CITY OF

Memphis

TENNESSEE

2016 Disparity Study
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Griffin & Strong, P.C. is a professional corporation based in Atlanta, Georgia, that is actively engaged in the practice of law, as well as governmental and private consulting. Since the firm's inception in 1992, the public policy consulting division has been continuously directed and controlled by Rodney K. Strong. Attorney Strong has an extensive background in the area of public contracting with specific experience conducting disparity studies. Gregory Price, Ph.D., served as Senior Economist for this Study and reviewed all quantitative aspects of the Study. Michele Clark Jenkins, as the Project Manager, was responsible for the day-to-day aspects of the Study and for executing the methodology. Mrs. Jenkins has extensive experience in managing disparity studies, bench-markings, and goal settings. Imani Strong served as Deputy Project Manager and qualitative research coordinator of the Study. Ms. Strong's expertise in anthropology and prior experience on GSPC studies made her an asset to the execution of this Study, particularly in the analysis of the anecdotal evidence. Susan Johnson handled the administration of the Study, particularly with regard to subcontractor tracking and payments.

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Table of Contents

I. Introduction 8
A. Objectives 9
B. Technical Approach 9
C. Report Organization 10
II. Legal Analysis 11
A. The Strict Scrutiny Test – Compelling Governmental Interest and Narrow Tailoring 11
1. Background & Introduction 11
2. Strict Scrutiny 13
3. Compelling Government Interest 14
B. Anecdotal Evidence as a Means to Establish a Compelling Governmental Interest 15
C. Use of Statistical Evidence to Establish a Compelling Governmental Interest 16
1. Availability 16
2. Utilization 18
3. Disparity Index and Croson 18
4. Standard Deviation 18
5. Statistical Regression Analysis 18
6. Relevant Market Area 19
D. Private Sector Analysis: Passive Participation as a Compelling Governmental Interest 20
E. Narrow Tailoring 22
F. General Observations on the Narrow Tailoring of Remedies 23
G. Intermediate Scrutiny – Gender Specific Programs 24
H. Application of the Strict Scrutiny Standard – Recent Relevant Court Decisions 26
1. Associated General Contractors of America, San Diego Chapter, Inc., v. California Department of Transportation 26
2. Mountain West Holding Co. v. Montana DOT 26
3. M.K. Weeden Construction v. Montana DOT 27
4. Dunnet Bay Construction Co. v. Gary Hannig 27
5. Geyer Signal, Inc. v. Minnesota DOT 27
6. Midwest Fence v. Illinois DOT & Illinois Tollway 28
I. Post Enactment Evidence 28
J. Burdens of Production & Proof 31
K. Standing to File Suit Against MWBE Programs 31
L. Equal Protection Clause Standards 33
M. Local Business Preferences 34
1. Equal Protection Clause 34
2. The Commerce Clause 35

3. Privileges and Immunities Clause 36
4. Implications for LBE Program 36
N. Conclusion 37
III. PURCHASING POLICIES, PROCEDURES, AND THE EQUAL BUSINESS OPPORTUNITY PROGRAM ORDINANCE 38
A. History of Disparity Studies and Remedial Programs 38
1. 1994 D.J. Miller Disparity Study 38
2. 2010 Griffin & Strong, P.C. Disparity Study 39
B. Methodology 40
C. Bonding and Insurance Requirements 46
D. Prompt Payment of Subcontractors and Non-discrimination Policy 49
E. Local Preference & Local Presence 49
F. Management & Technical Assistance Programs and Race Neutral Initiatives 50
G. Equal Business Opportunity Program Analysis 50
H. Conclusions 54
IV. QUANTITATIVE Analysis 57
A. Introduction 57
B. Data Assessment 57
C. Data Setup 58
1. Electronic Data 58
2. Manual Data Entry 58
D. Data Assignment, Cleanup and Verification 58
1. Assignment of Race/Gender/Ethnicity 58
2. Assignment of Business Categories 59
3. Contract Classifications 59
E. Data Source Description 60
1. Bidders' List 60
2. Contracts 60
3. Master Vendor File 60
4. Prime Vendor Questionnaire 61
F. Relevant Market Analysis 61
G. Availability Analysis 67
1. Methodology 67
2. Measurement Basis for Availability 68
3. Capacity 68
4. Availability Estimates 77
H. Utilization Analysis 80
I. Determination of Disparity 89
J. Determining the Significance of Disparity Indices 99

K. Conclusion 99
V. Private Sector Analysis 101
L. Introduction 101
M. Data 103
N. Statistical and Econometric Framework 105
O. The Relative New Firm Entry Propensities of Minority Firm Owners in the City of Memphis 106
1. Are Minority owned Firms Less Likely To Compete for Contracts in the City of Memphis? 107
2. Minority owned Firms And Prime Contracting in the City of Memphis 108
3. Minority owned Firms And Subcontracting in the City of Memphis 111
4. Do Minority owned Firms Face Additional Barriers in Submitting Bids And Securing Contracts With The City of Memphis? 114
P. Conclusion 120
VI. Anecdotal Analysis 121
A. Equal Business Opportunity Ordinance Extension Hearings 121
B. Exposure and Building Capacity of MWBE Firms 122
C. Awareness of "Fronts" and Contractor Fraud 122
D. Certifications 123
E. Goal-Setting and Bid Process 123
F. Bid Information 125
G. Need for the EBO Program 125
H. Informational Meeting 127
I. Anecdotal Interviews 128
1. Prime Contractors and the MWBE Program 129
2. Administrative and Contract Issues 130
3. Informal Networks 130
J. Focus Group 131
K. Public Hearing 133
1. Certification 133
2. Procurement Process 133
3. Local Small Business Set-Asides 134
4. Monitoring and Oversight 134
L. Conclusion 135
VII. Findings and Recommendations 137
A. FINDINGS 137
B. RECOMMENDATIONS 145
C. CONCLUSION 148

TABLE OF FIGURES

Table 1: Relevant Market – Construction (Payment Dollars) 64
Table 2: Relevant Market – A/E (Payment Dollars) 65
Table 3: Relevant Market – Other Professional Services (Payment Dollars) 65
Table 4: Relevant Market – Other Services (Payment Dollars) 66
Table 5: Relevant Market – Goods (Payment Dollars) 66
Table 6: Award Thresholds-Construction 69
Table 7: Award Thresholds-A/E 70
Table 8: Award Thresholds-Other Professional Services 71
Table 9: Award Thresholds-Other Services 72
Table 10: Award Thresholds-Goods 73
Table 11: Award Thresholds-All Work Categories 74
Table 12: Unutilized Capacity by Race/Ethnicity/Gender 75
Table 13: Gross Revenues of Firms for 2014 by Race/Ethnicity/Gender 76
Table 14: Prime Utilization – Construction by Number of Firms 80
Table 15: Prime Utilization – Construction by Dollars 81
Table 16: Prime Utilization – A/E by Number of Firms 82
Table 17: Prime Utilization – A/E by Dollars 82
Table 18: Prime Utilization – Other Professional Services by Number of Firms 83
Table 19: Prime Utilization – Other Professional Services by Dollars 83
Table 20: Prime Utilization – Other Services by Number of Firms 84
Table 21: Prime Utilization – Other Services by Dollars 85
Table 22: Prime Utilization – Goods by Number of Firms 86
Table 23: Prime Utilization – Goods by Dollars 86
Table 24: Prime Vendor Questionnaire Response Rate 87
Table 25: Subcontractor Utilization - Construction by Number of Firms 88
Table 26: Subcontractor Utilization - Construction by Dollars 88
Table 27: Subcontractor Utilization – A/E by Number of Firms 88
Table 28: Subcontractor Utilization – A/E by Dollars 89
Table 29: Disparity Indices – Construction (Prime) 91
Table 30: Disparity Indices – A/E (Prime) 92
Table 31: Disparity Indices – Other Professional Services (Prime) 93
Table 32: Disparity Indices – Other Services (Prime) 94
Table 33: Disparity Indices – Goods (Prime) 95
Table 34: Disparity Indices – Construction (Subcontractor) 97
Table 35: Disparity Indices – A/E (Subcontractor) 98
Table 36: Firm Ownership Type and Revenue Characteristics for the Memphis Tennessee Metropolitan Area (TN, AR, MS) 2012 Survey of Business Owners 102
Table 37: Covariate Summary 104
Table 38: Logit Parameter Estimates (Odds Ratio) 107
Table 39:Ordinal Logit Estimates (Odds Ratio) 108
Table 40: Logit Parameter Estimates (Odds Ratio) 109
Table 41: Logit Parameter Estimates (Odds Ratio) 110
Table 42: Logit Parameter Estimates (Odds Ratio) 112
Table 43: Logit Parameter Estimates (Odds Ratio) 113
Table 44: Logit Parameter Estimates (Odds Ratio) 115
Table 45: Ordinal Logit Parameter Estimates (Odds Ratio) 116
Table 46: Logit Parameter Estimates (Odds Ratio) 117
Table 47: Logit Parameter Estimates (Odds Ratio) 118
Table 48: Logit Parameter Estimates (Odds Ratio): 119
Table 49: Anecdotal Response Frequencies 135
Table 50: Summary of Contract Award Thresholds for FY2010-FY2014 138
Table 51: Summary of Prime Utilization for FY2010-FY2014 139

Table 52: Comparison of Disparity Analysis of Current Study to 2010 Study 140
Table 53: Summary of Disparity Analysis of MWBEs in Prime Contracting.....141
Table 54: Summary of Disparity Analysis of MWBEs in Subcontracting.....141

I. INTRODUCTION

In June, 2015, the City of Memphis, Tennessee ("City") contracted with Griffin & Strong, P.C. ("GSPC") to review the attainment of minority and women owned businesses ("MWBEs") in obtaining awards since the last disparity study was completed in 2010. The purpose for conducting such a review was to determine whether the purposes of the current Equal Business Opportunity ("EBO") ordinance, that was set to expire on June 30, 2015, had likely been fulfilled or not. GSPC determined, after its review of the MWBE Attainment Summaries provided by the City and after conducting public hearings, that the purposes of the EBO Ordinance had not been fulfilled. It further recommended that the City extend the EBO Ordinance until an update to the 2010 Disparity Study could be completed (hereinafter referred to as "2016 Updated Disparity Study" or "Study", the 2010 disparity study hereinafter referred to as "2010 Study"). The full MWBE Attainment Report prepared by GSPC is attached as Appendix A.

The current 2016 Updated Disparity Study and its 2010 predecessor were designed to determine whether existing City efforts have eliminated active and passive discrimination; to analyze city procurement trends and practices for the previous five (5) year periods; and to evaluate various options for future program development. Governmental entities, such as the City, have authorized disparity studies in response to City of Richmond v. J.A. Croson Co.[1] and the cases which followed, to determine whether there has been a compelling interest for remedial procurement programs, based upon ethnicity, race, and gender. The City adopted its current MWBE program in 1995 as a result of the findings in the 1994 Disparity Study, conducted by D.J. Miller & Associates.

The purpose of this disparity study ("Study") is to determine whether there is a disparity between the percentage of minority and women owned businesses ("MWBEs") by industry in the Memphis marketplace and the percentage of dollars that Memphis paid to such MWBE firms, such that the City is an active or passive participant in past or present discrimination.

The Study will collect and analyze relevant data on businesses in the industries of:

1. Construction services
2. Architecture & Engineering ("A/E")
3. Other Professional Services
4. Other Services
5. Goods

The study period for the disparity study is a five (5) year period from July 1, 2009 - June 30, 2014 (FY2010-FY2014).

1 City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).

A. Objectives

The principal objectives of this study are:

1. To determine whether the City, either in the past or currently, engages in discriminatory practices in the solicitation and award of contracts, which, for the purposes of this Study have been categorized as Construction, Architecture and Engineering ("A/E"), Other Professional Services, Other Services, and Goods;

2. To determine if a legally justified need continues to exist for any or all of the City's MWBE programs in accordance with the guidelines set forth by the Supreme Court and relevant subsequent cases; and

3. To recommend modifications to the City's MWBE program based on the findings of this Study.

B. Technical Approach

In conducting this study and preparing our recommendations, GSPC followed a carefully designed work plan that allowed study team members to fully analyze availability, utilization, and disparity with regard to MWBE participation. The final work plan consisted of, but was not limited to, the following major tasks:

- establishing data parameters and finalizing a work plan;
- legal analysis;
- policy and procurement process review and remedial program analysis;
- collecting, organizing, and cleaning data;
- conducting market area analyses;
- conducting product market analysis;
- conducting utilization analyses;
- estimating the availability of qualified firms;
- analyzing the utilization and availability data for disparity and significance;
- conducting private sector analysis including credit and self-employment analysis;
- collecting and analyzing anecdotal information; and
- preparing a final report that presents race- and gender-neutral and narrowly tailored race- and gender-based remedies

C. Report Organization

This report is organized into the following sections, which provide the results of our quantitative and qualitative analysis. In addition to this introductory chapter, this report includes:

- Chapter II, which presents a legal overview of disparity studies and the requirements for race- and gender-conscious programs.
- Chapter III, which provides a review of the City's purchasing policies and practices, particularly as they relate to minority and women owned firms.
- Chapter IV, which presents the methodology used in the collection of statistical data from the City and the analyses of those data as they relate to relative MWBE utilization and availability for prime contractors and subcontractors.
- Chapter V, which presents an analysis of disparities, if any, in the private sector.
- Chapter VI, which provides the analysis of anecdotal data collected from the survey of business owners, personal interviews, focus groups, public hearings, organizational meetings, and emailed comments.
- Chapter VII, a summary of the findings and recommendations based upon the analyses.

II. LEGAL ANALYSIS

A. The Strict Scrutiny Test – Compelling Governmental Interest and Narrow Tailoring

1. Background & Introduction

The primary purpose of this analysis is to provide the legal contextual background for the current Study and offer an expansive overview of the legal principles and leading cases governing the use of race-specific and gender-specific programs utilized by public entities. It is not intended to provide exhaustive legal advice, but rather to provide a framework by which to understand the significance of the statistical, anecdotal and other investigative information provided in subsequent chapters of this Study.

The City, through adoption of the City of Memphis' Equal Business Opportunity Program Ordinance (the "EBO" Program"), seeks to ensure that public contracting opportunities are not foreclosed to qualified and available minority and women owned businesses desiring to participate in City contracting opportunities. The current ordinance was set to sunset on June 30, 2015, but was extended by the Memphis City Council for one year, until September 30, 2016, after this Study is completed. If the 2016 Updated Study indicates an inference of discrimination and if a race- or gender-specific program is recommended, the continuation of the EBO Program, or any amended program, must meet the rigorous constitutional standards required for race- and gender-specific remedies. The current statement of policy of the EBO Program Ordinance evidences the City's strong commitment to its remedial nature: "Under all the circumstances and based on the factual predicate which has been established after careful study and review, the City of Memphis has a compelling interest to fully remedy the ongoing effects of past and present discrimination against minority and women business owners in both the public and private sectors of its marketplace." Memphis Code §Section 2-325(a).

This chapter strives to identify and highlight those case decisions that relate to the investigation into race and gender equality in contracting, the constitutionality of race and/or gender specific programs, and the application of the law therein. While the City of Memphis is primarily concerned with those decisions specifically in the Sixth Circuit due to its geographic location, this analysis requires a broader evaluation of the body of law governing the subject matter, as some case rulings leave issues unsettled and a reliance on other circuits is absolutely necessary.

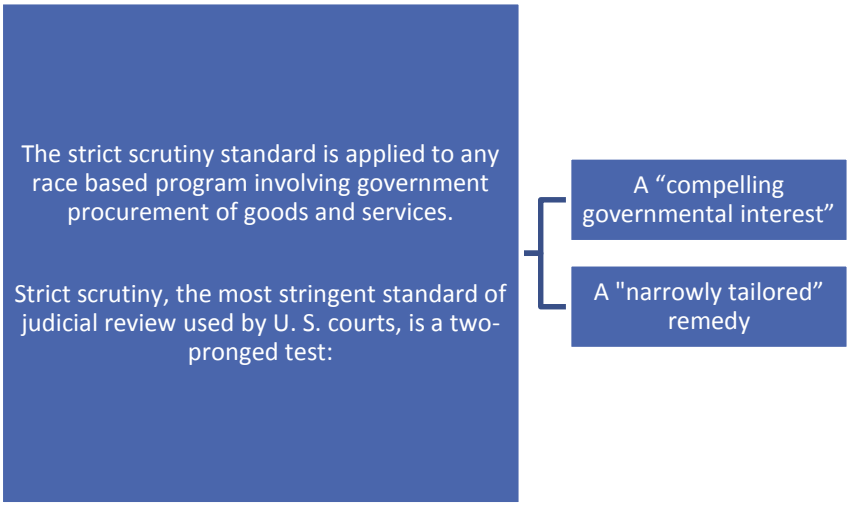
In order to employ "race conscious" remedies to ensure equal opportunity, a municipality must comply with the constitutional requirements, standards and principles of law set forth by the Supreme Court in City of Richmond v. J.A. Croson Company, 488 U.S. 469 (1989), 709 S.Ct. 706, Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S.Ct. 2097 (1995), and their progeny. The Croson decision represents the definitive legal precedent which established "strict scrutiny" as the standard of review by which courts evaluate state and local programs that grant or limit government opportunities based

on race. The Adarand decision subsequently extended the "strict scrutiny" standard of review to race conscious programs enacted by the federal government.

In rendering the Croson decision in January 1989, the U.S. Supreme Court held that the City of Richmond's minority business enterprise ordinance--which mandated that majority owned prime contractors, to whom the City of Richmond had awarded contracts, subcontract 30% of their construction dollars to minority owned subcontractors--violated the equal protection clause of the Fourteenth Amendment to the United States Constitution. In a six-to-three majority decision, the Court held that state and local programs which use race conscious measures to allocate, or "set aside," a portion of public contracting exclusively to minority owned businesses must withstand a "strict scrutiny" standard of judicial review.

The courts clearly held that any race based program involving governmental procurement of goods and services is subject to strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The strict scrutiny standard, the most stringent standard of judicial review used by the United States courts, is a two-pronged test: A “compelling governmental interest” must exist in remedying race discrimination by current “strong evidence” of the persistence of discrimination, and the program adopted must be “narrowly tailored” to remedy the identified discrimination.

While gender based programs have required the application of a lesser standard of review, “intermediate scrutiny,” a few courts have lumped gender in with race and required a higher standard of review at the strict scrutiny level. Intermediate scrutiny requires: The program must serve an “important governmental objective,” and the program must be “substantially related to the achievement of those objectives.”



2. Strict Scrutiny

As previously mentioned, strict scrutiny has two basic components: the public entity must establish race- or ethnicity-specific programs based upon a compelling governmental interest and narrowly tailor those programs to achieve the governmental interest. See also Tennessee Asphalt v. Farris, 942 F.2d 969 (6th Cir. 1991); Eason v. City of Memphis, 9 F.3d 477 (6th Cir. 1993); Engineering Contractors Assoc. of South Florida, Inc. v. Metropolitan Dade County, 122 F.3d 895 (11th Cir. 1997); Associated General Contractors v. Drabik, 214 F.3d 730 (6th Cir. 2000). According to the Croson decision, application of the strict scrutiny standard of review, which is not dependent on the race of those burdened or benefited by the racial classification, assures that the City is pursuing a remedial goal important enough to warrant use of a highly suspect tool and that the means chosen "fit" this compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype. City of Richmond v. J.A. Croson Co., 488 U.S. 469, 472, 109 S. Ct. 706, 711, 102 L. Ed. 2d 854 (1989).

The strict scrutiny test further requires a "searching judicial inquiry into the justification" for the race-conscious remedy to determine whether the classifications are remedial or "in fact, motivated by the illegitimate notions of social inferiority or simple social politics."[2] See also Stefanovic v. University of Tennessee, 1998 U. S. App. LEXIS 1905 (6th Cir. 1998); Doe v. Sundquist, 943 F. Supp. 886 (M.D. Tenn. 1996).

"While we may assume that a practice that is subject to the skeptical, questioning, beady-eyed scrutiny that the law requires when public officials use race to allocate burdens or benefits is not illegal per se, it can survive that intense scrutiny only if the defendants show that they are motivated by a truly powerful and worthy concern and that the racial measure that they have adopted is a plainly apt response to that concern. They must show that they had to do something and had no alternative to what they did. The concern and the response, moreover, must be substantiated and not merely asserted." Wygant v. Jackson Board of Education, 476 U.S. 267, 276-78, 106 S.Ct. 1842, 1848-49, 90 L.Ed.2d 260 (1986) (plurality opinion); Croson, 494-95; Hayes v. North State Law Enforcement Officers Ass'n, 10 F.3d 207, 213-17 (4th Cir.1993); Wittmer v. Peters, 87 F.3d 916, 918-19 (7th Cir. 1996).

"Although all governmental uses of race are subject to strict scrutiny, not all are invalidated by it." Grutter v. Bollinger, 539 U.S. at 326–27, 123 S.Ct. 2325. We employ strict scrutiny to "smoke out" impermissible uses of race by ensuring that the government is pursuing a goal important enough to warrant use of a highly suspect tool. *Id.* at 327, 123 S.Ct. 2325 (internal quotation marks omitted). This heightened standard of review provides 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. Smith v. Univ. of Washington, 392 F.3d 367, 372 (9th Cir.2004). In evaluating the District's plan under strict scrutiny, we also bear in mind the Court's directive that "[c]ontext matters when reviewing race-based governmental action under the Equal Protection Clause." Grutter, 539 U.S. at 326, 123 S.Ct. 2325.

2 488 U.S. at 493.

3. Compelling Government Interest

In order for a local governmental entity to enact a constitutionally valid minority and women owned business enterprise ("MWBE") ordinance in the awarding of contracts, it must show a compelling governmental interest. This compelling interest must be proven by particularized findings of past discrimination. Rutherford v. City of Cleveland, 179 Fed. Appx. 366, 373-375, 2006 U.S. App. LEXIS 13736 (6th Cir. 2006). The strict scrutiny test ensures that the means used to address the compelling goal of remedying past discrimination "fit" so closely that there is little likelihood that the motive for the racial classification is illegitimate racial prejudice or stereotype.[3] The court in Ashton v. City of Memphis, 49 F. Supp.2d 1051 (W. D. Tenn. 1999), noted that courts must "ensure that the government's intent in using affirmative action is benign or remedial rather than illegitimate." Ibid., at 1057 (cited favorably in Rutherford, 2006 U.S. App. LEXIS 13736, p. 32); see also Parents Involved, 127 S.Ct. 2738, 2007 U.S. LEXIS 8670, pp. 10-11. After legislative or administrative findings of constitutional or statutory violations, local governments have a compelling interest in remedying past discrimination.

The courts have ruled that general societal discrimination is insufficient proof to justify the use of race-based measures to satisfy a compelling governmental interest.[4] Rather, there must be some showing of prior discrimination by the governmental actor involved, either as an "active" or "passive" participant.[5] As the Court noted in Tennessee Asphalt, "governmental entities are not restricted to eradicating the effects only of their own discriminatory acts." 942 F.2d at 974.

The governmental entity must point to specific instances or patterns of identifiable discrimination in the area and in the industry to which the plan applies. A *prima facie* case of intentional discrimination is deemed sufficient to support a local government's affirmative action plan. However, generalized assertions that there has been past discrimination in an entire industry provide no guidance for a legislative body to determine the precise scope of the injury it seeks to redress.[6]

In Rutherford, the Court stated "Finally, a valid race-based remedy is not limited to alleviating the current practice of racial discrimination, but can also address the "lingering effects" of such discrimination." See Adarand, 515 U.S. at 237. See also Dean v. City of Shreveport, 438 F.3d 448, 456–57 (5th Cir.2006); Rutherford v. City of Cleveland, 179 F. App'x 366, 377 (6th Cir. 2006). Since all racial classifications are viewed as legally suspect, the governing body must show a "sound basis in the evidence" of discrimination in order to justify any enactment of race-conscious legislation. Merely stating a "benign" or "remedial" purpose does not constitute a "strong basis in evidence" that the remedial plan is necessary, nor does it establish a *prima facie* case of discrimination. See Parents Involved, 127 S.Ct. 2738, 2007 U.S. LEXIS 8670, p. 11 and Johnson v. California, 543 U.S. 499, 505-506, 125 S.Ct. 1141, 160 L.Ed. 2d 949 (2005). Thus, the local government must identify the discrimination it seeks to redress.[7] Particularized findings of discrimination are required under Croson.

3 Croson, 488 U.S. 469, 493. See also, Adarand, 515 U.S. 200, 235, Hopwood v. State of Texas, 78 F.3d 932, 951 (5th Cir. 1996).

4 See Miller v. Johnson, 515 U.S. 900, 922 (1995).

5 Id. at 498, 724.

6 Id. at 498-99, 724. See Miller, 515 U.S. 900, 921.

7 Id. at 500-501, 725.

See also Aiken v. City of Memphis, 190 F.3d 753 (6th Cir. 1999) (re: particularized findings in the context of fair employment plans).

B. Anecdotal Evidence as a Means to Establish a Compelling Governmental Interest

As a means to establish a compelling governmental interest, the majority decision in Croson impliedly permitted the inclusion of personal accounts of discrimination referred to as anecdotal evidence. According to case law, anecdotal evidence, standing alone, suffers the same flaws as statistical evidence. Anecdotal evidence may even be less probative than statistical evidence in the context of proving discriminatory patterns or practices. While anecdotal evidence may suffice to prove individual claims of discrimination, rarely, if ever, can such evidence show a systemic pattern of discrimination necessary for the adoption of an affirmative action plan. See Penk, 816 F.2d at 463–64. Nonetheless, the combination of convincing anecdotal and statistical evidence is potent. In International Brotherhood of Teamsters v. United States, the Court conceded for purposes of argument that "statistics alone" could not support the finding of discrimination, but observed that "[t]he individuals who testified about their personal experiences with the company brought the cold numbers convincingly to life. 431 U.S. 324, 399 (1977).

Evidence about discriminatory practices engaged in by prime contractors, bonding companies, suppliers, professional associations, lenders and other actors relevant to business opportunities has been found relevant regarding barriers to minority firms' business formation and to their success on governmental projects. Adarand Construction v. Slater (hereinafter referred to as "Adarand VI"), 228 F.3d at 1168-1172 (10th Cir. 2000). In Coral Construction Company v. King County, the Ninth Circuit U.S. Court of Appeals concluded that "the combination of convincing anecdotal and statistical evidence" was potent.[8] Also, the Ninth Circuit approved the combination of statistical and anecdotal evidence used by the City of San Francisco in enacting its MWBE ordinances.[9] Additionally, the Third Circuit U.S. Court of Appeals suggested that a combination of empirical and anecdotal evidence was necessary for establishing a prima facie case of discrimination.[10] The Federal District Court in Engineering Contractors held that, "we have found that kind of evidence [anecdotal] to be helpful in the past, but only when it was combined with and reinforced by sufficiently probative statistical evidence."[11]

According to the Croson standard, selective anecdotal evidence about MWBE experiences alone would not provide an ample basis in evidence to demonstrate public or private discrimination in a municipality's construction industry.[12] Nonetheless, personal accounts of actual discrimination or the effects of discriminatory practices may complement empirical evidence. In addition, anecdotal evidence of a governmental entity's institutional practices that provoke discriminatory market

8 941 F.2d at 919.

9 Associated General Contractors of California, Inc. v. Coalition for Economic Equity, et al, 950 F.2d 1401 (9th Cir. 1991), cert. denied 503 U.S. at 985 (1992).

10 Eastern Contractors, 6 F. 3rd 990, 1003 (3rd Cir. 1993).

11 122 F. 3rd at 925 (11th Cir. 1997).

