delaware, are not useful in securing contracts with the City of Wilmington.
- Several participants found Office of Economic Development staff and the DBE Program insufficient in supporting and enforcing the inclusion of DBEs in City's contracting. These participants were frustrated by:
 - Lack of accountability
 - Lack of enforcement of aspirational goals and other DBE requirements
 - Lack of outreach and notifications of opportunities
 - Insufficient experience to do the job.
- A few participants shared their longstanding business presence in Wilmington with no work with the City of Wilmington but work with the private sector and public sector agencies across the country.
- Several participants shared the following comments about the City's procurement and contracting department and process
 - Inability to get "thru the door" and gain access to the right people in procurement to learn about opportunities
 - Lack of notice of small dollar contracts and how to secure them
 - Lack of visibility of professional services opportunities
 - Repeated use of the same vendors
 - Not bidding formal A&E contracts and choosing who the City wants.
- Some participants believed that prime contractors sometimes used them as bid fodder.

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

CHAPTER 10: MARKETPLACE ANALYSIS

10.1 INTRODUCTION

To gain a better understanding of factors outside of the City of Wilmington that may limit participation of DBEs in the City's bidding process, we examine the role of the private sector and overall marketplace. Given the examination of availability and utilization of DBEs in previous chapters and the results of the analysis, the analysis in this chapter may offer some insight into the extent of DBE penetration of the private sector of the local construction industry.

The chapter begins with a summary of background information on the demographic and economic profile of the State of Delaware and Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA (utilizing U.S. Census data) and a brief description of the industrial and occupational composition of the local economy.

Following this summary is a review of available research that addresses marketplace disparities.²⁹⁷ This chapter examines private sector disparities, primarily in the construction industry, in the following ways:

- Occupational and apprentice employment using 2019 Census data
- Comparison by occupation of employment in the marketplace (based on EEO census tabulations)
- Private and public sector bid and award activity, based on Dodge data
- City of Wilmington building permits data and
- City of Wilmington business license data

To the extent the data allow, the present analysis may offer some evidence of the existence of passive participation, if any, by the City, in discriminatory acts in the private sector.

10.2 DEMOGRAPHIC AND ECONOMIC PROFILE OF THE RELEVANT MARKET

The demographic structure of the local area may explain some differences in the market availability and utilization of DBEs, since business owners are a subset of the general population. Understanding the broad contours of the population in the State of Delaware and the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA is necessary to identify instances in which discrimination may have inhibited DBE development.

Examining the population of persons 16 and over provides a picture of those eligible to enter the labor force in the geographical area (see Table 10.1). African Americans largely reside in the City of Wilmington making up 55.5 percent of the population, but their percentage in the MSA and the State drops to

²⁹⁷ A fundamental constraint, however, is the scarcity of economic and historical research that is sufficiently localized to address the first *Croson* standard.

approximately 20 percent. We observe the opposite with Whites who only make up 38.7 percent of the City's population but are close to 70 percent or more in the MSA and State. Hispanics are more consistent across the three geographies accounting for 9.16 percent of the City's population, 8.13 percent of the MSA and 7.67 percent of the State's population. Asians make up a larger percentage in the MSA (5.96 percent) than in the State (3.85 percent) or the City (1.37 percent). All other race/ethnic groups make up less than 3 percent or less in all the geographies listed in Table 10.1.

Table 10.1. Total Population 16 Years and Older by Race and Hispanic Origin Census 2019						
Ethnicity	State of Delaware		Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA		City of Wilmington	
	#	%	#	%	#	%
Population 16 years and over	777,026	100	4,904,034	100	56,045	100
RACE AND HISPANIC OR LATINO ORIGIN						
White alone	550,615	70.86	3,359,756	68.51	21,715	38.75
Black or African American alone	165,526	21.30	994,404	20.28	31,132	55.55
American Indian and Alaska Native alone	3,337	0.43	10,443	0.21	148	0.26
Asian alone	29,914	3.85	292,421	5.96	769	1.37
Native Hawaiian and Other Pacific Islander alone	379	0.05	1,984	0.04	12	0.02
Some other race alone	12,910	1.66	150,202	3.06	1,547	2.76
Two or more races	14,345	1.85	94,824	1.93	722	1.29
Hispanic or Latino origin (of any race)	59,579	7.67	398,540	8.13	5,131	9.16

Source: Census 2019 American Community Survey; M³ Consulting, Inc.

Examining further the civilian labor force in the three aforementioned geographical areas, a total of 34,692 persons are in the City of Wilmington, 485,641 persons in the State of Delaware and over 3.2 million persons in the MSA. About 67.6 percent of Whites, 57.7 percent of African Americans, 64.9 percent of Hispanics and 76.70 percent of Asians are part of the labor force in the City and all 12 (100 percent) of Native Americans are active in the labor force within the City. While White Americans, Asians see a drop in the percentage within the MSA and the State, African Americans, Native Americans, and Hispanics see a higher participation in the State and somewhat lower percentage in the MSA.

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Table 10.2. Civilian Labor Force Total Population 16 Years and Older by Race and Hispanic Origin Census 2019									
Race	State of Delaware			Philadelphia-Camden-Wilmington, PA-NJ- DE-MD MSA			City of Wilmington		
	Total	Labor Force Participation Rate		Total	Labor Force Participation Rate		Total	Labor Force Participation Rate	
	Estimate	Estimate	Calculated from Percentage*	Estimate	Estimate	Calculated from Percentage*	Estimate	Estimate	Calculated from Percentage*
Population 16 years and over	777,026	62.50	485,641	4,904,034	65.30	3,202,334	56,045	61.90	34,692
RACE AND HISPANIC OR LATINO ORIGIN									
White alone	550,615	61.10	336,426	3,359,756	66.30	2,227,518	21,715	67.60	14,679
Black or African American alone	165,526	65.20	107,923	994,404	61.90	615,536	31,132	57.70	17,963
American Indian and Alaska Native alone	3,337	65.00	2,169	10,443	55.00	5,744	148	65.50	97
Asian alone	29,914	67.20	20,102	292,421	65.50	191,536	769	76.70	590
Native Hawaiian and Other Pacific Islander alone	379	58.00	220	1,984	61.80	1,226	12	100.00	12
Some other race alone	12,910	68.20	8,805	150,202	62.90	94,477	1,547	57.50	890
Two or more races	14,345	68.20	9,783	94,824	69.10	65,523	722	64.10	463
Hispanic or Latino origin (of any race)	59,579	69.40	41,348	398,540	66.00	263,036	5,131	64.90	3,330

Source: Census 2019 American Community Survey; M³ Consulting, Inc.

10.3 EDUCATION AND TRAINING: PATHWAYS TO THE CONSTRUCTION SECTOR

It is generally recognized that relevant education and prior experience in an industry and occupation are strongly and positively correlated with the business formation decision. Of relevance to the formation of new businesses is the availability of jobs that offer the opportunity for occupational training, either in the form of formal apprenticeship training, or other formal pathways to occupational expertise. This connection is particularly important in the construction industry.

10.3.1 EMPLOYMENT IN APPRENTICEABLE EEO CONSTRUCTION OCCUPATIONS

Table 10.3 summarizes employment in selected apprenticeable EEO construction occupations in 2021 for the State of Delaware, the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, and the City of Wilmington as enumerated by the 2014-2018 Census EEO File.

For the State of Delaware, the majority of construction operations are dominated by White males. Hispanic American males are largely in all construction occupations with the lowest participation in Production Occupations. Both White female and Hispanic American females are represented mostly in Production Operations and Transportation and Material Moving Operations Occupations. African American males are largely in Installation, Maintenance and Repair occupations, Construction and Extraction occupations and Laborers and Helpers, whereas African American females are largely in Production occupations and Transportation and Material Moving Operations Occupations. Asians show a similar pattern to African Americans with no Asian females in Construction and Extraction occupations within the State. The Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA follows the same trends as the State of Delaware.

In the City of Wilmington, Construction and Excavation occupations are dominated by White males, followed by African American and Hispanic males. For African American females, 24.79 percent participate in Construction and Excavation occupations as well. Only White, African American, and Hispanic American males participate as laborers and helpers. In Installation, Maintenance and Repair occupations, only males participate among Whites and African Americans whereas among Hispanic Americans, females had the majority of participation at 51.28 percent. Production occupations see a greater proportion of participation among White females (21.99 percent), African American females (43.97 percent) Asian American females (7.89 percent) and Hispanic American females (2.80 percent). In Transportation and material moving occupations, African American and Hispanic American female participation is as high as 13.72 percent and 15.06 percent respectively, followed by White female participation at 11.19 percent. American Indian and Alaskan Native men also participate in Transportation and Material moving occupations.

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Table 10.3.
Employment in Selected Apprenticable EEO Construction Occupations
By Hispanic Origin and Race, 2014-2018
State of Delaware

Occupation Label: SOC / Census Code	Construction and Extraction Occupations			Installation, Maintenance, and Repair Occupations			Production Occupations			Transportation and Material Moving Occupations			Laborers and Helpers		
	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
	#	%	%	#	%	%	#	%	%	#	%	%	#	%	%
Total All Groups	18,869	95.68	4.32	14,390	96.18	3.82	18,230	68.27	31.73	29,025	80.62	19.38	4,730	98.94	1.06
Hispanic or Latino	3,325	96.84	3.16	1,185	96.20	3.80	2,180	57.34	42.66	2,645	84.69	15.31	1,145	100.00	0.00
Non-Hispanic or Latino															
White alone	13,689	96.42	3.58	11,215	96.12	3.88	9,565	76.22	23.78	16,950	80.21	19.79	2,980	98.66	1.34
Black or African American alone	1,440	87.71	12.29	1,655	97.89	2.11	5,674	58.69	41.31	8,470	79.93	20.70	515	98.06	1.94
American Indian/Alaska Native	43	100.00	0.00	19	100.00	0.00	109	95.41	4.59	109	100.00	0.00	4	100.00	0.00
Asian alone	123	86.99	13.01	130	100.00	0.00	465	62.15	37.85	369	86.45	13.55	35	100.00	0.00
Native Hawaiian/Pacific Islander	-	0.00	0.00	-	0.00	0.00	30	0.00	100.00	25	40.00	60.00	-	0.00	0.00
Balance of not Hispanic or Latino	227	95.15	4.85	175	88.57	11.43	210	88.10	11.90	455	80.22	19.78	45	100.00	0.00

Source: US Census Bureau, Census 2014-2018 special tabulation - Data based on where people live.

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Table 10.4.
Employment In Selected Apprenticable EEO Construction Occupations
By Hispanic Origin And Race, 2014-2018
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metro Area

Occupation Label: SOC / Census Code	Construction and Extraction Occupations			Installation, Maintenance, and Repair Occupations			Production Occupations			Transportation and Material Moving Occupations			Laborers and Helpers		
Race/Ethnicity/ Gender	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %
Total All Groups	98,835	97.27	4.73	76,565	97.23	2.77	120,255	71.64	28.36	192,835	80.65	19.35	24,990	98.24	1.76
Hispanic or Latino	16,220	91.83	8.17	6,800	96.69	3.31	17,205	63.32	36.68	24,285	77.58	22.42	6,165	98.78	1.22
Non-Hispanic or Latino															
White alone	72,790	96.48	3.52	57,515	97.84	2.16	70,175	77.09	22.91	105,208	82.45	17.55	14,385	97.64	2.36
Black or African American alone	7,514	92.01	7.99	8,710	95.01	4.99	18,595	68.49	31.51	51,210	79.60	20.40	3,540	99.44	0.56
American Indian/Alaska Native	168	85.71	14.29	105	90.48	9.52	118	74.58	25.42	355	70.42	29.58	75	100.00	0.00
Asian alone	848	89.39	10.61	2,125	93.18	6.82	12,400	57.42	42.58	8,055	72.44	27.56	340	100.00	0.00
Native Hawaiian/Pacific Islander	20	100.00	0.00	4	100.00	0.00	10	0.00	100.00	70	50.00	50.00	35	100.00	0.00
Balance of not Hispanic or Latino	1,242	95.97	4.03	1,300	96.15	3.85	1,745	71.06	28.94	3,585	83.54	16.46	450	100.00	0.00

Source: US Census Bureau, Census 2014-2018 special tabulation - Data based on where people live.

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Table 10.5.
Employment In Selected Apprenticable EEO Construction Occupations
By Hispanic Origin And Race, 2014-2018
City of Wilmington

Occupation Label: SOC / Census Code	Construction and Extraction Occupations			Installation, Maintenance, and Repair Occupations			Production Occupations			Transportation and Material Moving Occupations			Laborers and Helpers		
	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %
Total All Groups	1,219	95.90	4.10	1,330	97.74	2.26	1,500	74.33	25.67	2,945	87.61	12.39	615	100.00	0.00
Hispanic or Latino	85	82.35	17.65	39	48.72	51.28	143	97.20	2.80	405	84.94	15.06	170	100.00	0.00
Non-Hispanic or Latino															
White alone	1,004	99.50	0.50	1,075	99.07	0.93	755	78.01	21.99	1,260	88.81	11.19	385	100.00	0.00
Black or African American alone	124	75.81	24.19	210	100.00	0.00	489	56.03	43.97	1,130	86.28	13.72	60	100.00	0.00
American Indian/Alaska Native	-	0.00	0.00	-	0.00	0.00	-	0.00	0.00	15	100.00	0.00	-	0.00	0.00
Asian alone	-	0.00	0.00	-	0.00	0.00	114	92.11	7.89	115	100.00	0.00	-	0.00	0.00
Native Hawaiian /Pacific Islander	-	0.00	0.00	-	0.00	0.00	-	0.00	0.00	-	0.00	0.00	-	0.00	0.00
Balance of not Hispanic or Latino	-	0.00	0.00	-	0.00	0.00	-	0.00	0.00	20	100.00	0.00	-	0.00	0.00

Source: US Census Bureau, Census 2014-2018 special tabulation - Data based on where people live.

10.3.2 EMPLOYMENT IN APPRENTICABLE EEO PROFESSIONAL OCCUPATIONS

In Management, Business and Finance occupations within the State of Delaware, the distribution of men and women are almost even with slightly greater male participation (around 55 percent approximately) among all races except African American and Native Hawaiian/Pacific Islanders. Computer Engineering and Science occupations had slightly greater participation from Hispanic American and African American females (35.98 percent and 38.13 percent respectively) than Whites and Asian American females at roughly 27 percent of participants in these occupations. Except for Asian American females, among Healthcare practitioners, females dominated this occupation at about 70 to 80 percent. Technical occupations similarly witnessed a greater proportion of women across all racial and ethnic populations within the State.

Sales and related occupations had slightly higher female participation than males, except for American Indian and White females. Office and Administrative positions however had much larger female participation with over 70 percent, except for American Indian and Asian American females who reach about 50-60 percent. Protective Service occupations sees a reverse of this trend with about 20 percent women in any race/ethnicity. American Indian/Alaskan Natives have only male participations in protective service occupations. Among Service workers, Hispanic Americans and American Indians see slightly higher male participation than women but Whites, Asians and African American see greater participation from females in the service workers.

For the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA, Management, Business and Finance occupations follow similar trends as the State, except for African American males at 39.26 percent. Computer Engineering and Science occupations showed participation from Hispanic American, White females Asian American females slightly above 25 percent of participants, while African American females reflected 41 percent in these occupations. Females dominated Healthcare occupations from a low of 65 percent for Asian Americans to 92 percent for American Indians. Technical occupations similarly showed similar trends as the State.

Sales and related occupations had slightly higher female participation than males, ranging from 44 percent to 60 percent. Office and Administrative positions however had much larger female participation with over 70 percent, except for American Indian and Asian American females who reach about 63 percent and 67 percent respectively. Like the State, Protective Service occupations sees a reverse of this trend with males of any race/ethnicity representing the majority. Among Service workers, females garnered slightly 50 to 60 percent representation, except for American Indian females who had almost 85 percent.

The City of Wilmington has a similar pattern to the State in Management, Business, and Financial occupations across gender for all race and ethnic groups. In Computer Engineering and Science occupations, Whites see a greater male participation whereas Hispanic Americans, African Americans and

Asians see almost even participation among men and women within the City. Healthcare participants are similar among White and African Americans with over 83 percent participation by women whereas Hispanics see only women who are healthcare practitioners. Asians see a reverse with only 12.5 percent participation by women as healthcare practitioners. Over 70 percent participation is seen in technical occupations among Hispanics, Whites and African Americans. Asians see only male participants in technical occupations.

Sales and related occupations only see women participants among Asians and American Indians/Native Americans but Hispanics and African Americans see over 65 percent female participants. Whites see almost even participation from both genders in sales and related operations. Office and Support Service occupations and Protective Services occupations follow a similar pattern as seen in the State with greater female participation in the former and greater male participation in the latter. Service workers see men and female workers in almost equal proportions in almost all race/ethnic groups except African Americans where there are more women in these occupations.

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Table 10.6.
Employment In Selected Apprenticeable EEO Professional Occupations
By Hispanic Origin And Race, 2014-2018
State of Delaware

Occupation Label: SOC / Census Code	Management, Business, and Financial Occupations			Computer, Engineering, and Science Occupations			Healthcare Practitioners			Other Professionals			Technical Occupations		
Race/Ethnicity/ Gender	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %
Total All Groups	76,820	52.65	47.35	28,231	71.27	28.73	21,085	23.57	76.43	49,390	33.74	66.26	8,610	20.79	79.21
Hispanic or Latino	3,544	58.07	41.93	1,259	64.02	35.98	589	26.15	73.85	2,334	35.09	64.91	475	25.26	74.74
Non-Hispanic or Latino															
White alone	53,490	54.39	45.61	18,206	72.92	27.08	15,855	22.39	77.61	35,710	33.87	66.13	5,510	20.05	79.95
Black or African American alone	10,404	40.07	59.93	2,990	61.87	38.13	3,054	17.03	82.97	8,760	33.50	66.50	2,200	17.73	82.27
American Indian/Alaska Native	131	52.67	47.33	15	100.00	0.00	65	0.00	100.00	119	28.57	71.43	-	0.00	0.00
Asian alone	4,232	54.73	45.27	5,403	72.33	27.67	1,348	52.60	47.40	1,583	37.78	62.22	230	32.61	67.39
Native Hawaiian /Pacific Islander	30	50.00	50.00	4	100.00	0.00	20	0.00	100.00	-	0.00	0.00	4	100.00	0.00
Balance of not Hispanic or Latino	941	52.92	47.08	343	82.22	17.78	155	22.58	77.42	898	21.38	78.62	194	45.88	54.12

Source: US Census Bureau, Census 2014-2018 special tabulation - Data based on where people live.

Chapter X Marketplace Analysis

Table 10.6 cont.
Employment In Selected Apprenticeable EEO Professional Occupations
By Hispanic Origin And Race, 2014-2018
State of Delaware

Occupation Label: SOC / Census Code	Sales and Related Occupations			Office and Administrative Support Occupations			Protective Service Occupations			Service Workers Except Protective		
Race/Ethnicity/ Gender	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>
	#	%	%	#	%	%	#	%	%	#	%	%
Total All Groups	44,740	47.44	52.56	52,955	24.66	75.34	10,420	80.57	19.43	64,600	39.12	60.88
Hispanic or Latino	3,200	43.59	56.41	3,715	24.23	75.77	780	83.33	16.67	8,210	48.22	51.78
Non-Hispanic or Latino												
White alone	31,200	50.82	49.18	36,305	23.26	76.74	6,590	79.97	20.03	35,015	38.01	61.99
Black or African American alone	7,955	37.65	62.35	10,670	27.37	72.63	2,655	82.64	17.36	16,899	36.30	63.70
American Indian/Alaska Native	120	60.83	39.17	131	41.22	58.78	25	100.00	0.00	168	82.74	17.26
Asian alone	1,425	47.02	52.98	1,154	33.28	66.72	149	89.93	10.07	2,320	35.47	64.53
Native Hawaiian/Pacific Islander	15	0.00	100.00	10	0.00	100.00	-	0.00	0.00	10	100.00	0.00
Balance of not Hispanic or Latino	824	30.95	69.05	949	32.72	62.28	214	55.61	44.39	1,968	44.61	55.39

Source: US Census Bureau, Census 2014-2018 special tabulation - Data based on where people live.

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Table 10.7.
Employment In Selected Apprenticable EEO Professional Occupations
By Hispanic Origin And Race, 2014-2018
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metro Area

Occupation Label: SOC / Census Code	Management, Business, and Financial Occupations			Computer, Engineering, and Science Occupations			Healthcare Practitioners			Other Professionals			Technical Occupations		
Race/Ethnicity/ Gender	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %
Total All Groups	493,380	54.46	45.54	190,880	71.67	28.33	146,645	23.93	76.07	345,160	34.01	65.99	58,335	24.81	75.19
Hispanic or Latino	22,445	49.37	50.63	8,379	70.76	29.24	4,640	18.10	81.90	17,190	32.96	67.04	3,505	23.40	76.60
Non-Hispanic or Latino															
White alone	375,885	56.86	43.14	130,390	73.29	26.71	108,170	24.09	75.91	256,565	34.71	65.29	33,410	24.02	75.98
Black or African American alone	57,370	39.26	60.74	15,570	58.99	41.01	16,229	14.62	85.38	51,990	30.13	69.87	16,495	23.76	76.24
American Indian/Alaska Native	474	62.24	37.76	99	89.90	10.10	214	7.01	92.99	393	26.21	73.79	35	11.43	88.57
Asian alone	27,715	58.14	41.86	33,144	70.73	29.27	14,850	34.40	65.60	13,629	37.49	62.51	3,850	37.79	62.21
Native Hawaiian /Pacific Islander	120	29.17	70.83	83	21.69	78.31	30	33.33	66.67	36	50.00	50.00	4	100.00	0.00
Balance of not Hispanic or Latino	6,363	49.87	50.13	3,254	79.81	20.19	2,519	27.35	72.65	5,369	32.58	67.42	1,025	24.39	75.61

Source: US Census Bureau, Census 2014-2018 special tabulation - Data based on where people live.

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Table 10.7 cont.
Employment In Selected Apprenticable EEO Professional Occupations
By Hispanic Origin And Race, 2014-2018
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metro Area

Occupation Label: SOC / Census Code	Sales and Related Occupations			Office and Administrative Support Occupations			Protective Service Occupations			Service Workers Except Protective		
Race/Ethnicity/ Gender	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>
	#	%	%	#	%	%	#	%	%	#	%	%
Total All Groups	288,445	51.48	48.52	348,845	25.83	74.17	64,995	75.79	24.21	419,935	39.98	60.02
Hispanic or Latino	19,750	44.15	55.85	22,175	31.48	68.52	4,630	76.57	23.43	54,955	49.23	50.77
Non-Hispanic or Latino												
White alone	204,315	55.14	44.86	239,980	24.46	75.54	37,360	80.96	19.04	217,305	39.14	60.86
Black or African American alone	43,675	39.40	60.60	69,045	27.30	72.70	20,615	66.04	33.96	114,885	37.05	62.95
American Indian/Alaska Native	204	55.88	44.12	292	36.64	63.36	80	93.75	6.25	561	61.14	38.86
Asian alone	15,645	49.03	50.97	11,440	32.87	67.13	855	90.40	.60	22,353	41.17	58.83
Native Hawaiian/Pacific Islander	125	56.00	44.00	95	4.21	95.79	-	0.00	0.00	155	15.48	84.52
Balance of not Hispanic or Latino	4,730	42.92	57.08	5,835	29.05	70.95	1,415	69.61	30.39	9,419	37.34	62.66

Source: US Census Bureau, Census 2014-2018 special tabulation - Data based on where people live.

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Table 10.8.
Employment In Selected Apprenticable EEO Professional Occupations
By Hispanic Origin And Race, 2014-2018
City of Wilmington

Occupation Label: SOC / Census Code	Management, Business, and Financial Occupations			Computer, Engineering, and Science Occupations			Healthcare Practitioners			Other Professionals			Technical Occupations		
Race/Ethnicity/ Gender	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %
Total All Groups	14,838	51.71	48.29	5,634	71.80	28.20	2,639	23.49	76.51	8,419	39.02	60.98	855	21.64	78.36
Hispanic or Latino	483	47.41	52.59	259	82.24	17.76	40	25.00	75.00	404	18.32	81.68	25	60.00	40.00
Non-Hispanic or Latino															
White alone	10,793	54.38	45.62	2,994	73.28	26.72	1,714	17.15	82.85	6,114	42.25	57.75	560	23.21	76.79
Black or African American alone	2,107	37.83	62.17	600	60.67	39.33	590	27.97	72.03	1,604	31.05	68.95	220	15.91	84.09
American Indian/Alaska Native	4	0.00	100.00	-	0.00	0.00	-	0.00	0.00	15	100.00	0.00	-	0.00	0.00
Asian alone	1216	56.50	43.50	1688	70.91	29.09	234	51.28	48.72	190	43.68	56.32	35	11.43	88.57
Native Hawaiian /Pacific Islander	-	0.00	0.00	-	0.00	0.00	20	0.00	100.00	-	0.00	0.00	-	0.00	0.00
Balance of not Hispanic or Latino	223	39.46	60.54	94	74.47	25.53	29	86.21	13.79	88	28.41	71.59	10	0.00	100.00

Source: US Census Bureau, Census 2014-2018 special tabulation - Data based on where people live.

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Table 10.8 cont.
Employment In Selected Apprenticable EEO Professional Occupations
By Hispanic Origin And Race, 2014-2018
City of Wilmington

Occupation Label: SOC / Census Code	Sales and Related Occupations			Office and Administrative Support Occupations			Protective Service Occupations			Service Workers Except Protective		
Race/Ethnicity/ Gender	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %	Total #	Male %	Female %
Total All Groups	3,405	50.81	49.19	7,949	21.19	78.81	2,140	82.24	17.76	7,215	39.09	60.91
Hispanic or Latino	264	51.14	48.86	525	31.43	68.57	184	94.57	5.43	1,154	51.99	48.01
Non-Hispanic or Latino												
White alone	2,155	53.83	46.17	4,960	19.76	80.24	1,134	83.69	16.31	2,514	37.35	62.65
Black or African American alone	815	43.56	56.44	2,239	20.95	79.05	679	84.68	15.32	2,955	37.56	62.44
American Indian/Alaska Native	15	0.00	100.00	19	100.00	0.00	-	0.00	0.00	30	100.00	0.00
Asian alone	150	43.33	56.67	184	23.91	76.09	40	87.50	12.50	443	23.25	76.75
Native Hawaiian/Pacific Islander	-	0.00	0.00	-	0.00	0.00	-	0.00	0.00	-	0.00	0.00
Balance of not Hispanic or Latino	15	0.00	100.00	14	0.00	100.00	105	33.33	66.67	110	40.91	59.09

Source: US Census Bureau, Census 2014-2018 special tabulation - Data based on where people live.

10.4 ANALYSIS OF DODGE GENERAL CONSTRUCTION DATA

In showing an additional source of DBE participation in marketplace construction activity, M³ Consulting collected information maintained by the private firm of Dodge Data & Analytics (Dodge), which surveys Construction-related activity in various regions around the United States. A substantial portion of the Dodge data relates to bid activity, and significantly more so for projects owned by public entities than for private owners²⁹⁸. M³ Consulting, however, analyzed all projects submitted, both public and private. In the case of the data M³ Consulting received from Dodge, the selected geographic region for analysis as the State of Delaware.

Most importantly, the *dollar value* of those projects that are available in Dodge are only based on the owner and cannot be apportioned to the contractor (such as architect, construction manager, engineer, general contractor, or subcontractor) level. This limits the analysis. The details about the data submitted by Dodge are presented in **Chapter IV, Statistical Methodology**.

10.4.1 COMPARISON OF PRIVATE AND PUBLIC OWNERS OF PROJECT VALUES AND CONTRACTORS

Both the number of projects as well as the dollar value of projects are evenly divided among private and public sector. Private sector projects constituted 46.59 percent of projects and 56 percent of the value of total projects in FY 2021 in the State of Delaware.

Table 10.9. Counts and Project Value of Unique Projects By Project Owner State of Delaware 2021				
Project Owner	#	%	\$	%
Private	855	46.59	3,590,014,000	56.05
Public	966	53.05	2,815,200,000	43.95
Total	1,821	100.00	6,405,214,000	100.00

Source: Dodge Data 2021

One of the main purposes of presenting the Dodge data is to gain insight into the DBE penetration in the private sector. Therefore, below is an examination of categories of construction firms by DBE status.

As the data indicates, except in General contracting, in most other areas of construction, DBEs received very few building permits in the State of Delaware. Specifically, among Architectural firms, only one Hispanic American-owned firm, one African American-owned firm and 2 WBE firms were represented.

²⁹⁸ This may be a function of the ease with which public records may be accessed as opposed to bid documents of private owners that may be protected from public scrutiny.

Additionally, 6 SBEs, two VBEs architectural firms are also included. Besides the 36 non-commercial firms, the remaining 381 firms are Non-DBEs. Construction Managers and Owner-Builder/Developers only included Non-DBEs. Engineering firms include 82.92 percent Non-DBEs and one African American- and Hispanic American-owned firm each, 2 Other MBE firms and 3 WBEs. In addition, there are 2 SBE firms and 4 VBE firms. A total of 38 DBEs are included under General Contractors, which include 7 African American-owned, 4 Asian American-owned, 3 Hispanic American-owned, 5 Other MBEs and 19 WBEs. In addition, there are 18 SBEs, 4 VBEs and 1 Noncommercial owned firm that are general contractors. Even among Subcontractors, besides four WBEs and one VBE, the remaining firms are Non-DBEs.

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Table 10.10.
Firms Availability by Role
State of Delaware
FY 2021

Ethnicity	Architect		Construction Manager		Engineer		General Contractor		Owner-Builder/Developer		Project Manager		Subcontractor		Total	
	#	%	#	%	#	%	#	#	#	%	#	%	#	%	#	%
Non-DBE	381	88.81	17	100.00	233	82.92	670	89.93	31	88.57	14	100.00	40	88.89	1,105	88.54
African American	1	0.23	-	0.00	1	0.36	7	0.94	-	0.00	-	0.00	-	0.00	7	0.56
Asian American	-	0.00	-	0.00	-	0.00	4	0.54	-	0.00	-	0.00	-	0.00	4	0.32
Hispanic American	1	0.23	-	0.00	1	0.36	3	0.40	-	0.00	-	0.00	-	0.00	5	0.40
Native American	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Other MBE	-	0.00	-	0.00	2	0.71	5	0.67	1	2.86	-	0.00	-	0.00	8	0.64
<i>Total MBE</i>	<i>2</i>	<i>0.46</i>	<i>-</i>	<i>0.00</i>	<i>4</i>	<i>1.43</i>	<i>19</i>	<i>2.55</i>	<i>1</i>	<i>2.86</i>	<i>-</i>	<i>0.00</i>	<i>-</i>	<i>0.00</i>	<i>24</i>	<i>1.92</i>
WBE	2	0.47	-	0.00	3	1.07	19	2.55	-	0.00	-	0.00	4	8.89	24	1.92
Unknown MWBE	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	4	0.93	-	0.00	7	2.50	38	5.10	1	2.86	-	0.00	4	8.89	48	3.84
SBE	6	1.40	-	0.00	2	0.71	18	2.42	1	2.86	-	0.00	-	0.00	25	2.00
VBE	2	0.47	-	0.00	4	1.42	4	0.42	-	0.00	-	0.00	1	2.22	8	0.48
Non-Commercial	36	8.39	-	0.00	35	12.46	15	2.01	2	5.71	-	0.00	-	0.00	62	4.97
Grand Total	429	100.00	17	100.00	281	100.00	745	100.00	35	100.00	14	100.00	45	100.00	1,248	100.00

Source: Dodge Data 2021; M³ Consulting, Inc.

*Includes Owner/Owner Agent firms even when acting as engineer, architect etc

10.4.2 Comparison of Bid Activity and Bidders Across Private and Public Owners of Projects

Ranking of bidders reflects the decision rates of owners in determining the winning bidder (awardee). Given that the public sector bids may include the City of Wilmington, it indicates whether DBEs are winning public sector contracts within the State. As the data reflects in Table 10.11, less than 7 percent of DBEs were ranked #1 and less than 9 percent were ranked #2 or #3 as well. Sixteen WBEs (3.92 percent) were Ranked #1 in public sector projects, whereas African American- Hispanic American- and Asian American-owned firms had 2 or fewer firms in Rank #1. This pattern held steady for Rank #2 and #3 as well. Ten SBEs (2.45 percent) were ranked #1 and while only 2 were ranked #2, 7 SBEs were ranked #3. In contrast to DBEs, a total of 320 Non-DBEs were ranked #1, 149 ranked #2 and 118 ranked #3, thus gaining a majority of the public sector projects.

Table 10.11. Distribution of DBEs by Bidder Ranking By Project Owner: Public State of Delaware FY 2021						
Ethnicity	Rank #1		Rank #2		Rank #3	
	#	%	#	%	#	%
Non-DBE	320	78.43	149	89.22	118	84.89
African American	1	0.25	2	1.20	2	1.44
Asian American	2	0.49	1	0.60	1	0.72%
Hispanic American	2	0.49	-	0.00	1	0.72
Native American	-	0.00	-	0.00	-	0.00
Other MBE	4	0.98	1	0.60	1	0.72
Total MBE	9	2.21	4	2.40	5	3.60
WBE	16	3.92	11	6.59	7	5.04
Unknown MBE	-	0.00	-	0.00	-	0.00
Total DBE	25	6.13	15	8.99	12	8.64
SBE	10	2.45	2	1.20	7	5.04
VBE	5	1.06	1	0.60	2	1.44
Non-Commercial	48	11.76	-	0.00	-	0.00
Grand Total	408	100.00	167	100.00	139	100.00

Source: Dodge Data 2021; M³ Consulting, Inc.

*Includes Owner/Owner Agent firms even when acting as engineer, architect etc.

Unlike the public sector, typically winning private sector bids are more challenging for DBEs. While Non-DBEs win about 95 percent of all private sector bids, as reflected in Table 10.12, 4 WBEs, 3 African American-owned firms, 3 Hispanic American-owned firms and 4 Other MBEs did win private sector bids in FY 2021. In addition, 7 SBEs, 4 VBEs and 13 Non-commercial firm owners also won private sector bids in FY 2021.

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Table 10.12.
Distribution of DBEs by Bidder Ranking, Inclusive if Owner/Agent
By Project Owner: Private
FY 2021

Ethnicity	Rank #1		Rank #2		Rank #3	
	#	%	#	%	#	%
Non-DBE	728	94.42	-	0.00	-	0.00
African American	4	0.52	-	0.00	-	0.00
Asian American	-	0.00	-	0.00	-	0.00
Hispanic American	3	0.39	-	0.00	-	0.00
Native American	-	0.00	-	0.00	-	0.00
Other MBE	4	0.52	-	0.00	-	0.00
Total MBE	11	1.43	-	0.00	-	0.00
WBE	8	1.04	-	0.00	-	0.00
Unknown MWBE	-	0.00	-	0.00	-	0.00
Total DBE	19	2.47	-	0.00	-	0.00
SBE	7	0.91	-	0.00	-	0.00
VBE	4	0.35	-	0.00	-	0.00
Non-Commercial	13	1.69	-	0.00	-	0.00
Grand Total	771	100.00	-	0.00	-	0.00

Source: Dodge Data 2021; M³ Consulting, Inc.

*Includes Owner/Owner Agent firms even when acting as engineer, architect etc.

10.5 CITY OF WILMINGTON BUILDING PERMITS ANALYSIS

The following section analyzes construction activity in the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA market area, as evidenced in the City of Wilmington's building permits data.

Building permits are an additional indicator of potential contracting activity and owner decision rates in the private and public sectors by the various race, gender and ethnic groups as presented in Tables 10.13, 10.14 and 10.15. Based on the count of commercial building permits as presented below, MBEs had a distinctly greater percentage of the public sector contracts compared to private sector contracts (18.38 percent versus 7.68 percent) but a larger number of private sector contracts (386 contracts as opposed to 152 contracts). WBEs had distinctly larger number of contracts from the private sector (64) as opposed to the public sector (10) although the proportion is 1.2 percent in public and private sector.

In addition, in Table 10.14, the dollars awarded in the private sector was much larger for WBEs (at \$56.1 million or 6.6 percent) compared to the public sector (at \$713,979 or 0.21 percent). MBEs however won greater value in public commercial building permits (at \$16.5 million or 4.78 percent) compared to private sector building permits (valued at \$7.03 million or 0.83 percent). Among MBEs, African American-owned firms had the greatest value with public (\$6.32 million) and private (\$4.57 million) sector commercial building permits followed by Hispanic American-owned firms who received private sector building permits at \$2 million and public sector permits valued at \$824,795. Asian American and Other MBE owners received higher valued public sector building permits than private sector. SBEs had about \$8.8 million in private sector commercial building permits compared to about \$7.9 million in public sector building permits. In comparison, Non-DBEs who had the largest valued building permits exceeded \$775 million in private sector but also received over \$321 million in public sector building permits.

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Table 10.13.
Contractor Data
Count of Commercial Building Permits
City of Wilmington
Jan 1st 2016 – Dec 31st 2020

	Private Sector		Public Sector	
Ethnicity	#	%	#	%
Non-DBE	4,473	89.03	644	77.87
African American	159	3.16	70	8.46
Asian American	2	0.04	5	0.60
Hispanic American	212	4.22	74	8.95
Native American	1	0.02	-	0.00
Other MBE	12	0.24	3	0.36
<i>Total MBE</i>	<i>386</i>	<i>7.68</i>	<i>152</i>	<i>18.38</i>
WBE	64	1.27	10	1.21
Unknown MWBE	-	0.00	-	0.00
Total DBE	450	8.96	162	19.59
SBE	56	1.11	18	2.18
VBE	45	0.90	3	0.36
Grand Total	5,024	100.00	827	100.00

Source: City of Wilmington Building Permits 01/01/2016 to 12/31/2020, M³ Consulting, Inc.

Note: M³ Consulting, Inc. defined Commercial Building permits as permits without residential within project description

Table 10.14.
Contractor Data
Valuation (\$) of Commercial Building Permits
City of Wilmington
Jan 1st 2016 – Dec 31st 2020

	Private Sector		Public Sector	
Ethnicity	#	%	#	%
Non-MWBE	775,669,129	91.19	321,098,224	92.66
African American	4,575,136	0.54	6,319,672	1.82
Asian American	112,590	0.01	4,085,350	1.18
Hispanic American	2,075,305	0.24	824,795	0.24
Native American	1,205	0.00	-	0.00
Other MBE	262,641	0.03	5,324,967	1.54
<i>Total MBE</i>	<i>7,026,877</i>	<i>0.83</i>	<i>16,554,784</i>	<i>4.78</i>
WBE	56,155,612	6.60	713,979	0.21
Unknown MWBE	-	0.00	-	0.00
Total DBE	63,182,489	7.43	17,268,763	4.98
SBE	8,849,380	1.04	7,856,852	2.27
VBE	2,870,844	0.34	314,800	0.09
Grand Total	850,571,842	100.00	346,538,639	100.00

Source: City of Wilmington Building Permits 01/01/2016 to 12/31/2020, M³ Consulting, Inc.

Note: M³ Consulting, Inc. defined Commercial Building permits as permits without residential within project description

To assess capacity based on the value of projects that contractors bid, Table 10.15 breaks down value of building permits by thresholds. The largest value of building permits by MBEs are in the \$1 million to \$5 million range. These include contractors that are African American, Asian American, Other MBEs, SBEs and VBEs. By the same measure, WBEs include contractors in the greater than \$10 million range as do Non-DBEs. Hispanic American contractors in the MSA did not have building permits over \$500k and Native American contractors over \$50K. Even in the low end of thresholds, over 88 percent of the value of building permits were by Non-DBE contractors. No MBE or WBE had over 4 percent of the value of building permits in any threshold. Table 10.16 reflects building permits thresholds by count of permits issued. DBEs received the largest number of permits in the \$0 to \$50K threshold with 66 permits. No MBEs received permits in thresholds above \$5 million. One WBE received a permit in the range of greater than \$10 million.