12 See Concrete Works, 36 F. 3rd 1513 (10th Cir. 1994).

conditions have been found to be particularly probative. Thus, courts have required the inclusion of anecdotal evidence of past or present discrimination.[13]

C. Use of Statistical Evidence to Establish a Compelling Governmental Interest

As it relates to statistical evidence to establish a compelling governmental interest, the Supreme Court in Croson stated "where gross statistical disparities can be shown, they alone may in a proper case constitute prima facie proof of a pattern or practice of discrimination." 488 U.S. at 501, (quoting Hazelwood School Division v. United States, 433 U.S. 299, 307-308 (1977)). However, by no means can the statistics compare the general population to the prime construction contracts awarded to minority business enterprises. Croson additionally held that an inference of discrimination may be made with empirical evidence that demonstrates "a significant statistical disparity between the number of qualified minority contractors . . . and the number of such contractors actually engaged by the locality or the locality's prime contractors."[14] See also Aiken at 1163. Additionally, Croson identified the proper statistical evaluation would compare the percentage of MBEs in the relevant market that are qualified to undertake City contracting work with the percentage of total City construction dollars that are presently awarded to minority subcontractors. Croson, 488 U.S. at 501.

1. Availability

A predicate to governmental action is a demonstration that gross statistical disparities exist between the proportion of MWBEs awarded government contracts and the proportion of MWBEs in the local industry "willing and able to do the work,", or available firms, in order to justify its use of race conscious contract measures.[15] See Rutherford, 179 Fed. Appx. at 375-376. In order to adequately assess availability, there must be evidence identifying the basic qualifications of minority contractors "willing and able to do the job" and the Court must determine, based upon these qualifications, the relevant statistical pool with which to make the appropriate statistical comparisons.[16] Croson determined 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."[17] The relevant question is how to determine who is qualified, willing and able."

The methodology utilized to calculate MWBE availability has varied greatly from case to case. "Availability" attempts to quantify the number of qualified minority contractors willing and able to perform a particular service as prime contractors and associated subcontractors for a governmental agency. The primary purpose of quantifying availability is to ultimately determine if there is a

13 See Contractors Assn., 6 F.3d 990, 1002-03 (3rd Cir. 1993) (weighing Philadelphia's anecdotal evidence); Coral Construction Co. v. King County, 941 F.2d 910, 919 (9th Cir. 1991) ("The combination of convincing anecdotal and statistical evidence is potent"); Cone Corp. v. Hillsborough County, 908 F.2d 908, 916 (11th Cir. 1990) (supplementing Hillsborough County's statistical evidence with testimony from MBEs who filed complaints to the County about prime contractors' discriminatory practices), cert. denied, 498 U.S. 983 (1990); Engineering Contractors, 122 F.3d at 925-26.

14 Croson at 509.

15 Ensley Branch, NAACP 31 F3d 1548, 1565 (11th Cir. 1994).

16 122 F. 3rd at 925 (11th Cir. 1997).

17 Croson at 509.

statistically significant disparity between availability of MWBEs and utilization of those identified firms. Accuracy in the determination of availability is required in order to "determine the precise scope of the injury it seeks to remedy" by its program. (Id., 488 U.S. at 498). Availability data must be accurate and evaluated properly to ensure the results are not understated or exaggerated.

The courts have given a wide berth with regard to the data used to determine availability. There is precedent for using bidder data, awardees, payees, census data, publicly available lists and numerous other types of data to determine availability. The important aspect of the determination is that there is methodological support for the firms being qualified, willing, and able. See Webster v. Fulton County, 51 F. Supp. 2d 1354 (N.D. Ga. 1999); Engineering Contractors Association v. Metropolitan Dade County, 122 F.3d. 895 (11th Cir. 1997); Associated General Contractors v. Drabik, 214 F.3d 730 (6th Cir. 2000); H. B. Rowe Co., Inc. v. Tippett, 615 F.3d 233 (2010).

In Contractors Association of Eastern Pennsylvania v. City of Philadelphia, 6 F.3d 990 (3rd Cir. 1993), the court stated that available and qualified minority owned businesses comprise the "relevant statistical pool" for purposes of determining availability. The Court permitted availability to be based on the metropolitan statistical area ("MSA") and local lists of the Office of Minority Opportunity; for Non-MWBEs, census data. In Associated General Contractors of America v. City of Columbus, 936 F. Supp. 1363 (S.D. Ohio 1996), the City's consultants collected data on the number of MWBE firms in the Columbus MSA, in order to calculate the percentage of available MWBE firms. The issue of availability also was examined by the court in Contractors Association of South Florida, Inc., et al v. Metropolitan Dade County, et al, 122 F.3d 895 (11th Cir. 1997). Here, the court opined that when reliance is made upon statistical disparity, and special qualifications are necessary to undertake a particular task, the relevant statistical pool must include only those minority owned firms qualified to provide the requested services. Moreover, these minority firms must be qualified, willing and able to provide the requested services. If the statistical analysis includes the proper pool of eligible minorities, any resulting disparity, in a proper case, may constitute prima facie proof of a pattern or practice of discrimination.

In the opinion by the Sixth Circuit in Associated General Contractors v. Drabik, 214 F.3d 730 (6th Cir. 2000), the Court of Appeals ruled that the State of Ohio failed to satisfy the strict scrutiny standard to justify the State's minority business enterprise act, by relying on statistical evidence that did not account for which firms were qualified, willing and able to perform on construction contracts. The court stated that "although Ohio's most compelling statistical evidence compares the percentage of contracts awarded to minorities to the percentage of minority owned businesses…the problem is that the percentage of minority owned businesses in Ohio (7% of 1978) did not take into account which were construction firms and those who were qualified, willing and able to perform on state construction contracts." Id. at 736. Although this was more data than was submitted in Croson, it was still insufficient under strict scrutiny, according to the court. Id.

2. Utilization

Utilization is the other part of the equation to accompany availability as it pertains to the statistical calculation. In O'Donnell Construction v. District of Columbia, 963 F.2d 420, 426 (DC 1992), the City's consultants calculated the percentage of City contracting dollars that were paid to MWBE construction firms. The rate of utilization is the percentage of dollars expended.

3. Disparity Index and Croson

By comparing availability and utilization, a disparity index is determined. Courts have allowed the use of the disparity index, which is a statistical device, to demonstrate the underutilization of MWBEs in a particular area. The disparity index is calculated by dividing the percentage of MWBE participation in government contracts by the percentage of available MWBEs in the relevant marketplace. A disparity index of one (1) demonstrates full MWBE participation, whereas the closer the index is to zero, the greater the MWBE underutilization. Some courts multiply the disparity index by 100, thereby creating a scale between 0 and 100, with 100 representing full MWBE utilization.

In order to enact a race and/or gender based program, an evidentiary basis of discrimination must be found. In order to satisfy the Constitutional requirements as set by Croson, the compelling interest component is met when the governmental agency presents evidence of underutilization of MWBEs that would give rise to an inference of discrimination in public contracting. Croson at 469.

4. Standard Deviation

The number calculated via the disparity index is then tested for its validity through the application of a standard deviation analysis. Standard deviation analysis measures the probability that a result is a random deviation from the predicted result (the more standard deviations, the lower the probability the result is a random one.) Social scientists consider a finding of two standard deviations significant, meaning that there is about one chance in 20 that the explanation for the deviation could be random and the deviation must be accounted for by some factor. The Eleventh Circuit has directed that "where the difference between the expected value and the observed number is greater than two or three standard deviations, then the hypothesis that [employees] were hired without regard to race would be suspect."[18]

5. Statistical Regression Analysis

1The statistical significance of certain quantitative analyses was another issue that arose in the Webster case, 51 F. Supp. 2d at 1324. The Court indicated that the appropriate test should resemble the one employed in the Engineering Contractors case, wherein two standard deviations or any disparity ratio

18 Peightal II 26 F.3d 1545, 1556 (11th Cir. 1994), quoting Hazelwood, 433 US at 308 n. 13 (quoting Castaneda v. Partida, 430 U.S.482, 497,n.17 (1977).

that was higher than .80 (which is insignificant), should be used. 122 F.3d. at 895. The Webster court criticized the Fulton County expert for failing to use a regression analysis to determine the cause of the disparity. The Court likewise discredited the post-disparity study for failing to use regression analysis to determine if underutilization was due to firm size or inability to obtain bonding and financing.

The Webster Court noted that the Court of Appeals in Engineering Contractors affirmed the District Court's conclusion that the disparities offered by Dade County's experts in that case were better explained by firm size than discrimination. Dade County had conducted a regression analysis to control for firm size after calculating disparity indices with regard to the utilization of BBEs, HBEs and WBEs in the Dade County market, by comparing the number of contracts awarded to the amount each group would be expected to receive based on the group's bidding activity and the awardee success rate. Although there were a few unexplained disparities that remained after controlling for firm size, the District Court concluded (and the Court of Appeals affirmed) that there was no strong basis in evidence for discrimination for BBEs and HBEs and that the quantitative analysis did not sufficiently demonstrate the existence of discrimination against WBEs in the relevant economic sector. Webster, 122 F.3d at 917. Specifically, the Court noted that finding a single explained negative disparity against BBEs for the years 1989-1991 for a single SIC code was not enough to show discrimination.

6. Relevant Market Area

Identification of the relevant market area is critical in evaluating the governmental agency's compelling interest. In order to meet the strict scrutiny standard of review, the agency must empirically establish the geographic and product dimensions of its contracting and procurement market area. Geographically, it has become commonly accepted that the relevant market area be designated as that which accounts for at least 75% of where the agency's offerors come from. This has been permissible measured through bidders, vendors or award dollars.

The Croson Court observed that because discrimination varies across market areas, state and local governments cannot rely on national statistics of discrimination in the disputed industry to draw conclusions about prevailing market conditions in their respective regions.[19] However, to confine the permissible data to a governmental entity's strict geographical borders would ignore the economic reality that contracts are often awarded to firms located in adjacent areas. Thus, courts closely scrutinize pertinent data related to the jurisdictional area of the state or municipality. It has been deemed appropriate to examine the existence of discrimination against MWBEs even when these areas go beyond the political boundaries of the local jurisdictions.

Court decisions have allowed jurisdictions to utilize evidence of discrimination from nearby public entities and from within the relevant private marketplace. Nevertheless, extra-jurisdictional evidence must still pertain to the operation of an industry within geographic boundaries of the jurisdiction. Again, as the court wrote in Tennessee Asphalt, "[s]tates and lesser units of local government are

19 Croson, 488 U.S. at 504.

limited to remedying sufficiently identified past and present discrimination within their own spheres of authority." 942 F. 2d at 974.

With regard to product markets, it is important to analyze only those firms that offer products and services that are the type actually utilized by the agency. As in Drabik, firms that offer services in construction should be the only firms counted in providing construction services.

D. Private Sector Analysis: Passive Participation as a Compelling Governmental Interest

Strict scrutiny requires a strong basis in evidence of either active participation by the government in prior discrimination or passive participation by the government in discrimination by the local industry in the marketplace. In the successful defense of its program, in Concrete Works of Colorado Inc. v. The City and County of Denver, 36 F. 3rd 1513 (10th Cir. 1994), the City of Denver was allowed to show its compelling interest by "evidence of private discrimination in the local construction industry coupled with evidence that it had become a passive participant in that discrimination...[by] linking its spending practices to the private discrimination. Id. at 977.

The Denver Court fell in line with the Court in Croson and its progeny, that government may properly be deemed a "passive participant" when it fails to adjust its procurement practices to account for the effects of identified private discrimination on the availability and utilization of minority owned businesses in government contracting. See Adarand VII, 228 F.3d at 1165 ("[W]e readily conclude that the federal government has a compelling interest in not perpetuating the effects of racial discrimination in its own distribution of federal funds and in remediating the effects of past discrimination in the government contracting markets created by its disbursements."); Sherbrooke, 345 F.3d at 969. DynaLantic Corp. v. U.S. Dep't of Def., 885 F. Supp. 2d 237, 275-76 (D.D.C. 2012).

Thus, the desire for a government entity to prevent the infusion of public funds into a discriminatory industry is enough to satisfy the strict scrutiny requirement. Accordingly, if there is evidence that the City is infusing public funds into a discriminatory industry, then the City has a compelling interest in remedying the effects of such discrimination. However, there must be evidence of exclusion or discriminatory practices by the contractors themselves.

The Court in Concrete Works remarked that "neither Croson nor its progeny clearly state whether private discrimination that is in no way funded with public tax dollars can, by itself, provide the requisite strong basis in evidence necessary to justify a municipality's affirmative action program...Although we do not read Croson as requiring the municipality to identify an exact linkage between its award of public contracts and private discrimination, such evidence would at least enhance the municipality's factual predicate for a racial or gender conscious program." 36 F. 3d 1529. Other courts continue to struggle with this issue.

In Adarand VI 228 F.3d 1147 (10th Cir. 2000), the Tenth Circuit U.S. Court of Appeals addressed the constitutionality of the use in a federal transportation program of a subcontractor compensation clause which employed race-conscious presumptions in favor of minority and disadvantaged business enterprises. In addressing the federal government's evidentiary basis to support its findings of discrimination against minorities in the publicly funded and private construction industry, the Court did not read Croson as requiring that the municipality identify the exact linkage between its award of public contracts and private discrimination. The Tenth Circuit noted that the earlier Concrete Works ruling had not demonstrated the necessary finding of discrimination:

> Unlike Concrete Works, the evidence presented by the government in the present case demonstrates the existence of two kinds of discriminatory barriers to minority subcontracting enterprises, both of which show a strong link between racial disparities in the federal government's disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination. The first discriminatory barriers are to the formation of qualified minority subcontracting enterprises due to private discrimination, precluding from the outset competition for public construction contracts by minority enterprises. The second discriminatory barriers are to fair competition between minority and non-minority subcontracting enterprises, again due to private discrimination, precluding existing minority firms from effectively competing for public construction contracts. The government also presents further evidence in the form of local disparity studies of minority subcontracting and studies of local subcontracting markets after the removal of affirmative action programs.[20] Concrete Works at 1529.

The federal government's evidence consisted of numerous congressional investigations, hearings, local disparity studies and anecdotal evidence demonstrating discrimination by prime contractors, unions and financial lenders in the private marketplace. The Court of Appeals concluded that the government's evidence had demonstrated as a matter of law that there was a strong basis in evidence for taking remedial action to remedy the effects of prior and present discrimination. The Court found that Adarand had not met its burden of proof to refute the government's evidence.[21]

Since the strict scrutiny standards and evidentiary benchmarks apply to all public entities and agencies, it follows that the questions regarding passive participation in discrimination are relevant to all governmental units. Moving a step further, since the federal government has a compelling interest in not perpetuating the effects of racial discrimination in its own distribution of public funds, cities share the same interest. The Court in Croson stated that "it is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice."[22]

20 228 F.3d 1147 (Emphasis Added)

21 Id. at 1147, 1176.

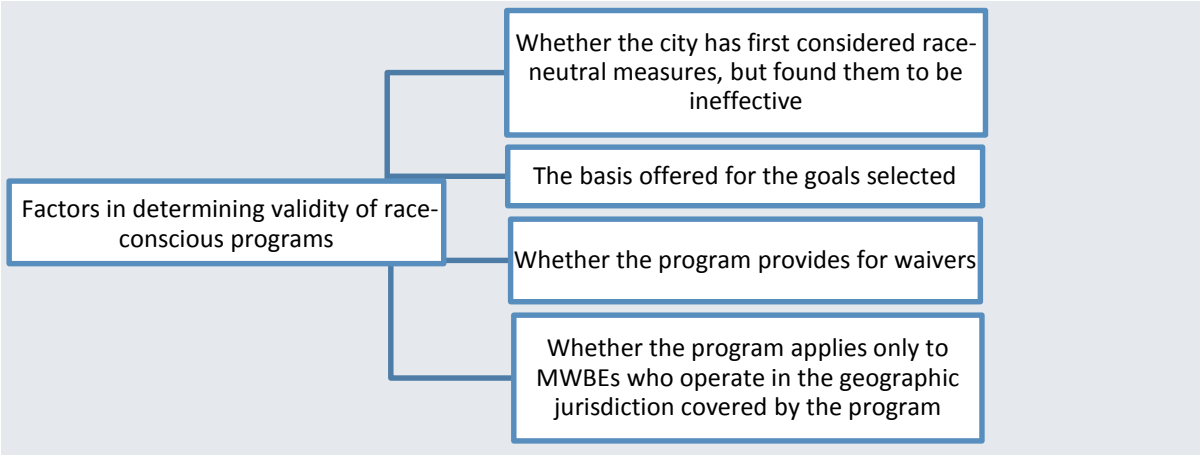
22 See Croson 488 U.S. at 492 (citing Norwood v. Harrison 413 U.S. 455)

E. Narrow Tailoring

Narrow tailoring is equally as important as the compelling interest portion of the strict scrutiny test. Just because one component of the test is met does not equate to a successful defense of a program. Both prongs of the test must be met. Once the governmental agency has met the compelling interest prong, the program must be narrowly tailored to remedy the identified discrimination.

The Supreme Court has identified a number of factors which bear upon whether the remedy employed will pass the narrow tailoring test. Included in those factors is whether the government remedy provided for consideration of race-neutral alternatives, the flexibility and duration of relief, the availability of waiver provisions, the relationship of numerical goals to the relevant labor market, and the impact of relief on the rights of third parties. United States v. Paradise, 480 U.S. 149, 171 (1987).

In Croson, the Court considered four factors in determining whether a race-conscious program is valid:



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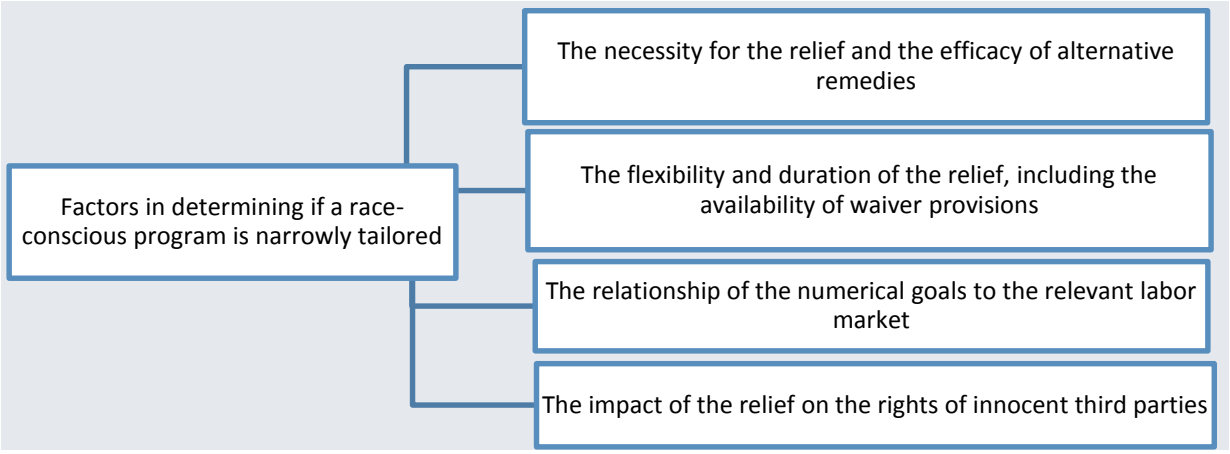
As noted above, another important key to analyzing the validity of a race based classification is the flexibility and duration of the program; that is, whether the program contains a sunset provision or other mechanisms for periodic review of its effectiveness. These mechanisms ensure that the program does not last longer than necessary to serve its intended remedial purpose. Furthermore, such mechanisms keep pure the relationship of numerical goals to the relevant labor market, as well as the impact of the relief on the rights of third parties.[23]

In Ensley Branch NAACP v. Seibels, 31 F.3d 1548 (11th Cir. 1994), the Eleventh Circuit U.S. Court of Appeals also held that four factors should be taken into account when evaluating whether a race- or ethnicity-conscious affirmative action program is narrowly tailored[24]:

23 Adarand, 515 U.S. at 238.

24 See Ensley Branch, 31 F.3d 1548, 1569 (11th Cir. 1994), Webster v. Fulton County, GA at 1362.



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F. General Observations on the Narrow Tailoring of Remedies

Under the Croson framework, any race-conscious plan must be narrowly tailored to ameliorate the effects of past discrimination. "Narrow tailoring is imperative when a government pursues a compelling interest which triggers strict scrutiny analysis." W. Tn. Chapter of Assoc. Build. & Contractors, et al. v. City of Memphis, 302 F. Supp.2d 860, 2004 U.S. Dist. LEXIS 2140, p. 11 (W.D. TN. 2004). Croson's progeny provide significant guidance on how remedies should be narrowly tailored. "Generally, while 'goals' are permissible, unyielding preferential 'quotas' will normally doom an affirmative action plan." Stefanovic v. University of Tennessee, 1998 U. S. App. LEXIS 1905 (6th Cir. 1998). The Eleventh Circuit has set forth four considerations in determining whether a plan is narrowly tailored:

- consideration of race neutral alternatives,
- flexibility of plan,
- relationship of plan's numerical goals to relevant market, and
- effect of plan on third parties.[25]

See also Rutherford, 2006 U.S. App. LEXIS 13736, p. 32.

Post-Croson cases articulated the general guidelines listed below in construing the elements of the narrow tailoring prong:

- relief is limited to minority groups for which there is identified discrimination;
- remedies are limited to redressing the discrimination within the boundaries of the enacting jurisdiction;
- the goals of the programs should be flexible and provide waiver provisions;
- race and/or gender neutral measures should be considered; and

25 Peightal II, 940 F.2d 1394, 1406 (11th Cir. 1991). See also Engineering Contractors, 122 F3rd 895, 927 (citing Ensley Branch NAACP at 31 F.3rd 1548,1569).

- the program should include provisions or mechanisms for periodic review and sunset.

MWBE programs must be designed so that the benefits of the programs are targeted specifically toward those firms that faced discrimination in the local marketplace. To withstand a challenge, relief must extend only to those minority groups for which there is evidence of discrimination. See, Tennessee Asphalt at 974. Consequently, MWBE firms from outside the local market must show that they have unsuccessfully attempted to do business within the local marketplace in order to benefit from the program.

The Sixth Circuit Court of Appeals in Associated General Contractors v. Drabik, affirmed the District Court's finding that the State of Ohio's minority business enterprise statute ("MBEA") was not narrowly tailored to remedy past discrimination. The court found the statute lacked narrow tailoring because (1) the MBEA suffered from under-inclusiveness and over-inclusiveness, (lumping together racial and ethnic groups without identified discrimination); (2) the MBEA lacked a sunset date; and (3) the state failed to provide specific evidence that Ohio had considered race-neutral alternatives before adopting the plan to increase minority participation. 214 F. 3d 739.

Croson requires that there not only be a strong basis in evidence for a conclusion that there has been discrimination, but also for a conclusion that the particular remedy is made necessary by the discrimination. In other words, there must be a "fit" between past/present harm and the remedy. The Third Circuit U.S. Court of Appeals, in Contractors Association of Eastern Pennsylvania, approved the District Court's finding that the subcontracting goal program was not narrowly tailored. Much of the evidence found on the discrimination by the City of Philadelphia was against black "prime contractors" who were capable of bidding on City prime contracts. Moreover, there was no firm evidentiary basis for believing that non-minority contractors would not hire black subcontractors.[26]

Court rulings have held that neutral measures must be considered, but not necessarily exhausted, in order for MWBE programs to be enacted. Moreover, some courts have held that such measures could be enacted concurrently rather than enacted before race- or gender-conscious measures. Cases such as Concrete Works, suggest the kinds of neutral measures considered by the courts. 36 F. 3d. at 1513.

G. Intermediate Scrutiny – Gender Specific Programs

Although women business enterprises (WBEs) are frequently attached to minority business enterprises (MBEs) in affirmative action programs, the Supreme Court has not directly addressed WBEs and the constitutional standard of review. Although Croson is the reference by which most local government programs are governed, Croson was limited in its review to the MBE Program. As a race based program, the standard of review was strict scrutiny. However, the standard of review for gender based programs in subsequent lower court rulings has been to apply a less stringent standard of review, intermediate scrutiny. Intermediate scrutiny is also a two prong approach which requires the following: Carrying

26 Contractor's Association of Eastern PA, Inc. v. City of Philadelphia, 91F.3d 586, (3d Cir. 1996)

the burden of showing an exceedingly persuasive justification for the classification, (Miss. Univ. for Women v. Hogan, 458 U.S. 718, 724 (1982) (quoting Kirchberg v. Feenstra, 450 U.S. 455, 461 (1981)), and the classification meets this burden "only by showing at least that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives. (Miss. Univ. for Women v. Hogan, 458 U.S. 718, 724 (1982) (quoting Wengler v. Druggists Mut. Ins. Co., 446 U.S. 142, 150 (1980)).

The Croson decision failed to evaluate women owned business ("WBE") programs. Subsequently, federal appellate courts addressed and set forth guidelines for evaluating gender-based affirmative action programs. Most of these courts have adopted an intermediate level of scrutiny, rather than the strict scrutiny analysis applicable to race-conscious programs. However, as demonstrated by the analysis below, it remains unclear how the review of evidence of discrimination for an intermediate level of scrutiny differs from strict scrutiny.

In Coral Construction Company v. King County, 941 F.2d 910 (9th Cir. 1991), the Ninth Circuit U.S. Court of Appeals applied an intermediate scrutiny standard in reviewing the WBE section of the County's ordinance. In addition, the Third Circuit U.S. Court of Appeals applied an intermediate level of review in its ruling in Contractors Association of Eastern Pennsylvania, Inc. v. City of Philadelphia, 6 F.3d 990 (3rd Cir. 1993). However, the court opined that it is unclear whether statistical evidence as well as anecdotal evidence is required to establish the standard of discrimination necessary to satisfy the intermediate scrutiny standard; and, if so, how much statistical evidence is necessary. Nonetheless, the Court struck down the WBE portion of Philadelphia's programs, finding that the City had no statistical evidence and insufficient anecdotal evidence regarding women owned construction firms and gender discrimination.

The Eleventh Circuit U.S. Court of Appeals in Ensley Branch NAACP v. Seibels, addressed the issue in a Title VII action.[27] In this decision, the Eleventh Circuit rejected the argument that, based on Croson, the Supreme Court intended strict scrutiny to apply to gender-conscious programs challenged under the Equal Protection Clause. Since Ensley, the Supreme Court decided United States v. Virginia, 518 U.S. 515 (1996), thereby invalidating Virginia's maintenance of the single sex Virginia Military Institute (VMI). Rather than deciding the constitutionality of the VMI program under intermediate scrutiny, the Court held that "parties who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive justification' for that action."[28] The Court then applied this "exceedingly persuasive justification" standard in invalidating the VMI program. Justice Rehnquist concurred only in the judgment, noting that "the Court . . . introduces an element of uncertainty respecting the appropriate test."[29] Justice Scalia dissented, suggesting that the majority had effectively adopted a strict scrutiny standard to judge the constitutionality of classifications that deny individuals opportunity on the basis of sex.[30] The majority, however, neither denied nor affirmed Justice Scalia's analysis.

27 31 F.3d 1548, 1579 (11th Cir. 1994).

28 U.S. v. Virginia at 529, 2274.

29 Id. at 559, 2288.

30 Id. at 571, 2294.

It is not certain whether the Supreme Court intended the VMI decision to signal a heightening in scrutiny of gender-based classifications. However, it may be that the VMI case stands as unique because – like some key, Supreme Court rulings– it involves an institution of higher learning. Nevertheless, cases liked Engineering Contractors Assn. of South Florida, Inc. v. Metropolitan Dade County, 122 F.3d 895 (11th Cir. 1997), continue to confine their analysis of WBE programs to traditional intermediate scrutiny.[31] Here, the court noted, however, that the measure of evidence required for a gender classification is ambiguous. The court agreed with the Third Circuit's holding that intermediate scrutiny requires that evidence be probative, but added that "probative" must be "sufficient as well." 122 F.3d 895. See also Coalition to Defend Affirmative Action v. Granholm, 473 F.3d 237, 249 (6th Cir. 2006).

H. Application of the Strict Scrutiny Standard – Recent Relevant Court Decisions

In the last several years, there have been a flurry of challenges to state DOT Disadvantaged Business ("DBE") Programs. State DOTs are required by federal law to apply the DBE Program to any projects that utilize federal funding. The court challenges have been both to the federal requirements and the implementation by the state DOTs. In each case, the courts have upheld the federal program and the state implementation, signaling a trend toward continuing the need for race and gender based programs.

1. Associated General Contractors of America, San Diego Chapter, Inc., v. California Department of Transportation[32]

Based on summary judgment the Court held that AGC did not have associational standing because it did not identify any of its individual members who have suffered or will suffer harm as a result of Caltrans' affirmative action program. The opinion went on to state that even if AGC could establish standing, its appeal would fail because Caltrans' Disadvantaged Business Program survived strict scrutiny by (1) having a strong basis in evidence of discrimination within the California transportation contracting industry; and (2) being narrowly tailored to benefit only those groups that have actually suffered discrimination." This recent case, decided in 2013, indicates the on-going support of the courts for the federal Disadvantaged Business Program.

2. Mountain West Holding Co. v. Montana DOT[33]

Armed with a disparity study which found underutilization of DBEs accompanied by anecdotal evidence of continuing discrimination, Montana DOT filed for summary judgment again the Plaintiff's challenge to Montana DOT's implementation of the federal DBE program. The study recommended the use of only race-neutral measures to meet goals set. During the relevant time period the utilization dropped

31 122 F.3d 895, 907-08 (11th Cir. 1997).

32 Associated Gen. Contractors of Am., Inc. v. Cal. Dep't of Transp., 713 F.3d 1187 (9th Cir., 2013)

33 Mountain W. Holding Co. v. Montana, No. CV 13-9-BLG-DLC, (D. Mont., Nov. 26,2014)

significantly from 13.1% to 2.8%. The court granted Montana DOT summary judgment finding that the agency's DBE program survives strict scrutiny by (1) having a strong basis in evidence of discrimination within Montana's transportation contracting industry and (2) being narrowly tailored to benefit only those groups that have actually suffered discrimination. Therefore, Defendant's implementation of its DBE program did not violate Defendant's constitutional rights under the Fourteenth Amendment, nor did it violate 42 U.S.C. § 1983, or Title VI. The court further found that Mountain West failed to create a genuine dispute relative to its claims regarding Montana's DBE program during 2012-2014 when Defendants utilized contract goals. It follows that Mountain West's claims for prospective, injunctive and declaratory relief also fail because Montana has currently ceased using contract goals and any potential future utilization of contract goals will be based on a not-yet conducted disparity study.

3. M.K. Weeden Construction v. Montana DOT[34]

The Court concluded that Plaintiff Weeden was not entitled to injunctive relief. Weeden has failed to show that it is likely to succeed on the merits of tis claims (or even that there are serious questions going to the merits) or that the balance of the equities tips in its favor. Moreover, importantly, the evidence clearly shows that an injunction against MDT would not be in the public interest. Overall the case involved bids for a $15 million project to avoid rock slides along the Interstate 80. Montana DOT established a 2% DBE participation goal for the project. Plaintiff, M.K. Weeden, was the low bidder but it did not meet the 2% DBE participation goal. Weeden's bid fell short of the established goal with only a 1.83% participation goal submitted. Montana DOT rejected Weeden's bid as non-responsive. Seemingly, the only good faith effort that Weeden made to contract with certified DBEs was a "mass emailing to 158 DBE subcontractors without any follow up." The MDT administrative appeal board and then the federal District Court both agreed with MDT that Weeden failed to demonstrate good-faith efforts to meet its hiring goals. Other bidders met the goal. The court found Weeden lacked standing.

4. Dunnet Bay Construction Co. v. Gary Hannig[35]

Similarly situated to the Weeden case, low bidder Dunnet Bay failed to meet a 20% DBE goal set by Illinois DOT. While Dunnet Bay made some attempts to utilize good faith efforts, there was a failure to apply all possible good faith efforts. The court found that the Plaintiff did not have standing to bring the lawsuit because it was unable to show that it would have been awarded the contract in the absence of the DBE Program.

5. Geyer Signal, Inc. v. Minnesota DOT[36]

The court found the Minnesota DOT DBE program facially constitutional and narrowly tailored. Plaintiff failed to prove the availability of "better data" and that Minnesota DOT was "unreasonable" in

34 M.K. Weeden Constr., Inc. v. Montana, No. CV 13-49-H-CCL, 2013 WL 4774517 (D. Mont. Sept. 4, 2013)

35 Dunnet Bay Constr. Co. v. Hannig (C.D. Ill., 2014)

36 Geyer Signal, Inc. v. Minn. Dep't of Transp., No. 11-321 (JRT/LIB), (D. Minn., Mar. 31, 2014)

relying on existing data or that discrimination no longer exists. The court rejected the challenge to the methodology used to set contract goals.

6. Midwest Fence v. Illinois DOT & Illinois Tollway[37]

Midwest Fence made a constitutional challenge to federal and state programs designed to benefit DBEs in the highway construction industry. Midwest alleged that the DBE programs instituted by the United States Department of Transportation ("USDOT"), the Illinois Department of Transportation ("IDOT"), and the Illinois State Tollway Highway Authority (the "Tollway") violate its right to equal protection under the law. The court granted summary judgment for the agencies and the USDOT based on standing.

I. Post Enactment Evidence

The Supreme Court in Croson found that a state or local government "must identify that discrimination . . . with some specificity before they may use race-conscious relief."[38] However, the Court declined to require that all relevant evidence of such discrimination be gathered prior to the enactment of the program. Pre-enactment evidence refers to evidence developed prior to the enactment of a MWBE program by a governmental entity. Such evidence is critical to any affirmative action program because, absent any pre-enactment evidence of discrimination, a state or local government would be unable to satisfy the standards established in Croson. Conversely, post-enactment evidence is that which has been acquired since the affirmative action program was enacted and therefore was not specifically relied upon as a rationale for the government's race and gender conscious efforts. Intrinsically, post-enactment evidence has been another source of controversy in contemporary litigation, though most subsequent rulings have interpreted Croson's evidentiary requirement to include post-enactment evidence. Post Croson, several circuits defended the use of post-enactment evidence to support the adoption of a local public affirmative action program. Most importantly, crucial exceptions exist in rulings from the local federal courts in the 6th Circuit.

In West Tennessee Chapter of Associated Builders and Contractors v. Board of Education of the Memphis City Schools, 64 F.Supp.2d 714 (W.D. Tenn. 1999), the District Court faced the issue of whether "post enactment evidence" was sufficient to establish a strong basis upon which a race conscious program can be supported. The late Judge Jerome Turner opined that although the Court in Croson was not faced with the issue of post enactment evidence, much of the language in the opinion suggested that the Court meant to require the governmental entity to develop the evidence before enacting a plan. Furthermore, when evidence of remedial need was developed after the enactment of a race-conscious plan, it provided no insight into the motive of the legislative or administrative body.

The court concluded that admitting post-enactment evidence was contrary to Supreme Court precedent as developed in Wygant, Croson, and Shaw. The Court held that post-enactment evidence may not be

37 Midwest Fence Corp. v. U.S. Dep't of Transp., No. 10 C 5627, (N.D. Ill., Mar. 24, 2015)

38 Croson, 488 U.S. at 504.

used to demonstrate that the government's interest in remedying prior discrimination was compelling. It is important to note that this opinion is not representative of the majority of case law on this issue, although it reflects a possible trend that warrants discussion and consideration. Obviously, the case has additional significance because Memphis is within the jurisdiction of the United States Court of Appeals for the Sixth Circuit.

Associated General Contractors of Ohio v. Sandra Drabik, 50 F.Supp.2d. 741 (1999), is another opinion wherein the District Court for the Eastern Division of Ohio stated that in order to support a compelling state interest for race-based preferences, challenged on equal protection grounds, evidence of past discrimination must be reasonably current. "Under Croson, the state must have had sufficient evidentiary justification for a racially conscious statute in advance of its passage; the time of a challenge to the statute, at trial, is not the time for the state to undertake fact-finding." Ibid., at 738.

Moreover, the Court ruled that evidence of purported racial discrimination that was more than twenty (20) years old was too remote to form the basis for a compelling governmental interest justifying the enactment of a race-based affirmative action program. This line of reasoning, in terms of the currency of statistical and anecdotal evidence, was fully considered by Griffin & Strong, P.C. while formulating the methodology employed in conducting the City's disparity study.

Early post-Croson decisions permitted the use of post-enactment evidence to determine whether an MWBE program complies with Croson.[39] In Ensley, the Eleventh Circuit explicitly held that post-enactment evidence is properly introduced in the record and relied upon by district courts in determining the constitutionality of government race and gender-conscious programs:

> Although Croson requires that a public employer show strong evidence of discrimination when defending an affirmative action plan, the Supreme Court has never required that, before implementing affirmative action, the employer not have proved that it has discriminated. On the contrary, further finding of discrimination need neither precede nor accompany the adoption of affirmative action.[40]

Again, a federal case from Tennessee clouds the issue.

In re: City of Memphis, 293 F.3d 345 (6th Circuit 2002), the Sixth Circuit U.S. Court of Appeals rejected the application for interlocutory appeal by the City of Memphis. Although the trial court certified an interlocutory appeal, neither party received notice of the certification until the 10-day period for filing the application for interlocutory appeal had expired. For the court, the central question was "whether the District Court [could] restart the 10-day period by vacating its original certification order and then

39 See, e.g. Contractors Assn., 6 F.3d 990, 1003-04 (3rd Cir. 1993); Harrison & Burrows Bridge Constructors, Inc. v. Cuomo, 981 F.2d 50, 60 (2d Cir. 1992); Coral Constr., 941 F.2d 910, 921 (9th Cir. 1991).
40 Ensley Branch, NAACP, 31 F.3d 1548, 1565 (11th Cir. 1994).

reentering the order." Ibid., at 348. However, the case touched upon the issue of post-enactment evidence.

In 1996, the City of Memphis adopted a Minority and Women Business Enterprise Procurement Program ("MWBE"), based upon findings from a disparity study covering the period from 1988 to 1992. The West Tennessee Chapter of Associated Builders and Contractors, Inc. and Zellner Construction Company, Inc. filed suit against the City of Memphis in January 1999, claiming that the City's MBWE program violated the Equal Protection Clause of the Fourteenth Amendment. In response to the lawsuit, Memphis proposed to commission a new disparity study, covering the period from 1993 to 1998. The City asserted that the post-enactment study could be used as evidence to demonstrate a compelling governmental interest. Six months after the initiation of the lawsuit, the District Court ruled that Memphis could not introduce the post-enactment study as evidence of a compelling governmental interest and initially denied the City's motion to certify an interlocutory appeal. In response to the City's motion to reconsider, the District Court certified an interlocutory appeal, though notice of this decision was not rendered to the parties in a timely fashion. Ibid.

After deciding that it had jurisdiction to rule on the matter, the Sixth Circuit examined the issue of post-enactment evidence through its analysis of the three requirements for interlocutory appeal: 1) whether the order involves a controlling issue of law; 2) whether a substantial ground for difference of opinion exists regarding the correctness of the decision; and, 3) whether an immediate appeal may materially advance the ultimate termination of the litigation. Of the three requirements, the Sixth Circuit focused on the second. The appeals court observed that the District Court had relied upon the City's assertion that substantial ground for difference of opinion existed regarding the value of post-enactment evidence. The Sixth Circuit rejected the City's argument, stating that "[t]his issue…appears to have been resolved in this circuit." Ibid.

The Sixth Circuit turned to the ruling in Drabik to imply that post-enactment evidence was inadmissible. "The City argues that the court in Drabik did not find that post-enactment evidence was inadmissible…Although Drabik did not directly address the admissibility of post-enactment evidence, it held that a governmental entity must have pre-enactment evidence sufficient to justify a racially conscious statute. It also indicates that this circuit would not favor using post-enactment evidence to make that showing." Ultimately, the appeals court denied the City's application for permission to appeal because "[e]ven if we concluded that there is a substantial difference of opinion, the issue presented in this case is not a controlling legal issue." Ibid. at 351.

It is important to reiterate that the court in In re: City of Memphis did not reject the validity of post-enactment evidence. The court rejected the City of Memphis' attempt to pursue an appeal of the trial court's evidentiary ruling. Only at first blush does it appear that the 6th Circuit suggested that post-enactment evidence has little value. A clear reading of the case reveals that the court's primary concern was the appropriateness of the City's appeal. The court's tangential concern was whether a governmental entity could rely upon post-enactment evidence alone to justify a pre-existing statute and MWBE program. Indeed, the court merely encouraged the City to continue its defense of the MWBE program with pre-enactment evidence gleaned from the initial disparity study. Furthermore, because

this discussion of the admissibility of post-enactment evidence occurred in the dicta of the opinion, the case does not suggest a sea change in the Sixth Circuit over the years.

Therefore, a race and gender-conscious program implemented by the City may be supported by post-enactment evidence of discrimination. Although post-enactment evidence may not suffice to support the original intent of a governmental entity, it can prove helpful in other ways. See, i.e., Mark L. Johnson, "Legislate First, Ask Questions Later: Post-Enactment Evidence in Minority Set-Aside Litigation," 2002 U. Chi. Legal F. 303 (2002). Specifically, post-enactment evidence seems necessary to determine the program's success for narrow tailoring and continued need after the program's initial term has expired. See Associated General Utility Contractors of MD v. Mayor of Baltimore, 218 F Supp. 2d 749, 620 (D. MD. 2002) (post-enactment evidence admissible on the issue of narrow tailoring and the use of race neutral alternatives).[41]

J. Burdens of Production & Proof

The defendant or local government agency carries the initial burden to produce evidence of discrimination to support race or gender based programs in cases that challenge the constitutionality of the procurement program. Then to rebut the government's case or position, the plaintiff bears the burden of production and persuasion that the affirmative action procurement program is unconstitutional. The plaintiff must proffer evidence to that fact. See Adarand VII, 228 F.3d at 1166, Scott, 199 F.3d at 219. The Court in Rowe held that "[w]hen a plaintiff alleges…that a statute violates the Equal Protection Clause, not only as applied, but also on its face, the plaintiff bears a heavy burden. Rowe, 615 F. 3d at 242. [M]ere speculation that the state's evidence is insufficient or methodologically flawed does not suffice to rebut a state's showing. Rowe at 242.

K. Standing to File Suit Against MWBE Programs

As a result of the Croson decision, courts have entertained numerous legal challenges to MWBE set-aside programs. Standing is important because it usually is pivotal in determining a party's relevance in a lawsuit. Thus, if an MWBE program is properly constructed and administered, there should be no legitimate claims of reverse discrimination by majority contractors resulting in a lawsuit. Under the traditional standing analysis, in order to satisfy the "injury in fact" requirement, plaintiffs must establish a causal connection between the injury, the ordinance, and the likelihood that the injury will be redressed by a favorable decision. Moreover, the Courts may not tolerate a lawsuit unless the plaintiff shows some "concrete and particularized" injury that is in fact imminent and which amounts to something more than "conjectural or hypothetical" injury.[42] See also Osborne v. Am South Bank Corp., 2003 U.S. Dist. LEXIS 24507, p. 8 (M.D. TN. 2003).

41 91 F. 3d at 606

42 See Cone Corp. v. Hillsborough County, 1994 WL 371368; Cone Corp., 1994 WL 526019 (M.D. Fla. 1994) (Court imposed Rule 11 sanctions based on plaintiffs' complaint which failed to establish injury in fact). See also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).

For example, in Safeco v. City of White House, TN., 191 F.3d 675 (6th Cir. 1999), the court addressed the standing of an insurer and bidder to challenge the constitutionality of a minority business plan. The case, which began in the Federal District Court for the Middle District of Tennessee, pertained to obligations under bid bonds and breach of contract, among other things. The court ruled that the insurance company and its insured – Eatherly Construction Company – had standing to challenge the MBE plan required for work performed in White House with funds from the United States Environmental Protection Agency. "The alleged failure to comply with the regulations did not result in the loss of a bid to an advantaged competitor, but did result in the loss of a contract and the institution of a suit. Further, even if the assumed-unconstitutional regulations do not place one contractor at a competitive disadvantage with other contractors, the regulations place white *subcontractors* at a disadvantage." Ibid. at 689 (emphasis in original).

Noteworthy is the fact that Justice Thomas' opinion in Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville, Florida, et al., 508 U.S. 656 (1993), modified the traditional standing requirement for contractors challenging local and state government minority preference schemes. The Court relaxed the injury in fact requirements by holding that so long as the non-minority contractor can show that they were "able and qualified to bid" on a contract subject to the City's ordinance, the "injury in fact" arises from an inability to compete with MWBEs on an equal footing due to the ordinance's "discriminatory policy."[43] Specifically, the Court stated:

> When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. The "injury in fact" in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit. And in the context of a challenge to a set-aside program, the "injury in fact" is the inability to compete on an equal footing in the bidding process, not the loss of a contract. To establish standing, therefore, a party challenging a set-aside program…need only demonstrate that it is able and ready to bid on contracts and that a discriminatory policy prevents it from doing so on an equal footing. 508 U.S. at 666.

See also Parents Involved in Comm. Schools v. Seattle School District No. 1, et al., 127 S. Ct. 2738, 2007 U.S. LEXIS 8670, P. 35 (2007).

In Associated General Contractors of America v. City of Columbus, 172 F.3d 411 (6th Cir. 1999), the U.S. Court of Appeals for the Sixth Circuit issued a decision which addressed the injury-in-fact element of the standing requirement. In Associated General Contractors, a contractors' association brought an action challenging the constitutionality of the City of Columbus' minority business set-aside ordinance. The Federal District Court for the Southern District of Ohio struck down the ordinance and the City moved for relief from judgment, *inter alia*, after enacting a new set-aside ordinance. The Sixth Circuit held, in pertinent part, that the contractors' association could not demonstrate the injury-in-fact

43 See Contractors Assn. of Eastern Pennsylvania v. City of Philadelphia, 6 F.3d 990, 995 (3rd Cir. 1993); Concrete Works of Colorado v. City and County of Denver, 36 F.3d 1513, 1518 (10th Cir. 1994);(Concrete Works submitted and the ordinance prevented it from competing on an equal basis.); Webster Greenthumb v. Fulton County, 51 FSupp. 2d 1354(Plaintiff Greenthumb demonstrated that it was able to bid on contracts and a discriminatory policy prevented it.)

required to establish standing to challenge the constitutionality of the second minority business set-aside ordinance that was enacted by the City, but had not yet been put into effect. The Court further stated that any injury foreseen as a result of the ordinance could not be other than hypothetical or conjectural until the ordinance was put into effect.

The Sixth Circuit explained:

> Once the set-aside program was gone, the constitutional violation was gone, and no condition requiring repair remained. The remedy was complete. The agreed order, however...enjoined the City from enacting any new set-aside legislation without first obtaining District Court approval--thus, the decree aimed at eliminating a condition that did not yet exist, a condition that, at most, might violate the Constitution, if that condition should in fact materialize. 172 F.3d at 418.

Lastly, in Adarand, the Supreme Court continued to find standing in cases in which the challenging party made "an adequate showing that sometime in the relatively near future it will bid on another government contract."[44] That is, if the challenging party is very likely to bid on future contracts, and must compete for such contracts against MBEs, then that contractor has standing to bring a lawsuit. See generally, Patterson v. Heartland Indus. Partners LLP, 428 F. Supp.2d 714, 719-720 (N.D. Ohio 2006).

L. Equal Protection Clause Standards

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that no state shall deny to any person within its jurisdiction "the equal protection of the laws." The meaning of the Equal Protection Clause has been the subject of much debate, and inspired the well-known phrase "Equal Justice Under Law." This clause was the basis for Brown v. Board of Education (1954), the Supreme Court decision that facilitated the dismantling of racial segregation. Ironically it is also the tool used to dismantle affirmative action programs seeking to redress discriminatory histories.

The second preliminary matter that courts address is the standard of equal protection review that governs their analysis. The Fourteenth Amendment provides that "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."[45] Courts determine the appropriate standard of equal protection review by examining the protected classes embodied in the statute. The courts apply *strict scrutiny* to review an ordinance's race-based preference scheme and inquire whether the law is narrowly tailored to achieve a compelling governmental interest. See, e.g., U.S. v. Taylor, 956 F.2d 572 (6th Cir. 1992). Conversely, gender-based classifications are evaluated under the *intermediate scrutiny* rubric, which provides that the statute must be substantially related to an important governmental objective.[46] Therefore, race-conscious affirmative action is subject to a much higher standard of judicial review than gender-conscious affirmative action.

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44 Adarand, 515 U.S. 2at 211.

45 U.S. Const. amend. XIV, § 1.

46 Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 724, 102 S.Ct. 3331, 3335. See Engineering Contractors Association of South Florida, Inc., et al v. Metropolitan Dade County, et al, 122 F.3d 895 (11th Cir. 1997) (Eleventh Circuit explaining U.S. v.Virginia, and the appropriate gender-based affirmative action equal protection analysis).

M. Local Business Preferences

The City's current EBO Procurement Program contains a local business preference as follows:

> (f) *Certification*. For purposes of contracting with the City of Memphis under this program, a minority or woman owned business enterprise must be located within the Memphis MSA (Crittenden County in Arkansas (AR), Desoto, Marshall, Tate, and Tunica Counties in Mississippi (MS), and Fayette, Shelby and Tipton Counties in Tennessee (TN)) and certified as a minority or woman owned business enterprise by the City of Memphis approved central certification agency or any other certification agency deemed appropriate by the Office of Contract Compliance.

The constitutional analysis applied to local business preferences is somewhat more complex than that applied to small business enterprise programs. Many municipalities have applied local business preferences (for example, the City of Oakland Local Business Enterprise (LBE) program started in 1979).[47] More common is the preference for small local businesses, which is an even more widespread practice.[48] While called small business programs, these programs often set-aside contracts for bidding by local small business enterprises.

The federal court cases have generally upheld local business preference programs as meeting constitutional requirements. However, local business preferences should be distinguished from preferences for hiring local residents, which have been struck down on constitutional grounds. But LBE programs could be carefully reviewed to make sure they comply with constitutional requirements. The three bases for constitutional challenges are the Equal Protection Clause, Dormant Commerce Clause and the Privileges and Immunities Clause.

1. Equal Protection Clause

Challenges to LBE programs under the Equal Protection Clause have generally failed because constitutional case law reflects that programs which favor local companies do not fall within those that are considered a suspect classification, and can be justified as having a rational basis under the Equal Protection Clause. See, Trojan Technologies v. Pennsylvania, 916 F.2d 903 (3rd Cir. 1990). In Trojan Technologies, a challenge was made to the Pennsylvania Steel Products Procurement Act, as a "blatant attempt at economic protectionism," in violation of the Equal Protection Clause. That act was a state statute which required the purchase of steel produced in the state of Pennsylvania. The federal court found that the more favorable treatment Pennsylvania afforded domestic steel products as opposed to foreign steel was "rationally related to a legitimate governmental purpose," the support of one of the

47 *See, e.g.,* City of Detroit's Detroit-Based Business Program (Executive Order No. 2003-4), City of San Francisco Minority/Women Local Business Enterprise Program (San Francisco Ordinance, CHAPTER 12D), City of Oakland Local Business Enterprise Program (City Ordinance 9739), City of New York Local Business Enterprise Program (New York Administrative Code § 6-108.1).

48 *See* note 3 above.

state's most important industries which contributed significant employment and tax revenue to the State.

2. The Commerce Clause

Objectors to LBE programs have also attempted to use the Commerce Clause found in Article One of the Constitution, which confers upon Congress the power to regulate interstate commerce.[49] When coupled with the Supremacy Clause of the Constitution granting to the federal government preemptive authority over conflicting state laws, the Supreme Court has ruled the Constitution contains "a self-executing limitation on the power of the States to enact laws imposing substantial burdens on such commerce."[50] Accordingly, some courts have determined a state statute is unconstitutional as it posed an undue burden on interstate commerce under what has become known as the Dormant Commerce Clause.[51] Generally, discrimination against interstate commerce in favor of local business or investment is *per se* invalid, except in a few class of cases in which the municipality can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest."[52]

The Dormant Commerce Clause has been implemented and justified for economic and political reasons. It has been argued that the Dormant Commerce Clause "prohibits economic protectionism."[53] From a political standpoint, a state law that only harms interests from other states "is not likely to be subjected to those political restraints which are normally exerted on legislation where it affects adversely some interests within the state."[54]

The Supreme Court has employed a two-part test for the Dormant Commerce Clause: (1) does the state regulation discriminate against interstate commerce on its face; or, (2) are the burdens imposed on interstate commerce excessive relative to the alleged local benefits.[55] A statute that fails either part of this test (the "Pike test") is invalid under the Dormant Commerce Clause. However, in regard to the Commerce Clause and LBE programs, there is an important exception called the "Market Participant" doctrine which allows a state to pass 'protectionist' legislation so long as the state is participating in the market as a buyer or seller of goods and services, rather than regulating the market.[56]

Given these results, it is not surprising that no federal court case was found overturning, or even challenging, an LBE program under the Dormant Commerce Clause.

U.S. Const., art. I., 8 (reading, "Congress shall have Power ... to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes ...").

50 S.-C. Timber Dev., Inc. v. Wunnicke, 467 U.S. 82, 87 (1984); see also New Energy Co. of Ind. v. Limbach, 486 U.S. 269, 273 (1988).

51 See Big Country Foods, Inc. v. Bd. of Educ. Anchorage Sch. Dist., 952 F.2d 1173, 1177 (9th Cir. 1992).

52 C & A Carbone v. Town of Clarkstown, 511 U.S. 383, 392 (1994).

53 New Energy Co. of Ind. v. Limbach, 486 U.S. 269, 274 (1988).

54 S.C. St. Hwy. Dept. v. Barnwell Bros., Inc., 303 U.S. 177, 185 n. 2 (1938).

55 Pike v. Bruce Church, Inc., 397 U.S. 137 (1970).

56S.-C. Timber Dev., Inc., 467 U.S. at 93 (holding that "if a state is acting as a market participant, rather than as a market regulator, the dormant Commerce Clause places no limitation on its activities").

3. Privileges and Immunities Clause

The Privileges and Immunities Clause is found in Article Four of the U.S. Constitution and provides "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." The U.S. Supreme Court has identified the original purpose of the Privileges and Immunities Clause as prohibiting discrimination on the basis of state citizenship. Historically, the U.S Supreme Court has applied a two-part test under the Privileges and Immunities Clause: (1) did the state or local government violate a fundamental right, and (2) did the state or local government have a substantial reason for doing so.[57] Accordingly, not all forms of discrimination against citizens of other states are prohibited:

> "Some distinctions between residents and nonresidents merely reflect the fact that this is a Nation composed of individual States, and are permitted; other distinctions are prohibited because they hinder the formation, the purpose, or the development of a single Union of those States. Only with respect to those `privileges' and `immunities' bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and nonresident, equally." Baldwin v. Montana Fish and Game Commission, 436 U.S. 371, 383 (1978).

While similar and interrelated with the Dormant Commerce Clause, the Privileges and Immunities Clause and the Commerce Clause provide different constitutional protections. The Dormant Commerce Clause is a judicially-created doctrine designed to prevent economic protectionism while the Privileges and Immunities Clause is a Constitutional provision created to protect the rights of individual citizens.