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Table 10.15.
Contractor Data by Threshold
Valuation (\$) of Commercial Building Permits
City of Wilmington
Jan 1st 2016 – Dec 31st 2020

	0-50K		50-100K		100-500K		500K-1M	
Ethnicity	\$	%	\$	%	\$	%	\$	%
Non-MWBE	39,156,154	88.25	20,942,843	86.60	113,713,911	90.57	91,329,542	91.75
African American	1,513,376	3.41	1,479,681	6.12	4,397,649	3.50	1,572,102	1.58
Asian American	68,590	0.15	70,500	0.29	675,800	0.54	-	0.00
Hispanic American	1,623,020	3.66	699,450	2.89	577,630	0.46	-	0.00
Native American	1,205	0.00	-	0.00	-	0.00	-	0.00
Other MBE	166,201	0.37	-	0.00	110,530	0.09	533,702	0.54
Total Minority	3,372,392	7.60	2,249,631	9.30	5,761,609	4.59	2,105,804	2.12
WBE	691,462	1.56	307,994	1.27	2,609,754	2.08	4,363,805	4.38
Unknown MWBE	-	0.00	-	0.00	-	0.00	-	0.00
Total M/WBE	4,063,854	9.16	2,557,625	10.58	8,371,363	6.67	6,469,609	6.50
SBE	475,481	1.07	169,552	0.70	2,657,131	2.12	1,744,029	1.75
SDV/VOBE	675,644	1.52	514,700	2.13	804,600	0.64	-	0.00
Grand Total	44,371,133	100.00	24,184,720	100.00	125,547,005	100.00	99,543,180	100.00

Source: City of Wilmington Building Permits 01/01/2016 to 12/31/2020, M³ Consulting, Inc.

Note: M³ Consulting, Inc. defined Commercial Building permits as permits without residential within project description

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Table 10.15 cont.
Contractor Data by Threshold
Valuation (\$) of Commercial Building Permits
City of Wilmington
Jan 1st 2016 – Dec 31st 2020

	1-5M		5-10M		Above 10M		Total	
Ethnicity	\$	%	\$	%	\$	%	\$	%
Non-MWBE	206,093,025	87.92	125,458,102	100.00	500,073,776	91.99	1,096,767,353	91.62
African American	1,932,000	0.82	-	0.00	-	0.00	10,894,808	0.91
Asian American	3,383,050	1.44	-	0.00	-	0.00	4,197,940	0.35
Hispanic American	-	0.00	-	0.00	-	0.00	2,900,100	0.24
Native American	-	0.00	-	0.00	-	0.00	1,205	0.00
Other MBE	4,777,175	2.04	-	0.00	-	0.00	5,587,608	0.47
Total MBE	10,092,225	4.31	-	0.00	-	0.00	23,581,661	1.97
WBE	5,373,576	2.29	-	0.00	43,523,000	8.01	56,869,591	4.75
Unknown MWBE	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	15,465,801	6.60	-	0.00	43,523,000	8.01	80,451,252	6.72
SBE	11,660,039	4.97	-	0.00	-	0.00	16,706,232	1.40
VBE	1,190,700	0.51	-	0.00	-	0.00	3,185,644	0.27
Grand Total	234,409,565	100.00	125,458,102	100.00	543,596,776	100.00	1,197,110,481	100.00

Source: City of Wilmington Building Permits 01/01/2016 to 12/31/2020, M³ Consulting, Inc.

Note: M³ Consulting, Inc. defined Commercial Building permits as permits without residential within project description

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Table 10.16.
Count of Discrete Contractors by Threshold
Public and Private Sector
City of Wilmington
Jan 1st 2016 – Dec 31st 2020

	0-50K		50-100K		100-500K		500K-1M	
Ethnicity	#	%	#	%	#	%	#	%
Non-MWBE	1,680	95.13	171	90.96	208	88.89	60	88.24
African American	32	1.81	7	3.72	9	3.85	2	2.94
Asian American	2	0.11	1	0.53	1	0.43	-	0.00
Hispanic American	6	0.34	3	1.60	4	1.71	-	0.00
Native American	1	0.06	-	0.00	-	0.00	-	0.00
Other MBE	7	0.40	-	0.00	1	0.43	1	1.47
Total MBE	48	2.72	11	5.85	15	6.41	3	4.41
WBE	18	1.02	4	2.13	6	2.56	3	4.41
Unknown MWBE	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	66	3.74	15	7.98	21	8.97	6	8.82
SBE	14	0.79	0	0.00	4	1.71	2	2.94
VBE	6	0.34	2	1.06	1	0.43	0	0.00
Grand Total	1,766	100.00	188	100.00	234	100.00	68	100.00

Source: City of Wilmington Building Permits 01/01/2016 to 12/31/2020, M³ Consulting, Inc.

Note: M³ Consulting, Inc. defined Commercial Building permits as permits without residential within project description

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Table 10.16 cont.
Count of Discrete Contractors by Threshold
Public and Private Sector
City of Wilmington
Jan 1st 2016 – Dec 31st 2020

	1-5M		5-10M		Above 10M		Total	
Ethnicity	#	%	#	%	#	%	#	%
Non-MWBE	51	82.26	11	100.00	12	92.31	1,861	94.80
African American	1	1.61	-	0.00	-	0.00	39	1.99
Asian American	1	1.61	-	0.00	-	0.00	2	0.10
Hispanic American	-	0.00	-	0.00	-	0.00	7	0.36
Native American	-	0.00	-	0.00	-	0.00	1	0.05
Other MBE	1	1.61	-	0.00	-	0.00	8	0.41
Total MBE	3	4.84	-	0.00	-	0.00	57	2.90
WBE	3	4.84	-	0.00	1	7.69	20	1.02
Unknown MWBE	-	0.00	-	0.00	-	0.00	-	0.00
Total DBE	6	9.68	-	0.00	1	7.69	77	3.92
SBE	4	6.45	-	0.00	-	0.00	17	0.87
VBE	1	1.61	-	0.00	-	0.00	8	0.41
Grand Total	62	100.00	11	100.00	13	100.00	1,963	100.00

Source: City of Wilmington Building Permits 01/01/2016 to 12/31/2020, M³ Consulting, Inc.

Note: M³ Consulting, Inc. defined Commercial Building permits as permits without residential within project description

Table 10.17. Count of Discrete Contractors City of Wilmington Jan 1st 2016 – Dec 31st 2020				
	Private Sector		Public Sector	
Ethnicity	#	%	#	%
Non-DBE	1,741	95.19	282	86.24
African American	31	1.69	22	6.73
Asian American	1	0.05	1	0.31
Hispanic American	7	0.38	4	1.22
Native American	1	0.05	-	0.00
Other MBE	6	0.33	3	0.92
Total MBE	46	2.52	30	9.17
WBE	20	1.09	5	1.53
Unknown MWBE	-	0.00	-	0.00
Total DBE	66	3.61	35	10.70
SBE	14	0.77	8	2.45
VBE	8	0.44	2	0.61
Grand Total	1,829	100.00	327	100.00

Source: City of Wilmington Building Permits 01/01/2016 to 12/31/2020, M³ Consulting, Inc.

While Table 10.13 above presents number of building permits issued, Table 10.17 presents a discrete count of contractors who received building permits for private and public sector projects. While there were fewer public sector permits than private sector, there were a greater proportion of MBE contractors who received permits in the public sector (9.17 percent) compared to the private sector (2.52 percent). WBEs received slightly higher proportion in the public sector (1.53 percent) than private sector (1.09 percent). Among MBEs, African American contractors had the highest proportion of those who received building permits in the public sector (6.73 percent) compared to private sector (1.69 percent). Hispanic American contractors had a similar pattern accounting for 1.22 percent of public sector contractors as opposed to 0.38 percent in private sector as did SBEs (0.61 percent of in public sector compared to 0.77 percent in private sector). In Table 10.18, the Top 20 contractors receiving building permits are reflected. One Hispanic American-owned firm and one African American-owned firm are included in the Top 20. No WBEs are reflected among the Top 20 contractors.

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Table 10.18.
Count of Discrete Contractors
Top 20 Awardees Based on Count of Building Permits Received
City of Wilmington
Jan 1st 2016 – Dec 31st 2020

	Private Sector		Public Sector		Total		Race/Gender/ Ethnicity
Contractors	#	%	#	%	#	%	
Astec Inc	164	3.26	63	7.62	227	3.88	Hispanic American
Tupp Signs Inc	99	1.97	13	1.57	112	1.91	Non-DBE
Edis Company	71	1.41	38	4.59	109	1.86	Non-DBE
R&B General Contracting LLC	26	0.52	42	5.08	68	1.16	Non-DBE
County Environmental Co	62	1.23	6	0.73	68	1.16	Non-DBE
Bpgs Construction Services LLC	52	1.04	6	0.73	58	0.99	Non-DBE
Energy Coordinating Agency	41	0.82	-	0.00	41	0.70	Non-DBE
G Fedale Roofing & Siding Cont	36	0.72	3	0.36	39	0.67	Non-DBE
Milestone Construction Company	36	0.72	1	0.12	37	0.63	Non-DBE
Disabatino Construction Company	22	0.44	14	1.69	36	0.62	Non-DBE
The Whiting-Turner Contracting Company	27	0.54	8	0.97	35	0.60	Non-DBE
Delaware Elevator Co	26	0.52	8	0.97	34	0.58	Non-DBE
K C Sign & Awnings	31	0.62	1	0.12	32	0.55	Non-DBE
Chief Mechanical Services LLC	29	0.58	3	0.36	32	0.55	African American
Graficolors 7 LLC	31	0.62	-	0.00	31	0.53	Non-DBE
Adam Basement Inc	31	0.62	-	0.00	31	0.53	Non-DBE
Richards Paving Inc	28	0.56	2	0.24	30	0.51	Non-DBE
Hes Sign Services DbA Yesco	30	0.60	-	0.00	30	0.51	Non-DBE
Gerber Masonry	29	0.58	1	0.12	30	0.51	Non-DBE
Delaware Construction Services LLC	28	0.56	-	0.00	28	0.48	Non-DBE
Total	5,024	100.00	827	100.00	5,851	100.00	

Source: Source: City of Wilmington Building Permits 01/01/2016 to 12/31/2020, M³ Consulting, Inc.

10.6 SUMMARY OF FINDINGS

To understand factors that impact the participation of DBEs with the City of Wilmington and the potential opportunities for capacity building that may limit participation of DBEs with the City the role of the marketplace in which these firms operate is critical.

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

Taking a gauge of the civilian labor force, 67.6 percent of Whites, 57.7 percent of African Americans, 64.9 percent of Hispanic Americans and 76.70 percent of Asian Americans are part of the labor force in the City. While White Americans and Asian Americans see a drop in the percentage within the MSA and the State, the rest of the MBEs see a higher participation in the State and somewhat lower percentage in the MSA.

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

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

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

A comparison of bid activity and bidders across private and public owners of projects with their ranking presents the winning bidder (awardee). Within the MSA, less than 7 percent of DBEs were ranked #1 (winner) while 16 WBEs (4.41 percent) were ranked #1 in public sector projects. While Non-DBEs win about 95 percent of all private sector bids in the MSA, 4 WBEs, 3 African American-owned firms, 3 Hispanic American-owned firms and 4 Other MBEs did win private sector bids in FY 2021.

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

CHAPTER 11: RACE NEUTRAL ANALYSIS

11.1 INTRODUCTION

As discussed in Chapter 2: Legal Analysis, as part of narrow tailoring, public entities are required to consider the efficacy of race neutral measures in addressing any disparity or discrimination. The race neutral analysis seeks to determine the ability of existing race neutral efforts in eliminating disparity in the marketplace.

Federal case law has provided some illumination on the question of what constitutes adequate consideration of race-neutral measures.

1. A governmental entity does not have to enact race-neutral means if those means are not feasible or conducive to remedying past discrimination.²⁹⁹
2. If race-neutral programs and legislation were in place prior to the establishment of a race-conscious program and had been attempted in good faith, and yet MWBE participation in public procurement remains low relative to availability, then an inference is created that race-neutral programs were inadequate to relieve the impact of past discrimination.³⁰⁰

Several city, state, and local organizations were identified that provide technical and financial assistance to small, minority and woman-owned business enterprises in the City of Wilmington and throughout the State of Delaware. A discussion is also provided of public entities that operate race and gender-conscious and race and gender-neutral programs. The inclusion of the results of race and gender-conscious initiatives further reflects the effectiveness of all remedial-type activity in addressing disparity within the area.

These programmatic initiatives have been in place during the operation of Wilmington's DBE programs.

²⁹⁹ Coral Construction v. King County, 941 F.2d 910, 923 (9th Cir. 1991), AGC of California v. Coalition of Economic Equity, 950 F. 2d 1401,1417 (9th Cir. 1991), Engineering Contractors v. Dade County, 122 F. 3d 895 (11th Cir. 1997), Concrete Works of Colorado, Inc. v. City and County of Denver (Concrete Works I), 823 F. Supp. 821 (D Colo 1993), Western States Paving Co., Inc. v. Washington State Department of Transportation, 407 F.3d 983 (9th Cir. 2005).

³⁰⁰ Concrete Works I at 841.

11.2 METHODOLOGY

This chapter's race-neutral analysis is based on a review of 41 organizations throughout the three counties of Delaware that provide services to small, minority and woman-owned businesses. The results of the organizational review are reflected in 11.4. Master List of Race Neutral Programs. The Master List is divided into sections as follows:

- Goal-Based and Other Targeted Procurement Programs
- Management and Technical Assistance Providers
- Financial Assistance Providers
- Community and Economic Development Organizations
- Chambers of Commerce
- Trade Organizations and Business Associations
- Other Advocacy Groups

Additionally, M³ Consulting sought to interview Executive Directors of this organizations to determine their experiences working with small, minority and women-owned businesses. Out of the forty-one Executive Directors contacted, nine (9) agreed to one-on-one in-depth interviews.

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11.3 MASTER LIST OF RACE NEUTRAL PROGRAMS

Agency/Organization		Type of Goal-Based Programs							Support Services
Organization's Name	County	SBE	LBE/CBE	VBE	MBE	WBE	DBE	SDB	Services and Available Metrics
Goal-Based and Other Targeted Procurement Programs									
Delaware Department of Transportation DBE Program	State of Delaware						x		- DeIDOT supports small businesses by ensuring non-discrimination and equal opportunity contracting for construction and renovation projects that receive federal funding. DeIDOT evaluates each of their USDOT-assisted contracts and establishes contract specific DBE goals to ensure nondiscrimination in federally-assisted projects. - The major objectives of the DeIDOT DBE Program - To ensure nondiscrimination in the award and administration of all DeIDOT contracts; - To create a level playing field on which small businesses and DBE's can compete fairly for participation in federal-aid contracts; - To ensure that the DBE Program is narrowly tailored in accordance with applicable federal and state law; - To make certain that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate in our program; - To help remove barriers to the participation of DBE's and small businesses in DOT-assisted contracts; - To assist the development of firms so that they are able to compete successfully in the marketplace outside of the DBE Program; - To achieve increased small business participation in federal-aid contracts through race- and gender-neutral means - The overall DeIDOT DBE goal is based on demonstrable evidence of ready, willing and able DBEs relative to all businesses currently ready, willing and able to participate on DeIDOT's FHWA-assisted contracts. DeIDOT set an overall DBE goal of 13.40% for FHWA-assisted contracts for FFYs 2020–2022.

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									• DeIDOT estimates 3.44% of the overall goal can be achieved through race- and gender-neutral (RN) participation. The remaining portions of those overall DBE goals will need to be met through use of race- and gender-conscious (RC) contract goals • Based on this analysis of FHWA-funded contracts for October 2015 through September 2018, DeIDOT determined that the following areas should be selected as the relevant geographic market area for the availability study: ○ Delaware (Kent, New Castle and Sussex Counties); ○ The Maryland Eastern Shore (Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico and Worcester counties in Maryland); ○ The Baltimore Metropolitan Statistical Area (Maryland counties Anne Arundel, Baltimore City, Baltimore, Carroll, Harford and Howard) ○ Salem County, New Jersey. ○ Approximately 92% of all sample contract dollars went to firms with locations within the 19 contiguous counties of the relevant geographic market area • The combined information from the marketplace and the disparity analysis indicates evidence that there is not a level playing field for minority- and women-owned firms in the DeIDOT relevant geographic market area. • DBE participation based on DBE commitments/awards on FHWA-funded contracts was below DeIDOT's overall DBE goal for FFY 2016 through FFY 2018 • DeIDOT considered whether it can achieve 100% of its overall DBE goal through neutral means or whether race-conscious programs are needed. Such a determination depended in part on the level of the overall DBE goal. Since DeIDOT submits overall DBE goals for FHWA-funded contracts of 13.40%, the evidence presented from their Goal Setting Methodology and Overall DBE goal report indicates that DeIDOT would not meet its DBE goal solely through neutral means. DeIDOT considered the above information

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									when reaching its decision on any use of race and gender-conscious programs (such as DBE contract goals). ○ There is information indicating disparities in outcomes for minorities and women and minority- and women-owned firms in Maryland (a large portion of the DelDOT relevant geographic market area), and some qualitative evidence of discrimination within the DelDOT transportation contracting marketplace, as detailed in the 2018 MDOT Disparity Study. ○ Median annual DBE participation from FFY 2016 to FFY 2018 was 11.44% based on awards/commitments. This level of participation is below an overall DBE goal in the range of 13.40%. ○ DelDOT's median race-neutral participation has been 3.44% for FFY 2016 through FFY 2018. ○ Based on the data above, DelDOT submits a race-neutral projection of 3.44 percentage points for its overall DBE goal for FFY 2020 through FFY 2022. As noted above, DelDOT projected a 2.20 percentage point neutral and 11.60 percentage point race-conscious split when it prepared its overall DBE goal of 13.80% for FFY 2017 through FFY 2019
Wilmington Office Of Economic Development	City of Wilmington						x		• The Office of Economic Development (OED) ensures a diversified local economy for the city by promoting and developing all varieties of industry and by initiating programs to increase job opportunities for residents of the City of Wilmington. The OED also assists small, minority, and women owned businesses through training and technical assistance programs designed to facilitate greater access to the public/private marketplace. • The City of Wilmington, through the Equal Opportunity/Contract Compliance Office, assists Disadvantaged Business Enterprises (DBE) in becoming actively involved in the City's procurement process. To expand opportunities for disadvantaged businesses, the City has established goals for contracting with DBEs, expressed as percentages of the total dollar amount of each of the following contract categories: construction, goods/services, and professional services. The current participation goals are defined as follows:

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									○ Construction Contracts 20% ○ Goods & Services 10% ○ Professional Services 5%

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Agency/Organization		Type of Management and Technical Assistance Providers				Support Services
Organization's Name	County	Mgmt.	Marketing/ Sales/ Networking	Financial	Bonding	Services and Available Metrics
Management, Financial and Technical Assistance Providers						
The National Development Council (NDC)				x		- NDC directs capital to support the development and preservation of affordable housing, creates jobs through small business lending, advances livable communities with social infrastructure investment, and builds capacity with hands-on technical assistance to local governments. - NDC provides technical assistance, professional training, small-business lending, debt and equity financing for residential, commercial, public, and nonprofit facilities. - NDC has helped improve the lives of millions of people through new economic opportunity and community improvement, in every one of the 50 states and Puerto Rico.
Delaware Division of Small Business (DSB)	State of Delaware		x	x		- The Division of Small Business is a service-focused agency committed to helping businesses start and grow in Delaware. - The Division launched advisory committees for minority business owners, women business owners and military veteran business owners to find out how DSB can best assist them.
American Incorporators		x	x			American Incorporators Ltd. has been providing attorneys, accountants and entrepreneurs worldwide with efficient, cost effective incorporating and registered agent services since 1979. They incorporate C Corporations, LLCs, and Non-Profits and can assist with S Corporation elections in all 50 states. They offer additional services to aid in forming client's business such as registered agent service, amendments, corporate documents and virtual office services.
Stand By Me Minority Small Business Program	State of Delaware			x		Stand By Me is a joint project of the State of Delaware and United Way of Delaware. With an alliance between Barclays Bank and United Way of Delaware, Delaware minority-owned-and-operated small businesses may now be eligible to receive free financial coaching and business support services aimed at helping grow their business revenue as much as 20%.

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						Since 2011, Stand By Me has helped over 31,500+ Delawareans reach their financial goals, improve credit scores on average by 79 points, saved more than \$41.8 million, and reduced personal debt by more than \$33.9 million
True Access Capital	State of Delaware			x		- True Access Capital is a Community Development Financial Institution (CDFI) that empowers business owners and entrepreneurs in Delaware. The Women's Business Center at True Access Capital (WBC) provides in-depth, outcome-oriented business services to women entrepreneurs. WBC training includes courses on business planning, business financing, social media, and marketing and through its partnership with True Access Capital, the WBC provides access to business capital for women business owners. As an official SBA Resource Partner, the WBC also partners with SCORE and the Small Business Development Center, and other State agencies, to help ensure the success of women and entrepreneurs. - The fund—which changed its name to True Access Capital in 2019—has disbursed nearly \$30 million to more than 1,100 small businesses and community organizations. - Since inception, True Access Capital has provided nearly \$50 million to support more than 1,425 small businesses and organizations.
Goldman Sachs 10,000 Small Businesses	Nationwide			x		10,000 Small Businesses (10KSB) is a \$500 million investment by Goldman Sachs to help entrepreneurs create jobs and build economic opportunity by providing them access to business education, financial capital, and support services. Classes for businesses based in Pennsylvania, New Jersey, and Delaware are taught by faculty at the Community College of Philadelphia. More than 8,000 small business owners throughout the country have completed the 10KSB program since 2009, including more than 450 scholars at the Philadelphia site. To date, only ten businesses from Delaware have been selected for this competitive scholarship program.
Community First Fund				x		Community First Fund is a private, independent non-profit Community Development Financial Institution (CDFI) whose mission is to provide capital in places where it is not usually available. Community First Fund's mission is to create financial equity through wealth building opportunities for individuals, families, and business owners, especially Persons of Color,

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						women, and immigrants. CFF aligns capital, knowledge, and advocacy to advance access to financial services, business ownership, housing, and community development. Services available in counties in Pennsylvania, Delaware, NJ • Since 1992, Community First Fund has made more than 1,700 loans and investments totaling more than \$208 million to businesses, affordable housing and community-based developers and projects. ○ 5,592 Business and Community Development Projects Financed ○ \$355 Million Of Financing Provided ○ 71% of Loans to Businesses Owned By People Of Color ○ 20,551 Jobs Created and Retained ○ 80% of Loans Benefit Low Income People and Communities ○ \$84 Million In Loans to Community Service Organizations ○ 5,562,320 Square Feet of Commercial Real Estate Financed ○ 7,973 Child Care Opportunities Financed ○ 42% of Loans to Women Owned Businesses ○ 32% of Loans to Start-up Businesses ○ 7,892 Educational Opportunities Financed ○ 2,694 Housing Units Financed ○ \$24 Million in Financing for Healthy Food Activities ○ \$8 Million to Finance Accessible Healthcare
Leading Edge Ventures				x		• Leading Edge Ventures invests in exceptionally talented entrepreneurs with vision who bring to market innovative technologies and approaches that are in high demand to provide venture capital financing and guidance to exceptional entrepreneurs whose innovative companies are transforming their markets.
Nehemiah Gateway Community Development Corporation (NGCDC)	State of Delaware			x		• NGCDC is a non-profit organization that provides access to financial education and support services for low-to-moderate income individuals and small businesses. Since its founding in 2000, the organization has offered a variety of programs, focusing on increasing the financial well-being of Delaware through training in asset development, financial management, and employment. • NGCDC Impact Since 2000

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						○ \$359,300,000 Total Refunds, Credits, and Tax Prep Fees Saved ○ 192,000 Returns Filed ○ \$295.7 M Total Refunds ○ 5,789 Volunteers ○ \$40.1 M saved on Tax Fees ○ \$23.5 M EITC Credits
De Novo Corporation				x		• De Novo, through its subsidiary Pango Financial, offers equipment and accounts receivable funding, as well as small business and start-up support through conventional bank loans, marketable securities, unsecured lines of credit, SBA and paycheck protection program loans. Through the DreamSpark® program, entrepreneurs can unlock retirement savings to invest in their own business, tax deferred and penalty free. • Through Creative Solutions, Convergence Group and De Novo's alliance partners Corserv and Zeta, De Novo offers comprehensive capabilities in data sourcing, development, management and analytics, with access to billions of online transaction data to inform targeting and channel strategies.
The Delaware SBDC	State of Delaware		x	x		• Delaware Small Business Development Center (DSBDC), a unit of the University of Delaware's Office of Economic Innovation and Partnerships (OEIP), develops and supports entrepreneurship throughout the State of Delaware by working one-on-one with its clients to understand their needs and assist them in a path forward. ○ 4230 New Jobs Created since Inception ○ 1400+ New Business Started since Inception ○ \$267 Million in Capital Raised since 2010 ○ \$900 Million in Government Contracts

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Agency/Organization		Type of Community and Economic Development Organization				Support Services
Organization's Name	County	Ethnic Chamber	Other Chamber	Community Development	Economic Development	Services and Available Metrics
Community and Economic Development Organization						
Delaware BioScience Association	State of Delaware			x	x	- Delaware Bio is dedicated to advancing smart policies at both the state and federal levels and collaborating with government and economic development partners to ensure a thriving bioscience landscape in Delaware. - Hosts events showcasing industry innovation, making essential connections and communicates the extraordinary value of its members' work - Advocates and creates an environment where innovation and investment can continue to thrive in the First State and across the region - Collaborates with industry, academic and government partners to promote the growth of its members and ensure newly created innovation thrives in Delaware. - Their 130 member companies and organizations are of every size, from global leaders to small start-ups, representing 8,000 innovation-based jobs vital to Delaware's economic future. - They are in regular communication with the governor and key members of the administration, the state legislature and Delaware's Congressional delegation to highlight the immense public health and economic value their members work to create every day. Through engagement with public officials, they share the innovative research and medical and scientific breakthroughs that are changing lives while creating great jobs for fellow Delawareans
Delaware Department of Labor	State of Delaware				x	Delaware Department of Labor is an executive department headed by a cabinet secretary appointed by the governor. The department is responsible for protecting Delaware's

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						workforce and ensuring justice in the workplace to promote a strong economy. The department assists with connecting people to jobs, resources, and labor market information. ○ Employment & Training ○ Unemployment Insurance ○ Vocational Rehabilitation (DVR) ○ Industrial Affairs ○ Office of Occupational & Labor Market Information (OOLMI) • The combined efforts of these divisions and offices support the employment-related needs of nearly 400,000 Delaware workers and more than 20,000 businesses throughout the state.
Delaware Hispanic Commission	State of Delaware	x		x	x	• The Delaware Hispanic Commission (DHC) was established to improve public policy development and the delivery of local government services to Latinos in Delaware. DHC members are appointed by the Governor to advocate on behalf of the Latino community to government agencies and representatives in support of policies and programs that ensure equity and opportunity. • Be Our Voice campaign has held community conversations across all three counties to increase voter registration. The campaign encourages undocumented residents to get involved by supporting voters and getting them to the polls. • DHC supported implementation of the Delaware Driving Privilege Card, which was signed into law by Gov. Jack Markell on June 30, 2015. • DHC has actively participated in the Senate Joint Resolution # 4 Education Funding Improvement Commission. • A public policy agenda was developed. • DHC developed and implemented a bilingual six-week/three-hours (per session) statewide pilot program on “How to Do Business in Delaware.” About 70 participants graduated and continue to work with its business partners. The program

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						was adopted and is run by First State Community Loan Fund. DHC set up six subcommittees to address community needs: education, health, economic and workforce development, housing, transportation, and community and social justice.
Delaware SCORE	New Castle, Kent, and Sussex Counties, and Coastal DelMarVa			x	x	- Delaware SCORE is a nonprofit organization whose mission is to both educate entrepreneurs and help small businesses start, grow, and succeed. - They provide: - Volunteer mentors who share their expertise across 62 industries - Free, confidential business counseling in person or via email - Free business tools, templates, and tips online - Inexpensive or free business workshops (locally) and webinars (online 24/7) - SCORE Delaware's Impact on the local community 2021 70 New Businesses Started 199 Total Jobs Created 2,914 Total Chapter Services (total mentoring sessions + total workshop attendee hour) 1252 Mentoring Hours 61 Workshops
Eastern Minority Supplier Development Council (EMSDC)	State of Delaware	x			x	EMSDC certifies and connects minority-owned businesses (Asian, Black, Hispanic, and Native American) throughout Pennsylvania, Southern New Jersey, and Delaware with partner organizations that are committed to working alongside these small businesses. EMSDC is an affiliate of the National Minority Supplier Development Council (NMSDC), small businesses that partner with EMSDC build relationships with organizations that span beyond Delaware.

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Metropolitan Wilmington Urban League (MWUL)	City Wilmington	of	x		x	x	- The Metropolitan Wilmington Urban League (MWUL) is the Delaware chapter of the National Urban League. The mission of the Metropolitan Wilmington Urban League (MWUL) is to empower people of color to achieve economic self-reliance, parity and civil rights. - Over the years, the MWUL has worked with/served thousands of people throughout Delaware (i.e., students, parents, policymakers, government officials, and business/community leaders) with the goal to expand opportunities for all and to help disadvantaged citizens achieve parity.
United Way of Delaware	State Delaware	of			x	x	- United Way of Delaware collaborates with community-based organizations, caring corporations, passionate volunteers, and generous donors to maximize all their resources for good and tackling the most pressing issues facing people in Delaware and Salem County (NJ). With their partners they help children become more proficient readers, prepare young people for future career success, and guide adults towards financial stability. - During the 2020-21 school year, nearly 100,000 new books were given to students participating in My Very Own Library to encourage a life-long love for reading. - More than 23,000 Delaware high school students are enrolled in a Career Pathway program to help prepare them for college and future careers. - Since 2011, nearly 20,000 Stand By Me participants in Delaware have reduced their debt by a combined total of over \$30 million.
University of Delaware Office of Economic Innovation and Partnerships (OEIP)						x	OEIP is an organization dedicated to assisting innovators and entrepreneurs. OEIP partners students and faculty with start-up businesses to facilitate effective collaboration. Services provided from OEIP tailor toward the technical and business communities in Delaware, with a focus on patents, licensing, portfolios, and capital. OEIP helps build small

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						businesses by engaging, challenging and guiding them, using business experience and the power of creative capital and intellectual assets, and thereby achieve a vibrant sustainable Delaware economy.
YWCA Delaware				x	x	YWCA Delaware leads social change, empowers women, girls and their families by offering programs in the five key areas of Economic Empowerment, Housing, Racial Justice, Sexual Assault Crisis and Youth Development.
US Economic Development Administration (Philadelphia Regional Office)					x	- The EDA focuses exclusively on economic development efforts, especially in economically distressed areas in the United States. With six regional offices that span over the entire country, the EDA specializes in working alongside local economic development officials to make grant investments, as well as create programs that support innovation and entrepreneurship. The EDA provides businesses with the tools and resources they need to compete in both domestic and international markets. - As the only federal government agency focused exclusively on economic development, the U.S. Department of Commerce's Economic Development Administration (EDA) plays a critical role in facilitating regional economic development efforts in communities across the nation. Guided by the basic principle that sustainable economic development should be locally driven, EDA works directly with communities and regions to help them build the capacity for economic development based on local business conditions and needs. EDA's grant investments in planning, technical assistance, and infrastructure construction are designed to leverage existing regional assets to support the implementation of economic development strategies that make it easier for businesses to start and grow. - EDA provides economic development financial assistance to communities so they can encourage innovation and entrepreneurship in a way that works best for them.

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						Through its network of regionally based staff and portfolio of flexible grant tools, EDA helps communities experiencing economic distress, take control of their future and position themselves for economic prosperity and resiliency. • EDA partners with other federal agencies to implement policies and procedures that: ○ Increase Access through supporting local and regional capacity to successfully identify and apply for any relevant economic development resources -- federal and non-federal, public, and private -- that best support their economic development priorities and objectives. ○ Enhance collaboration with coordination among interagency, inter-governmental, and cross-sector partners to promote strategic investments that support local priorities and contribute to sustainable and equitable economic growth. ○ Reduce Administrative Burdens through EDA's EDI team that regularly works with federal interagency partners to help identify and leverage opportunities to align administrative requirements commonly triggered through the provision of federal program assistance (e.g., strategic planning, environmental reviews, grant reporting) ○ EDA and Disaster Recovery program has a long history of successfully supporting disaster recovery and resiliency efforts (PDF). EDA's role in disaster recovery is to facilitate the timely and effective delivery of Federal economic development assistance to support long-term community economic recovery planning and project implementation, redevelopment, and resilience. EDA is uniquely positioned to coordinate federal support for regional disaster recovery efforts in

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						partnership with its extensive network of Economic Development Districts (EDDs), University Centers, and other stakeholders in designated impact areas. • EDA serves as the Coordinating Agency for the Economic Recovery Support Function (ERSF) (PDF) on behalf of the Department of Commerce (DOC). In this capacity, EDA provides leadership, coordination, and oversight for primary and support agencies, all of which share a role in the provision of grants, loans, training and other forms of assistance to support economic recovery efforts in disaster-impacted communities and regions. To assist interagency coordination, EDA established an Economic Recovery Working Group (PDF) of federal partners. • EDA's performance goals and specific performance metrics are tied to the U.S. Department of Commerce's performance management structure. The performance data are analyzed for economic and program trends and used to enhance EDA's program performance. The data are reported via departmental publications and reviewed by key stakeholders, such as the Office of Management and Budget (OMB), the Government Accountability Office (GAO), and Congress. EDA's performance targets are tied to its annual budget request and appropriations. DOC and relevant stakeholders consider EDA's performance results when EDA submits its annual budget request. EDA's Annual Performance Plan (APP) identifies anticipated outcomes based on the investment of appropriated funds by program and by performance measure.
Delaware Center for Enterprise Development (DCED)	State Delaware	pf			x	• DCED provides business training and entrepreneurial education for youth and adults; operates a commercial kitchen incubator; provides specialized classes and workshops for small business owners; offers one-on-one technical assistance to entrepreneurs and manages "The Garage" the new innovation and makerspace in the College

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						of Business. The DCED staff provides technical assistance in all areas of business start-up and development.
New Castle County Chamber of Commerce	New Castle County		x			- The New Castle County Chamber of Commerce creates business development opportunities for its members and advocates for a strong and stable economic climate. The New Castle County Chamber of Commerce provides opportunities for businesses of all levels to connect with resources, get involved in programs and initiatives, make business connections, and make a positive impact on the economic development of the community. - A project of the NCC Economic Development Council, the Emerging Enterprise Center is a business incubator that helps startup businesses develop a long-term sustainable model, grow their business, and learn essential entrepreneurial skills. Since its inception in 2008, the Emerging Enterprise Center has assisted 42 businesses. These businesses have generated over \$62 million in revenue and employed 200 people while in the program.
Delaware Small Business Chamber (DSBC)	State of Delaware		x			- DSBC is an independent chamber of commerce supporting local small business in Delaware and the surrounding areas focusing on businesses with 0-100 employees and larger companies that economically support its local small business community. 70-100 free events each year for DSBC Members 56,000+ visitors to the webpages to learn more about its small business members. 10 Years supporting the LOCAL small business community 3-5X the value of each membership level vs the actual cost.
African-American Chamber of Commerce	State of Delaware	x				The AACC has been serving as a leading advocate for minority-owned businesses in Delaware, Pennsylvania, and New Jersey. The AACC's mission is to support these small businesses through education and financial assistance, to

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						enhance the quality of life for communities heavily populated with minority citizens.
Delaware State Chamber of Commerce, Inc.	State of Delaware		x			- The Delaware State Chamber of Commerce promotes an economic climate that enables businesses of all sizes and types to become more competitive in a constantly changing, increasingly global, and unpredictable environment. - The Delaware State Chamber of Commerce's 501(c)(3) education affiliate, The Partnership, Inc., has been fostering private sector involvement in education and workforce development to ensure the First State has a sustainable pipeline of talent. - Recent achievements include: - Passing reforms to the Coastal Zone Act, which prioritizes solutions that will both strengthen the economy and enhance its natural resources. The State Chamber will now work with DNREC, who must develop and implement the updated regulations. - Spearheading the creation of a public-private partnership dedicated to marketing the state to businesses so that they choose Delaware as their new home. The newly formed Delaware Prosperity Partnership focuses on bringing and retaining jobs in Delaware – a top priority for the State Chamber. - Partnering with the Delaware Business Roundtable on the launch of the Delaware Growth Agenda, a framework of economic development and growth that includes public policy recommendations centered on three strategic goals to be implemented over the next five years. - Reducing workers compensation rates by 33% over three years. - Actively shaping legislation and regulations that

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						impact its members on issues such as: taxation, online privacy, health care policy, abandoned property, labor and employment law, education reform and economic development.
Wilmington Economic Development Corp. (WEDCO)	City of Wilmington			x		WEDCO provides access to capital to small businesses within the city of Wilmington. Loans are available for working capital, inventory, machinery and equipment, and facility improvements in sizes from \$5,000 to \$50,000. For Small Business Owners, the 504 program provides financing for facilities and equipment for expanding small businesses. By combining a lender sourced loan (50%) and a loan from DCDC (40%) the small business receives a balanced loan package that supports business expansion and job creation. With a complete package DCDC is able to obtain approval in 10 to 15 days, depending on the complexity of the project, following the lender's commitment.

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Agency/Organization		Type of Trade Organization, Business Associations or Other Advocacy Groups			Support Services
Organization's Name	County	Trade Organization	Business Association	Other Advocacy Groups	Services and Available Metrics
Trade Organizations, Business Associations and Other Advocacy Groups					
Delaware Manufacturing Extension Partnership (DEMPEP)	State of Delaware	x			- Delaware Manufacturing Extension Partnership (DEMPEP) is a federally and state funded non-profit organization committed to helping Delaware's manufacturers improve their global competitiveness. DEMPEP experts assess needs and opportunities, identify appropriate local, regional and national resources, and create and manage successful partnerships. DEMPEP is the official representative of the MEP National Network in Delaware. The MEP National Network™ is a unique public-private partnership that delivers comprehensive, proven solutions to U.S. manufacturers, fueling growth and advancing. - Supply Chain Optimization - Build a Lean Manufacturing Enterprise - Quality Management Systems - Analytical Tools for Statistical Approach & Process Improvement - Top Line Growth or Business Growth - Energy Savings Analysis and Audit
Department of Agriculture (DDA)	State of Delaware			x	- The DDA is responsible for ensuring that agriculture continues to be an economic driver in the state and that Delaware's potential for economic prosperity through the agriculture industry continues to grow and expand. Agriculture is one of the primary industries in the state and makes up a significant portion of the state's economy. The DDA is responsible for sustaining and promoting agriculture industries throughout the state. - The Delaware Employment Link (DEL) provides a faster, more convenient way to search and apply for state government jobs. A complete list of State of Delaware employment opportunities can be found by accessing the link.