While local hiring programs may face challenge under the Privileges and Immunities Clause, the Supreme Court has held that the Privileges and Immunities Clause does not protect corporations.[58] Consequently a Privileges and Immunities challenge should only arise relative to an individual seeking to contract with a local government. But local contracting programs can and should have a clear statement of the economic basis of the program to protect it from challenge by an individual vendor on the basis of the Immunities Clause.

4. Implications for LBE Program

Finally, an LBE program should survive constitutional challenge on the basis of (1) a challenge under the Equal Protection Clause because LBE programs generally have a rational basis for their existence, (2) a challenge under the Dormant Commerce Clause based upon the Market Participant exception, and (3) a challenge under the Immunities Clause (a)because the clause does not apply to corporations, (b)public contracts are not a fundamental right and (c)an agency should be able to provide economic justification for an LBE program.

57 Toomer v. Witsell, 334 U.S. 385, 395-96 (1948).

58 Paul v. Virginia, 75 U.S. (8 Wall.) 168, 177, 181, (1869);) This result was reaffirmed by the Supreme Court in Western & Southern Life Ins. Co. v. State Bd. of Equalization, 451 U.S. 648, (1981).

N. Conclusion

Despite the nearly twenty-six years of litigation following the Croson decision, the law in the area of race-conscious remedies used to ameliorate inequities concerning MWBE utilization in the area of public contracting, is far from settled. Clearly, the law requires that such programs be reviewed periodically. What remains unclear is the applicable standard used to determine whether a race- and gender-conscious program has achieved its intended goal of eliminating identified discrimination, thereby negating the need for the continued use of race- and gender-conscious remedies. In this study, the Griffin & Strong P.C. team analyzed the statistical data as extensively as possible and used the more conservative interpretations of availability which have been proffered by the most recent Court opinions. The quantitative data is buttressed with detailed and varied anecdotal evidence.

III. PURCHASING POLICIES, PROCEDURES, AND THE EQUAL BUSINESS OPPORTUNITY PROGRAM ORDINANCE

Research Questions: Purchasing Practices, Policies, and Procedures Review

1. Does the City have policies that, on their face, may present barriers to MWBEs?
2. Do procurement personnel understand the City's policies as they relate to MWBEs?
3. Are there any differences between the City's policies and Is there a statistically significant disparity between the percentage of available MWBE firms in the Relevant Geographic and Product Markets and the percentage of dollars spent with MWBE firms in those same markets during the Study Period?

The purpose of this chapter is to provide a comprehensive review and analysis of the City of Memphis' (" City") purchasing and contracting methods as they pertain to the Equal Business Opportunity Program Ordinance (City Code section 2-325). This review will focus on whether there are purchasing policies, practices or procedures which may serve as barriers to minority and women owned businesses as they pursue opportunities, or engage in commerce, with the City. To the extent that areas of concern are revealed, they will be discussed and recommendations for changes will be made as part of the comprehensive Disparity Study recommendations.

A. History of Disparity Studies and Remedial Programs

1. 1994 D.J. Miller Disparity Study

The original factual predicate for the MWBE Procurement Program was based upon the findings and recommendations of the 1994 D.J. Miller Disparity Study ("Miller Study"), which was a multijurisdictional study of 9 members of the Memphis Consortium[59]. The Miller Study made the following findings:

- The City of Memphis's contracting activity reflected significant statistical disparity in most years across all procurement categories, as no MWBE utilization was evident.
- The lack of adequate monitoring and reporting systems by which an agency can track MWBE participation and monitor the purchasing activity of the City of Memphis.
- Substantial anecdotal evidence of private sector discrimination indicated that bid irregularities are commonplace in the Memphis contractor community with majority contractors exercising use of their influence with purchasing agents to harass or interfere with the ability of minority contractors to win bids and perform work on contracts.
- Historical research indicated thriving African American businesses during the late 1800s and early 1900s which were eliminated by the "political machinery" combined with discrimination in trade unions which impeded the ability of minorities and women to obtain training in construction and trades industries.

59 The Memphis Consortium was made up of: Shelby County Government, City of Memphis, Memphis Light, Gas & Water Division, Memphis Area Transit Authority, Memphis/Shelby County Airport Authority, Memphis Board of Education, Shelby County School Board, Memphis/Shelby County Port Commission & The Regional Medical Center

- Based upon the findings and recommendations of the Miller Study that a compelling interest was established which justified immediate and substantial remedial action in regard to increasing the participation of minority and women owned businesses in City contracting.

2. 2010 Griffin & Strong, P.C. Disparity Study

During the month of November 2007, the City contracted with Griffin & Strong, P.C. ("GSPC") to conduct a comprehensive disparity study which included all City departments except Memphis Light, Gas & Water, Memphis Area Transit, and Memphis Housing Authority. The purpose of this later disparity study was to determine if the City still had a compelling interest in continuing the MWBE Procurement Program for the City. The study was designed to determine whether existing City efforts had eliminated active and passive discrimination; to analyze city procurement trends and practices for the five (5) year period beginning July 1, 2002 and ending June 30, 2007; and to evaluate various options for future program development.

In March 2010, GSPC presented the completed study to the City, which found that since the enactment of the City's MWBE Procurement Program, the City had:

- Improved utilization of MWBEs during the course of the Study Period;
- Consistently set and met aspirational goals;
- Established a strong local business program;
- Provided outstanding management and technical assistance to MWBEs;
- Collaborated with existing financial assistance providers to assist MWBEs in strengthening their contracting power;
- Provided MWBE outreach workshops and seminars;
- Issued contracts in smaller dollar amounts, thus expanding the opportunity for small businesses.

Specifically, the data showed increases in the absolute and relative value of MWBE utilization since the 1994 Memphis Disparity Study, as indicated by the following:

- MWBE Construction prime contracting utilization increased from $5.3 million out of $85.4 million total dollars spent during the 1994 Study Period, which represented 6.2% participation, to $18.3 million in MWBE participation out of $190.5 million total dollars spent, which represents 9.6% of total construction dollars spent during the 2010 Disparity Study Period. Therefore, MWBE participation increased 3.4% in the 2010 Study Period over the totals in the 1994 Study Period.
- MWBE Professional services including A/E utilization grew from $202,609 during the 1994 Study Period, to $10.3 million, or 3.86% of the total during the 2010 Study Period.

- MWBE Other Services and Goods utilization grew in percentage terms from about 5.85% in the 1994 Study Period to 9.2% during the 2010 Study Period.

As a result of the findings and recommendations of the Griffin & Strong 2010 Disparity Study, the Memphis City Council adopted three primary findings to support establishment of the EBO Program. Firstly, the disparity study identified statistically significant disparities in the use of MWBEs in the Memphis MSA when compared to similarly situated non-MWBE owned firms, which was the result of discrimination on the basis of race, gender, and ethnicity. Secondly, MWBEs continued to be substantially underutilized in the private sector marketplace. Thirdly, the statistical and anecdotal evidence taken as a whole gave rise to an inference of continued discrimination and/or the continuing effect of past discrimination against MWBEs in the Memphis MSA. As such, the City Council found that the City had a compelling interest to continue remedying the present and past effects of discrimination against African-American and women business owners and enacted the Equal Business Opportunity Ordinance that established the current Equal Business Opportunity ("EBO") Program. Additionally, the City Council stated in the ordinance that its affirmative duty to remedy the effects of the past and present discrimination also extended to the development of initiatives which encouraged the development of local small businesses.

B. Methodology

This section will discuss the steps taken to examine and evaluate the City's contracting and purchasing policies, procedures, and programs.

This analysis included the following steps:

- Identify, analyze and review City contracting and purchasing policies and procedures currently in use.
- Identify, analyze and review City ordinances, regulations, resolutions, and purchasing policies which relate to implementation of the EBO Program.
- Identify, analyze and review relevant Tennessee State law provisions related to purchasing and the implementation of the EBO Program.
- Perform in depth interviews with City personnel, departmental purchasing managers, and "non-City personnel" executives responsible for outsourced purchasing to understand and review purchasing activity and implementation of the EBO Program for the relevant period and determine their understanding of the policies.
- Review year end reports encapsulating the EBO Program achievements for FY 2010 through FY 2015.
- Analyze EBO Program implementation to determine whether the procurement process as written and practiced is fair and open without presenting barriers to minority and women owned businesses.
- Analyze the existence and effectiveness of initiatives and outreach efforts as they relate to bidding opportunities, manner of source selection and subcontractor performance issues.

- Determine if any policies and/or practices present barriers to MWBEs.

In completing the above tasks, the following documents and information which directly impact the procurement of goods and services, construction contracting and the procurement of professional services were reviewed:

- The City of Memphis Purchasing Policies and Procedures (2013);
- The Equal Business Opportunity Program, City Code section 2-325;
- Certification Requirements for the acceptable agencies;
- Sample Contracts for Professional Services;
- Sample Contracts for Construction;
- Sample Requests for Proposals and Qualifications;
- City of Memphis Webpage Office of Contract Compliance;
- City of Memphis Webpage Memphis Office of Resources and Enterprises;
- 1994 D.J. Miller Disparity Study for City of Memphis;
- 2010 Griffin & Strong, P.C. Comprehensive Disparity Study for City of Memphis;
- City of Memphis Charter and Ordinances;
- Tennessee Code Annotated § 12-4-106;
- Tennessee Code Annotated § 62-2-107.

Interviews were held with City personnel, departmental purchasing managers, and "non-City personnel" executives responsible for outsourced purchasing. The interview instruments were designed to determine relevant personnel's application of the City's ordinances, policies, programs and procedures. Interviews were held during the month of September 2015. Each interview was designed to last approximately one to one half hours and was held at various City of Memphis office spaces. The following persons were interviewed:

- Purchasing Agent
- Deputy Director of Finance
- Senior Contract Analyst
- Administrator – Environmental Construction
- Administrator – Black & Veatch Subcontractor Purchasing
- Business Office Manager – SAIC
- Director – Office of Business Diversity and Compliance

C. Analysis of City of Memphis Procurement Process

General Overview-- The City Purchasing Agent ("PA") is empowered by the City of Memphis Charter section 222 to "make all purchases of supplies, materials and equipment required for use by said municipal government or personal services or labor." The City's Purchasing Policies and Procedures Manual ("PPPM") clearly identifies "the mission of the purchasing department is to provide the most cost effective method of procuring goods, materials, construction and services for the City of Memphis while adhering to the procurement laws of the City of Memphis and the State of Tennessee, if applicable."

According to the manual, the overall objective of the purchasing department is to serve as the centralized purchasing unit through which the City and its divisions may obtain needed goods or services (including construction), via competitive concerns, at competitive costs in a timely and cost effective manner. Oracle continues to be the purchasing software used for transactions.

While the PA reports directly to the Deputy Director of Finance, the position oversees an Assistant PA as well as various contract analysts, buyers, and clerks. The Purchasing Department employs ten people under the direction of the PA. The purchasing department staff includes two Assistant Purchasing Agents, one fixed asset coordinator, five contract analysts, and one senior procurement specialist. With a total of ten persons under its direction, the Purchasing Department is responsible for:

- Receiving and processing all requisitions for purchases;
- Ensuring funds are available for the purchase;
- Collaborating with divisions in meeting their needs for purchasing goods, supplies, services and construction with the least delay;
- Maintaining current lists of vendors and contractors seeking to do business with the City; Preparing and advertising solicitations and maintaining bid files;
- Overseeing a weekly bid and contract session for purchases over $50,000 and securing all bids in connection therewith;
- Soliciting bids and making awards for purchases;
- Handling complaints, claims, adjustments, etc. pertaining to procurement activities;
- Preparing the resulting contract for goods or services procured competitively;
- Encumbering funds, amendments and change orders to all City contracts;
- Disposing of all City personal property that has been condemned by the division;
- Conducting public auctions to dispose of abandoned or stolen merchandise or motor vehicles which have been recovered by the Memphis Police Department and remains unclaimed;
- Keeping accurate records, which must include but not be limited to the time, location, price bid and price paid, of items sold at public auctions; and
- Conducting or participating in procurement education and training programs for City employees.

- Maintain an inventory of all city property in an effort to determine missing or surplus items.
- Maintain an updated list of vendors, suppliers, and contractors in Oracle.
- Ultimately, the Mayor of the City of Memphis shall sign and execute all City contracts.

Small Purchases - Purchases with a cost up to five thousand dollars ($5,000) during a fiscal year are considered small dollar purchases.[60] The division, with director level approval, has the authority to negotiate the purchase of such goods and services directly with a vendor. However, in an effort to thwart competitive procurement requirements as defined by the manual, the purchase may not be "artificially" divided. The vendor must agree to furnish the goods or services on credit without the use of a purchase order or contract. The City will receive an invoice after completion of the job.

Small purchase authority should not be used for purchases with a recurring nature and the invoices should not be split. If purchases are foreseen to be repetitive or the purchase cost is expected to be greater than $5,000, the division is required to consult with purchasing. Although the small purchase authority is a tool to be utilized by the division, solicitation of informal quotes is encouraged.

Purchases over $5,000 but less than $25,000 – All purchases supplies, materials, equipment and services over $5,000 within a fiscal year must be competitively procured through the purchasing department. After verification of sufficient funds, review and possible revision of the specifications, to ensure fair and equitable competition, the purchasing department will solicit bids.[61] Post bid, the purchasing department may issue a purchase order or contract evidencing the transaction.

Purchases over $25,000 but less than $50,000 – Written informal bids shall be solicited by the purchasing department for purchases over $25,000 but less than $50,000.[62] According to the PPPM, "the process to procure such goods and services is as follows:

- The purchasing department will review and revise the specifications, if necessary, to ensure fair and open competition;
- The purchasing department will prepare a solicitation (i.e., RFQ), including bid documents, specifications and other necessary information;
- The solicitation will be distributed to interested vendors;
- The purchasing department will receive the bids until the specified submission deadline and secure them until the scheduled bid opening date and time;
- The purchasing department will open the bids and conduct an initial review of each bid;
- The purchasing department will then forward the bids to the division for evaluation and award recommendation;
- The division will evaluate the bids to determine the "lowest and best" bid;

60 Purchasing Policies and Procedures Manual, IV. 4.1

61 Purchasing Policies and Procedures Manual, IV 4.2.1.1 A

62 Purchasing Policies and Procedures Manual, IV 4.2.1.1 B

- The division must submit an award recommendation to the purchasing department. Any award recommendation to one other than the lowest bidder must be justified, in writing, by the division. The phrase "does not meet specifications" is not sufficient justification;
- The purchasing department will publicly announce the award;
- The purchasing department will verify that sufficient funds are available for the purchase and, unless a bid protest has been submitted, approve the award recommendation; and
- The purchasing department may issue a properly signed purchase order to the successful bidder for the purchase of the goods and/or services."
- If all informal bids exceed $50,000, the bids will be rejected, the solicitation will be cancelled, and the procurement shall be made in accordance with "Purchases costing $50,000 or more."

Processed and completed bids that result in "contracts" ($50,000 and over, or multi-year, or negotiated contracts) are only held in Purchasing until the contract has been executed. At that time (usually with one to two days after execution) the packet is delivered to Records Management. Purchase Orders (under $50,000 and for a maximum of one year only) are held in Purchasing until the end of the fiscal year, then delivered to Records Management.

Purchases over $50,000 excluding construction – Goods or services over $50,000 must be obtained by formal competitive written sealed bid process.[63] This purchase is perfected by a written contract executed by the Mayor. Per the PPPM, the following procedures are performed:

- After verifying that funds are available for the purchase, the division must submit the specifications to the City's Contract Compliance Officer, who will review the specifications to determine whether any minority or women owned participation goal is required;
- Upon review and approval by the Contract Compliance Officer, the division must submit the requisition; specifications; written approval of the Contract Compliance Officer; and other related bid information (e.g., signature page, pricing page, etc.) to the purchasing department;
- The purchasing department will review the documentation and, upon approval, prepare a solicitation, (i.e., RFQ);
- The purchasing department will publicly advertise the solicitation;
- The solicitation will be distributed to interested vendors;
- The purchasing department will receive the sealed bids until 2:00 p.m. on the Friday specified in the RFQ and secure them until the date and time scheduled for the Bid and Contract session typically held in City Council Chambers. At the Bid and Contract session, the purchasing department will publicly open the sealed bids;
- After the Bid and Contract session, the purchasing department will forward the bids to the appropriate division for bid evaluation and award recommendation;
- The division will evaluate the bids, to determine the "lowest and best" bid;

63 Purchasing Policies and Procedures Manual, IV 4.2.1.2

- The division will submit an award recommendation to the Purchasing Department. Any award recommendation to one other than the lowest bidder must be justified in writing by the Division. The phrase "does not meet specifications" is not sufficient justification;
- The Purchasing Department will publicly announce the intent to award;
- The Purchasing Department will verify that sufficient funds are available for the purchase and; unless a bid protest has been submitted, approve the award recommendation; and
- The Purchasing Department will prepare and forward the contract to the successful bidder for signatory approval. At the City's discretion, the contractor will manually or electronically sign the contract submit the appropriate insurance and bonding documentation, if required.
- The successful bidder or consultant will return the signed contract and any bond, insurance documentation, and other required information to the Purchasing Department for review and processing;
- The Purchasing department will forward the contract to the law division for review and approval as to form. Upon approval, the law division will forward the contract to the Chief Administrative Officer ("CAO") for review and execution by the CAO and the Mayor; and
- Upon full execution, the fully signed contract will be returned to the purchasing department. The purchasing department will then attest to the execution of the contract and forward an original, or a copy of the fully executed contract, to the contractor and the division. The original contract will be retained by the City. Records retains Contracts for 7 years, and retains PO's for 5 years. After that they are sent to Vital Records Storage.

Construction Projects – All construction projects fall under the purview of the City Engineer. Construction contracts are primarily for the purposes of construction, repair, and demolition, improvement, of City buildings, parks, streets and other infrastructures.[64] All construction services are procured by competitive sealed bid method. The City Engineer has the responsibility for the preparation and oversight of plans specifications and estimates on all construction projects in which the City or agencies of the City are contracting parties. All awards must be approved by the City Engineer.

Construction Procurement greater than $5,000 and less than $10,000 - The Divisions are responsible for submitting the requisition, specifications and other pertinent information to the purchasing department and adhering to the competitive sealed bidding procedure.[65] The competitive sealed bidding procedure is the same used for non-construction projects greater than $25,000 but less than $50,000. This purchase may be consummated by purchase order per the PPPM.

Construction Procurement greater than $10,000 – Building Design and Construction ("BD&C") must submit a Request for Legal Notice to the purchasing department.[66] This bid will be publicly advertised by purchasing and the normal competitive sealed bid process will ensue under the purchasing policies regarding purchases costing greater than $50,000. The purchase will then move into contract execution.

64 Purchasing Policies and Procedures Manual, IV 4.2.2

65 Purchasing Policies and Procedures Manual, IV 4.2.2.2

66 Purchasing Policies and Procedures Manual, IV 4.2.2.1 B

Contracts Exempt from the Competitive Bid Process and Sole Source Contracts-There are classifications of contracts that are exempt from the competitive bid process. They include contracts for artifacts and museum pieces, sole/single source items, Professional, Architectural and Engineering Services Contracts, Negotiated Contracts and Purchases from Governmental Agencies.[67] Where the professional services sought are architectural and engineering, state of Tennessee regulation stipulates that the selection process must be based upon competence and integrity, but shall not be based up competitive bids.[68]

Prequalification & Licensing - The construction department of the City does not pre-qualify firms to do business with the City. All firms that desire to participate on City construction projects are required to submit their qualifications and experience in order to be added to the list of eligible firms. The construction department then evaluates the firms on its list against project specifications. It is at that point that firms will be deemed appropriate to participate on a project by project basis.

In regard to licensing, Tenn. Code Ann. Section 62-2-107, requires plans, specifications and estimates be prepared by the appropriately qualified Tennessee registered design professionals for public works projects undertaken by the state, any city, county, town or other political subdivision when the projects are greater than $25,000 or the project alters the structural, mechanical, or electrical systems. The size and complexity of the project generally determines whether the design profession used on a project is a city employee or whether the design is out-sourced.

Construction Projects and MWBE Program Accomplishments - The construction department maintains a list of approved architectural and engineering firms. Engineering firms are selected consistent with Tennessee state regulations. The construction department awards engineering professional services contracts based upon a number of factors including prior experience of the city with the firm, evaluation of relevant expertise and information submitted by the firm, capacity to perform the job within time parameters and the attempt by the department to more evenly spread the work assignments among those on the list. There were MWBE firms on the list, along with other professional services firms.

C. Bonding and Insurance Requirements

General Overview -- The Purchasing Department is responsible for ensuring compliance with bonds and insurance requirements. Minimum requirements for bid bonds and insurance are stated in the bid specifications. Except where required by law, the PA may require a bond or other security for any solicitation. The PPPM also provides that the PA may waive any bonding requirements not required by law; however, bonds required in the bid specification cannot be waived for any bidder after the bid submission time.

Bid bonds or deposits may be required on bids for large expenditures to protect the interest of the city in the event the low bidder attempts to withdraw the bid or refuses to enter into a contract. Bid bonds are generally required on all construction contracts with an estimated cost in excess of $100,000 or more. Bid

67 Purchasing Policies and Procedures Manual, IV 4.3

68 Tenn. Code Ann. § 12-4-106

Bonds are calculated at 5 percent of the project amount. Should the successful bidder refuse to enter into a contract within 10 days following award, then the bid bond or deposit will be forfeited to the City.

Performance bonds, labor and materials bonds guarantee that work will be done according to specifications and in the time specified. Performance Bonds are required to be equal to the total dollar value of the project. Labor and material bonds protect the City against liens that might be granted to suppliers of labor and materials to the general contractor, in the event the contractor does not pay his subcontractors. In the case of City contractors, the bond provides protection to suppliers of labor and materials who cannot legally place a lien on public construction.

Certificates of Insurance are required on all construction type and professional services contracts. The Purchasing department contacts the City's Risk Management Service Center to obtain the required type and limits of coverage for inclusion in the bid specifications.

Professional Services Insurance Requirements -Prior to commencing any work under an agreement with the City, the consultant shall deliver to the City insurance certificates confirming the existence of the insurance required by the Agreement. The name of the consultant's project shall also be referenced on the insurance certificate. The consultant is required to provide copies of insurance policies upon request. As respects all acts, errors or omissions in the performance of professional services, the consultant agrees to indemnify and hold harmless the City, its officials, employees, and agents from and against any and all claims, demands, defense costs, or liability of any kind or nature arising directly out of the consultant's negligent acts, errors or omissions in the performance of his or her professional services under the terms of this contract.

- **Workers' Compensation:** The consultant shall maintain in force Workers' Compensation coverage in accordance with the Statutory Requirements and Limits of the State of Tennessee and shall require all sub-contractors to do likewise.

- **General Liability:** Including coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, Broad-Form Property Damage (if applicable) and Independent Contractor's Liability (if applicable written on an occurrence form.

- **Automobile Liability:** To be taken out in the name of the consultant as Named Insured and the City as an Additional Insured, covering owned, non-owned, and hired vehicles with minimum limits.

- **Professional Liability:** Consultants are generally required to secure professional liability coverage to insure against errors and omissions. The amount of coverage required is $2 million dollars. Each wrongful act, and consultant shall maintain such coverage for at least three (3) years from the termination of the agreement. While there is no written documentation to evidence the change, interview of City Risk Management Department personnel indicated that the City increased its Professional Liability Insurance aggregate coverage requirement from one million to two million dollars around 2006. The reason given for the million-dollar increase in coverage requirement was

to provide greater protection for the City in the event the consultant experienced more than one claim against its policy in a short period of time. The Risk Management Department also acknowledged that it was the department's practice to review each contract individually to assess the amount of risk then set contract insurance requirements rather than to apply one written policy to all situations.

- **Property Insurance:** Consultant shall be responsible for maintaining any and all property insurance on his or her own personal property and equipment and shall require all subcontractors to do likewise.

- **Construction Contracts Insurance Requirements:** The Company shall indemnify, defend, save and hold harmless the City, its officers, employees, and agents, from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character arising out of or in connection with the breach of this Agreement by Company, its employees, subcontractors, or agents, or any negligent act or omission of Company, its employees, subcontractors, or agents, which occurs pursuant to the performance of this Agreement, and this indemnification shall survive the expiration or earlier termination of this Agreement. The provisions of this paragraph shall not apply to any loss or damage caused solely by the acts, errors, or omissions of the City, its officers, employees and agents.

- **Worker's Compensation** -- The Company shall maintain in force Workers' Compensation coverage in accordance with the Statutory Requirements and Limits of the State of Tennessee and shall require all subcontractors to do likewise. However, if a company employs "less" than five employees the Workers Compensation requirement is waived as long as they provide a signed statement on company letterhead stating they employee less than five.

- **Employer's Liability**
  - $100,000 Each Accident
  - $500,000 Disease-Policy Limit
  - $100,000 Disease-Each Employee

- **Automobile Liability:** Covering owned, non-owned, and hired
  - Vehicles with LIMITS OF: $1,000,000
  - Combined Single Limits. Each Occurrence –

- **Commercial General Liability:** Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage with minimum limits of:

  $1,000,000 General Aggregate

  $1,000,000 Products-Completed Operations

$1,000,000	Personal and Advertising Injury
$1,000,000	Each Occurrence (Bodily Injury & Property Damage)
$ 50,000	Fire Damage and One Fire
$ 5,000	Medical Expense any One Person

- **Property Insurance**: The Company shall be responsible for maintaining any and all property insurance on their own equipment and shall require all subcontractors to do likewise. The Company shall require all subcontractors to carry insurance as outlined above, in case they are not protected by the policies carried by the Company. The Company is required to provide copies of the insurance policies upon request.

D. Prompt Payment of Subcontractors and Non-discrimination Policy

- Prompt Payment - According to the ordinance, contractors awarded City of Memphis contracts shall ensure the prompt and full payment of any subcontractors working on the contract within five (5) business days of the subcontractor's satisfactory completion of the work assigned to the subcontractor.

- Non-discrimination Policy – Bidders must execute and submit as part of the bid/proposal a Certificate of Nondiscrimination agreeing that, among other things, if awarded the contract, the bidder will not discriminate against any subcontractor, employee, or applicant for employment on the grounds of race, color, national origin or sex.[69]

E. Local Preference & Local Presence

- Local Preference - The City's Local Preference Ordinance establishes a preference on any contract costing $10,000 or more for businesses located within the limits of the city of Memphis. Proof is required from the vendor in the form of a Shelby County and Tennessee Business Tax Receipt accompanying the bid or proposal. Additionally, all personal property and local business operational taxes must have been paid. Local businesses are assigned a 5% decrease in the bid price and or 5% of the total evaluation points.[70]

- Local Presence - In circumstances where there is no business qualifying for the local preference, local presence will be considered for procurements greater than $2,000,000. Local presence is established in favor of the business with the largest number of employees in Shelby County with a minimum of 25 at the time of the bid. A 5% price differential is allowed up to $200,000 for the company granted local presence status.[71]

69 Purchasing Policies and Procedures Manual, 4.2.2.9

70 Purchasing Policies and Procedures Manual, 7.8.1

71 Purchasing Policies and Procedures Manual, 7.8.2

F. Management & Technical Assistance Programs and Race Neutral Initiatives

The City provides a wealth of services to MWBEs through its partnership with the Renaissance Business Center. The center provides management and technical assistance programs, classes and workshops covering nearly every facet of business operations. Classes are held on topics such as construction general contractor licensing, business plan development, sourcing financing, financial statement preparation, and bidding, management of employees and human resources principles.