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					• The Delaware Department of Agriculture provides a wide range of educational programs for both students and adults to improve the public's understanding and appreciation of agriculture. • The mission of the Delaware Department of Agriculture is to sustain and promote the viability of food, fiber, and agricultural industries in Delaware through quality services that protect and enhance the environment, health, and welfare of the general public. The agency includes the following sections: ○ Aglands Preservation & Planning promotes farmland preservation through the Delaware Agriculture Lands Preservation. More than 121,000 acres of farmland are now permanently preserved for future generations. ○ Agriculture Compliance provides services to ensure the accuracy of label guarantees for animal feeds, pet foods, fertilizers, soil conditioners, and liming materials. These services include reviews of product labels, marketplace inspections, and laboratory analysis. Laboratory testing services are also provided to the public for samples of animal manures, feeds, and fertilizers. ○ Communications & Marketing serves as the primary contact for public and media inquiries, manages the Department's website, and promotes Delaware's agricultural products via advertising, publications, and special events. The team provides growers, food processors and agribusinesses with marketing assistance and services for commodities and products. ○ The Delaware Forest Service helps Delawareans conserve, protect, and enhance their forest resources. Staff members manage Delaware's three State Forests; run an Urban and Community Forestry Program to assist communities and homeowners with urban forestry projects; and administers the Forestland Preservation Program. The Forest Service also offers Smokey Bear, Project Learning Tree, and other education programs. Professional foresters provide financial and technical assistance to communities for urban forestry projects.

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					○ The Delaware Harness Racing Commission regulates this sport by upholding the rules and regulations of harness racing as set by the Delaware Code. ○ Delaware Standardbred Breeders' Fund oversees and maintains records and funds pertaining to the breeding of Standardbred horses in a state racing program and promotes Standardbred activities and sales of state bred yearlings. ○ Food Products Inspection oversees and inspects all meat and poultry products to protect the consumer from food borne diseases. State inspectors provide inspection services for both State and USDA Federal red-meat slaughter and processing plants. Inspectors also provide grading verification for poultry and eggs and grading services for Delaware's fruit and vegetable growers and brokers. ○ Nutrient Management manages activities involving the generation and application of nutrients to help maintain and improve the quality of Delaware's ground and surface waters to help meet or exceed federally mandated water quality standards. ○ Pesticides regulates pesticide distribution, use storage, sales, and disposal, and conducts public recycling programs for empty commercial pesticide containers. It focuses on regulation of products used to control pests (weeds, insects, bacteria, fungi, rodents); the prevention of adverse human health effects from pesticide exposure, and the protection of the environment, animals and property from pesticide injury or damage. ○ Plant industries prevents the introduction, establishment and spread of plant and honeybee pests and performs grain and seed inspections. It serves farmers, beekeepers, nursery growers and dealers, fruit growers, university and industry researchers, grain elevator operators, consumers, and agricultural product exporters.

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					○ Poultry & Animal Health protects domestic animals and poultry from the spread of infectious diseases, including those transmissible to humans. ○ The Thoroughbred Racing Commission regulates this sport by upholding the rules and regulations of thoroughbred racing as set by Delaware code. ○ Weights & Measures safeguards the public against fraud during transactions that require weighing, measuring and/or counting, including gas pumps, grocery scales and home fuel delivery trucks, and inspects food labels for accurate weight and count.
Delaware Innovation Space		x		x	• The Innovation Space fuels the growth of science-based startups and entrepreneurs through best-in-class labs and customized support. Scientists, business leaders, community members, investors, and service providers in the industrial biotech, advanced materials, chemical ingredients, renewable energy, nutrition, and healthcare fields can build business concepts together and accelerate the path to commercialization. • Lab Features ○ Access to a wide variety of leveraged scientific equipment ○ Potable water, sewer, and electricity (selective 208V available) ○ 1 megawatt of generator backup power ○ Low pressure Nitrogen gas (high-pressure available in select labs) ○ High pressure air (select labs) ○ Dry compressed air (select labs) ○ House vacuum ○ Cold and chemical storage rooms ○ Various vented chemistry fume hoods ○ Safety showers ○ Extensive loading dock, service elevator, and service corridor capabilities ○ Biosafety cabinets and clean benches available ○ In-lab vented connections for equipment ○ Deionized water

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					○ Wet ice, dry ice, and liquid nitrogen. ○ Full GB ethernet connection, enhanced cellular in-building antenna, and full Wi-Fi coverage. • The First Fund™ provides up to \$200k in investment resources to early-stage startups in the form of cash, business building expertise, access to scientific equipment and multi-use laboratories, and more. • Spark Factory™ is a virtual pitch event that offers mentoring support to new founders who are beginning to build a startup in the sciences. • Science Inc.™ is a cohort-based virtual accelerator for early-stage startups in the sciences. • Over \$700M in cumulative investment secured by early-stage Innovation Space startup organizations through grants and venture capital • Over 40 Startups supported through its programs and offerings • Over 300 Jobs created by the Innovation Space and its client startup companies
Delaware Prosperity Project	State of Delaware			x	• Delaware Prosperity Partnership (DPP) is the nonprofit <i>state economic development agency</i> that leads Delaware's economic development efforts to attract, grow and retain businesses; build a stronger entrepreneurial and innovation ecosystem; and to support private employers in identifying, recruiting, and developing talent in Delaware. • The DPP team's services include working with prospects to review potential sites, cost-of-living details and funding opportunities, including available tax credits and incentives. ○ Targeted Business Development ○ Attracting Business and Jobs ○ Expanding and Retaining Businesses ○ Coordinating Economic Activity
New Castle County Government Center	New Castle County			x	• The New Castle County Office of Economic Development (OED) is especially focused on supporting its innovation ecosystem. Top initiatives include prioritizing new job creation through entrepreneurship, startup companies, existing small businesses and providing a predictable land use planning process. The OED actively collaborates with the Delaware Prosperity Partnership and State Division of Small Business to expedite the Request for Proposal (RFP) and

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					planning processes for businesses considering relocation to Delaware.
Export Delaware: Delaware Department of State	State of Delaware			x	- Export Delaware is an office within the Delaware Department of State that helps small and medium sized businesses to grow by providing on-site guidance to businesses that are looking to explore export opportunities or to expand their current export activities to new markets. - Export Delaware expanded the strategic export program to include Ireland, Colombia, Singapore, Malaysia and Australia, and additional trade representatives were engaged to support the program. - Export Delaware has received six State Trade Expansion Program (STEP) grant awards from the Small Business Administration. Nearly \$935,000 of grant funds have been distributed to assist Delaware companies to enter and develop markets over the last several years. - To date, Export Delaware has supported more than 96 Delaware companies participate in international business trips around the world. As a result of the activity, the participants have achieved \$148 million in export sales and 52 Delaware jobs have been created.
Downtown Visions	City of Wilmington			x	- Downtown Visions is a registered 501 C (3) nonprofit (#51-0362299) and receives grants to fund community development projects through its Main Street® program. To date, 100% of grants have been used for programs and do not support operating expenses. - Main Street Wilmington Program has created 1,800+ jobs, restored 53 buildings, issued 72 grants, and brought over 194 new businesses to Downtown since 2010.
World Trade Center Delaware		x	x		- World Trade Center Delaware is a non-profit organization that assists small businesses effectively enter international markets. They provide guidance on regulations and explain the intricacies of the global market to businesses who do not have the means or resources to do so themselves. Small businesses are also given access to World Trade Center Delaware regular seminars and workshops on issues of critical interest to companies operating in the global marketplace. - With locations across the world and a network covering multiple industries, World Trade Center Delaware provides access to key contacts

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					in every major global market. World Trade Center Delaware provide discussions, seminars, online training, and customized assistance to its member companies, providing valuable insight and access to contacts from around the world.
Delaware Technology Park (DTP)				x	- The Delaware Technology Park (DTP) is a recognized leading East Coast non-profit research park, providing development-stage life science, information technology, advanced materials, and renewable energy companies with access to the resources and connections needed to drive and accelerate their economic success. - Delaware Technology Park (DTP) is currently home to 54 tenants, ranging from multinational corporations to university spinouts and support organizations. The DTP facility houses five buildings, three multi-tenant buildings, the Delaware Biotechnology Institute, and the Fraunhofer USA Center for Molecular Biotechnology. DTP has a laboratory extension called DTP@STAR on UD's STAR Campus. DTP offers cutting-edge physical infrastructure, including wet labs, office space, conference facilities and a park-wide fiber optic network, to meet the varying needs of its companies and organizations. - Since its inception, DTP has housed more than 75 companies, including 25 companies that have matured and graduated from the Park. There has been \$300 million invested in the Park and an additional \$300 million given to DTP organizations through research grants. DTP has helped create more than 16,000 new jobs in the community.
Delaware Sustainable Chemistry Alliance (DESCA)				x	- DESCA drives innovation and collaborative partnerships between major strategics, startups and universities by offering hands-on workshops, lunch & learns, connections to industry and subject matter experts, as well as events focused on access to capital through its suite of Innovation 2 Invoice programs geared to early-stage deep tech startups, with a focus on sustainable innovation - Tech2MarketSM introduces early-stage startups, technologists, and innovations to foundational product commercialization concepts to help them better leverage their ROI on existing

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					programs offered by the Delaware entrepreneurial ecosystem. The perfect precursor to NSF iCorps, Tech2MarketSM is designed and led by chemical industry leaders and takes innovators and researchers out of academia to give them a taste of business and the world of technology commercialization. The program is highly focused on introducing business tools and applying those tools to real world examples in industry.
La Plaza Delaware	Sussex County			x	- La Plaza Delaware is a non-profit organization created to enhance the business opportunities, business acumen, and success of Latino and minority-owned businesses. - Training in business plans - Specialized workshops - Business and financial advice - Business support groups (Master Mints) - Business Loan Help - Special events
Delaware Alliance for Nonprofit Advancement (DANA)		x			- DANA's Member Services includes access to Standards for Excellence material, posting of job openings, discounts on resources such as GrantStation, HR solutions, D&O insurance, and retirement programs. - DANA's Excellence Academy provides a range of education, networking, and consulting services to help nonprofit boards, leaders, and their staff navigate governance, strategy, policy issues, and more. - DANA builds nonprofit sector capacity by serving as a voice for federal and state public policy issues, bringing nonprofits together through its conference and collaborative initiatives, and providing research on nonprofit trends. 82 Nonprofit organizations advanced with DANA's Excellence Academy in 2019 730 People participated in DANA programs during 2019 6443 followers on social media platforms in 2019

11.4 ANECDOTAL INTERVIEWS WITH EXECUTIVE DIRECTORS

Several city, state, and local organizations were identified that provide technical and financial assistance to small, minority and woman-owned business enterprises in the City of Wilmington and throughout the state of Delaware. M³ Consulting sought to interview Executive Directors of this organizations to determine their experiences working with small, minority and women-owned businesses. Out of the forty-one Executive Directors contacted, nine (9) agreed to one-on-one in-depth interviews. The organizations were derived from these sectors:

- Goal-Based and Other Targeted Procurement Programs
- Management and Technical Assistance Providers
- Financial Assistance Providers
- Community and Economic Development Organizations
- Chambers of Commerce
- Trade Organizations and Business Associations
- Other Advocacy Groups

Race Neutral Interview Findings

The following sections indicate the recurrent themes in the discussions found throughout the interviews. Each theme includes anecdotal comments directly from the interviewees illustrating the topic heading.

- Theme 1: Lack of Parity, Inclusiveness, Diversity, Discrimination
- Theme 2: Issues Specific to City of Wilmington
- Theme 3: Access to Capital (Funding)
- Theme 4: Access to Information, Communication, Technology (Too many agencies)
- Theme 5: Small Business Programs and Certifications (Uniform Certification)
- Theme: 6: Training and Education (Understanding How To Bid)
- Theme 7: Suggestions and Comments

Theme 1: Lack of Parity, Inclusiveness, Diversity

Race Neutral (RN), Interviewee 1 (I1), Director, Goal-Based Program

RN, I1 feels “a lot of what I hear from my community is that the relationships with the primes aren't that great. So, I guess that would have—we have to take a deep dive into that and see how they're working with the diverse suppliers. There's a lot of issues there.”

RN, I1 talks about their certification program, saying “I know a lot of different states, outside organizations, they include women in their minority designation. We do not do that. So, because we don't do that, we do find that a lot of our—prime construction companies, let's just say, they utilize the women to kind of get that designation status. So, there's a fight there. Because we don't designate women as minorities.”

RN, I1 “We do see that we have some successes with our Black and Brown businesses, but you have to kind of break that down because they're different groups of minorities, right? So, you have your African Americans, your Hispanic Americans, Native American. Breaking that down, we see that the population of our Asian American community is very small. But they make up the most in terms of dollar amounts.”

Race Neutral (RN), Interviewee 4 (I4), Member Director, Chamber of Commerce

RN, I4 talks about the impact of African American-owned businesses. “[T]he benefit that Black businesses can bring that no other type of business can...They can help better address economic issues, poverty issues, bring those individuals out of that type of situation, giving them hope, and giving them a more personal involvement of what's going on.”

RN, I4 discusses types of contracts African American-owned businesses are awarded, “There are very few Black-owned construction companies because there's really not a lot of rewards. So, a lot of times, the janitorial services, the lower end—I shouldn't say lower end, but those type of services that provide cleaning, whatever, they are more successful as far as getting contracts. But the construction companies themselves, Black-owned, there is a serious void. There are a few, but they're not enough. And they're not one of the inside track—or they're not on the inside track to gain these type of contracts from the state or the city right now.”

Race Neutral (RN), Interviewee 5 (I5), Executive Director, Community and Economic Development Organization

In discussing leadership commitment, I5 stated, “And so if there is not real intent at the top, it's very hard to move this dial forward and kind of create the ecosystem across the state to really improve opportunities for Black, Hispanic, and woman-owned businesses.”

RN, I5 sees a lack of parity and potential discrimination within the Hispanic community by noting, “these are some of the barriers, really understanding the system itself and having guidance. Not just having a website in Spanish, but actually investing in the kind of support that's needed so that somebody could sit down with you and walk you through this. Because you're just not only in another language, it's another culture.”

RN, I5 talks about an engagement with a trade association. “It's a trade association...It's a national association, but I had a discussion, actually, this week with the executive director. And they have all kinds of training and workshops. And they work with contractors mostly to get into—not only to get information, but to do networking and to help them to get jobs. And it's like this huge industry association. And I asked him, first of all, I'd like to get some of those workshops going. We're going to do a whole contractor series for our businesses in Spanish. So, I said, would you like to partner?” The Executive Director responded by stated that her team would have a translator at the training in Sussex County. “I can't ask people to come down to Sussex County. It's going to take twice as long. They need to be able to hear it. And see it, not just have a translator. The material, the presentation, the teacher.” I said important information is important having in your own language. If I had to go to the doctor and the doctor didn't speak English and was only speaking Spanish, I'd be in trouble. I need to know important information in my language. And she was having a little bit of a fit over it.”

Race Neutral (RN), Interviewee 6 (I6), Executive Director, Targeted Small Business Program

RN, I6 feels that minority-owned businesses “[a]s a whole, they don't have the strength and power and advocacy to get the dollars, get the resources, get the contracts that they should. And I do think that people have been trying. I think there's been some progress, but not enough.”

Theme 2: Issues Specific to Wilmington

Race Neutral (RN), Interviewee 1 (I1), Director, Goal-Based Program

RN, I1 states regarding the City of Wilmington, “I am very proud of what the city is doing in terms of the use of the ARPA funds and the initiative that they're taking and then realizing that, hey, we have to build up our communities. And that's not only kind of like building up the community in a aesthetic sense, but

making sure that we use minority or Black, specifically Black contractors in certain parts of the city where the population is predominantly Black.”

Race Neutral (RN), Interviewee 3 (I3), Executive Director, Community and Economic Development Organization

RN, I3 stated that “we probably need better contacts and relationships with the City of Wilmington. I don't know where to go in the City of Wilmington to look for grants. I don't know who to tell people to talk to. So, if we could get that information—if we could get a contact in the City of Wilmington who could come to our chapter meeting or talk to us about how we can interact with the City of Wilmington and make those grants visible, we would love to be able to do that.”

RN, I3 says that “When you talk about doing business in the City of Wilmington, and you talk about the areas that really need that—I guess, Hilltop and the south side of Wilmington and the east side of Wilmington in there.

RN, I3 feels as though the city has issues. “[Q]uite frankly, there's probably a trust issue with anybody that's there, and we just are not anywhere close to the culture. So, we need people in our chapter who can have credibility and understand what the real challenges are for an entrepreneur in there. There's crime; there's an employment issue; there's all kinds of issues that I probably am not even aware of that are barriers. So, we can teach somebody how to do a balance sheet, but we can't really teach them how to... really appreciate how to help them cope with the day-to-day issues they're going to have in actually starting that business.” They continue to say, “We would like to have some inroads into the City of Wilmington—what kind of programs they're offering-- who we can contact when we have-- because we do a lot of referrals and that sort of thing.”

Race Neutral (RN), Interviewee 4 (I4), Member Director, Chamber of Commerce

RN, I4 says the City has seen success. “[W]e've had some individuals who have done very, very well in the city. And we're trying to get those individuals to help us help other individuals; to teach them these basic fundamentals that they will need to have to be successful.”

RN, I4 shared that within the City of Wilmington “what I'm seeing is not enough pressure is being put on the primes to hire a lot of minority subs currently, and there's not enough minority primes who are winning business in that space. So there needs to be a lot more pressure. There's not enough. I met people in that area, and they voice their need, but they really don't see the follow up and follow through.”

Race Neutral (RN), Interviewee 5 (I5), Executive Director, Community and Economic Development Organization

RN, I5 expresses the desire for change within the city, stating “pretty much working on these same issues for 30 years or more. And the battle's never over. So, there's lots of good intentions, but it will require a major system change and someone who's really willing to go for it.”

RN, I5 states that “if you don't have culturally competent approach to what you're doing, you can have all the good intentions and all the great programs in the world, and they're just not going to look up. They're not going to see you. They're not going to hear you. They're not going to get involved. But when the pastor says, hey, we're having somebody who's going to talk about business and come on and it's in the church, the room is packed. So, we're in the churches.”

RN, I5 believes that “I really think that for Latinos - I would say probably for everybody - you really need to have kind of like a guide to walk you through the process and the system to be able to qualify and get all those things done, meet all the requirements that need to be met, especially when it's in another language. It's so foreign. And then just communicating, in general, working, maybe going through the faith-based community to promote opportunities, business opportunities. People don't think about it, but a lot of people go to church.”

RN, I5 thinks that “when it comes time to working with the businesses and communicating, they should be hiring African American- and Latino-owned marketing firms so they're communicating properly. Because what they'll do is they'll just do Google Translate.”

RN, I5 feels as though, “They got to put the resources, and they have to think, how do we reach the community, how do we help them to take advantage of these opportunities, if they're serious.”

Race Neutral (RN), Interviewee 7 (I7), Chief Executive Director, Community and Economic Development Organization

RN, I7 speaks about the need to collect data “in order to have a development plan, one would need to start, like Atlanta did, with having commitment to understand who is in a landscape. How can you have a development plan and make commitments, and I'm going to call them, quote, as, just make “commitments,” that X of dollars will be going towards X, right, if you don't even know how many black and brown minority-owned, women-owned, veteran-owned businesses you have in the city of Wilmington? We do not collect that data, and we've been advocating for the last two or three years through council and others for the City of Wilmington to adjust—just put three more fields: collect demographic data in your business license. Apparently, it's a very difficult task.”

Race Neutral (RN), Interviewee 9 (I9), Executive Director, Targeted Small Business Program

RN, I9 stated that the City of Wilmington had a good reputation for its DBE program, in that it did not have the same stringent requirements for qualifying as a DBE. "So, the city did better than the state with respect to designating people as DBEs with our definition. The state may do better with payment turnaround, and the county seemed to be challenged with respect to apprenticeship requirements."

RN, I9 reflected that the City did not adequately track DBE utilization and was not ready to expend resources to update its data capture systems. Even though the City had goals, the response to addressing tracking through its data systems was, "Oh, it's going to be 10 or 20 thousand dollars to add that field to the accounting system." Because of this unwillingness to update or adjust systems, the City was unable to track by contract type or DBE status.