G. Equal Business Opportunity Program Analysis

- **General Overview**

Administrative Authority and the Contract Compliance Officer (CCO) - The EBO Program ordinance places responsibility for implementation on every city officer, director, manager and supervisor to assure that the intent and spirit of the act is carried out:

"It is the responsibility of every officer, director, administrator, manager, and supervisor of the City of Memphis to manage the daily administration of the provisions of this division and to assure that the intent of this division is carried out in all procurement activities and opportunities." Memphis City Code section 2-325(e)

The ordinance then tasks the CCO, in conjunction with the division of finance, to enforce and administer the code.[72] The CCO is specifically charged with the duties of establishing written procedures, providing MWBEs with information and assistance regarding city contracting opportunities, providing technical assistance and training, monitoring contracts for compliance with participation goals, assisting the department of finance with reporting procedures, monitoring the City's progress and achievement of MWBE program goals, and interviewing MWBEs to ensure performance on joint venture contracts. This structure was reinvented with the establishment of the Office of Business Diversity and Compliance by the current administration. The Contract Compliance Department is contained within the Executive Division and the Contract Compliance Officer reported directly to the Chief Administrative Officer. The Contract Compliance Department was also staffed by three full-time employees and a contract staffer. Currently, the Contract Compliance Department along with the Memphis Office of Resource and Enterprise ("MORE") have been consolidated into the new Office of Business Diversity. The former CCO now operates as the Director of this new entity and reports to the Chief Financial Officer. The office has expanded from three full-time employees to five full time employees with two contract staffers. The office intends to eventually employ up to 8 full time staff.

MWBE Overall Goal Setting, Project Goals and the EBO Advisory Committee (Advisory Committee) - The annual overall goals are approved by the City Council based upon a recommendation from the EBO Advisory Committee. It should be noted that the ordinance defines a minority person as

72 Memphis City Code § 2-325(e)(1)

"those persons, citizens of the United States and lawfully admitted resident aliens, who are African American, Hispanic, Asian or Native American." Consequently, the original ordinance did not apply to non-minority Women. In June of 2006 the City Council amended the definition of women contained in the original ordinance because it was "vague." The revised ordinance defined women as "those persons, citizens of the United States and lawfully admitted resident aliens, who are of the female gender." (City of Memphis Ordinance # 5171, June 20, 2006).

The ordinance establishes the development of annual overall MWBE participation goals which shall be used as benchmarks for evaluating the performance of the program. In addition to overall annual goals, the EBO program provides that the EBO Advisory Committee "shall have the responsibility to decide whether a project participation goal is warranted on any given project." Notwithstanding the foregoing provision, section 2-327 (c) establishes a Construction Projects Goal Setting Committee" which shall "establish specific participation goals for each construction project, the cost of which is estimated to be in excess of $100,000." The ordinance restricts construction project goals to 50 percent or less of the total project contract amount.[73]

Additionally, the ordinance sets forth a comparable framework for setting project goals regarding Professional Services contracts. It provides that the "professional services committee shall review a professional services project costing $50,000.00 or more to determine which, from the following, is or are the best methods for ensuring MWBE participation."[74]

Moreover, there is another project goal setting committee outlined in the ordinance for procurement of Goods, Supplies and Other Services referred to as the GSNP Committee. The ordinance provides for the establishment of goals on goods, supplies and Other Services for purchases that cost $50,000 or more.[75] Similar to the construction goals setting committee, the ordinance restricts project goals for goods, supplies and Other Services to 50 percent or less of the total project contract amount.

In Memphis City Code Section 2-327 (a) the ordinance establishes that MWBE overall yearly goals are to be set for the procurement of construction-related services, goods and Other Services and professional services. Section 2-327 outlines a six factor methodology for setting annual overall MWBE goals. (1) The number of minority and female owned businesses in the market area, (2) the availability of minority and female owned businesses in the relevant market area willing to do business with the City, (3) the general availability of minorities and females having the requisite skills to manage and/or form businesses in the relevant market area, (4) the percentage of minority and female businesses compared to the total number of businesses in the relevant market, (5) the availability of minority and female businesses in the relevant market area which an agency can reasonably add to its certification list, and (6) the degree of outreach and training the City is reasonably able to undertake as a means of making opportunity available to minority and female businesses.

Certification and Local Preference Requirements - The City accepts certification from three different certifying agencies: Uniform Certification Agency (UCA), Tennessee Minority Supplier Development Council (TMSDC), and Women's Business Enterprise National Council (WBENC). UCA

73 Memphis City Code § 2-327(c)(1)b

74 Memphis City Code § 2-327(e)(1)

75 Memphis City Code § 2-327(d)(1)

performs certifications for the following categories: MBE, WBE, and Locally owned small business (LOSB). TMSDC only certifies MBEs. WBENC certifies WBEs only.

The ordinance in section 2-325(d) defines factors used to evaluate whether a business entity is a valid minority or women owned business. Factors include ownership of at least 51 percent of the business by a minority or woman, management and control of daily business operations by the applicant and the performance of a commercially useful function. An MWBE is said to perform a "commercially useful function" where it performs a "distinct element of the work of the contract by actually performing, managing and supervising the work involved" with its employees. Section 2-328(b)(3) provides that "if a MWBE subcontracts 50 percent or more of the work, the MWBE shall be presumed not to be performing a commercially useful function. The MWBE may present evidence to rebut this presumption to the City."

For purposes of contracting with the City under the EBO program a minority or woman owned business enterprise must be located within the Memphis MSA. The various certification agencies perform their review for certifying individual companies. Upon completion, if certification is granted each company is presented the appropriate certificate evidencing the status of MBE, WBE, or LOSB. MMBC employs an appeals committee composed of representatives from participating companies and governmental partners to review challenges to certification decisions. The Contract Compliance Officer for the City sits on the MMBC appeals committee and participates on appeals panels on a rotating basis.

Good Faith Efforts - The ordinance in section 2-328(d) contemplates that there will be instances when a bidder may submit a bid on a project which does not meet the participation goals established for the project but submits the bid based upon good faith efforts to achieve the goal. The ordinance outlines seven factors used to evaluate the good faith efforts employed by the bidder as follows:

(1) attendance at pre-bid conference, if held;

(2) copies of written notification of the work to be performed sent to all certified City MWBEs that perform the type of work to be contracted, in sufficient time to allow said MWBEs to participate effectively, soliciting said MWBEs interest in working on the project and advising the MWBEs:

a) of the specific work the bidder intends to subcontract;

b) that interest in the project is being solicited; and

c) how to obtain information for the review and inspection of the plans, specifications and requirements of the bid.

(3) a written statement that economically feasible portions of work were selected to be performed by MWBEs;

(4) a statement of the efforts made to negotiate with MWBEs;

(5) a statement of efforts made to assist MWBEs contacted who need assistance in obtaining bonding, insurance, etc.;

(6) a statement that the bidder submitted all quotations received from MWBEs, and for those quotations not accepted, a statement of the reasons why the MWBE will not be used to work on the project; and

(7) as to each MWBE contacted, with the bidder considered not to be qualified, a statement of the reasons for the bidder's conclusion based on an investigation of said MWBE's capabilities. Memphis City Code section 2- 328(d)(l-7).

The determination of whether a bidder has made good faith efforts is left to the judgment of the CCO, the director of finance and the purchasing agent prior to award of the project.[76]

Exceptions and Waivers - The ordinance grants to the CCO the authority to waive a construction projects participation goals for a bidder when reasonable good faith efforts are shown. The CCO is also empowered to waive the MWBE good faith efforts requirements when based upon the advice of the User Division and the Purchasing Agent that the goods are available only from a single source which is not an MWBE. Additionally, if the user division certifies in writing to the CCO that an emergency exists, and no MWBEs capable of performing the emergency work are immediately available, an exception and waiver may be granted.[77]

Post-Award Contract Compliance - Contractors are required to submit monthly reports on a form developed by the CCO using the software B2GNow, which allows monitoring of subcontractor payments against contract specifications. This process is used to implement the ordinance requirement that reports of progress shall be submitted by contractors. At the completion of the performance of a contract the contractor is required to submit a final schedule of participating MWBE subcontractors noting final contract amounts and all payments made to MWBE subcontractors. The collection of payment data by prime contractors to subcontractors is now input into the B2GNow program by the contractor after the contract is entered into the system continues to be collected on a manual basis.

Non-Compliance by Bidders and Contractors -The ordinance gives broad authority to the CCO in the event of noncompliance by a bidder or contractor. Penalties include declaration of the bidder's bid as non-responsive, denial or revocation of an MWBEs city certification for a period not to exceed one year, withholding up to ten percent of all future payments due a contractor pending the cure of the default, exclusion from bidding on city contracts for a period not to exceed one year, or termination of the contract by the City. Section 2-326 (b) (l) of the ordinance also requires that contracts with participation goals include language indicating that the penalties outlined above may be employed for breach of the MWBE program provisions.

Graduation Clause and Sunset Provisions - The MWBE program includes two provisions that directly support a finding that the ordinance is narrowly tailored. The graduation clause found in section 2-325(g) and the Sunset clause found in section 2-331. Certified MWBEs are graduated out of the program once their annual sales exceed the average sales for the industry for three consecutive years as determined by their federal tax returns and the NAICS Codes designated by the Small Business Administration. The EBO Program ordinance adopted in 2010 was scheduled to sunset on June 30, 2015. However, City Council extended the ordinance until September 30, 2016. This extension will allow for the continued development of small and minority owned businesses and will permit additional time for the City to complete this disparity study.

76 Memphis City Code § 2-328(d)(7)

77 Memphis City Code § 2-328(f)(2)

H. Conclusions

While there is a good understanding of the codified policies and procedures at the City of Memphis among its staff and no apparent disconnect between policy and practice, GSPC has identified various potential barriers to MWBE firms in the City's written policies.

- **Bid bonds or deposits**

Fact: Construction projects with an estimated cost of $100,000 or more generally require a bid bond at 5% of the bid amount.

Issue: On its face, a 5% bid bond may not appear to be excessive. However small, minority and women owned businesses can rarely afford to pull much needed money from their businesses for the bond. As a result, these businesses are placed in the unenviable position of serving in the consistent role of subcontractor rather than the prime position. Although the company may have the skills, licenses and experience to perform as a prime, finance is a major factor keeping them in the subcontractor role.

- **Performance bonds**

Fact: When a company wins a construction bid with the City, shortly thereafter a performance bond in the amount equal to the dollar value of the project is required.

Issue: The ability to obtain a bond is based on experience, reputation, financial capability, and equipment readiness to name a few expectations. Finance is consistently a problem for small, minority and women owned businesses. While it is understandable the City has to balance the fiscal responsibility due taxpayers. It is also important to take into consideration other less burdensome options that can accomplish the same goal.

- **Certificates of Insurance**

Fact: City insurance levels include $2,000,000 for professional liability and commercial general liability of $1,000,000, to identify a few.

Issue: Vendors have consistently complained about the perceived high levels of insurance required to do business with the City. Although each contract should be reviewed to establish the appropriate insurance limits, in practice rarely are insurance levels lowered.

- **Management & Technical Assistance Programs and Race Neutral Initiatives**

Fact: The City provides a wealth of services to all citizens including MWBEs through the Renaissance Business Center.

Issue: The center offers construction licensing, low interest loans, and financial statement preparation instruction. With all of these resources, many in the community are unaware of the center and it many offerings. Marketing resources have not been deployed in a meaningful way to spread the word about the opportunities presented. With direct loan capabilities, many in the business community could benefit if they were aware of the assistance.

- **Administrative Authority and the Contract Compliance Officer (CCO)**

Fact: The EBO Program is clear in its designation and description of the CCO as being charged with oversight of MWBE issue, concerns, information distribution, etc. The CCO has now been consolidated into the Office of Business Diversity and Compliance to work in conjunction with the division of finance, is specifically charged with providing MWBEs with information and assistance regarding city contracting opportunities and enforcing minority contracting participation requirements.

Issue: In an effort to increase the attention given to small, minority and women owned businesses, oversight boards and other entities had been created. Because the two offices were very similar in scope and focus, the office of MORE with the Contract Compliance Office were consolidated into the creation of the Office of Business Diversity and Compliance. The initial mission of MORE was to provide MWBEs with information regarding city contracting opportunities, although that responsibility was to fall to the CCO through city ordinance. Though a noble attempt at rectifying the issue, there were no measurable available to determine its effectiveness, which also led to confusion in the marketplace for where MWBEs should go to seek information.

The accomplishment or lack thereof of minority participation goals were therefore the responsibility of the CCO. However, with the development of this joint venture it allows for clarity within the marketplace, consolidation of resources, and greater oversight and attentiveness to minority participation in procurement.

- **Certification and Local Preference Requirements**

Fact: The City accepts various certifications from UCA, TMSDC, and WBENC. Each agency charges approximately $300 for certification.

Issue: Vendors have consistently complained about the certification fee charged and the application process. Additionally, the certification period is unusually short at 1 year and require vendors to pay the additional recertification fee annually of $300. Because the City does not self-certify, vendors have no choice but to pay these substantial fees to remain certified. As a result, many firms lose their certification. The MWBEs and LOSBs have expressed that they have to pay to do business with the City under the various programs while majority owned companies do not have pay. Except that the LOSB is not race based as requires all applicants to provide the requested financial data. So majority owned companies are required to submit finances to participate as well.

The application process has been described as invasive and intrusive by MWBEs and LOSBs. There has been a constant concern of breaches of privacy as it relates to their information supplied to the various agencies. The perceived breach is not on the side of City as the City receives no financial data regarding the applicant but the City, by not self-certifying has provided passive support to this process.

IV. QUANTITATIVE ANALYSIS

A. Introduction

The quantitative analysis measures and compares the availability of firms in each race/ethnicity/gender group within the City's geographical and product market areas to the utilization of each race/ethnicity/gender group, measured by the payments to these groups by the City.

> Research Question: Statistical Analysis
>
> Is there a statistically significant disparity between the percentage of available MWBE firms, in the Relevant Geographic and Product Markets, and the percentage of dollars spent with MWBE firms in those same markets during the Study Period?

The outcome of the comparison shows us whether there is a disparity between availability and utilization and whether that disparity is an overutilization, an underutilization, or in parity (the amount to be expected). Further, the disparity is tested to see if it is statistically significant. Finally, the regression analysis contained in the Chapter V Private Sector Analysis will test other explanations for the disparity to determine if it is likely that the disparity is caused by race/ethnicity/gender status, or other factors. If there is statistically significant underutilization of MWBEs that is likely caused by race/ethnicity/gender, then GSPC will determine that there is a legal basis for an inference of discrimination.

Sections A through E address the methodologies employed for data collection, data assessment, database setup, and data cleanup. Section F focuses on establishment of the relevant market in which the City already does business. Section G estimates the pool of available firms which are deemed to be ready, willing and able to do business with the City. Section H lays out the City's contracting, or utilization history for the five (5) year Study Period, and examines utilization for MWBEs in Construction, Architecture and Engineering ("A/E"), Other Professional Services, Other Services, and Goods. Section I analyzes the availability of MWBEs as compared to the City's utilization of such firms, to determine if there is a disparity. Section J determines whether the foregoing disparity suggests the presence of discrimination and Section K provides a conclusion to the chapter.

B. Data Assessment

The data assessment process was initiated with a series of meetings with representatives from the City's purchasing, contract compliance, finance, and IT departments. The purpose of each of these meetings was to determine what data the City of Memphis maintains, in what format, and how GSPC can obtain the data. Further, the objective was for GSPC to get a better understanding of the City's purchasing process in order to best execute the methodology that has been approved by the City. It was also important for GSPC's team to get to know procurement personnel and understand how to operate the Study in a manner least intrusive to City personnel.

GSPC's Data Assessment Report is attached hereto as Appendix B.

C. Data Setup

Following approval of the Data Assessment Report, GSPC developed and executed a Data Collection Plan and submitted data requests to the City. The Data Collection Plan set out the process for collecting manual and electronic data for statistical analyses. In addition, it included a plan for collecting data needed for the anecdotal portions of the study which included surveys, public hearings, focus groups, and interviews. GSPC's Data Collection Plan is attached hereto as Appendix C.

1. Electronic Data

Electronic data (MS Excel or other computer spreadsheets) supplied by the City and other data collected by GSPC were catalogued and stored in GSPC's computer systems subsequent to the data collection effort. The data entered were used to develop databases containing contracting history for each business type, for both prime contracting and subcontracting on behalf of the City. GSPC related all of the databases collected in order to cross-reference information among the files, including matching addresses, work categories, and MWBE identification.

2. Manual Data Entry

Some of the City's data was not available in electronic format and had to be entered manually by data entry personnel. This included most of the IT (SAIC and ACS) data as well as bid tabulations for some construction contracts.

D. Data Assignment, Cleanup and Verification

After the completion of data collection, the data were electronically and manually "cleaned" to find duplicates (both electronically and manually), and fill in unpopulated fields. The cleanup phase also included the following five (5) tasks:

- Assigning and verifying ethnicity, race & gender of each firm;
- Assigning each firm to one or more of the five (5) business categories based upon the kind of work that the firm performs;
- Utilizing zip codes to determine certain areas to assign each firm's location
- Matching files electronically to pick up addresses, ethnicity/race/gender, and/or work category; and
- Filling in any additional missing data on firms.

File cleanup was first done electronically by linking information provided by the City to certain indicators, like commodity codes or cross-referencing information with other files to fill in missing fields.

1. Assignment of Race/Gender/Ethnicity

In order to identify all other minority groups, GSPC utilized the assignments given to firms in the governmental lists from the City, the Tennessee Department of Transportation DBE list, the State of Tennessee GoDBE list, the B2G certified lists (including historical lists), and a non-current Memphis Unified Certification List.[78] In assignment of race/gender/ethnicity, priority is given to race/ethnicity, so that all minority owned firms were categorized according to their race/ethnicity and not by gender. Women

78 The current Memphis Unified Certification List was not available to GSPC.

are categorized by race and gender and firms with no race/ethnicity/gender indicated and Caucasian male owned firms are categorized as Non-MWBE firms.

From all of the governmental sources, GSPC assembled a Master MWBE list. Where there were any inconsistencies in the race/ethnicity/gender, GSPC researched the firm and manually resolved any inconsistencies.

2. Assignment of Business Categories

In order to place firms in the proper business categories, GSPC used the NIGP codes to assign the firms into one of the five industries of construction, A/E, Other Professional Services, Other Services, and Goods. Further, where other indicators were missing GSPC used certain word descriptions in firm names (e.g. ABC Construction or XYZ Mowing Services) and researched firms to determine the type of work they did. A list of NIGP codes with the assigned business categories is attached as Appendix D. However, generally, (i) the Construction category includes those firms that perform construction services; (ii) the A/E category includes only architecture and engineering firms; (iii) the Other Professional Services category includes lawyers, doctors, accountants, banks, and other highly skilled and licensed services; (iv) the Other Services category includes services such as janitorial, landscape, and cleaning services; and (v) the Goods category includes firms who provide a tangible product.

3. Contract Classifications

Firms were identified and classified into the following five (5) work categories:

- Construction – "The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property."

- A/E – Architecture and Engineering

- Other Professional Services– "(i.e., legal services, fiscal agent, financial advisor or advisory services, educational consultant services, and similar services by professional persons or groups of high ethical standards)"

- Other Services – "the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. This term does not include employment agreements or collective bargaining agreements." (not including Construction, A/E or other Professional Services)

- Goods – "all property, excluding real property or an interest in real property, including but not limited to supplies, equipment, and materials."[79]

79 City of Memphis, Purchasing Policies and Procedures. March, 2013

E. Data Source Description

The following describes the databases created by GSPC and used for the analyses contained in this Study:

1. Bidders' List

The Bidders' List is a compilation of an electronic bidders Excel spreadsheet and bid tabulations (PDF format) taken from the City's website and entered manually by GSPC data entry personnel for some construction contracts. Bidder information only provides details about the prime vendors. The firms on the Bidders' List were included in the Master Vendor File for inclusion in the Availability Estimates.

2. Contracts

The contracts file is a file of all awards of $5,000 or more made during the Study Period. It was extracted by GSPC from the City's B2G systems and combined with a supplemental electronic awards file provided by Purchasing and the contracts from ACS and SAIC (IT awards through an outside vendor acting on behalf of the City) that were entered manually. This list was used to create the mailing list for the Prime Vendor Questionnaire, conduct the Threshold Analysis, and all the firms on the Contract List, that were located within the Relevant Market, were included in the Availability Estimates. Firms in this unique prime database were counted once in each of the work categories in which they performed work for purposes of availability, but each award made was counted in the Threshold Analysis.

3. Master Vendor File

The purpose of the Master Vendor File is to collect, in one database, a listing of all firms that are ready, willing, and able to do business with the City. It includes internal lists from the City of Memphis as well as outside governmental lists. By including the outside lists GSPC has a broader inclusion of firms that have expressed an interest in doing business with government. Although GSPC may not have picked up every available firm in the Relevant Market, it has included such a broad sample that the percentages are reliable and no sample bias would be indicated.

The Master Vendor file is a compilation of all lists of vendors used to determine availability estimates. It was also used to match and verify data in other data files, particularly to make sure that information assigned to firms for utilization calculations matched the information assigned to firms for availability calculations. This is important to make sure that GSPC is comparing like-data to like-data. The Master Vendor File contains the lists of firms from the following data sources:

a) *Memphis Data Files*

- Memphis Suppliers (Current)
- Bidders (Study Period)
- Contracts (Study Period, including SAIC and ACS)
- Subcontractors from Prime Vendor Questionnaire (Study Period)
- Payments from A/P file (Study Period)
- Registered & Certified MWBEs (from the Study Period)

b) *Outside Files*

- Tennessee Department of Transportation Pre-Qualified (Current)
- Tennessee Unified Certification Program (Current)
- Memphis Light Gas & Water Awardees (Study Period)
- State of Tennessee GoDBE (Current)
- B2G Memphis Vendors (Current)
- Memphis-Shelby County Airport Authority ("MSCAA")

4. Prime Vendor Questionnaire

The Prime Vendor Questionnaire referenced above was conducted through a mail questionnaire prepared by GSPC and sent to all awardees for all contract awards during the Study Period. A copy of the questionnaire is attached as Appendix E. There were 1745 questionnaires sent that were not returned or identified as outside the period, a not-for-profit, governmental agency, or that otherwise should have been excluded as a non-competitive contract (e.g. leases). GSPC received responses from 245 firms which is a 14.04% response rate. Of those firms that responded 32 had subcontractors which indicates that only 13% of contractors utilized subcontractors. These 32 prime contractors utilized 134 subcontractors in total.

The responses of the Prime Vendor Questionnaire were used to calculate Subcontractor Utilization and to include subcontractors in Availability Estimates. In addition, the subcontractor race/ethnicity/gender identification was used to verify like information provided by the City of Memphis in various databases.

F. Relevant Market Analysis

The now commonly-held idea that the relevant market area should encompass at least seventy-five to eighty-five percent of the "qualified" vendors that serve a particular sector has its origins in antitrust lawsuits.[80] In line with antitrust precepts, United States Supreme Court, Justice Sandra Day O'Connor in Croson, specifically criticized Richmond, Virginia, for making Minority Business Enterprises (MBEs) all over the country eligible to participate in its set-aside programs.[81] The Court reasoned that a mere statistical disparity between the overall minority population in Richmond, Virginia, which was 50% African American, and the award of prime contracts to minority owned firms, 0.67% of which were African American owned firms, was an insufficient statistical comparison to raise an inference of discrimination. Justice O'Connor also wrote that the relevant statistical comparison is one between the percentage of Minority Business Enterprises in the marketplace [or *Relevant Market*] who were qualified to perform contracting work (including prime and subcontractors) and the percentage of total City contracting dollars awarded to minority firms. It should be noted that it is preferable, from an economic standpoint, to evaluate the largest and most exhaustive group of firms, even to 100% of all firms, but for this disparity study, GSPC utilized a benchmark of at least 75%.

The relevant market has been determined for each of the major procurement categories:

80 D. Burman. "Predicate Studies: The Seattle Model," Tab E of 11-12 Minority and Women Business Programs Revisited (ABA Section of Public Contract law, Oct. 1990)

81 City of Richmond v. J.A. Croson Company, 488 U.S. 469, 709 S. Ct. 706 (1989)

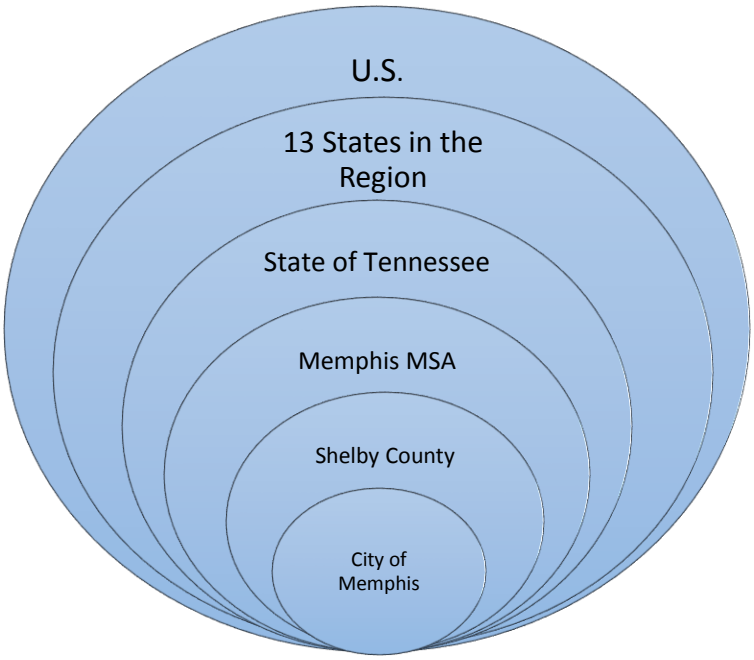
- Construction
- A/E
- Other Professional Services
- Other Services
- Goods

For each procurement category GSPC measured the "relevant market" by the area where at least 75% of the City's dollars were spent during the Study Period.

Preferably, GSPC would have measured the relevant market by the area where at least 75% of the bidders were located because it more accurately defines the geographic area from which the City's offerors are from and is not limited to those who are successful bidders. However, the City's bidder data was not available for all business categories. Therefore, the alternative data to measure the geographic territory where ready, willing, and able firms are available, is payment data. There is no question that every firm that has been paid by the City, demonstrated themselves ready, willing, and able to do business with the City by actually performing compensable services for the City.

Figure 1 below, summarizes the geographic area where at least 75% of prime payees are located in each industry. In analyzing the relevant market data, GSPC tabulated the percentage of dollars spent, beginning with the City of Memphis (by zip codes). GSPC continued counting in radius surrounding the City of Memphis until the cumulative percentage was equal to or greater than 75%.

Figure 1: Levels of Measurement for Geographic Relevant Market



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If, after counting where dollars were spent during the Study Period, the percentage of dollars paid to firms within the City of Memphis, TN was not at least 75% of all dollars spent, then GSPC calculated the percentages in Shelby County (but not including the zip codes in the City of Memphis that had already been counted). If the 75% benchmark was still not met, then GSPC counted the dollars spent in the counties in the Memphis MSA, which includes the counties of Tipton, TN; Fayette, TN; DeSoto, MS; Crittenden, AR; Tunica, MS; Tate, MS; and Marshall, MS, but not including Shelby County which had already been counted.