RN, I9 focused on the need for the City to scale its contracts in a manner that allows more companies to bid on its projects. "A lot of times...the scale of the project may outpace the financial capacity of a business to handle a project of a certain size or, from a staffing standpoint, their own internal capacity to perform on a contract. So, then it goes back to those same limitations we spoke to earlier, capital and human resources. So, I would say the state of contracting—it could be better if the way the city let contracts was intentional with respect to scale. Do we have some projects that we can scale a certain kind of way to make sure that not just the big guys are able to take advantage of it?"

RN, I9 discussed the reason it is difficult for DBEs to obtain subcontracts. "[T]hey're not successful because the subcontracting function is a private industry function. And so, if there isn't a concerted effort on the part of private contractors to do it, then it just doesn't exist. And there's no enforceable mandate that can come from the city to make anybody do it. So, if your plumber is your plumber and your electrician is your electrician and they've been that all these years, you're not going to go out of your way to source a small or minority firm when you already have your group set up.

RN, I9 talked about the disconnect between the Procurement Department and OED as it relates to oversight of the DBE Program. "[Procurement's] job is to procure goods and services at the most competitive rate from a qualified supplier. Period. All of this whether they're black or included or poverty, that was economic development's issue. So, there's a disconnect between the mandate of that department—not that they don't have a heart for it or don't want to, but at the end of the day, they just need to buy goods and services at the most competitive price. And their system will track that, what we bought and how much we paid and how many bids we got, but it doesn't get into all this other stuff that we were talking about. And the system was built for them. It's an accounting system..."

RN, I9 discussed the need for businesses to have sufficient capital and human resources to operate efficiently. "So capital, I would say. I would say the digital divide is huge. So, making sure that we're helping

businesses with their digital transformations and making sure they're using technology in all aspects of their business, from marketing to finances, managing their finances and all. So those are two big ones. And then this affects every business, though. So human resources. Are they developing enough capacity to grow the business? So, a lot of times, the small business owners wear all the hats. And so how do we get businesses to, first of all, generate enough revenue to then bring people in? But then when it comes time to bring people in, how are they building their staff and their capacity?"

RN, I9 talked about the abundance of resources available to businesses in Delaware. Because I would say Delaware has a really robust resource ecosystem for businesses. "So even if the city can't solve all your problems, there's so many other touch points and resources that can start to pour into your plan and your concept and into your growth strategy to hopefully get you to the next steps."

In offering suggestions, RN, I9 focused on data tracking. "Well, first, investing in the data and the transparency to see what we have. Where are we now? I don't know if they gave you any records. They may not have been able to do that or maybe they have. At that time, they didn't have any data. But let's say, "Where are we now?" And we're actually getting accurate data. To me, that's low-hanging fruit. How to turn that on and capture that throughout the process, at Tier 1 and Tier 2. At the various tiers, how can they add just one layer of reporting or information gathering to capture that Tier 2? Because maybe there is more impact and we just can't see it...So number of local hires, number of minorities. And when you add those other measures up in addition to price, as long as the price is not more than 10 or 20 percent plus or minus, then this one wins because the score is where it is, the economic value. And that's a whole different rating."

Theme 3: Access to Capital

Race Neutral (RN), Interviewee 1 (I1), Director, Goal-Based Program

RN, I1 believes that "access to capital is number one. I mean, they don't have the financial resources to be able to be in a space as some of the other businesses."

RN, I1 expresses the difficulty for minority-owned business, "A lot of our contractors or subcontractors have issues. We have a lot of subs, very few primes. And a lot of that is because of the bonding."

Race Neutral (RN), Interviewee 3 (I3), Executive Director, Community and Economic Development Organization

RN, I3 sees the need for guidance and education stating, "And so the first thing that we have to tell them is, 'How is your personal financial situation, and how much are you willing to contribute to the business?' Because I know that the answer's going to be, 'I don't have any money to contribute, and my credit rating

is 580,' or something like that. So, it's very challenging. And, from a mentoring standpoint, you want your people to be successful, but you know they're starting in a hole."

Race Neutral (RN), Interviewee 4 (I4), Member Director, Chamber of Commerce

RN, I4 believes that the advising and hands-on assistance the Chamber offered business owners in completing the PPP loan applications really made a difference. "We had 127 people that we helped with the PPP loan process when it was at its height. People who were having problems just filling out an application or getting everything in line. We really did a lot of work on their behalf to get them ready in the process. We had a lot of people funded."

RN, I4 stresses the need for assisting the minority community in accessing capital stating, "a lot of them aren't prepared to access capital. Accessing capital is number one, but they're not really prepared to access capital. So, a lot of times they don't have their—like I say, they may not have an LLC, or they will have an LLC, but they don't have a lot of financial information ready at hand, they would maybe come in with funds. They don't do a good job with accounting."

Race Neutral (RN), Interviewee 5 (I5), Executive Director, Community and Economic Development Organization

RN, I5 says that funding is available. "So, what we do is we partner with [local organization] with their Launcher program, their small business plan program. And we also partnership with [local organization] - so you know them - to provide access to credit. And then we partner with a local organization here. And now, we're looking at—what we did is we put together this package of business plan development, access to capital, and one-on-one business coaching. And we're also partnering with local nonprofit in [DC Organization], which is already out there providing services to the Latino community."

RN, I5 continues to say "This time, we bring in bankers, and with [local organization], we talk a lot about investing in your business to grow because the research shows that with Latino companies, while there's a lot of them, they don't grow because they're risk-averse when it comes to borrowing. So, they only want to borrow from family and friends."

Race Neutral (RN), Interviewee 6 (I6), Executive Director, Targeted Small Business Program

RN, I6 sees the challenges minorities face while accessing capital by saying, "And sometimes it's internal, like, 'Oh am I good enough?' Sometimes it's, 'I'm really trying harder. I'm working twice as hard as everybody else. And my revenues don't show it. The quality of my employees don't show it. When I go and do an investor pitch, I don't have 29 people swarming me like the 19-year-old white guy who's working out of his garage does. So yeah. Like is there something the matter with me?' So, there's this confidence

issue, sometimes internal, but often external, quite frankly, I think due to institutional and societal racism. It's really tough when you're the salmon swimming upstream. The positive for the salmon is it's in their nature. And statistically, they know how to swim upstream. And where they choose to swim upstream, most of them make it. In a country where the institutional racism is baked into our laws literally, that's why it's institutional and systemic, it's tough. So, I think what our program does is by encouraging—really reaching out to different state chambers, so in Delaware, we work with the Delaware State Chamber, by asking our alumni who are part of professional associations, trade associations, we ask them to share their story. We often partner with them to share their story. They continue to say they don't have the resources and the connection. And then they don't get the funding. So that's the program.”

Race Neutral (RN), Interviewee 9 (I9), Executive Director, Targeted Small Business Program

RN, I9 discussed the need for DBEs to be prepared to provide necessary documentation to qualify for available resources. “We're very well versed in helping businesses understand how to qualify for various resources. However, if you have not prepared ahead of time to qualify, then there's nothing I can do other than teach you what you need to do to be prepared next time. So, for instance, when the disaster relief funding came out in response to COVID-19, the government was willing to give out money, but they asked you to be ready with certain kinds of documents. And if your financial management systems weren't in order sufficiently for you to produce that and turn that around, you weren't able to take advantage of it. So, I believe we have what we need to help the businesses, but there needs to be, I guess, just more of a push to get businesses in the proper position so that they can take advantage of various opportunities with respect to capital, whether it's grants or loans or whatever it may be, so.

Theme 4: Access to Information, Communication, Technology

Race Neutral (RN), Interviewee 1 (I1), Director, Goal-Based Program

RN, I1 explains the current state of accessing information. “The state does have what we call the Delaware Learning Center, where employees can kind of go in and take different classes on a variety of different things, management, all that kind of stuff. There is a procurement section.”

RN, I1 describes some of the educational training available. “We do what we call vendor day training. We actually had day one this morning. It's a two-day training on how to do business with the state, right? So, the training is put on at least four times a year, once a quarter, and it's put on by government support services, people in the contracting unit. I participate to do my piece about supplier diversity and how that connects with procurement. And so essentially, what we teach is we teach individuals how to use the transparency site to their advantage. So whatever contract is going on with the state, you can find out exactly what it is. So, in terms of the advertised contracts, those central contracts, of course, there's a central directory.”

Race Neutral (RN), Interviewee 2 (I2), Executive Director, Community and Economic Development Organization

RN, I2 explains one of the biggest obstacles, “But what I had found was that probably the biggest thing is just awareness in the community—getting our name out there so that people understand that we are a resource. And everybody that I talk to is so blown away when there's no charge. We're free. I always brag about that. We're free.”

RN, I2 continues to say that “We hear a lot of people looking for grants. There's someone out there spreading lies that grants are so easy to get, and there's a billion of them out there, and there's a lot of free money out there; there are lots of grants out there, but there's ways to go about it. And it's not as easy to get that money as some people may be led to believe.”

Race Neutral (RN), Interviewee 3 (I3), Executive Director, Community and Economic Development Organization

RN, I3 stated that “We partner with over 12 of the small business chambers in the State of Delaware, including a new partnership last year with the Delaware Black Small Business Chamber. Our hope is to continue to work with other organizations to meet the needs of business owners. A lot of us operate in silos.”

Race Neutral (RN), Interviewee 5 (I5), Executive Director, Community and Economic Development Organization

RN, I5 believes that one of the issues is “number one, doing business in English. Hispanic’s want to, but there's a lot they don't understand. And then when it comes to the system, the licenses, the permits, the insurance, the workman's comp, all these things, not only is it complicated but it's expensive. So, if you don't really understand everything that's required by the system.”

RN, I5 states that most contractors are “all in residential. And because they don't know about minority business set-asides, that—they don't know about those programs. So, we're going to do—we're doing a whole workshop on that, how to get certified as a minority-owned business. They don't even know that exists. So how can you compete on those contracts when you don't even know that that's an option?”

Race Neutral (RN), Interviewee 8 (I8), Director, Community and Economic Development Organization

RN, I8 speaks to the system their organization uses to quantify their efforts in inclusivity and economic development, “It's called the Apricot system, and it's an infrastructure, an online infrastructure, where the partners we have relationships with and that we fund to meet the needs and to meet the service needs of our entrepreneurs and businesses, we have asked that each of our partners provide us with their

tracking numbers, right? And we define them as outcomes. And those numbers, we're building it out to put into our system so that everything is in one place. We're able to evaluate and examine our progress and our success and how we can measure that. So, we do have a formal system in place for that, and we're getting it up and running now.”

Theme 5: Small Business Programs and Certification

Race Neutral (RN), Interviewee 1 (I1), Director, Goal-Based Program

RN, I1 says that “we are the office to certify businesses within the state for diverse businesses, which includes minorities, women, veterans, service-disabled veterans, and individuals with disability. We also have what we call the Small Business Focus certification, which is really the certification strictly for about the size of your business, those 50% of the SBA's thresholds.” RN, I1 also says “We also do advocacy work. Whatever legislation is coming along that may affect the clients that we work with, our vendors, we keep an eye out on that. And we also connect them with resource partners throughout the state.”

When asked whether there is a system to track the number of certified M/WBEs, RN, I1 responded “We don't actually have a mechanism to track that, but we do have—so government support services, they're the helm that tracks the spend. So anytime that a vendor is on state contract, we can reach out to government support services and get the spend report. So, we do report on spend in our annual report every year. So, we can track the number of certified vendors who have state contracts.”

RN, I1 “I think a lot of business owners get tripped up on the word goals and then set-asides. My people think set-asides specifically for them when it's really goals and goals are just the goals. You know what I mean? We do have what we call supplier diversity liaisons for each of our state agencies, and their job is to create a supplier diversity plan for their agency. And so, what we do is, if the agency wants to put those items in their plan and if that's their plan, that's the opportunity for them to do that.”

Race Neutral (RN), Interviewee 3 (I3), Executive Director, Community and Economic Development Organization

RN, I3 shared that “[G]etting labeled as a minority business, first off, is a complex issue. Different governments have different processes for doing that; it's a complex process that takes weeks. Again, you need to have a business that's shown success, and it doesn't apply in the civilian world outside of government who have their own organizations for classifying a business as being diverse or not. So, again, it's a whole level of education there as to what that means. Just because you may have the business history to get tagged as a diverse business doesn't mean it's going to be, again, any advantage to you when it comes to going out and looking for business.”

Race Neutral (RN), Interviewee 6 (I6), Executive Director, Targeted Small Business Program

RN, I6 shared “So I think that for the minority businesses that go through the program, they’re gaining, one, a sense of, ‘I’m not alone because I now have had a chance, over a 14-week period, to interact, not only with minority-owned businesses, and to interact with majority-owned businesses.’ So as a black business advisor, I found it very interesting when our first few cohorts were predominantly white males, such to the fact that the people from the city said, ‘Why aren’t more women applying to the program?’ Well, I think part of it was that white men were being accepted. And like white men were like, ‘The Goldman program, I want that stamp on my website.’ But very quickly, I heard white men go, ‘Well the diversity in the class is very interesting,’ meaning, ‘I’ve never talked with a black business person before. I didn’t know that they had legitimate businesses,’ because the press makes it seem like the biggest black business is drug-dealing or gun-selling, which may or may not be true. But certainly, other entities profit from that. The police, et cetera, law enforcement, jails, there’s whole industries built on the backs of black communities.”

Theme 6: Preparedness, Education and Training

Race Neutral (RN), Interviewee 1 (I1), Director, Goal-Based Program

RN, I1 speaks about the investment business owners have to make in their own education of the contracting process “... if you don’t take it [the training] and then you’re asking questions, it’s like, “Did you take the training? Did you take the training? Did you take the training?” It’s a lot of information. And I tell everybody, “You have to take it more than once or maybe twice, but it’s out there for you to grasp.” But the problem also is these are small businesses. Listen, they’re working in their business, and they don’t have time to work on their business. It takes a lot to kind of sit down and be able to go through. Sometimes, it takes them six months just to fill out my application and complete it. So, like I said, it’s trying to balance that, what we can give them, what we can’t give them, and what they need and how they can get it.”

Race Neutral (RN), Interviewee 4 (I4), Member Director, Chamber of Commerce

RN, I4 shared that “currently, we’re doing a lot of education, webinars, a lot of events where we try to put our members in contact with people who can help them get more business, do better business with bigger and larger organizations. We’re trying to fulfill their DE&I initiatives.”

Race Neutral (RN), Interviewee 5 (I5), Executive Director, Community and Economic Development Organization

RN, I5 feels that “with many different agencies on the local, state, and federal level, typically, we do find there are more Latinos in construction and contracting than any other category, if you will. And what we

have found as it relates to the Black community, there has been a lack of education and understanding about trades. And so, I think in some ways, within the Latino community, some of that is just innate in terms of their ability to be able to do a lot of different things. And I think within the Black community, I don't think a lot of us really understand trades because they took trades out of schools. And so even a part of my work is just pushing some of these agencies to share more information about the trades, especially within the Black community. Because even today, electricians, plumbers, I mean, there's such a grave need. And I know so many people who are making so much money because they're just not enough of them."

Race Neutral (RN), Interviewee 9 (I9), Executive Director, Targeted Small Business Program

RN, I9 speaks to the impact of their organization "So in any given year, we might provide one-on-one advising to upwards of 800 clients. I think in my last report, about 350 of them or so were actually identified as black. And then as far as minority, if you look on our-- we keep an impact report online."

Theme 7: Suggestions and Comments

Race Neutral (RN), Interviewee 2 (I2), Executive Director, Community and Economic Development Organization

RN, I2 suggests the "Christina School District is actively working. I've participated in a few of their workshops to kind of make sure that minority businesses know what the state process is, what forms they need, the bonding, all those opportunities so that they can present a successful bid on that project. The department of education does not have to play by state procurement rules. They can do whatever they want to do. And so, because of that, a lot of minority- and women-owned businesses can be left out of the process."

Race Neutral (RN), Interviewee 4 (I4), Member Director, Chamber of Commerce

RN, I4 stated the need to "Make sure that so many minorities win prime contracts or so many minorities are on those subcontracts as well."

Race Neutral (RN), Interviewee 5 (I5), Executive Director, Community and Economic Development Organization

RN, I5 speaks about the business growth withing the Latino community in Southern Delaware. "[T]he Latino community is very entrepreneurial. I mean, they're starting businesses really at an exponential level—nationally, one in four of every new business starts is Latino-owned. And down here, it's probably that or more. Everybody has a business. They come here, they start out working in the poultry plants or

whatever kind of demeaning labor job they can get, and then the next thing, it's like I'm tired of getting stiffed or being treated so bad and I'm just going to start my own thing. And that's what they do."

Race Neutral (RN), Interviewee 6 (I6), Executive Director, Targeted Small Business Program

RN, I6 speaks to organizers launching inclusive initiatives but lack real thought and consideration to getting it done. "[An organization] says 'Oh we must do diversity and inclusion.' And then suddenly, there are all these dollars to help black businesses that are once again controlled by, essentially, the white establishment who's deciding, okay, so we're going to hire some young black marketing street coordinators. And I mean, I'm not saying that that's a bad thing. I'm just saying, okay, so, the executive director of the chamber is getting \$300,000, and you're creating a \$30,000 job for someone that then has to go out and talk to experienced black businesses that have been beaten up for the last 30 years who are like junior." RN, I6 also mentioned "You can't advocate for me within your own organization because you're making \$30,000, and you don't report to the president."

11.5 SUMMARY OF FINDINGS

There are a significant number of race-neutral programs that aid and support to DBEs and SMBEs. M³ Consulting reviewed the offerings of over 41 organizations in the categories of:

- Goal-Based and Other Targeted Procurement Programs
- Management and Technical Assistance Providers
- Financial Assistance Providers
- Community and Economic Development Organizations
- Chambers of Commerce
- Trade Organizations and Business Associations
- Other Advocacy Groups

M³ Consulting interviewed Executive Directors of 9 organizations to determine their experiences working with small, minority and women-owned businesses. The Executive Directors identified the following issues impacting the S/DBEs that they service:

- Importance and availability of Capital (Funding)
- Insufficient access to information, communication, technology
- Need for improved Wilmington commitment to and processes supporting MWDBEs
- Need for training and education on bid process, running a business, goal-based program requirements
- Need for improved engagement with the Hispanic community and other “non-English as a first language” communities
- Lack of parity, inclusiveness, diversity, discrimination

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

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

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

CHAPTER 12: CONCLUSIONS AND RECOMMENDATIONS

12.1 INTRODUCTION

Miller³ Consulting, Inc. (M³ Consulting) was commissioned by the City of Wilmington to conduct a Disparity Study to determine the level of availability of disadvantaged-owned businesses (DBEs) in the City of Wilmington's relevant market and the actual utilization of those firms in the City of Wilmington's contracting opportunities. M³ Consulting conducted several analyses for the City of Wilmington:

- Procurement Analysis
- Statistical Analysis of DBE Availability
- Statistical Analysis of DBE Utilization
- Statistical Analysis of DBE Disparity
- Capacity and Regression Analysis
- Anecdotal Analysis
- Marketplace Sector Analysis
- Race-Neutral Analysis

These analyses provide an overall picture of the environment faced by DBEs in attempting to do business with and in the City of Wilmington.