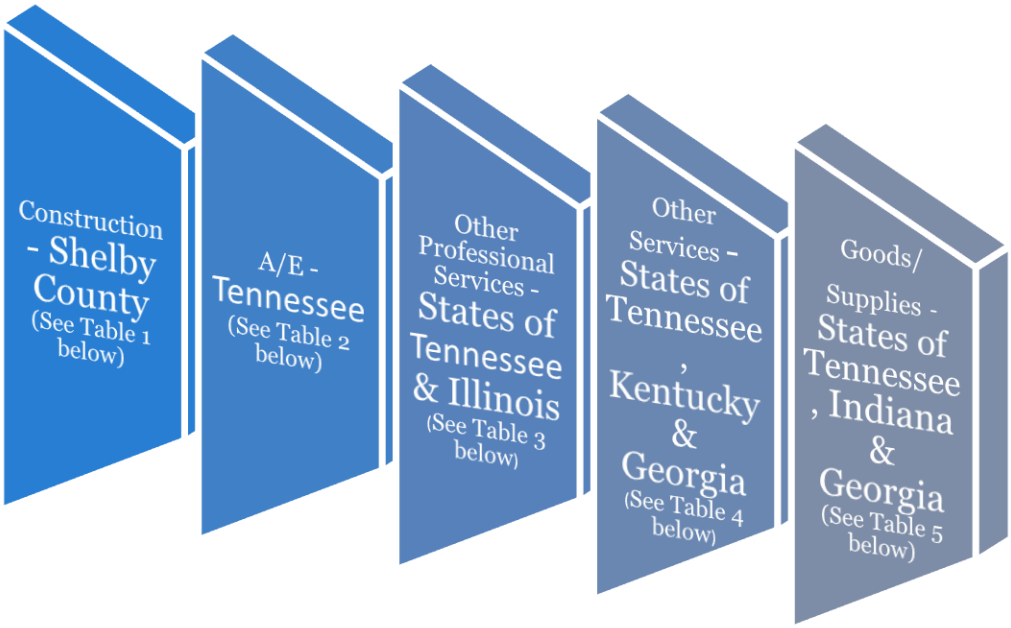
If dollars received by firms doing business with the City that are located within the MSA did not reach the 75% benchmark, then GSPC began counting dollars going to firms located in the State of Tennessee (but not in the MSA). When, upon exhausting the dollars spent within the State of Tennessee, the 75% benchmark had still not been attained, GSPC then analyzed the dollars spent in the neighboring states, beginning with those states where the dollars were greatest. Neighboring states are Alabama, Arkansas, Georgia, Illinois, Indiana, Kentucky, Mississippi, Missouri, Ohio, North Carolina, South Carolina, Virginia, and West Virginia.

In situations in which the surrounding states had been exhausted, but the 75% benchmark still had not been reached, it was appropriate to make the determination that the relevant market consisted of the entire United States.

Note: The Memphis MSA is included in the calculation for the State of Tennessee and broader determinations. The MSA is comprised of the following counties outside of the State of Tennessee: DeSoto, MS, Crittenden, AR, Tunica, MS, Tate, MS, and Marshall, MS

The Relevant Geographic Market for each industry is determined as follows:

Figure 2: Summary of Relevant Geographic Market (by payments)



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The previous 2010 Disparity Study differed from the current determination of the Relevant Geographic Market in that:

- Construction was the Memphis MSA (now Shelby County)
- A/E was Memphis MSA (now State of Tennessee)
- Other Professional Services was the U.S. (now States of Tennessee & Illinois)
- Other Services was State of Tennessee (now States of Tennessee, Kentucky & Georgia)
- Goods/Services was the U.S. (now States of Tennessee, Indiana, and Georgia)

Tables 1-5 detail the dollars spent in each level of the Geographic Relevant Market calculations by payments. It is interesting to note that in Construction 72.41% of all the dollars spent were spent within the City of Memphis. In A/E, 58.31% of the dollars were spent with firms within the City of Memphis, 63.61% in Other Professional Services, 53.63% in Other Services. Goods is the only category where less than half of the City's dollars were spent outside of the City of Memphis, but 56.91% of the dollars in this category remained in the State of Tennessee.[82]

Table 1: Relevant Market – Construction (Payment Dollars)
City of Memphis, TN Disparity Study

Construction	**$225,635,702**			
	Number	**Percent**	**Cumulative Number**	**Cumulative Percent**
City of Memphis	**$163,382,028**	**72.41%**	**$ 163,382,028**	**72.41%**
Shelby County	**$9,679,604**	**4.29%**	**$ 173,061,632**	**76.70%**
Memphis MSA	$3,005,803	1.33%	$ 176,067,435	78.03%
State of Tennessee	$9,632,028	4.27%	$ 185,699,463	82.30%
State of Alabama	$11,246,900	4.98%	$ 196,946,363	87.29%
State of Kentucky	$3,650,072	1.62%	$ 200,596,435	88.90%
State of Georgia	$2,733,393	1.21%	$ 203,329,828	90.11%
State of Missouri	$2,568,998	1.14%	$ 205,898,826	91.25%
State of Ohio	$2,554,155	1.13%	$ 90,619,903	92.38%
State of Illinois	$2,463,149	1.09%	$ 90,619,903	93.48%
State of Indiana	$640,042	0.28%	$ 90,619,903	93.76%
State of Virginia	$413,059	0.18%	$ 211,969,231	93.94%
State of Mississippi	$194,034	0.09%	$ 212,163,265	94.03%
State of North Carolina	$49,372	0.02%	$ 212,212,637	94.05%
State of Arkansas	$8,066	0.00%	$ 212,220,703	94.05%
State of West Virginia	$0	0.00%	$ 90,619,903	94.05%
State of South Carolina	$0	0.00%	$ 90,619,903	94.05%
U.S.	$13,414,999	5.95%	$ 225,635,702	100.00%
Total		100.00%		

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82 The Relevant Market calculations include all payment dollars spent in the business category, even if those dollars were otherwise excluded from other portions of the disparity study analysis (e.g. not-for profits)

Table 2: Relevant Market – A/E (Payment Dollars)
City of Memphis, TN Disparity Study

Architecture & Engineering	$17,862,074			
	Number	Percent	Cumulative Number	Cumulative Percent
City of Memphis	**$10,415,948**	**58.31%**	**$ 10,415,948**	**58.31%**
Shelby County	**$2,065,111**	**11.56%**	**$ 12,481,059**	**69.87%**
Memphis MSA	**$0**	**0.00%**	**$ 12,481,059**	**69.87%**
State of Tennessee	**$1,620,086**	**9.07%**	**$ 14,101,145**	**78.94%**
State of Georgia	$551,135	3.09%	$ 15,621,665	82.03%
State of North Carolina	$373,479	2.09%	$ 15,621,665	84.12%
State of Missouri	$350,225	1.96%	$ 15,621,665	86.08%
State of South Carolina	$158,602	0.89%	$ 15,621,665	86.97%
State of Illinois	$84,782	0.47%	$ 15,619,368	87.44%
State of Mississippi	$2,297	0.01%	$ 15,621,665	87.46%
State of Indiana	$0	0.00%	$ 15,621,665	87.46%
State of Ohio	$0	0.00%	$ 15,621,665	87.46%
State of West Virginia	$0	0.00%	$ 15,621,665	87.46%
State of Arkansas	$0	0.00%	$ 15,621,665	87.46%
State of Alabama	$0	0.00%	$ 15,621,665	87.46%
State of Virginia	$0	0.00%	$ 15,621,665	87.46%
State of Kentucky	$0	0.00%	$ 15,621,665	87.46%
U.S.	$2,240,409	12.54%	$ 17,862,074	100.00%
Total		100.00%		

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Table 3: Relevant Market – Other Professional Services (Payment Dollars)
City of Memphis, TN Disparity Study

Other Professional Services	$170,902,215			
	Number	Percent	Cumulative Number	Cumulative Percent
City of Memphis	**$108,715,425**	**63.61%**	**$ 108,715,425.00**	**63.61%**
Shelby County	**$2,577,041**	**1.51%**	**$ 111,292,466.00**	**65.12%**
Memphis MSA	**$2,546,206**	**1.49%**	**$ 113,838,672.00**	**66.61%**
State of Tennessee	**$8,416,472**	**4.92%**	**$ 122,255,144.00**	**71.54%**
State of Illinois	**$8,587,649**	**5.02%**	**$ 130,842,793.00**	**76.56%**
State of Georgia	$5,794,454	3.39%	$ 148,875,910.00	87.11%
State of Kentucky	$3,321,424	1.94%	$ 139,958,671.00	81.89%
State of Virginia	$3,299,434	1.93%	$ 143,258,105.00	83.82%
State of Missouri	$1,276,716	0.75%	$ 144,534,821.00	84.57%
State of Alabama	$1,253,463	0.73%	$ 145,788,284.00	85.31%
State of Arkansas	$1,151,097	0.67%	$ 146,939,381.00	85.98%
State of North Carolina	$673,594	0.39%	$ 147,612,975.00	86.37%
State of Mississippi	$618,000	0.36%	$ 148,875,910.00	87.11%
State of Indiana	$438,337	0.26%	$ 148,669,312.00	86.99%
State of Ohio	$206,598	0.12%	$ 148,875,910.00	87.11%
State of West Virginia	$0	0.00%	$ 148,875,910.00	87.11%
State of South Carolina	$0	0.00%	$ 148,875,910.00	87.11%
U.S.	$22,026,305	12.89%	$ 170,902,215.00	100.00%
Total		100.00%		

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Table 4: Relevant Market – Other Services (Payment Dollars)
City of Memphis, TN Disparity Study

Other Services	$90,619,903			
	Number	Percent	Cumulative Number	Cumulative Percent
City of Memphis	**$48,597,054**	**53.63%**	**$ 48,597,054**	**53.63%**
Shelby County	**$2,957,761**	**3.26%**	**$ 51,554,815**	**56.89%**
Memphis MSA	**$3,862,970**	**4.26%**	**$ 55,417,785**	**61.15%**
State of Tennessee	**$5,364,846**	**5.92%**	**$ 60,782,631**	**67.07%**
State of Kentucky	**$6,698,464**	**7.39%**	**$ 75,899,842**	**74.47%**
State of Georgia	**$2,848,419**	**3.14%**	**$ 75,899,842**	**77.61%**
State of Illinois	$2,267,125	2.50%	$ 72,596,639	80.11%
State of Alabama	$1,112,914	1.23%	$ 75,899,842	81.34%
State of Ohio	$874,702	0.97%	$ 75,960,842	82.30%
State of Mississippi	$460,256	0.51%	$ 75,044,511	82.81%
State of Arkansas	$414,443	0.46%	$ 75,458,954	83.27%
State of Missouri	$148,703	0.16%	$ 75,607,657	83.43%
State of North Carolina	$124,660	0.14%	$ 75,732,317	83.57%
State of Virginia	$88,095	0.10%	$ 75,820,412	83.67%
State of South Carolina	$79,430	0.09%	$ 75,899,842	83.76%
State of Indiana	$61,000	0.07%	$ 75,960,842	83.82%
State of West Virginia	$0	0.00%	$ 75,960,842	83.82%
U.S.	$14,659,061	16.18%	$ 90,619,903	100.00%
Total		100.00%		

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Table 5: Relevant Market – Goods (Payment Dollars)
City of Memphis, TN Disparity Study

Goods	$218,863,781			
	Number	Percent	Cumulative Number	Cumulative Percent
City of Memphis	**$99,192,044**	**45.32%**	**$ 99,192,044**	**45.32%**
Shelby County	**$1,973,231**	**0.90%**	**$ 101,165,275**	**46.22%**
Memphis MSA	**$3,410,452**	**1.56%**	**$ 104,575,727**	**47.78%**
State of Tennessee	**$19,978,512**	**9.13%**	**$ 124,554,239**	**56.91%**
State of Indiana	**$29,363,458**	**13.42%**	**$ 183,740,920**	**70.33%**
State of Georgia	**$10,429,267**	**4.77%**	**$ 164,346,964**	**75.09%**
State of Alabama	$7,938,955	3.63%	$ 172,285,919	78.72%
State of Illinois	$7,203,468	3.29%	$ 183,740,920	82.01%
State of Mississippi	$4,251,533	1.94%	$ 183,740,920	83.95%
State of Arkansas	$3,783,927	1.73%	$ 196,615,362	85.68%
State of North Carolina	$3,369,199	1.54%	$ 196,615,362	87.22%
State of Ohio	$3,078,269	1.41%	$ 193,972,315	88.63%
State of Missouri	$1,482,941	0.68%	$ 196,615,362	89.30%
State of South Carolina	$562,617	0.26%	$ 196,615,362	89.56%
State of Kentucky	$474,463	0.22%	$ 196,615,362	89.78%
State of Virginia	$123,026	0.06%	$ 196,615,362	89.83%
State of West Virginia	$0	0.00%	$ 196,615,362	89.83%
U.S.	$22,248,419	10.17%	$ 218,863,781	100.00%
Total		100.00%		

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G. Availability Analysis

1. Methodology

The methodology utilized to determine the availability of businesses for public contracting is crucial to understanding whether a disparity exists within the relevant market. Availability is a benchmark to examine whether there are any disparities between the utilization of MWBEs and their availability in the marketplace.

***Availability** is the determination of the percentage of MWBEs that are "ready, willing, and able" to provide goods or services to the City of Memphis.*

Croson and subsequent decisions give only general guidance as to how to measure availability. One common theme from the court decisions is that being qualified to perform work for a local jurisdiction is one of the key indices of an available firm. In addition, the firm must have demonstrated that it is both willing and able to perform the work.
The measures of availability utilized in this disparity study incorporate all of the criteria of availability required by Croson:

- The firm does business within an industry group from which the City of Memphis makes certain purchases.
- The firm's owner has taken steps to do business with the City and qualified itself to do such business by registering or certifying itself.
- The firm is located within a relevant geographical area such that it can do business with the City of Memphis.

The following definitions are necessary for the estimation of availability:
Definitions:
Let: A = Availability Estimates
A (Asian) = Availability Estimates for Asian Business Enterprises
N (Asian) = Number of Asian Business Enterprises in the relevant market
N (MWBE) = Number of Minority owned Business Enterprises
N (t) = Total number of businesses in the pool of bidders in the procurement category (for example, Construction)

Availability, (A), is a percentage and is computed by dividing the number of firms in each MWBE group by the total number of businesses in the pool of bidders for that procurement category, N (t). For instance, availability for Asians is given by
A (Asian) = N (Asian)/N (t)
and total availability for all MWBE groups is given by
A (MWBE) = N (MWBE)/N (t).

Once these availability estimates were calculated, GSPC compared them to the percentage of firms utilized in the respective business categories in order to generate the disparity indices which will be discussed later in this analysis.

2. Measurement Basis for Availability

There are numerous approaches to measuring available, qualified firms. GSPC has established a methodology of measuring availability based upon demonstrated interest in doing business with governments. In determining whether a firm is ready, willing, and able, it cannot be presumed that simply because a firm is doing business in a relevant market, it desires, or is capable of, working for the City, particularly as a prime, which may require a particular capacity. However, a determination of availability for subcontractors, where all levels of work are available, to be made strictly based upon the existing vendor base of the City assumes that there are no discriminatory barriers associated with registration or certification. GSPC measured Prime Contractor Availability by utilizing the Master Vendor File (the contents of which is set forth below) but including only those firms that have bid, been prequalified, or performed as primes (sources for primes indicated by an (*). In determining those firms to be included in the subcontractor availability pool, GSPC included the entire "Master Vendor File".

a) *City's Bidder* (Study Period)*
b) *City's Suppliers (Current)*
c) *B2G Vendors (Current)*
d) *City's Contracts* – Includes ACS and SAICS procurements (Study Period)*
e) *City's Payments* (Study Period)*
f) *City's EBO list (Current)*
g) *B2G Certified Lists- Includes certifications by Uniform Certification Agency-Memphis (Study Period)*
h) *City's Subcontractors (indicated in returned Prime Vendor Questionnaire)*
i) *State of Tennessee GoDBE list (Current)*
j) *Tennessee DOT Prequalified List* (Current)*
k) *Memphis Light Gas & Water*– Award List (Study Period)*
l) *Memphis Shelby County Airport Authority (MSCAA) -DBE List (Current)*

3. Capacity

The ability or capacity to perform the work is tested below in the Threshold Analysis. It is also tested in the Regression Analysis conducted in Chapter V below.

First, capacity is important to determine whether a separate availability estimate for primes and subcontractors is needed. GSPC performs a threshold analysis of the level of contracting done by prime contractors to determine if it is reasonable to believe that the firms in the marketplace that have at least registered to do business with governments and that are included in our availability lists, have the capacity to perform as prime contractors, or only as subcontractors. The threshold analysis shows the ladder of awards at each level and across all race/ethnicity/gender groups to see if the capacity of MWBEs matches with those of Non-MWBEs in contracting with the City.

Secondly, from the survey of business owners, we can see whether the level of contracting awarded to MWBE's outside of contracting with the City of Memphis indicates similar levels of contracting to those attained in City awards. If not, it may indicate a level of unutilized capacity of MWBEs within the City's contracting.

Finally, the regression analysis shows whether race/ethnicity/gender factors are impediments overall to the success of MWBEs in obtaining awards in the Memphis marketplace and whether, but for those factors, firms would have the capacity to provide goods and services on a level higher than what is presently being utilized. In fact, the Private Sector Analysis concluded that, "in the absence of financing barriers, manifested perhaps as discrimination against African American owned firms in credit markets—a major source of financing—African American owned firms would be able to compete with non-minority owned firms in bidding and securing public contracts from the City of Memphis."

a) *Overall Award Thresholds to Determine Level of Contracting*

In Construction, there were a total of 672 contracts for a total of $336,103, 490 over the Study Period. The average contract was $500,154 with half of all contracts at $29,020 or less. Only 74 or 11.01% of all Construction contracts were $1M or more, but they account for 80.84% of all Construction award dollars.

Table 6: Award Thresholds-Construction
City of Memphis, TN Disparity Study

Award Threshold	Number of Awards	Percent of Awards	Dollars
5,000 to 10,000	96	14.29%	$737,128
10,000 to 50,0000	324	48.21%	$7,802,976
50,000 to 100,000	35	5.21%	$2,627,786
100,000 to 250,000	57	8.48%	$9,192,707
250,000 to 500,000	47	6.99%	$16,652,084
500,000 to 750,000	25	3.72%	$15,183,750
750,000 to 1,000,000	14	2.08%	$12,199,225
1,000,000 to 1,500,000	18	2.68%	$22,012,789
1,500,000 to 2,000,000	15	2.23%	$26,042,604
2,000,000 to 2,500,000	7	1.04%	$15,490,755
2,500,000 to 5,000,000	20	2.98%	$66,800,593
Over 5,000,000	14	2.08%	$141,361,094
Total	672	100.00%	$336,103,490

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Average:	**$500,154**
Median:	**$29,020**

In A/E, there were a total of 67 contracts for a total of $15,273,196 over the Study Period[83]. The average contract was $227,958 with half of all contracts at $50,500 or less. Only 3 or 4.48% of all A/E contracts were $1M or more, but they account for 36.77% of all A/E award dollars.

Table 7: Award Thresholds-A/E
City of Memphis, TN Disparity Study

Award Threshold	Number of Awards	Percent of Awards	Dollars
5,000 to 25,000	16	23.88%	$222,377
25,000 to 50,0000	15	22.39%	$556,305
50,000 to 100,000	10	14.93%	$629,254
100,000 to 500,000	18	26.87%	$5,132,267
500,000 to 1,000,000	5	7.46%	$3,117,730
1,000,000 to 1,500,000	1	1.49%	$1,080,000
1,500,000 to 2,000,000	1	1.49%	$1,729,783
2,000,000 to 2,500,000	0	0.00%	$0
2,500,000 to 5,000,000	1	1.49%	$2,805,480
Over 5,000,000	0	0.00%	$0
Total	67	100.00%	$15,273,196

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Average:	**$227,958**
Median:	**$50,500**

83 Although this seems like a low number of A/E contracts, it could be because those contracts were performed as subcontractors under a prime construction contract.

In Other Professional Services, there were a total of 209 contracts for a total of $48,041,919 over the Study Period. The average contract was $$229,866 with half of all contracts at $68,771 or less. Only 9 or 4.31% of all Other Professional Services contracts were $1M or more, but they account for 37.75% of all Other Professional Services award dollars.

Table 8: Award Thresholds-Other Professional Services
City of Memphis, TN Disparity Study

Award Threshold	Number of Awards	Percent of Awards	Dollars
5,000 to 25,000	56	26.79%	$770,985
25,000 to 50,0000	39	18.66%	$1,491,818
50,000 to 100,000	27	12.92%	$2,013,303
100,000 to 500,000	59	28.23%	$12,185,684
500,000 to 1,000,000	19	9.09%	$13,445,189
1,000,000 to 1,500,000	4	1.91%	$4,868,919
1,500,000 to 2,000,000	2	0.96%	$3,387,821
2,000,000 to 2,500,000	0	0.00%	$0
Over 5,000,000	3	1.44%	$9,878,200
Total	209	100.00%	$48,041,919

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Average:	**$229,866**
Median:	**$68,771**

In Other Services, there were a total of 1389 contracts for a total of $276,493,842 over the Study Period. The average contract was $199,060 with half of all contracts at $32,257 or less. Only 40 or 2.88% of all Other Services contracts were $1M or more, but they account for more than half (58.20%) of all Other Services award dollars.

Table 9: Award Thresholds-Other Services
City of Memphis, TN Disparity Study

Award Threshold	Number of Awards	Percent of Awards	Dollars
5,000 to 25,000	553	39.81%	$7,583,955
25,000 to 50,0000	311	22.39%	$11,023,429
50,000 to 100,000	185	13.32%	$13,100,489
100,000 to 500,000	258	18.57%	$56,376,302
500,000 to 1,000,000	42	3.02%	$27,487,976
1,000,000 to 1,500,000	12	0.86%	$13,763,700
1,500,000 to 2,000,000	5	0.36%	$8,206,682
2,000,000 to 2,500,000	4	0.29%	$8,766,137
2,500,000 to 5,000,000	10	0.72%	$38,277,694
Over 5,000,000	9	0.65%	$91,907,477
Total	1389	100.00%	$276,493,842

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Average:	**$**	**199,060**
Median:		**$32,257**

In Goods, there were a total of 2,052 contracts for a total of $$239,687,135 over the Study Period. The average contract was $116,807 with half of all contracts at $29,193 or less. Only 32 or 1.56% of all Goods contracts were $1M or more, but they account for 42.09% of all award dollars in Goods.

Table 10: Award Thresholds-Goods
City of Memphis, TN Disparity Study

Award Threshold	Number of Awards	Percent of Awards	Dollars
5,000 to 10,000	351	17.11%	$2,540,864
10,000 to 25,000	562	27.39%	$9,210,177
25,000 to 50,0000	554	27.00%	$20,916,244
50,000 to 100,000	218	10.62%	$15,325,643
100,000 to 500,000	292	14.23%	$60,965,063
500,000 to 1,000,000	43	2.10%	$29,835,431
1,000,000 to 1,500,000	8	0.39%	$9,760,982
1,500,000 to 2,000,000	8	0.39%	$13,063,909
2,000,000 to 2,500,000	6	0.29%	$12,855,254
2,500,000 to 5,000,000	7	0.34%	$22,077,423
Over 5,000,000	3	0.15%	$43,136,146
Total	2052	100.00%	$239,687,135

Average:	**$116,807**
Median:	**$29,193**

Overall, there were 4,389 awards over $5,000 made by the City of Memphis from FY2010-FY2014 totaling $915,599,582. The average dollar amount awarded was $208,612; however, half of all contracts were $30,660 or under. Only 158 of all contracts, or 3.60% were over $1M, but they accounted for 60.86% of all contracting dollars over $5,000.

Table 11: Award Thresholds-All Work Categories
City of Memphis, TN Disparity Study

Award Threshold	Number of Awards	Percent of Awards	Dollars
5,000 to 10,000	625	14.24%	$4,590,817
10,000 to 25,000	1210	27.57%	$20,014,488
25,000 to 50,0000	1042	23.74%	$38,250,953
50,000 to 100,000	475	10.82%	$33,696,475
100,000 to 500,000	731	16.66%	$160,504,106
500,000 to 1,000,000	148	3.37%	$101,269,300
1,000,000 to 1,500,000	43	0.98%	$51,486,390
1,500,000 to 2,000,000	31	0.71%	$52,430,798
2,000,000 to 2,500,000	17	0.39%	$37,112,147
2,500,000 to 5,000,000	41	0.93%	$139,839,390
Over 5,000,000	26	0.59%	$276,404,717
Total	4389	100.00%	$915,599,582

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Average:	**$**	**208,612**
Median:		**$30,660**

Since 76.37% of the City's prime awards that are $5,000 or more are under $100,000, and 93.03% are under $500,000, GSPC determined that all firms, including those that have only provided services as subcontractors, have the capacity to perform as prime contractors in City awards. There is no need to separate the availability estimates between prime contractors and subcontractors, as all can perform as both primes contractors and subcontractors.

b) *City Award Thresholds By Race/Ethnicity/Gender*

GSPC measured the level of contracting awarded by the City to each race/ethnicity/gender group and then compared that to the level of contracting that firms in each race/ethnicity gender group have performed in all public and private contracting. If public and private contracting levels are higher than contracting with the City, the difference is deemed to be Unutilized Capacity. With no utilization at all, Hispanic American owned firms and Native American owned firms have 100% unutilized capacity; Asian American have 75% unutilized capacity; Women have 19.7% unutilized capacity; and African American owned businesses have 9.6% unutilized capacity. This means that that percentage of firms could have performed in contracts higher than those awarded to that race/ethnicity/gender group.

Table 12: Unutilized Capacity by Race/Ethnicity/Gender
(from $5,000 and over award data and
Question 11 responses from Survey of Business Owners)
City of Memphis, TN Disparity Study

City of Memphis Disparity Study Unutilized Capacity by Ethnicity			
Race/Ethnicity	Highest Award	% Surveyed with Revenues in Excess of the Highest Award (Unutilized capacity)[84]	Category of next highest awards
African American	$2,805,480	9.6%	$3M or more
Asian American	$883,620	75.00%	$1 M or more
Hispanic American	$0	100.00%	$0 or more
Native American	$0	100.00%	$0 or more
Women	$1,892,696	19.7%	$3M or more
Non-MWBE	$30,000,000	0%	More than $30M

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84 Reflects an "at least" percentage

Table 13: Gross Revenues of Firms for 2014 by Race/Ethnicity/Gender
City of Memphis, TN Disparity Study

Q11 Company gross revenues for calendar year 2014									
	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	
$50,000 or less	1	4	13	0	0	0	0	0	18
	0.8%	6.6%	17.8%	0.0%	0.0%	0.0%	0.0%	0.0%	6.4%
$50,001 - $100,000	2	2	12	1	0	0	0	0	17
	1.6%	3.3%	16.4%	25.0%	0.0%	0.0%	0.0%	0.0%	6.0%
$100,001 - $300,000	6	4	12	0	0	0	0	1	23
	4.9%	6.6%	16.4%	0.0%	0.0%	0.0%	0.0%	7.1%	8.2%
$300,001 - $500,000	6	3	9	0	0	0	0	0	18
	4.9%	4.9%	12.3%	0.0%	0.0%	0.0%	0.0%	0.0%	6.4%
$500,001 - $1,000,000	10	11	9	0	1	1	0	2	34
	8.2%	18.0%	12.3%	0.0%	50.0%	100.0%	0.0%	14.3%	12.1%
$1,000,001 - $3,000,000	22	19	9	2	0	0	2	4	58
	18.0%	31.1%	12.3%	50.0%	0.0%	0.0%	40.0%	28.6%	20.6%
$3,000,001 - $5,000,000	14	4	4	0	0	0	0	0	22
	11.5%	6.6%	5.5%	0.0%	0.0%	0.0%	0.0%	0.0%	7.8%
$5,000,001 - $10,000,000	10	2	1	0	1	0	0	0	14
	8.2%	3.3%	1.4%	0.0%	50.0%	0.0%	0.0%	0.0%	5.0%
Over $10 million	33	6	2	1	0	0	1	3	46
	27.0%	9.8%	2.7%	25.0%	0.0%	0.0%	20.0%	21.4%	16.3%
No response	18	6	2	0	0	0	2	4	32
	14.8%	9.8%	2.7%	0.0%	0.0%	0.0%	40.0%	28.6%	11.3%
Total	122	61	73	4	2	1	5	14	282
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

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In addition to the foregoing unutilized capacity, the Private Sector Analysis found in Chapter V of this report determined that MWBEs had capacity that has been undermined by discrimination. For all of the reasons set forth in the section, GSPC determined that MWBE capacity is sufficient to bid and be awarded the substantial majority of contracts as primes from the City of Memphis and that prime and subcontractor availability should not be separated, but should be represented by one availability estimate.