12.2 CONCLUSIONS REGARDING RACE- AND GENDER-CONSCIOUS GOALS

Based on the statistical findings in the disparity chapter, the utilization of qualified firms as reflected by the percentage of contracts or purchase orders awarded and payments made, when compared to the availability of ready, willing, and able firms (RWASM), appears to be less inclusive than warranted, thus M³ Consulting draws an inference of discrimination against the following race, ethnicity and gender groups:

Table 12.1. Inference of Discrimination Based on Findings of Statistically Significant Disparity By Race/Ethnicity/Gender By Procurement Type					
	Architecture & Engineering (Purchase Orders)	Construction & Construction-Related Services (Contract Awards)	Non-Professional Services (Purchase Orders)	Professional Services (Purchase Orders)	Goods & Supplies (Purchase Orders)
African American	No disparity	No disparity	Disparity*	Disparity*	Disparity*
Asian American	Disparity	Disparity	No Disparity*	No disparity*	Disparity*
Hispanic American	No disparity*	Disparity*	Disparity*	Disparity*	Disparity*
Native American	ND	Disparity	ND	ND	ND
WBE	Disparity	No Disparity*	No Disparity*	Disparity*	Disparity*

Source: M³ Consulting
*Statistically Significant

12.3 RECOMMENDATIONS

Considering the findings discussed in the previous chapters and the disparity conclusions above, M³ Consulting is providing the following recommendations to the City of Wilmington. The recommendations contain both race and gender-neutral and race and gender-conscious elements. The recommendations are grouped within the following categories:

- *Croson* Parameters for Recommendations
- Enhancements to Purchasing Procedures and Practices
- Identification of Race/Gender-Conscious Goal Possibilities

These recommendations consist of a listing of pertinent options from which the City of Wilmington may select in narrow tailoring its efforts in response to the findings of this report. The options combine agency specific and best practices recommendations that are legally defensible considering the factual findings of this study. The City of Wilmington should consider adoption of those recommendations that are considered most appropriate in terms of cost, resources required, likely effectiveness, community acceptance and organizational feasibility.

12.3.1 **CROSON PARAMETERS FOR RECOMMENDATIONS**

If the City of Wilmington chooses to continue to utilize some form of a race and gender-conscious program, it will need to meet the U.S. Supreme Court requirements of *Richmond v. Croson*. Narrow tailoring is the crucial element in crafting appropriate *Croson* remedies. Courts have struck down many M/W/DBE programs due to the failure of local jurisdictions to narrowly tailor their remedies. Once a factual predicate has been established, post-*Croson* case law presents several broad guidelines for crafting recommendations for M/W/DBE programs by a public entity, based on the factual predicate findings.

- Race and gender-conscious M/W/DBE programs should be instituted only after, or in conjunction with, race/gender-neutral programs.
- M/W/DBE programs should not be designed as permanent fixtures in a purchasing system without regard to eradicating bias in standard purchasing operations or in private sector contracting. Consequently, each M/W/DBE program should have a sunset provision, as well as provisions for regular review. Additionally, there is the implication that reform of purchasing systems should be undertaken.
- M/W/DBE programs should have graduation provisions for the M/W/DBEs that have largely overcome the effects of discrimination and no longer need a remedy.

- Rigid numerical quotas run a greater risk of being overturned by judicial review than flexible goals.
- Race and gender-conscious goals, if any, should be tied to M/W/DBE availability and to addressing identified discrimination.
- M/W/DBE programs should limit their impact on the rights and operations of third parties.
- M/W/DBE programs should be limited in scope to only those group(s) and firms that suffer the on-going effects of past or present discrimination.

These measures are designed to address the underlying systemic factors that contributed to the disparity in contracting. Procurement adjustments are considered by the U.S. Supreme Court as race neutral. The Court requires a public entity to employ race neutral means to the degree available. While the statistical findings suggest that the City of Wilmington can continue to utilize race and gender-conscious goals in certain instances, the courts may question if the City of Wilmington has aggressively worked to change its own practices, as well as the City's prime contractor practices, to reduce and eliminate statistical disparities, particularly considering the July 13, 2018, City Auditor Report on the City's DBE Program. A review of the *Croson's* Courts views on this issue is relevant here:

Many of the barriers to minority participation in the construction industry relied upon by the city to justify a racial classification appear to be race neutral. *If MBEs disproportionately lack capital or cannot meet bonding requirements, a race-neutral program of city financing for small firms would, a fortiori, lead to greater minority participation.* The principal opinion in *Fullilove* found that Congress had carefully examined and rejected race-neutral alternatives before enacting the MBE set-aside.³⁰¹

Given the existence of an individualized procedure, the city's only interest in maintaining a quota system rather than investigating the need for remedial action in particular cases would seem to be simple administrative convenience. *But the interest in avoiding the bureaucratic effort necessary to tailor remedial relief to those who truly have suffered the effects of prior discrimination cannot justify a rigid line drawn on the basis of a suspect classification...*³⁰²

Even in the absence of evidence of discrimination, the city has at its disposal a whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races. Simplification of bidding [488 U.S. 469, 510] procedures,

³⁰¹ 488 U.S. 469, 508 (1989)

³⁰² *Id.* at 509.

relaxation of bonding requirements, and training and financial aid for disadvantaged entrepreneurs of all races would open the public contracting market to all those who have suffered the effects of past societal discrimination or neglect. *Many of the formal barriers to new entrants may be the product of bureaucratic inertia more than actual necessity and may have a disproportionate effect on the opportunities open to new minority firms. Their elimination or modification would have little detrimental effect on the city's interests and would serve to increase the opportunities available to minority business without classifying individuals on the basis of race. The city may also act to prohibit discrimination in the provision of credit or bonding by local suppliers and banks. Business as usual should not mean business pursuant to the unthinking exclusion of certain members of our society from its rewards.*³⁰³

(Emphasis added.)

While not controlling for the Third Circuit, the Eleventh Circuit summed it up in this manner:

“The first measure every government ought to undertake to eradicate discrimination is to clean its own house and to ensure that its own operations are run on a strictly race- and ethnicity-neutral basis...”³⁰⁴

12.3.2 ENHANCEMENTS TO PROCUREMENT AND DBE PROCEDURES AND PRACTICES

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

A. Change inclusion focus from programmatic (*compliance* with DBE regulations) to organizational (*commitment* to inclusive procurement environment)

Much of the focus at the City of Wilmington has been on DBE goals for its race and gender-conscious efforts. These efforts, while important to the issues of inclusion are programmatic (related to operation of a specific program) and functional (focused on departmental function) in nature, and not focused on organizational and City-wide enhancements. These programmatic efforts alone do not have a transformative impact on procurement and contracting operations that will lead to real and sustained

³⁰³ *Id.* at 510-511.

³⁰⁴ 122 F.2d 895, 929 (11th Cir. 1997)

change in organizational culture and practices as it relates to doing business with DBEs. Furthermore, the effectiveness of these programmatic efforts will not be maximized until underlying organizational issues impacting the inclusiveness of the City of Wilmington's procurement operations are addressed.

Many of the recommendations below focus on City-wide organizational enhancements that can lead to the transformation of the City of Wilmington's procurement system to become more inclusive, whether or not the City of Wilmington employs race and gender-conscious or race and gender-neutral programmatic initiatives. Further, as we noted in Chapter IV: Statistical Methodology, under EEO requirements, employers must be able to "track" its decision-making points—applicants, promotions, terminations, etc. Similarly, the City of Wilmington should be able to "track" its procurement and contracting-related decision-making points in order to more effectively determine if the City of Wilmington's current practices in any way promote active, or passive, discrimination or other exclusionary practices.

The importance of leadership's commitment and organization-wide implementation cannot be underestimated in either a race and gender-conscious or race and gender-neutral environment. Most of the City of Wilmington's major vendors perform work statewide, nationally and/or internationally and are intimately familiar with responding to various public sector inclusion efforts at the local, state, and federal levels. The degree of responsiveness often correlates to the public entity's degree of commitment to inclusion in which these firms are pursuing contracting opportunities with the City of Wilmington.

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

M³ Consulting does not advocate for a centralized or decentralized procurement process. We seek to determine the impact of either process on the ability of DBEs to contract with a public entity. Without appropriate infrastructure, management and operational support, an unwieldy bureaucracy can be created that serves as a de facto barrier to DBEs. As it relates to the City of Wilmington, the City of Wilmington operates in a decentralized procurement environment that has the overall effect of decreasing accountability and transparency regarding DBE participation, resulting from lack of robust infrastructure and integration, coordination, and delegation. As such, the City of Wilmington should ensure that the Procurement Department has the authority and ability to:

4. Report to the Mayor and City Council on the manner in which the City of Wilmington's annual procurement spend has assisted the City of Wilmington to achieve its objective of increasing DBE participation;
5. Report to the Mayor and City Council, in conjunction with the MWBE Manager, on whether and the way the City of Wilmington has met stated DBE targets at both the prime and subcontractor

levels across procurement categories, inclusive of change orders and work plans, as well as other inclusive procurement initiatives; and,

6. Make recommendations for the utilization of procurement techniques and contracting vehicles that best meet the Mayor and City Council's objectives as it relates to community economic development and inclusive procurement, as well as User Department needs.

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

The City of Wilmington's Procurement Review Committee will also be responsible for developing the City of Wilmington's Action Plan in response to the recommendations contained herein.

C. Identify Community Economic Development and Inclusive Procurement Objectives

To achieve the Vision, Mission and Goals as established by the Mayor and City Council, procurement plays a pivotal role, along with proper planning and budgeting, which starts the execution and implementation of the process that actualizes the Mayor and City Council's community economic development and inclusive procurement objectives. The Procurement Department and the MWBE Office must operate in a manner that is both consistent with the policy objectives established by the Mayor and City Council and programmatically sound. The City can do so through striving toward inclusive procurement, which focuses in an on-going manner on working to ensure that all vendors—regardless of race, ethnicity, gender, national origin, sexual orientation, or disability—can bid and perform on the City's procurement and contracting prime and subcontracting opportunities, thereby participating in the economic prosperity of the Wilmington Area, as well as the MSA. An inclusive procurement environment will incorporate the following elements:

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

- **Relationship Driven**—With the foundation that being opportunity driven provides, the MWBE Office and the City will be in the relationship development business. The Procurement Department and MWBE Office will know its businesses that can do the City's work and ask the business community to share its goal of inclusive economic development.
- **Data Driven**—Sound data and fully integrated systems will provide senior management with the information it needs to report on successfully meeting its objectives and maximizing economic development, equity, organizational performance, along with the other objectives established by the Mayor and City Council.

D. Training and Development

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

- All Procurement, OED and other appropriate Department staff should be provided basic training on both procurement operations, as well as MWBE operations. If feasible, some staff members in OED should become certified buyers through organizations such as National Institute of Government Purchasing and certified compliance officers through organizations such as the American Contract Compliance Association.
- All procurement staff and departmental staff engaged in procurement activity should attend a seminar on the components of the DBE program and establish strategies for achieving established objectives.
- Once Procurement, OED and other appropriate Departmental staff have baseline training, the Procurement Director and the OED Director are then positioned to train on higher level negotiating strategies and tactics in the various procurement categories and for types of goods and services that can be deployed, consistent with the tenets of sound procurement laws and regulations at both the formal and informal levels.

E. Full Implementation of MWBE Programmatic Initiatives

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

But it does not appear that full and aggressive implementation has ever occurred, based on 2018 Audit of the City's DBE Program and M³ Consulting analysis. The City needs to first work to implement its currently

established initiatives before making programmatic adjustments. This can only be done sufficiently when items A-C, listed above, are addressed. The City's current DBE programs require Procurement Department, MWBE and Department staff who are well-grounded in procurement, M/W/DBE programs and supplier diversity to achieve the DBE programs' outlined objectives. Otherwise, these programs and initiatives become no more than subcontractor goal programs, supported by insufficient certification efforts and redundant outreach. In a subcontractor focused program, the responsibility of inclusion is passed on to the City's prime contractors. The City should seek to have direct relationships with diverse businesses at the prime contractor level.

F. Culture Audit

M³ Consulting recommends that the City of Wilmington conduct a culture audit to assist it in moving toward an organizational culture that will more readily support a more inclusive procurement process. The culture audit will allow examination and explanation of the common rules of behavior and underlying beliefs of the City of Wilmington that drives its organization, and the way people approach their work. It also will assist in determining whether the City of Wilmington's current organizational culture is an asset or liability in achieving its Vision and Mission and provides actual evidence for establishing the appropriate direction for the City of Wilmington.

As a tool for diversity and inclusion, the culture audit identifies sources of diversity tension and leverage points that shape culture. It will provide a precise measure of employee perceptions, recommendations for cultural and system interventions for more effective diversity management to support organizational goals. If bias—implicit or unconscious—is one of the factors significantly impacting the City of Wilmington's organizational and procurement culture, a culture audit will root it out. The benefit of the culture audit is that bias is not isolated but viewed in conjunction with other factors. Regressions on the responses to the culture audit can then be run to determine the degree to which bias is a primary factor.

G. Address Data Capture Issues

Critical to creating an inclusive procurement operation at the City of Wilmington is an efficient and integrated procurement data infrastructure. These data recommendations are necessary because:

- Poor data systems can mask discriminatory actions or disparate impact, even where race and gender-conscious goals are utilized. Immediately addressing data issues is critical to protecting against unfairly discontinuing the City of Wilmington's DBE programs due to temporary or permanent injunctions or internal decisions based on incomplete data that may allow the organization to continue to discriminate. Sound, accurate and complete data supports the Mayor, City Council and Legal Department in fairly balancing all legal and regulatory implications, potential challenges, etc. arising from the City of Wilmington's ability to sufficiently state, in this

disparity study and any time thereafter, the level of DBE participation in its procurement and contracting activity.

- We note that in the EEO environment, under 29 CFR Ch. XIV, Part 1607.4.D, a finding of an inference of adverse impact can be drawn from poorly maintained data system not in conformance with data tracking requirements of the regulations. While 49 CFR Part 26 does not have similar language, Section 26.47 covers Bad Faith Administration of the DBE Program.
- More refined and detailed procurement spend analysis cannot be performed without better data capture and tracking. This inability limits programmatic activity, including identification and expansion of the pool of available firms through outreach; setting project-based goals; determining participation and availability at the commodity code level; and tracking decision-making issues at bidding, evaluation, awards and commitments, and post-award utilization.
- To operate a race and gender-neutral procurement operation, the City of Wilmington must be able to adequately monitor and track levels of SBE and DBE participation to anticipate necessary adjustments. Further, under a race and gender-conscious DBE program, tracking allows for proactive and real-time responses that allow the City of Wilmington to utilize race/gender-conscious programs only when necessary, and to respond quickly when tracking reveals that participation is dropping in a race and gender-neutral environment.
- Data efficiency promotes the City of Wilmington's ability to respond to DBE opportunities and challenges quickly and nimbly, such that it does not unnecessarily and perhaps unintentionally perpetuate "government inertia" referenced by Justice Sandra Day O'Connor in the *Croson* decision.

M³ Consulting recommends that the City of Wilmington address the following data issues outlined below to support transparent monitoring, tracking, and reporting. Once these changes are implemented, M³ Consulting recommends that the City of Wilmington update the statistical portion of the disparity study to capture FY 2016 through FY 2020 data to provide both a more accurate reflection of DBE utilization at prime and subcontractor levels and as a test case for its DBE data capture process.

8. **Expand data capture on vendor portal**—The City of Wilmington should require all firms interested in doing business with the City of Wilmington to register through an online vendor portal, including certified DBEs to which the City of Wilmington has identified from outreach and matchmaking efforts. The vendor portal should capture both vendor service using NIGP or NAICs code and vendor contract size preference, as well as annual gross receipts and age of firm on all bidders and sub-bidders. By capturing both sets of information for all vendors, the City of Wilmington now has capacity data that can be utilized, as it solicits vendors for both quotes and bids. In other words, the City of Wilmington has the *rudimentary* information need to transition vendors from simply "ready and willing" to "ready, willing and able."

Additionally, the City of Wilmington should consider the best means of uploading certified DBEs into the vendor portal, such that project availability and project/contract-based goals can be established real-time and inclusive notifications and solicitations and outreach can easily occur.

- 9. Assign commodity codes to bids**—By assigning NIGP or NAICS codes to bids or quotes, the City of Wilmington will increase the accuracy of commodity code tracking, which is essential to reporting DBE participation in specific areas. Further, prime bidders should assign NIGP codes to their sub-bids. M³ Consulting further recommends that the City of Wilmington pre-assign a Procurement Category to the commodity codes in one of five categories:

- Architectural, Engineering and Other Design-Related Professional Services;
- Construction and Construction-Related Professional Services;
- Professional Services;
- Technical or Non-professional Services;
- Goods, Commodities and Supplies.

- 10. Consider utilizing e-procurement or online bid portal to capture bid and quote information**—

Several on-line programs allow for the on-line solicitation of quotes and bid (not simply filing pdfs). Proposals can also be uploaded. This process reduces workloads, while at the same time increasing detailed information available to the City of Wilmington on both bids and quotes. These programs should integrate with ERP and Financial systems.

- a. The Bid Portal should also allow prime vendor access to upload bids/bid tabulations for sub-bid opportunities the prime vendor is letting on a City of Wilmington contract. This will facilitate Good Faith Efforts determinations.
- b. The MWBE Office will need to determine the impact of using the online portal on small businesses who may not be familiar with the technology; training programs and access to technical assistance providers for assistance should be made available to the degree necessary to minimize any negative impact.

- 11. Consider utilizing an off-the-shelf DBE tracking system**—The City of Wilmington should consider utilizing an off-the-shelf DBE tracking system. Several off-the-shelf software packages have been developed for DBE tracking, monitoring, and reporting. These systems should integrate with MUNIS, the City of Wilmington's vendor portal and the City of Wilmington's chosen bid portal—to the degree that current systems can be maximized. This tracking system should also have the capacity to track formal joint venture and mentor-protégé agreements. Further, this system should have the capacity to track awards, commitments at point of contract execution and payments at both the prime and subcontractor level.

12. Develop computerized formats for evaluation score sheets—The City of Wilmington should digitalize its evaluation score sheets, such that the City of Wilmington is positioned to determine that these evaluations are scored in a fair and non-discriminatory manner and that the decision-making process is transparent. By digitalizing evaluation score sheets, the City of Wilmington is also able to assess the fairness of its selection process over time.

13. Track awards, commitments, and payments separately—Decisions made at the point of award can change before a contract is executed or after contract execution, due to change orders and other contractual adjustments. As such, the City of Wilmington should ensure that it can track awards and commitments separately, as well as payments, at both the prime and subcontractor level. This detailed tracking also allows the City of Wilmington to ensure that any changes to agreements between the City of Wilmington and its prime and sub-contractors and vendors is executed in a non-discriminatory fashion.

- a. In developing this tracking process, the City of Wilmington should ensure that there are common identifiers, i.e., vendor numbers, vendor tax-ID, project numbers, agreement numbers, that facilitate easy tracking of individual vendors, as well as projects from the point of requisition and solicitation to project close-out.
- b. As the City of Wilmington determines project management systems that are part of a fully integrated data system, the City of Wilmington should also consider requesting vendor invoices in both PDF and spreadsheet formats to allow the City of Wilmington project managers and engineers to upload detailed commitment and payment information into any chosen software.

By being able to track these areas separately at the prime and subcontractor level, the City of Wilmington is positioned to determine areas where closer scrutiny and deeper dives into its decision-making processes and those of its prime vendors are required to ensure that these decisions are being made in a non-discriminatory manner.

14. Appropriate access—As suggested by one the City of Wilmington official, having a dashboard would be very useful in ensuring staff's ability to respond real-time to DBE participation. As the City of Wilmington accesses appropriate systems and software packages to utilize, the City of Wilmington decision makers should be sure that these systems accommodate appropriate access by staff in Procurement, Finance, MWBE Office and User Departments.

H. Budgeting, Forecasting and Scheduling

On an annual basis, the City of Wilmington should develop a budgeting and forecasting process appropriate for each procurement category that provides project information necessary for planning its

activities as it relates to DBE participation. Master design and construction schedules should also be available. From these sources, the City of Wilmington can make transparent:

- Type of possible opportunities at prime and subcontractor levels, as well as formal and informal levels;
- Funding source; and,
- Timeframe that opportunity may be available.

With this information, the City of Wilmington can begin to (a) provide maximum opportunities for outreach, matchmaking, partnering and bidding (b) project the impact of the City of Wilmington's purchases on economic, business and employment growth in the Wilmington area, and (c) Identify areas where local capacity is needed among both DBEs and Non-DBE firms and begin pre-bid capacity building efforts.

I. Monitor Contracts for Issue of Concentration

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

Furthermore, the City of Wilmington should monitor its contracts to ensure that DBEs are not overly concentrated in certain product areas as a means of the City of Wilmington meeting its DBE goals.

Concentration can be addressed in the following ways:

- Ensure that there is no steering of contracts at the prime or subcontractor levels;
- Expand pool of available firms;
- Expand capacity of available firms; and,
- Ensure that firms repeatedly submitting low bids are not requesting change orders post award or providing substandard work.

12.3.3 LONG-TERM AVAILABILITY AND CAPACITY BUILDING INITIATIVES

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

C. Increasing Pipeline of DBEs

3. The Starting Point: Youth Entrepreneurship

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

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

Efforts can include:

- Youth entrepreneurship and financial literacy programs;
- Mentorship and apprenticeship programs with City and other public and private sector vendors/contractors/consultants;
- Targeted entrepreneurship career tracks, in conjunction with local technical colleges;
- Expanded access to entrepreneurship and financial literacy programs to students' parents/family members;
- Ultimately, providing economically disadvantaged graduates of local school systems who become entrepreneurs with access to the City opportunities through Small/Micro programs, such as set-asides, sheltered markets and mentor/protégé. If they are available to all students, initiatives focused on students that have matriculated at in schools in the Wilmington area would be considered race/gender-neutral, with a desired outcome of promoting economic and social development.

These initiatives should be combined with strong diversity initiatives. Focus should not simply be on anti-bias, but multi-culturalism efforts that build social capital.

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

Currently, certification is focused on identifying the race/gender/ethnicity of firms eligible to participate in its race/gender-conscious programs. This process has resulted in only 95 DBE firms certified, an insufficient pipeline of available firms. Pre-qualification is also used on a selective basis, particularly by

Public Works. These processes can be exclusive and limit the number of available firms. Currently, when the City staff and prime vendors search for “available” minority- and women-owned businesses, they are searching the City certified DBE list, not the list of available firms. As such, as a matter of practice, while there is a larger pool of firms that are available, many of these firms may not be considered, because they cannot be “counted” toward goal attainment or achievement or have not been pre-qualified. We note that there were 94 certified firms on the City’s DBE list, compared to 20,167 in Marketplace Availability based on Data Axle data.

While a necessary part of the City initiatives, the MWBE Office should work to ensure that these processes are promoting inclusion. To do so, the MWBE Office should *start* by identifying all small-, minority- and women-owned firms in the MSA. The Disparity Study assists with this effort by its compilations in availability spreadsheets using data sources from the City, Data Axle and Business Licenses, along with the Master Small/Minority/WBE/DBE certification lists. While all these firms may not meet the RWASM standard, the firms on these lists represent the starting point of the City’s pipeline of available firms. Before proceeding to other initiatives of certification and pre-qualification, the MWBE office should:

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

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

D. Expanding Competition

Due to policies, such as pre-qualification, and practices, such as awarding contracts to a few firms in certain instances, the City has limited competition on its opportunities. the City may expand competition and potentially increase the award of contracts to DBEs in the following ways.

4. Deeper Dive of Bid, RFP and Selection and Evaluation Process

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

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

5. Goal Setting and Other DBE Tools Applied by Threshold

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

In conducting this spend analysis, the City should obtain a greater understanding of the individual opportunities and the dollar values associated with them. The spend analysis allows the City to review these individual opportunities by size. This process is different from unbundling, where the organization starts with the larger contracts and attempts to unbundle them. For example, for projects under \$60,000, there is not a need to unbundle contracts, but to utilize other techniques, such as small business set-asides, to increase participation levels of DBEs.

When individual opportunities are sorted by size, appropriate programmatic efforts by the MWBE office can be established. Furthermore, there is more transparency in contracts awarded, particularly on contracts where more firms are fully capable of competing.

6. Assess Performance of Personnel with Buying Authority

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

12.3.3 EXPANDED DBE INITIATIVES

Based on the outcomes of the Disparity Analysis, the Procurement Analysis and Anecdotal/Race Neutral Testimony, the MWBE Office should consider the following:

A. Promoting DBE Participation at the Prime Contractor Level

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

- Identify prime-level procurement opportunities where a significant pool of DBEs are available;
- Establish prime-level participation targets to ensure that the City of Wilmington is focused on securing participation at the prime level, as well as subcontracting level;
- Improve procurement forecasting to allow for inclusive planning and outreach;
- Utilize race/gender-conscious initiatives, such as goals, evaluation factors, joint venture incentives, price preferences, targeted solicitation;
- Utilize of SBE sheltered market opportunities, where SBE availability supports doing so;
- Provide notice of small business opportunities (below \$60,000) and ensure that DBEs are included in pool of firms being solicited;
- Consistently review pool of DBE sub-bidders and subcontractors to determine those that have done a significant level of subcontracting with the City of Wilmington and/or other public agencies, thereby building a track record to support prime level awards;
- Utilize bid rotation on IDIQs;
- Unbundle contracts into commercially viable units;
- Optimize joint ventures, develop and encourage mentor/protégé program, recognize prime opportunities for distributors (see also Recommendation N);
- Review and revise all technical specifications to exclude proprietary language that discourage DBEs from bidding; and,

- Develop evaluation mechanisms for measuring the City of Wilmington senior management commitment and staff's efforts toward DBE participation in the City of Wilmington contracting opportunities.

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

Utilizing the Seven Phases of a Development ProjectSM defined by M³ Consulting will allow the City of Wilmington to meet its planning, procurement and DBE needs across the life cycle of the development project.

The Seven Phases of a Development ProjectSM, along with possible opportunities (list intended to provide examples, not be exhaustive) at each stage are:

- **Planning**—opportunities exist in the acquisition of right-a-way; acquisition of property; legal services; environmental studies; land use studies; geotechnical studies and feasibility studies.
- **Financing**—opportunities may include investment banking, lobbyists, grant proposers, and legal services.
- **Designing**—design services include both architectural and engineering services, with other additional services that may be required such as geotechnical services, and environmental services. Design services may also include the development of a bulk purchasing plan.
- **Constructing**—these services include prime contractor/subcontractor activities including construction managers, general contractors, tradespeople, and soil testing.
- **Equipping**—involves the furnishing of facilities and buildings.
- **Maintaining**—involves the maintenance of equipment, facilities and buildings.
- **Operating**—covers the provision of those services that contribute to the overall continued function of the facility and buildings.

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

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

To maximize utilization of and inclusion of DBEs in Small Business Set-Asides and Sheltered Market Projects, the City of Wilmington should:

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

D. Address Concerns about Slow Payments

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

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

Bonding

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

- *Waiving bonding requirements.* While bonding may be required by local, state, or federal statute in particular instances, all governmental entities have some latitude in requiring a bond in the first place. Typically, small dollar value contracts are not required to have bonds. An honest assessment of the actual risk involved to the owner ought to be performed before deciding to

always require a bond on every job. In addition, bonds can be required within a certain number of days after bid submittal, rather than with the bid submittal, so that only low bidders, and not unsuccessful bidders, must obtain them.

- *Removing bonding stipulations at subcontract level.* Typically, on larger construction jobs, the owner requires bonds of the prime contractor. This means, essentially, that the total job is bonded. The practice of requiring bonds of subcontractors is just that, a practice. It is not required by the owner. Therefore, the owner may develop a policy that does not permit a prime's requirement of a subcontract bond to constitute a barrier to DBE participation. Both the owner and the prime contractor should be willing to undertake special activities to monitor subcontractors' performance and lend technical assistance, if necessary.
- *Reducing bonding.* Rather than requiring a 100 percent payment and performance bond, consideration also can be given to reducing the dollar coverage of the bond. A 50 percent bond, for example, can be required, thus reducing the size and cost of bonding. In this way, a company's bonding capacity is not reached so quickly, and bonding is made more affordable. The owner benefits by still being protected by a bond and in the form of lower bids since the cost of bonding is built into contractor's bids.
- *Phasing bonding.* This technique can be used in instances where bonding cannot be waived but where there are limitations of the low bidder to obtain a full bond. For example, the owner can divide the job into three phases, each requiring a separate notice to proceed. The successful bidder is then required to obtain a bond for each phase. Upon completion of the first phase of the work, the bond is released, and the contractor is required to provide a second bond in a like amount. This process is then repeated for a third time. The owner thereby accommodates a DBE, SB or MWBE firm that might not otherwise qualify, the owner is still protected from risks, and the contractor builds a track record of completing work under three bonds, thereby building bonding capacity and lowering the cost of bonding.

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

Wrap-Up Insurance

This represents an approach to affording all contractors the necessary insurance to perform public work, while guaranteeing the owner that needed insurance coverage is in place in all critical areas of contracting.

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

F. Joint Ventures, Mentor-Protégé Programs, and Distributorships

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

- Joint Ventures
- Mentor-Protégé
- Distributorships

The MWBE Manager should review and sign off on any teaming arrangements, where the team anticipates receiving DBE participation credit.

G. Effective Matchmaking and Outreach Programs

1. Matchmaking

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

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

- Coordinate matchmaking sessions with forecast release and/or solicitation schedule. In many instances, matchmaking sessions follow pre-bid conferences. Matchmaking sessions can also be utilized to identify available firms for projects in planning stages. While not called matching sessions, the federal government often allows vendors to provide qualification information in pre-bid research to determine the level of competitiveness it can expect once the bid is let.

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

Matchmaking at the subcontractor level. Matchmaking takes on a team building dynamic at this level. Prime contractors/consultants can identify potential DBE team members on upcoming opportunities to be let by the City of Wilmington. To be most effective, the City of Wilmington personnel will be required to have an in-depth knowledge of the capabilities of the pool of certified DBEs. MWBE staff also need to have strong business development skills. *The matchmaking session* should focus on a particular project, either in planning or prior to bid. It is critical for success that matchmaking occur as early in the planning process as possible. Prime contractors, construction managers and large consultants' planning process begin well in advance of the actual Invitation to Bid or Request for Proposal.³⁰⁵ As such, at the time of bid letting, prime contractors and contract managers have often already identified team members to address commercially viable opportunities at the subcontractor level that build a firm's capacity and portfolio. Conformance to DBE requirements often does not produce quality and high-level DBE participation, because these firms are an "appendage" to the team already developed.

In addition to establishing matchmaking initiatives planned around the City of Wilmington's Capital Budgets, the City of Wilmington's legal counsel should consider the legality of including responsiveness to matchmaking efforts as a factor of good faith. Often, prime vendors may attend a matchmaking session, but thereafter prime vendors do not communicate with or make themselves available to DBEs after the session, thus opportunities for these groups do not often materialize as a result.

2. Outreach

³⁰⁵Some government online bid and marketing portals employ staff that is in constant contact with government procurement agents and planning departments to identify projects for its clients that may be in the initial planning stages and not yet included in procurement forecasts and budgets. Member in these portals can cost \$10,000 or more.

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

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

As suggested previously under Recommendation A., the City of Wilmington should always be able to determine that procurement and contracting decision-making is executed in a non-discriminatory manner. We believe it is useful to view RWASM tracking from the standpoint of statistical data supporting applicant flow and compliant reporting:

Figure 12.1 RWASM Tracking	
EEO Applicant Flow	RWASM and Disparity Analysis Equivalent
Labor Force	Potential Availability from Data Axle Firms, Firms Receiving Building Permits and/or Business License, certified DBE firms, non-certified DBE firms, trade organization membership; yellow pages
Potential Applicants	Registered Vendors, Plan Holders, Pre-Qualified Vendors
Actual Applicants	Bidders and Sub-bidders (inclusive of quotes)
Actual Hires	Awardees and Payees
Actual Promotions	Difference between prime and subcontracting opportunities; vendor performance
Actual Terminations	Contract terminations, for convenience and for cause; substitutions

Source: M³ Consulting

In annual reporting on the achievement of DBE efforts to the Mayor and City Council, Procurement and MWBE Manager's reports should also include the degree to which the City of Wilmington's efforts have:

- Promoted and strengthened economic prosperity in the Wilmington area;
- Enhanced competition;
- Expanded business capacity; and,
- Removed barriers and reduced or eliminated disparities.

I. Post-Award Compliance Responsibilities

The City of Wilmington should review the degree to which User Departments are performing contract compliance functions and reporting their efforts to the Procurement Director and MWBE Manager. Post-award utilization responsibilities should minimally include:

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

J. Partnerships with Technical Assistance Providers

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

- Start- up
- Emerging
- Mature

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

K. Working Capital Loans and Paymaster³⁰⁶ Programs + Prompt Pay Requirements

49 CFR Part 26.29 requires the establishment of prompt payment measures by the City of Wilmington and its prime vendors on federal contracts. OCR should work with accounts payable, PDC and M&E to ensure that the City of Wilmington and its prime vendors are paying vendors within the requirements of 49 CFR

³⁰⁶ A paymaster is authorized by the firm to handle the firm's receipts and payment of expenses, including payroll and subcontractor payments.

Part 26. To the extent allowable, the City of Wilmington should extend this requirement to non-federal contracts.

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

12.4 IDENTIFICATION OF RACE/GENDER-CONSCIOUS GOAL POSSIBILITIES

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

12.4.1 ESTABLISHMENT OF RACE- AND GENDER-CONSCIOUS GOALS

The existence of established goals is an effective mechanism for establishing objectives for the City of Wilmington and in achieving the desired outcome of increase DBE participation, when effectively implemented. If operations are inflexible, it falls into a quota.

The annual goal should be utilized by to periodically evaluate the effectiveness of its program and its project-specific efforts, as well as to gauge whether it is appropriate to increase or decrease the mix of more aggressive remedies. To be legally defensible, the annual goal should be a *minimum achievable standard* for Minority/WBE inclusion and not a maximum barometer of exclusion.

In certain categories and for certain groups, race/gender-conscious means are supportable activities toward the achievement of established goals, based on the findings of statistically significant disparity, reflected in Table 12.2 below.

Table 12.2. Categories for Race/Ethnicity/Gender-Conscious and Race/Ethnicity/Gender-Neutral Means of Addressing Disparity By Procurement Type		
	Race and gender-Conscious	Race and gender-Neutral
Architecture and Engineering	None	- African American - Asian American - Hispanic American - Native American - WBEs
Construction and Construction-Related Services	- Hispanic American - WBEs	- African American - Asian American - Native American
Non-Professional Services	- African American - Hispanic American	- Asian American - Native American - WBEs
Professional Services	- African American - Hispanic American - WBEs	- Asian American - Native American
Goods and Supplies	- African American - Asian American - Hispanic American - WBEs	Native American

Source: M³ Consulting

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

Given the recommendations regarding data capture, these categories should be closely monitored, as the City of Wilmington implements the recommendations above, which may result in changes in disparity findings.

While the City of Wilmington should utilize race and gender-neutral means to address participation of the above groups, that does not mean or condone passive or no outreach to these groups, as significant underutilization can emerge or re-emerge with lack of focus by the City of Wilmington to be inclusive.

12.4.2 GOAL-SETTING FORMULAS AND TECHNIQUES

The City of Wilmington has at its disposal a wide-array of goal-setting formulas and techniques, including:

- Bid Preferences
- DBE Goals
- SBE Set-Asides
- DBE evaluation factors

The actual setting of race and gender-conscious or race and gender-neutral goals is a policy decision that requires action by the Mayor and City Council. The Mayor and City Council can establish overall annual policy goals by industry. Project-by-project goals could then be established by staff based upon the relative DBE availability for performance of the specific contract. This type of goal setting would probably be considered the most legally defensible flexible form of goal setting available to the City of Wilmington.

M³ Consulting adds to this list of offerings its own goal-setting formula, which is described below.

A. ATMSM Formula

The Annual Target Method (ATMSM) formula, developed exclusively by M³ Consulting, allows entities to develop goals based on both market conditions (availability) and actual levels of participation by the City of Wilmington (utilization). The ATMSM formula also allows the City of Wilmington to forecast the necessary DBE participation levels to achieve the desired outcome, correcting for stated disparity, by an established date. This methodology has been designed to assist the City of Wilmington to determine its goals through a realistic and statistically valid model.³⁰⁷

To ensure that goals properly reflect the opportunity being bid and that goals do not appear to be set-asides because the same goal for a procurement category is applied to every trade or commodity area within that procurement category, M³ Consulting recommends that the City of Wilmington implement project-by-project goals. The ATMSM formula can still be used, but availability should be computed for each project type and then that availability measure used in the ATMSM formula. To calculate availability by project-type, the City of Wilmington must have a well-functioning Central Bidder Registry or Vendor List.

In the ATMSM formula, *Gp* or the target goal is either availability, weighted availability or a goal established above availability. When calculating the project goal using the ATMSM formula, the project goals become a function of correcting disparity and bringing overall utilization in line with overall availability for a

³⁰⁷ ATM operates most realistically for an organization over time. The ATM is designed to correct for any disparity found. As such, established goals will be higher than availability, if disparity exists. Thus, if an organization attempts to correct for this disparity in a very short period of time, the goal calculations will result in very high numerical percentages. Actual calculations would be based on specific availability and utilization data from the City of Wilmington.

particular procurement category. As such, the project goal will reflect the volume of dollars in a particular trade, commodity, or project area and, thus, calculate its appropriate weight in assisting in correcting overall disparity.

The calculation of ATM^{SM} is a two-step process:

1. A weighted availability measure is developed by using Sum of the Year's Digits method which results in a higher amount of weight being given to an availability measure which is ranked higher or deemed more reliable or important than other weighted availability used to calculate an average. The following formula: $\{N*(N + 1)\}/2$, will calculate the sum of the number of availability measures being averaged.

2. This weighted availability measure is then used in the computation process identified below to establish the actual target goal.

ATMSM Formula

For Computing Annual Targets for Minority and Female Participation

$$ATM = \frac{G_p(TCE_t) - TME_p}{T - P}, TE_a$$

$$T - P$$

Where

G_p = target goal for DBE participation. When the policy goal is used to bring utilization in line with availability, then

TCE_t = total cumulative expenditure at time frame

TE_a = total annual the City of Wilmington expenditure

TME_p = total minority cumulative expenditure at present

T = time frame year

P = present year

B. Race-Neutral Means To Achieve Goals/Targets

The City of Wilmington should first exhaust all race/gender-neutral means to achieve any established target, goal, or benchmark. Race/gender-neutral means include (1) purchasing adjustments, (2) prohibition of discrimination in purchasing, and (3) matchmaking.

C. Race and Gender-Conscious Tools

Again, to be legally defensible, Race/gender-conscious contract goals should be subject to a variety of limitations:

- Race and gender-conscious goals, where allowable at the City of Wilmington, should not be applied to every contract across all purchasing types.
- Race and gender-conscious goals should generally be “good faith efforts” subject to waivers.
- Race and gender-conscious goals should be reviewed by the Procurement Department and OCR to ensure that such goals do not disproportionately fall on one class Non-DBE contractors or subcontractors. For example, awards of all painting subcontracts to minority firms would impose an undue burden on non-minority-owned painting subcontractors.
- Race and gender-conscious goals (in purchasing) for subcontracting should apply to both Non-DBE and DBE prime contractors;
- Firms eligible to benefit from race and gender-conscious goals at the City of Wilmington should be subject to graduation provisions; and
- The City of Wilmington race and gender-conscious elements should be subject to annual review and sunset provisions.

12.5 SUMMARY OF FINDINGS

In summary, Miller³ Consulting, Inc. found that the City of Wilmington purchasing activities suggest that DBEs continue to have some difficulties obtaining significant contracts with the City of Wilmington. In submitting specific findings within the Disparity Study for the City of Wilmington, M³ Consulting formulated recommendations that allow the City of Wilmington to rely upon race and gender-conscious means when necessary to address ongoing hindrances to eliminating disparities, while also addressing DBE participation through race and gender-neutral efforts. Our economic and statistical utilization analyses could serve as part of the policy and procedure-making decisions needed to ensure enhanced and legally defensible DBE participation in the City of Wilmington's purchasing processes.