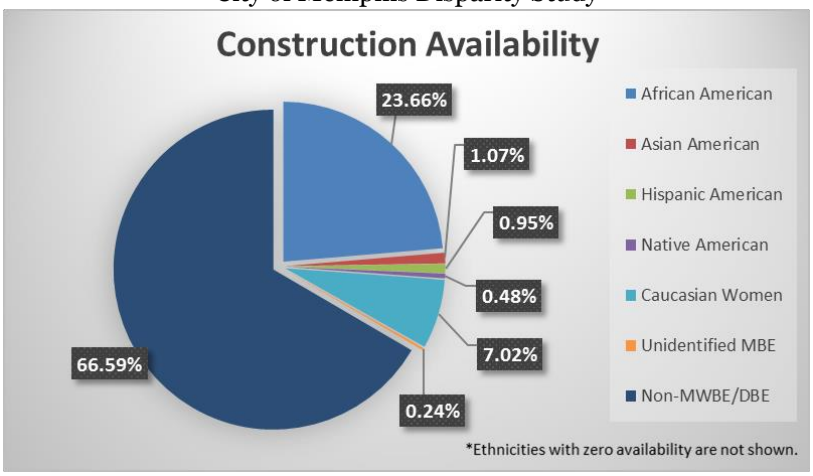
4. Availability Estimates

Below are the Availability Estimates for the Study. The data is separated into the five (5) major business categories: Construction, A/E, Other Professional Services, Other Services, and Goods. Figures 3-7 show the number of firms by race/gender/ethnicity as compared with the total number of firms.

The availability analyzed from the Master Vendor File includes all unique vendors in each work category.[85] The Memphis availability in Figure 3 below shows that, in Construction, African American owned firms make up 23.66% of all construction firms, woman owned firms make up 7.02%. Asian American owned firms are 1.07%, and Hispanic American and Native American owned firms have availability of .95% and .48%, respectively, in Construction within the Relevant Market. In total, MWBEs account for 33.41% of all available firms in Construction.

Figure 3: Availability Estimates – Construction

In the Relevant Market – Shelby County, TN
City of Memphis Disparity Study



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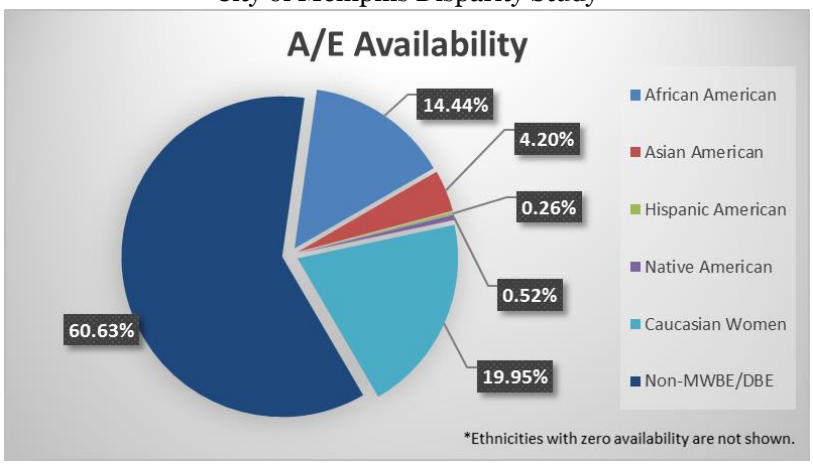
In A/E, availability in Figure 4 indicates that Non-MWBE owned firms make up 60.63% of all available firms and MWBEs are 39.37%. African American owned firms represent 14.44% of all A/E firms and

85 Firms can count in more than one business category if they perform services in each category, but can only be counted once in each business category.

woman owned firms make up 19.95% of all available A/E firms. Asian American owned A/E firms account for 4.20% and other ethnic groups have minimal availability with .52% Native American owned firms and .26% Hispanic American owned firms.

Figure 4: Availability Estimates-A/E
In the Relevant Market – State of Tennessee
City of Memphis Disparity Study



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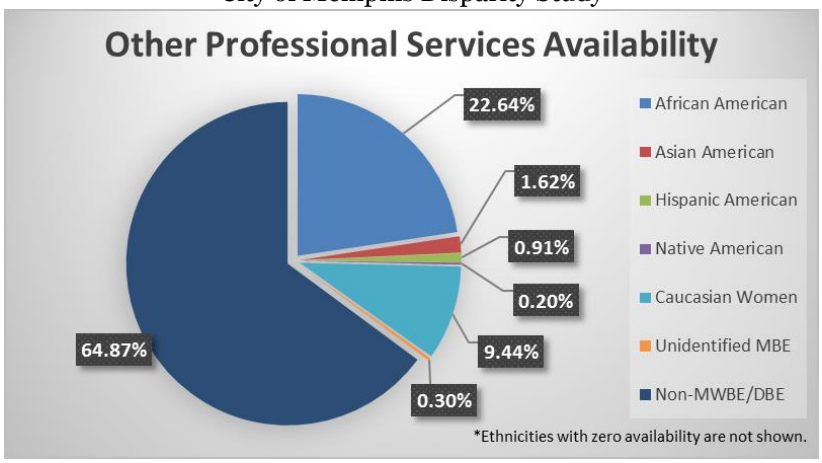
As set out in the availability Figure 5, African American owned firms make up 22.64% of Other Professional Services firms and woman owned firms make up 9.44%. Non-MWBE owned firms account for about 64.87%, while Asian American owned firms have 1.62%. Hispanic American owned firms have .91% and Native American owned firms have .20% availability in this category. MWBEs are 35.13% of all available firms in Other Professional Services.

Figure 5: Availability Estimate - Other Professional Services
In the Relevant Market – States of Tennessee & Illinois
City of Memphis Disparity Study



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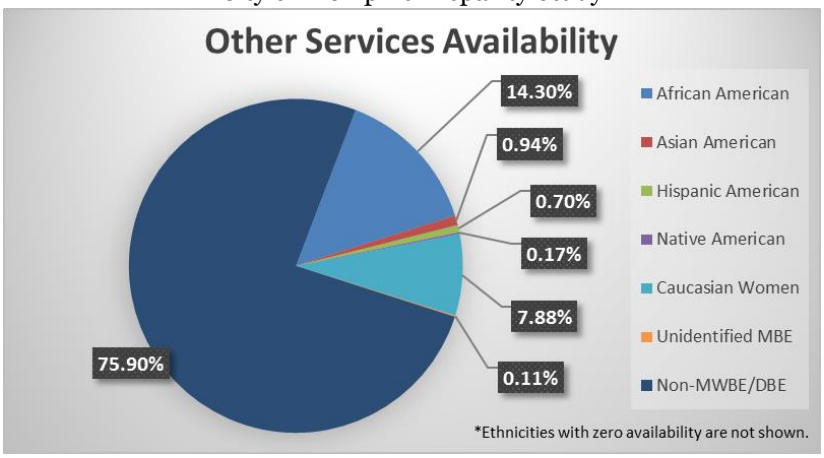
In Other Services, Availability Figure 6 shows that the availability of African American owned firms is about 14.30%, woman owned firms make up 7.88%, Asian and Hispanic American owned firms make up .94% and .70%, respectively, and Native American owned firms is 0.17%. MWBEs total 24.10% of all available firms in Other Services.

Figure 6: Availability Estimates - Other Services
In the Relevant Market – States of Tennessee, Kentucky, & Georgia
City of Memphis Disparity Study



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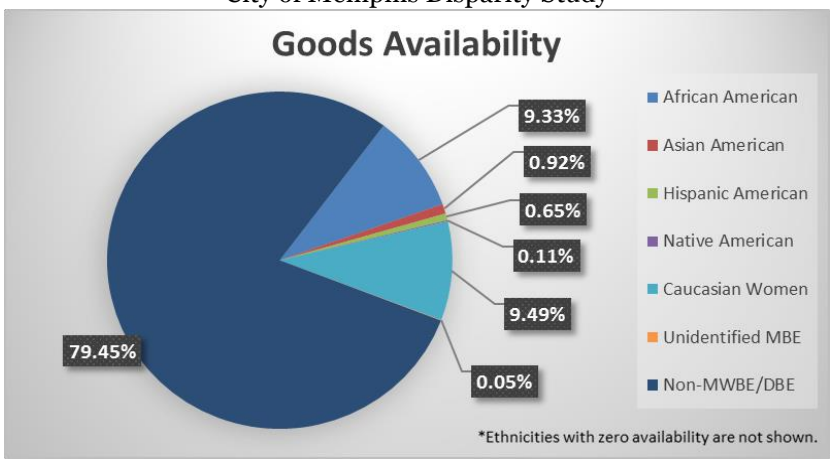
Goods availabilities are reflected in Figure 7 so that businesses owned by African Americans make up 9.33% and Women owned 9.49% of the firms. Non-MWBEs account for 79.45% of all availability and other ethnic groups account for less than 1% each. MWBEs total 20.55% of all available firms in Goods.

Figure 7: Availability Estimates - Goods
In the Relevant Market – States of Tennessee, Indiana, & Georgia
City of Memphis Disparity Study



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H. Utilization Analysis

1. Prime Utilization

The relevant payment history for the City has been recorded based upon the payment database provided by the City. In the Prime Utilization tables below, the dollars and percentage of dollars spent in each of the five (5) major procurement categories have been broken out by race/ethnicity and gender for each year of the Study Period. The total of each race/ethnicity/gender group represented in the MWBE category will, when added to the Non-MWBE Category, equal the Total Column.

***PRIME UTILIZATION** is the percentage of actual payments made directly by the City during the Study Period to MWBEs in comparison to all actual payments made directly to all vendors by the City during the Study Period.*

Only African American and woman owned firms received contracts in Construction during the four years of this study. A total of nine (9) African American owned firms received $3,988,795 during the Study Period with an average to each firm of $433,199, while five (5) woman owned firms were awarded a total of $7,949,990 with an average to each firm of $1,589,998. Sixty-three (63) non-MWBE firms were awarded $202,065,342 with an average to each firm of $3,207,386.

Table 14: Prime Utilization – Construction by Number of Firms
In the Relevant Market – Shelby County, TN
City of Memphis Disparity Study

Construction-Number of Firms																		
	African American		Asian American		Hispanic American		Native American		Women		MBE		Total MWBE		Non-MWBE		TOTAL	
FY	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
2010	6	21.43%	0	0.00%	0	0.00%	0	0.00%	1	3.57%	0	0.00%	7	25.00%	21	75.00%	28	36.36%
2011	2	7.14%	0	0.00%	0	0.00%	0	0.00%	1	3.57%	0	0.00%	3	10.71%	25	89.29%	28	36.36%
2012	2	8.00%	0	0.00%	0	0.00%	0	0.00%	2	8.00%	0	0.00%	4	16.00%	21	84.00%	25	32.47%
2013	8	22.86%	0	0.00%	0	0.00%	0	0.00%	3	8.57%	0	0.00%	11	31.43%	24	68.57%	35	45.45%
2014	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	23	100.00%	23	29.87%
TOTAL*	9	11.69%	0	0.00%	0	0.00%	0	0.00%	5	6.49%	0	0.00%	14	18.18%	63	81.82%	77	100.00%
*TOTAL represents the number of unique firms during the Study Period																		

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Table 15: Prime Utilization – Construction by Dollars
In the Relevant Market – Shelby County, TN
City of Memphis Disparity Study

Construction-Dollars																		
	African American		Asian American		Hispanic American		Native American		Women		MBE		Total MWBE		Non-MWBE		TOTAL	
FY	$	%	$	%	$	%	$	%	$	%	#	%	#	%	$	%	$	
2010	$191,809	0.52%	$0	0.00%	$0	0.00%	$0	0.00%	$216,957	0.59%	$0	0.00%	$408,766	1.12%	$36,237,025	98.88%	$36,645,791	17%
2011	$587,832	1.13%	$0	0.00%	$0	0.00%	$0	0.00%	$1,110,183	2.13%	$0	0.00%	$1,698,015	3.26%	$50,425,583	96.74%	$52,123,598	24%
2012	$457,625	1.51%	$0	0.00%	$0	0.00%	$0	0.00%	$5,396,681	17.77%	$0	0.00%	$5,854,306	19.28%	$24,506,991	80.72%	$30,361,297	14%
2013	$2,751,529	5.40%	$0	0.00%	$0	0.00%	$0	0.00%	$1,226,170	2.41%	$0	0.00%	$3,977,699	7.81%	$46,937,440	92.19%	$50,915,139	24%
2014	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$43,958,301	100.00%	$43,958,301	21%
TOTAL	$3,988,795	1.86%	$0	0.00%	$0	0.00%	$0	0.00%	$7,949,990	3.71%	$0	0.00%	$11,938,785	5.58%	$202,065,342	94.42%	$214,004,127	100%

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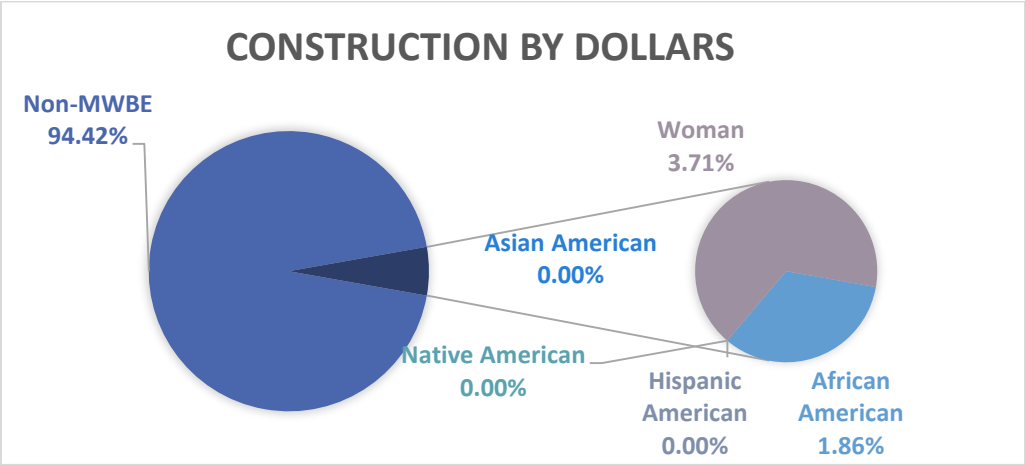
Figure 8: Prime Utilization - Construction by Dollars



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In Architecture and Engineering there were 15 MWBEs that shared a total amount of $1,145,138, which was 5.76% of the total A/E awarded dollars. Ten (10) African American owned firms were awarded 4.30% or $854,829 of the total A/E dollars, which was the highest percent of dollars awarded to MWBEs. The average paid to MWBE firms was $76,342 compared to $585,626 to Non-MWBE firms.

Table 16: Prime Utilization – A/E by Number of Firms
In the Relevant Market – State of Tennessee
City of Memphis Disparity Study

Architecture and Engineering-Number of Firms																		
	African American		Asian American		Hispanic American		Native American		Women		MBE		Total MWBE		Non-MWBE		TOTAL	
FY	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
2010	1	7.14%	2	14.29%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	3	21.43%	11	78.57%	14	29.79%
2011	2	11.76%	1	5.88%	0	0.00%	0	0.00%	1	5.88%	0	0.00%	4	23.53%	13	76.47%	17	36.17%
2012	4	23.53%	1	5.88%	0	0.00%	0	0.00%	1	5.88%	0	0.00%	6	35.29%	11	64.71%	17	36.17%
2013	3	14.29%	2	9.52%	0	0.00%	0	0.00%	1	4.76%	0	0.00%	6	28.57%	15	71.43%	21	44.68%
2014	5	26.32%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	5	26.32%	14	73.68%	19	40.43%
TOTAL*	10	21.28%	3	6.38%	0	0.00%	0	0.00%	2	4.26%	0	0.00%	15	31.91%	32	68.09%	47	100.00%
*TOTAL represents the number of unique firms during the Study Period																		

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Table 17: Prime Utilization – A/E by Dollars
In the Relevant Market – State of Tennessee
City of Memphis Disparity Study

Architecture and Engineering-Dollars																		
	African American		Asian American		Hispanic American		Native American		Women		MBE		Total MWBE		Non-MWBE		TOTAL	
FY	$	%	$	%	$	%	$	%	$	%	#	%	#	%	$	%	$	%
2010	$35,997	1.46%	$35,160	1.43%	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$71,157	2.89%	$2,390,969	97.11%	$2,462,126	12%
2011	$81,823	3.11%	$36,990	1.41%	$0	0.00%	$0	0.00%	$27,187	1.03%	$0	0.00%	$146,000	5.55%	$2,484,274	94.45%	$2,630,274	13%
2012	$324,039	8.70%	$23,040	0.62%	$0	0.00%	$0	0.00%	$114,000	3.06%	$0	0.00%	$461,079	12.37%	$3,264,925	87.63%	$3,726,004	19%
2013	$38,726	1.25%	$40,955	1.32%	$0	0.00%	$0	0.00%	$12,977	0.42%	$0	0.00%	$92,658	2.99%	$3,005,913	97.01%	$3,098,571	16%
2014	$374,244	4.70%	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$374,244	4.70%	$7,593,955	95.30%	$7,968,199	40%
TOTAL	$854,829	4.30%	$136,145	0.68%	$0	0.00%	$0	0.00%	$154,164	0.78%	$0	0.00%	$1,145,138	5.76%	$18,740,036	94.24%	$19,885,174	100%

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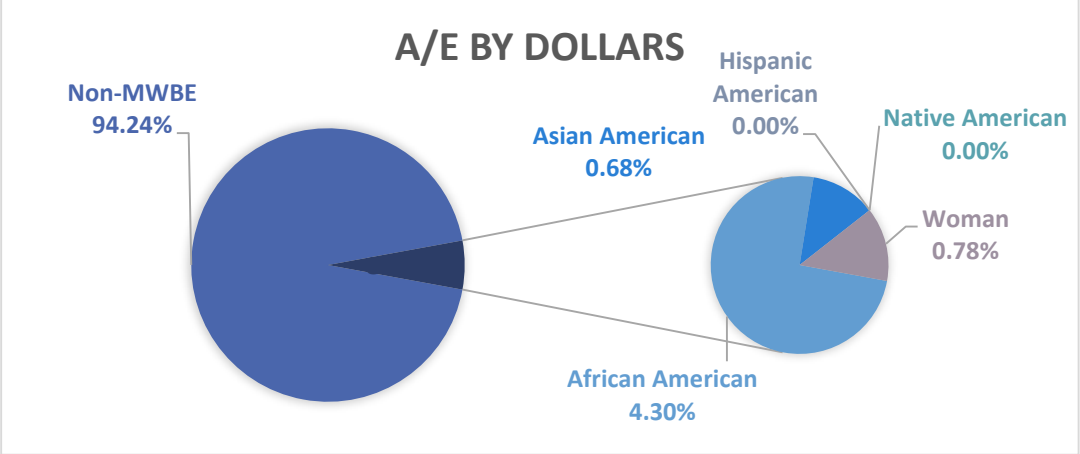
Figure 9: Prime Utilization - A/E by Dollars



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As indicated in Tables 18 and 19, Forty-two (42) African American owned firms represented 10.71% of all firms to be awarded dollars in Other Professional Services. One Hispanic American owned firm was paid $54,985 or .04% of all dollars, and fifteen (15) women owned firms were paid $8,993,341, representing 3.83%. The average dollars paid to MWBE firms was $256,742 compared to $396,616 to non-MWBE firms in Other Professional Services.

Table 18: Prime Utilization – Other Professional Services by Number of Firms
In the Relevant Market – States of Tennessee & Illinois
City of Memphis Disparity Study

Other Professional Services-Number of Firms																		
	African American		Asian American		Hispanic American		Native American		Women		MBE		Total MWBE		Non-MWBE		TOTAL	
FY	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
2010	11	11.22%	0	0.00%	0	0.00%	0	0.00%	2	2.04%	1	1.02%	14	14.29%	84	85.71%	98	25.00%
2011	6	6.52%	0	0.00%	1	1.09%	0	0.00%	3	3.26%	0	0.00%	10	10.87%	82	89.13%	92	23.47%
2012	7	5.93%	0	0.00%	0	0.00%	0	0.00%	4	3.39%	0	0.00%	11	9.32%	107	90.68%	118	30.10%
2013	14	11.02%	2	1.57%	0	0.00%	0	0.00%	5	3.94%	0	0.00%	21	16.54%	106	83.46%	127	32.40%
2014	15	11.63%	1	0.78%	0	0.00%	0	0.00%	5	3.88%	0	0.00%	21	16.28%	108	83.72%	129	32.91%
TOTAL*	42	10.71%	2	0.51%	1	0.26%	0	0.00%	15	3.83%	1	0.26%	61	15.56%	331	84.44%	392	100.00%
*TOTAL represents the number of unique firms during the Study Period																		

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Table 19: Prime Utilization – Other Professional Services by Dollars
In the Relevant Market – States of Tennessee & Illinois
City of Memphis Disparity Study

Other Professional Services-Dollars																		
	African American		Asian American		Hispanic American		Native American		Women		MBE		Total MWBE		Non-MWBE		TOTAL	
FY	$	%	$	%	$	%	$	%	$	%	#	%	#	%	$	%	$	
2010	$2,326,936	15.64%	$0	0.00%	$0	0.00%	$0	0.00%	$1,080,299	7.26%	$17,860	0.12%	$3,425,095	23.02%	$11,451,495	76.98%	$14,876,590	10%
2011	$159,305	0.86%	$0	0.00%	$54,985	0.30%	$0	0.00%	$296,896	1.60%	$0	0.00%	$511,186	2.76%	$18,017,130	97.24%	$18,528,316	13%
2012	$1,080,842	2.69%	$0	0.00%	$0	0.00%	$0	0.00%	$5,057,930	12.57%	$0	0.00%	$6,138,772	15.25%	$34,113,922	84.75%	$40,252,694	27%
2013	$1,451,463	4.18%	$59,280	0.17%	$0	0.00%	$0	0.00%	$1,990,654	5.73%	$0	0.00%	$3,501,397	10.09%	$31,215,534	89.91%	$34,716,931	24%
2014	$1,492,286	3.87%	$25,000	0.06%	$0	0.00%	$0	0.00%	$567,562	1.47%	$0	0.00%	$2,084,848	5.41%	$36,481,963	94.59%	$38,566,811	26%
TOTAL	$6,510,832	4.43%	$84,280	0.06%	$54,985	0.04%	$0	0.00%	$8,993,341	6.12%	$17,860	0.01%	$15,661,298	10.66%	$131,280,044	89.34%	$146,941,343	100%

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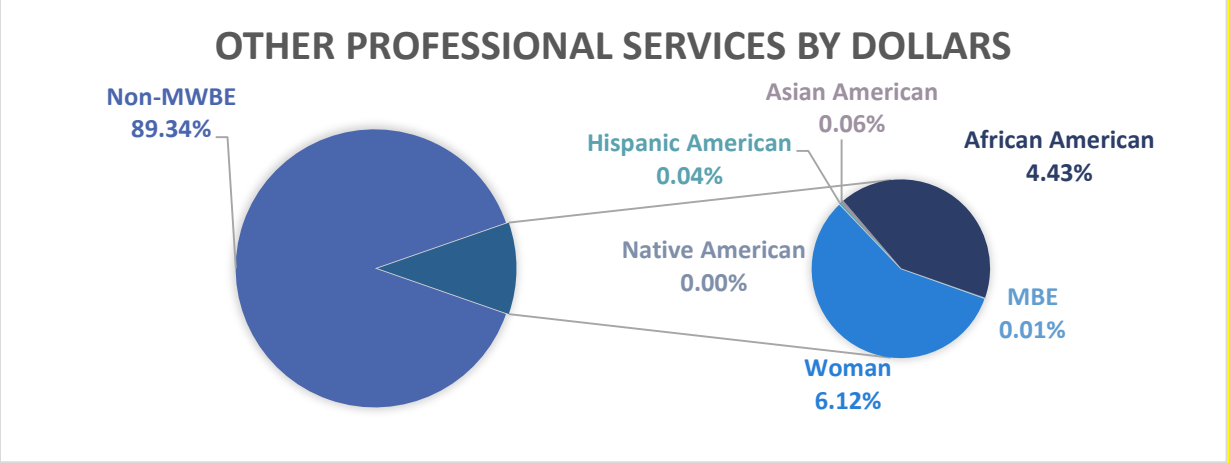
Figure 10: Prime Utilization - Other Professional Services by Dollars



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In Other Services there were 60 MWBE firms that were paid a total of $8,239,976 which was 10.12% of the total amount awarded. Forty (40) African American owned firms, one Asian American owned, and Nineteen (19) women owned firms accounted for 19.74% of all firms paid in Other Services during the Study Period.

Table 20: Prime Utilization – Other Services by Number of Firms
In the Relevant Market – States of Tennessee, Kentucky, & Georgia
City of Memphis Disparity Study

Other Services-Number of Firms																		
	African American		Asian American		Hispanic American		Native American		Women		MBE		Total MWBE		Non-MWBE		TOTAL	
FY	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
2010	12	13.95%	0	0.00%	0	0.00%	0	0.00%	8	9.30%	0	0.00%	20	23.26%	66	76.74%	86	28.29%
2011	11	12.50%	0	0.00%	0	0.00%	0	0.00%	6	6.82%	0	0.00%	17	19.32%	71	80.68%	88	28.95%
2012	12	11.76%	0	0.00%	0	0.00%	0	0.00%	5	4.90%	0	0.00%	17	16.67%	85	83.33%	102	33.55%
2013	15	12.40%	1	0.83%	0	0.00%	0	0.00%	7	5.79%	0	0.00%	23	19.01%	98	80.99%	121	39.80%
2014	18	16.67%	0	0.00%	0	0.00%	0	0.00%	2	1.85%	0	0.00%	20	18.52%	88	81.48%	108	35.53%
TOTAL*	40	13.16%	1	0.33%	0	0.00%	0	0.00%	19	6.25%	0	0.00%	60	19.74%	244	80.26%	304	100.00%
represents the number of unique firms during the Study																		

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Table 21: Prime Utilization – Other Services by Dollars
In the Relevant Market – States of Tennessee, Kentucky, & Georgia
City of Memphis Disparity Study

Other Services-Dollars																		
	African American		Asian American		Hispanic American		Native American		Women		MBE		Total MWBE		Non-MWBE		TOTAL	
FY	$	%	$	%	$	%	$	%	$	%	#	%	#	%	$	%	$	
2010	$570,900	8.01%	$0	0.00%	$0	0.00%	$0	0.00%	$306,174	4.29%	$0	0.00%	$877,074	12.30%	$6,252,749	87.70%	$7,129,823	9%
2011	$362,805	5.70%	$0	0.00%	$0	0.00%	$0	0.00%	$256,585	4.03%	$0	0.00%	$619,390	9.73%	$5,748,138	90.27%	$6,367,528	8%
2012	$707,412	5.14%	$0	0.00%	$0	0.00%	$0	0.00%	$281,447	2.04%	$0	0.00%	$988,859	7.18%	$12,774,124	92.82%	$13,762,983	17%
2013	$1,101,151	5.74%	$14,836	0.08%	$0	0.00%	$0	0.00%	$1,018,217	5.31%	$0	0.00%	$2,134,204	11.13%	$17,045,202	88.87%	$19,179,406	24%
2014	$3,388,347	9.69%	$0	0.00%	$0	0.00%	$0	0.00%	$232,103	0.66%	$0	0.00%	$3,620,450	10.35%	$31,354,276	89.65%	$34,974,726	43%
TOTAL	$6,130,614	7.53%	$14,836	0.02%	$0	0.00%	$0	0.00%	$2,094,526	2.57%	$0	0.00%	$8,239,976	10.12%	$73,174,489	89.88%	$81,414,465	100%

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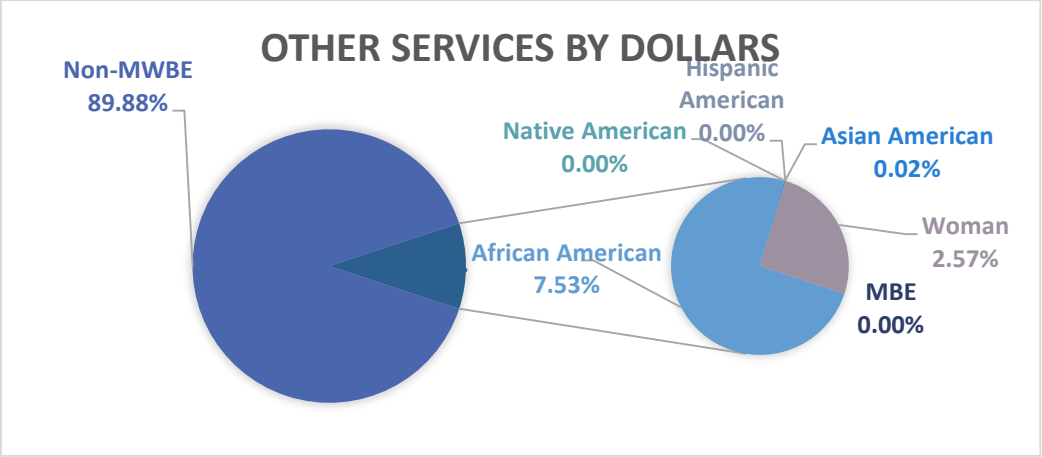
Figure 11: Prime Utilization - Other Services by Dollars



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Every ethnicity except Native American owned firms, was represented in Goods, for a total of 48 MWBE firms or 12.06%, averaging $123,011 per firm. In comparison, 350 non-MWBE firms represented 87.94% of all firms in Goods, averaging $530,852 per firm.

Table 22: Prime Utilization – Goods by Number of Firms
In the Relevant Market – States of Tennessee, Indiana, & Georgia
City of Memphis Disparity Study

Goods-Number of Firms																		
	African American		Asian American		Hispanic American		Native American		Women		MBE		Total MWBE		Non-MWBE		TOTAL	
FY	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
2010	4	2.56%	1	0.64%	0	0.00%	0	0.00%	5	3.21%	0	0.00%	10	6.41%	146	93.59%	156	39.20%
2011	8	5.52%	2	1.38%	0	0.00%	0	0.00%	10	6.90%	0	0.00%	20	13.79%	125	86.21%	145	36.43%
2012	7	4.35%	1	0.62%	0	0.00%	0	0.00%	10	6.21%	0	0.00%	18	11.18%	143	88.82%	161	40.45%
2013	7	5.74%	0	0.00%	1	0.82%	0	0.00%	4	3.28%	0	0.00%	12	9.84%	110	90.16%	122	30.65%
2014	2	1.60%	1	0.80%	0	0.00%	0	0.00%	4	3.20%	0	0.00%	7	5.60%	118	94.40%	125	31.41%
TOTAL*	22	5.53%	2	0.50%	1	0.25%	0	0.00%	23	5.78%	0	0.00%	48	12.06%	350	87.94%	398	100.00%
*TOTAL represents the number of unique firms during the Study Period																		

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Table 23: Prime Utilization – Goods by Dollars
In the Relevant Market – States of Tennessee, Indiana, & Georgia
City of Memphis Disparity Study

Goods-Dollars																		
	African American		Asian American		Hispanic American		Native American		Women		MBE		Total MWBE		Non-MWBE		TOTAL	
FY	$	%	$	%	$	%	$	%	$	%	#	%	#	%	$	%	$	
2010	$1,310,849	5.00%	$58,973	0.22%	$0	0.00%	$0	0.00%	$179,612	0.68%	$0	0.00%	$1,549,434	5.91%	$24,687,624	94.09%	$26,237,058	14%
2011	$550,382	2.38%	$39,120	0.17%	$0	0.00%	$0	0.00%	$304,021	1.31%	$0	0.00%	$893,523	3.86%	$22,267,950	96.14%	$23,161,473	12%
2012	$234,988	0.44%	$19,047	0.04%	$0	0.00%	$0	0.00%	$330,058	0.62%	$0	0.00%	$584,093	1.10%	$52,298,922	98.90%	$52,883,015	28%
2013	$632,269	1.81%	$0	0.00%	$737,111	2.10%	$0	0.00%	$935,174	2.67%	$0	0.00%	$2,304,554	6.58%	$32,714,771	93.42%	$35,019,325	18%
2014	$18,347	0.03%	$28,935	0.05%	$0	0.00%	$0	0.00%	$525,631	0.97%	$0	0.00%	$572,913	1.05%	$53,828,953	98.95%	$54,401,866	28%
TOTAL	$2,746,866	1.43%	$146,075	0.08%	$737,111	0.38%	$0	0.00%	$2,274,497	1.19%	$0	0.00%	$5,904,549	3.08%	$185,798,219	96.92%	$191,702,768	100%

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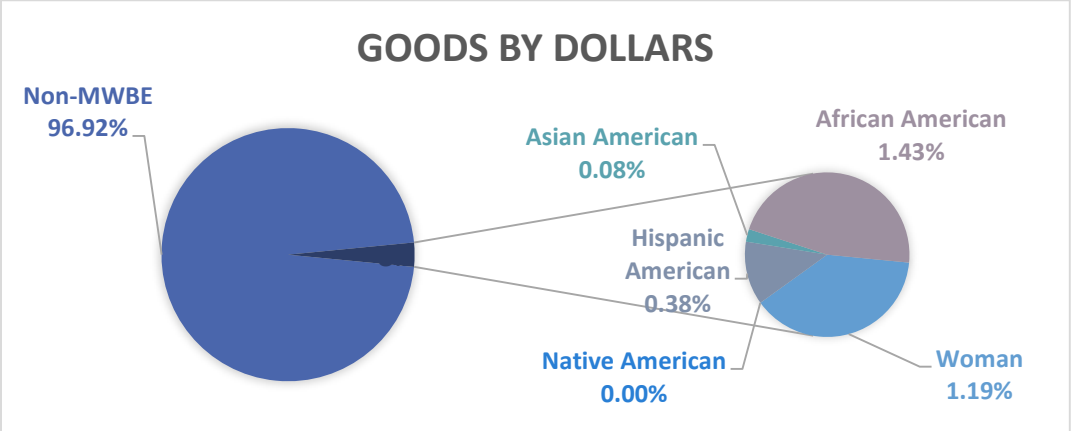
Figure 12: Prime Utilization - Goods by Dollars



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2. Subcontractor Utilization

In order to determine subcontractor utilization by the City's prime awardees, it is necessary to calculate the percentage of subcontracting dollars awarded to MWBE and Non-MWBE subcontractors as compared to all subcontracting awards. The City only tracks subcontracting dollars allocated to MWBEs but does not track Non-MWBE subcontractors. Without a complete data set of subcontractors, it was necessary for GSPC to request information on subcontractor utilization directly from the prime contractors through a "Prime Vendor Questionnaire." GSPC sent the Prime Questionnaire to every prime awardee during the Study Period. A copy of the correspondence and questionnaire sent to awardees is attached as Appendix E.

***SUBCONTRACTOR UTILIZATION** is the percentage of dollars awarded from Prime Contractors (in the Relevant Market) to MWBE Subcontractors, in comparison to dollars awarded by Prime Contractors to all Subcontractors during the Study Period.*

There were 1745 questionnaires sent that were not returned or identified as outside the period, a not-for-profit, governmental agency, or that otherwise should have been excluded as a non-competitive contract (e.g. leases). GSPC sent two reminder notices to firms, both by email and through a mailing house to request their participation in returning the questionnaires. GSPC received responses from 254 firms which is a 14.04% response rate. Of those firms that responded GSPC further cleaned the list to remove additional firms that identified themselves as not for profits in the questionnaire. This left 241 firms that responded. The firms that reported subcontractors are as follows:

Table 24: Prime Vendor Questionnaire Response Rate
City of Memphis Disparity Study

Work Category	#Prime Respondents	#Prime Respondents with Subcontractors	% of Prime Respondents reporting subcontractors
Construction	39	11	28.21%
A/E	13	7	53.85
Other Professional Services	44	0	0%
Other Services	62	0	0%
Goods	83	1	1.20%
Totals	241	19	7.88%

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Note: GSPC will only report on subcontractors for Construction and A/E since there were no reported subcontractors for Other Professional Services and Other Services. The occurrences for Goods were not sufficient to report. This is typical as most subcontracting occurs in Construction and A/E.

Responding firms were asked to list the names of subcontractors, the type of work, and the dollar amount of subcontracts awarded. The analysis of responses to the survey is then used to draw inferences regarding minority and woman owned business participation in subcontracting by prime contractors.

In construction, during the study period, the questionnaire reported that 37.93% of construction subcontractors were MWBEs. In dollars, 56.34% of subcontracting dollars were awarded to MWBE subcontractors. Only awards to African American, Asian American, Women, and non-MWBE owned firms were reported.

Table 25: Subcontractor Utilization - Construction by Number of Firms
City of Memphis Disparity Study

Construction-Number of Firms																		
	African American		Asian American		Hispanic American		Native American		Women		MBE		Total MWBE		Non-MWBE		TOTAL	
FY	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
2010	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	6	100.00%	6	20.69%
2011	1	0.00%	0	0.00%	0	0.00%	0	0.00%	1	11.11%	0	0.00%	2	22.22%	7	77.78%	9	31.03%
2012	3	0.00%	0	0.00%	0	0.00%	0	0.00%	1	0.00%	0	0.00%	4	0.00%	1	20.00%	5	17.24%
2013	1	50.00%	1	50.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	2	100.00%	0	0.00%	2	6.90%
2014	2	28.57%	0	0.00%	0	0.00%	0	0.00%	1	14.29%	0	0.00%	3	42.86%	4	57.14%	7	24.14%
TOTAL*	7	24.14%	1	3.45%	0	0.00%	0	0.00%	3	10.34%	0	0.00%	11	37.93%	18	62.07%	29	100.00%
*TOTAL represents the number of unique firms during the Study Period																		

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Table 26: Subcontractor Utilization - Construction by Dollars
City of Memphis Disparity Study

Construction-Dollars																		
	African American		Asian American		Hispanic American		Native American		Women		MBE		Total MWBE		Non-MWBE		TOTAL	
FY	$	%	$	%	$	%	$	%	$	%	#	%	#	%	$	%	$	
2010	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$284,301	100.00%	$284,301	4%
2011	$112,540	4.33%	$0	0.00%	$0	0.00%	$0	0.00%	$248,190	9.54%	$0	0.00%	$360,730	13.86%	$2,241,327	86.14%	$2,602,057	40%
2012	$2,638,017	95.08%	$0	0.00%	$0	0.00%	$0	0.00%	$89,892	3.24%	$0	0.00%	$2,727,909	98.32%	$46,625	1.68%	$2,774,534	43%
2013	$117,988	66.36%	$59,801	33.64%	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$177,789	100.00%	$0	0.00%	$177,789	3%
2014	$257,360	43.85%	$0	0.00%	$0	0.00%	$0	0.00%	$96,245	16.40%	$0	0.00%	$353,605	60.25%	$233,251	39.75%	$586,856	9%
TOTAL	$3,125,905	48.65%	$59,801	0.93%	$0	0.00%	$0	0.00%	$434,327	6.76%	$0	0.00%	$3,620,033	56.34%	$2,805,504	43.66%	$6,425,537	100%

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In Architecture and Engineering, 30% of subcontractors were MWBE firms. African American and woman owned firms received subcontract awards which represented 26.51% of the total dollars awarded to all subcontractors. Awards were reported to African American, Asian American, Native American, Women, and non-MWBE firms.

Table 27: Subcontractor Utilization – A/E by Number of Firms
City of Memphis Disparity Study

Architecture and Engineering-Number of Firms																		
	African American		Asian American		Hispanic American		Native American		Women		MBE		Total MWBE		Non-MWBE		TOTAL	
FY	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
2010	1	9.09%	1	9.09%	0	0.00%	1	9.09%	2	18.18%	0	0.00%	5	45.45%	6	54.55%	11	36.67%
2011	0	0.00%	0	0.00%	0	0.00%	0	0.00%	2	33.33%	0	0.00%	2	33.33%	4	66.67%	6	20.00%
2012	1	33.33%	0	0.00%	0	0.00%	0	0.00%	1	33.33%	0	0.00%	2	66.67%	1	33.33%	3	10.00%
2013	2	22.22%	1	11.11%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	3	33.33%	6	66.67%	9	30.00%
2014	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	6	100.00%	6	20.00%
TOTAL*	2	6.67%	2	6.67%	0	0.00%	1	3.33%	4	13.33%	0	0.00%	9	30.00%	21	70.00%	30	100.00%
*TOTAL represents the number of unique firms during the Study Period																		

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Table 28: Subcontractor Utilization – A/E by Dollars
City of Memphis Disparity Study

Architecture and Engineering-Dollars																		
	African American		Asian American		Hispanic American		Native American		Women		MBE		Total MWBE		Non-MWBE		TOTAL	
FY	$	%	$	%	$	%	$	%	$	%	#	%	#	%	$	%	$	#
2010	$40,000	18.17%	$9,202	4.18%	$0	0.00%	$1,055	0.48%	$15,920	7.23%	$0	0.00%	$66,177	30.07%	$153,913	69.93%	$220,090	16%
2011	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$58,236	55.67%	$0	0.00%	$58,236	55.67%	$46,380	44.33%	$104,616	7%
2012	$43,542	45.34%	$0	0.00%	$0	0.00%	$0	0.00%	$5,189	5.40%	$0	0.00%	$48,731	50.75%	$47,300	49.25%	$96,031	7%
2013	$209,990	56.30%	$30,800	8.26%	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$240,790	64.55%	$132,223	35.45%	$373,013	27%
2014	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$0	0.00%	$612,930	100.00%	$612,930	44%
TOTAL	$293,532	20.87%	$40,002	2.84%	$0	0.00%	$1,055	0.07%	$79,345	5.64%	$0	0.00%	$413,934	29.43%	$992,746	70.57%	$1,406,680	100%

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I. Determination of Disparity

This section of the report addresses the crucial question of whether, and to what extent, there is disparity between the utilization of MBEs/WBEs as measured against their availability in the City of Memphis marketplace.

***DISPARITY INDICES** calculate the difference between the percentage of the City's **UTILIZATION** of MWBEs during the Study Period and the **AVAILABILITY** percentage of MWBEs.*

1. Methodology

The statistical approach to answer this question is to assess the existence and extent of disparity by comparing the MWBE utilization percentages (by dollars) to the percentage of the total pool of MWBE firms in the relevant geographic and product areas. The actual disparity derived as a result of employing this approach is measured by use of a Disparity Index (DI).

The Disparity Index is defined as the ratio of the percentage of MWBE firms utilized (U) divided by the percentage of such firms available in the marketplace, (A):

Let: U =Utilization percentage for the MWBE group
A =Availability percentage for the MWBE group
DI =Disparity Index for the MWBE group
DI =U/A

The results obtained by a disparity analysis will result in one of three conclusions: overutilization, underutilization or parity. Underutilization is when the Disparity Index is below one. Overutilization is when the Disparity Index is over one. Parity, or the absence of disparity is when the Disparity Index is one (1.00) which indicates that the utilization percentage equals the availability percentage. In situations where there is availability, but no utilization, the corresponding disparity index will be zero. Finally, in cases where

there is neither utilization nor availability, the corresponding disparity index is undefined and designated by a dash (-) symbol. Disparity analyses are presented separately for each procurement category and for each race/gender/ethnicity group. They are also disaggregated by year, for each year of the Study Period.

2. Prime Disparity Indices

In Table 29, Construction, for the entire Study Period, there is underutilization of MWBEs in all categories during every year of the Study Period, except Women-owned firms were overutilized in 2012. Non-MWBEs were overutilized every year of the Study.

In Table 30, A/E, for the entire Study Period, there is underutilization of MWBEs in all categories during every year of the Study Period. Non-MWBEs were overutilized every year of the Study.

In Table 31, the Other Professional Services, for the entire Study Period, there is underutilization of MWBEs in all categories during every year of the Study Period; however, woman owned firms were overutilized in 2012. Non-MWBEs were overutilized every year of the Study.

In Table 32, the Other Services, for the entire Study Period, there is underutilization of MWBEs in all categories during every year of the Study Period. Non-MWBEs were overutilized every year of the Study.[86]

In Table 33, Goods, for the overall Study Period, there is underutilization of MWBEs in all categories. Non-MWBEs were overutilized every year of the Study; however, Hispanic American owned firms were overutilized in FY2013 and Native American owned firms in FY2014. [87]

86 Uncategorized MBEs that are included in Total MWBE figures were may have been over- or under- utilized, but when combined with all MWBEs were underutilized in every instance.

87 Uncategorized MBEs that are included in Total MWBE figures were may have been over- or under- utilized, but when combined with all MWBEs were underutilized in every instance.

Table 29: Disparity Indices – Construction (Prime)

Memphis Disparity Study

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2010				
AFRICAN AMERICAN	0.52%	23.66%	0.02	**Underutilized**
ASIAN AMERICAN	0.00%	1.07%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.95%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.48%	0.00	**Underutilized**
WOMEN	0.59%	7.02%	0.08	**Underutilized**
MBE	0.00%	0.24%	0.00	**Underutilized**
TOTAL MWBE	1.12%	33.41%	0.03	**Underutilized**
NON-MWBE	98.88%	66.59%	1.48	**Overutilized**
FY 2011				
AFRICAN AMERICAN	1.13%	23.66%	0.05	**Underutilized**
ASIAN AMERICAN	0.00%	1.07%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.95%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.48%	0.00	**Underutilized**
WOMEN	2.13%	7.02%	0.30	**Underutilized**
MBE	0.00%	0.24%	0.00	**Underutilized**
TOTAL MWBE	3.26%	33.41%	0.10	**Underutilized**
NON-MWBE	96.74%	66.59%	1.45	**Overutilized**
FY 2012				
AFRICAN AMERICAN	1.51%	23.66%	0.06	**Underutilized**
ASIAN AMERICAN	0.00%	1.07%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.95%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.48%	0.00	**Underutilized**
WOMEN	17.77%	7.02%	2.53	**Overutilized**
MBE	0.00%	0.24%	0.00	**Underutilized**
TOTAL MWBE	19.28%	33.41%	0.58	**Underutilized**
NON-MWBE	80.72%	66.59%	1.21	**Overutilized**
FY 2013				
AFRICAN AMERICAN	5.40%	23.66%	0.23	**Underutilized**
ASIAN AMERICAN	0.00%	1.07%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.95%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.48%	0.00	**Underutilized**
WOMEN	2.41%	7.02%	0.34	**Underutilized**
MBE	0.00%	0.24%	0.00	**Underutilized**
TOTAL MWBE	7.81%	33.41%	0.23	**Underutilized**
NON-MWBE	92.19%	66.59%	1.38	**Overutilized**
FY 2014				
AFRICAN AMERICAN	0.00%	23.66%	0.00	**Underutilized**
ASIAN AMERICAN	0.00%	1.07%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.95%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.48%	0.00	**Underutilized**
WOMEN	0.00%	7.02%	0.00	**Underutilized**
MBE	0.00%	0.24%	0.00	**Underutilized**
TOTAL MWBE	0.00%	33.41%	0.00	**Underutilized**
NON-MWBE	100.00%	66.59%	1.50	**Overutilized**
TOTALS				
AFRICAN AMERICAN	1.86%	23.66%	0.08	**Underutilized**
ASIAN AMERICAN	0.00%	1.07%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.95%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.48%	0.00	**Underutilized**
WOMEN	3.71%	7.02%	0.53	**Underutilized**
MBE	0.00%	0.24%	0.00	**Underutilized**
TOTAL MWBE	5.58%	33.41%	0.17	**Underutilized**
NON-MWBE	94.42%	66.59%	1.42	**Overutilized**

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Table 30: Disparity Indices – A/E (Prime)
Memphis Disparity Study

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2010				
AFRICAN AMERICAN	1.46%	14.44%	0.10	**Underutilized**
ASIAN AMERICAN	1.43%	4.20%	0.34	**Underutilized**
HISPANIC AMERICAN	0.00%	0.26%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.52%	0.00	**Underutilized**
WOMEN	0.00%	19.95%	0.00	**Underutilized**
MBE	0.00%	0.00%	-	-
TOTAL MWBE	2.89%	39.37%	0.07	**Underutilized**
NON-MWBE	97.11%	60.63%	1.60	**Overutilized**
FY 2011				
AFRICAN AMERICAN	3.11%	14.44%	0.22	**Underutilized**
ASIAN AMERICAN	1.41%	4.20%	0.34	**Underutilized**
HISPANIC AMERICAN	0.00%	0.26%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.52%	0.00	**Underutilized**
WOMEN	1.03%	19.95%	0.05	**Underutilized**
MBE	0.00%	0.00%	-	-
TOTAL MWBE	5.55%	39.37%	0.14	**Underutilized**
NON-MWBE	94.45%	60.63%	1.56	**Overutilized**
FY 2012				
AFRICAN AMERICAN	8.70%	14.44%	0.60	**Underutilized**
ASIAN AMERICAN	0.62%	4.20%	0.15	**Underutilized**
HISPANIC AMERICAN	0.00%	0.26%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.52%	0.00	**Underutilized**
WOMEN	3.06%	19.95%	0.15	**Underutilized**
MBE	0.00%	0.00%	-	-
TOTAL MWBE	12.37%	39.37%	0.31	**Underutilized**
NON-MWBE	87.63%	60.63%	1.45	**Overutilized**
FY 2013				
AFRICAN AMERICAN	1.25%	14.44%	0.09	**Underutilized**
ASIAN AMERICAN	1.32%	4.20%	0.31	**Underutilized**
HISPANIC AMERICAN	0.00%	0.26%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.52%	0.00	**Underutilized**
WOMEN	0.42%	19.95%	0.02	**Underutilized**
MBE	0.00%	0.00%	-	-
TOTAL MWBE	2.99%	39.37%	0.08	**Underutilized**
NON-MWBE	97.01%	60.63%	1.60	**Overutilized**
FY 2014				
AFRICAN AMERICAN	4.70%	14.44%	0.33	**Underutilized**
ASIAN AMERICAN	0.00%	4.20%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.26%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.52%	0.00	**Underutilized**
WOMEN	0.00%	19.95%	0.00	**Underutilized**
MBE	0.00%	0.00%	-	-
TOTAL MWBE	4.70%	39.37%	0.12	**Underutilized**
NON-MWBE	95.30%	60.63%	1.57	**Overutilized**
TOTALS				
AFRICAN AMERICAN	4.30%	14.44%	0.30	**Underutilized**
ASIAN AMERICAN	0.68%	4.20%	0.16	**Underutilized**
HISPANIC AMERICAN	0.00%	0.26%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.52%	0.00	**Underutilized**
WOMEN	0.78%	19.95%	0.04	**Underutilized**
MBE	0.00%	0.00%	-	-
TOTAL MWBE	5.76%	39.37%	0.15	**Underutilized**
NON-MWBE	94.24%	60.63%	1.55	**Overutilized**

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Table 31: Disparity Indices – Other Professional Services (Prime)
Memphis Disparity Study

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2010				
AFRICAN AMERICAN	15.64%	22.64%	0.69	**Underutilized**
ASIAN AMERICAN	0.00%	1.62%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.91%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.20%	0.00	**Underutilized**
WOMEN	7.26%	9.44%	0.77	**Underutilized**
MBE	0.12%	0.30%	0.40	**Underutilized**
TOTAL MWBE	23.02%	35.13%	0.66	**Underutilized**
NON-MWBE	76.98%	64.87%	1.19	**Overutilized**
FY 2011				
AFRICAN AMERICAN	0.86%	22.64%	0.04	**Underutilized**
ASIAN AMERICAN	0.00%	1.62%	0.00	**Underutilized**
HISPANIC AMERICAN	0.30%	0.91%	0.33	**Underutilized**
NATIVE AMERICAN	0.00%	0.20%	0.00	**Underutilized**
WOMEN	1.60%	9.44%	0.17	**Underutilized**
MBE	0.00%	0.30%	0.00	**Underutilized**
TOTAL MWBE	2.76%	35.13%	0.08	**Underutilized**
NON-MWBE	97.24%	64.87%	1.50	**Overutilized**
FY 2012				
AFRICAN AMERICAN	2.69%	22.64%	0.12	**Underutilized**
ASIAN AMERICAN	0.00%	1.62%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.91%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.20%	0.00	**Underutilized**
WOMEN	12.57%	9.44%	1.33	**Overutilized**
MBE	0.00%	0.30%	0.00	**Underutilized**
TOTAL MWBE	15.25%	35.13%	0.43	**Underutilized**
NON-MWBE	84.75%	64.87%	1.31	**Overutilized**
FY 2013				
AFRICAN AMERICAN	4.18%	22.64%	0.18	**Underutilized**
ASIAN AMERICAN	0.17%	1.62%	0.10	**Underutilized**
HISPANIC AMERICAN	0.00%	0.91%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.20%	0.00	**Underutilized**
WOMEN	5.73%	9.44%	0.61	**Underutilized**
MBE	0.00%	0.30%	0.00	**Underutilized**
TOTAL MWBE	10.09%	35.13%	0.29	**Underutilized**
NON-MWBE	89.91%	64.87%	1.39	**Overutilized**
FY 2014				
AFRICAN AMERICAN	3.87%	22.64%	0.17	**Underutilized**
ASIAN AMERICAN	0.06%	1.62%	0.04	**Underutilized**
HISPANIC AMERICAN	0.00%	0.91%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.20%	0.00	**Underutilized**
WOMEN	1.47%	9.44%	0.16	**Underutilized**
MBE	0.00%	0.30%	0.00	**Underutilized**
TOTAL MWBE	5.41%	35.13%	0.15	**Underutilized**
NON-MWBE	94.59%	64.87%	1.46	**Overutilized**
TOTALS				
AFRICAN AMERICAN	4.43%	22.64%	0.20	**Underutilized**
ASIAN AMERICAN	0.06%	1.62%	0.04	**Underutilized**
HISPANIC AMERICAN	0.04%	0.91%	0.04	**Underutilized**
NATIVE AMERICAN	0.00%	0.20%	0.00	**Underutilized**
WOMEN	6.12%	9.44%	0.65	**Underutilized**
MBE	0.01%	0.30%	0.03	**Underutilized**
TOTAL MWBE	10.66%	35.13%	0.30	**Underutilized**
NON-MWBE	89.34%	64.87%	1.38	**Overutilized**

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Table 32: Disparity Indices – Other Services (Prime)
Memphis Disparity Study

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2010				
AFRICAN AMERICAN	8.01%	14.30%	0.56	**Underutilized**
ASIAN AMERICAN	0.00%	0.94%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.70%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.17%	0.00	**Underutilized**
WOMEN	4.29%	7.88%	0.54	**Underutilized**
MBE	0.00%	0.11%	0.00	**Underutilized**
TOTAL MWBE	12.30%	24.10%	0.51	**Underutilized**
NON-MWBE	87.70%	75.90%	1.16	**Overutilized**
FY 2011				
AFRICAN AMERICAN	5.70%	14.30%	0.40	**Underutilized**
ASIAN AMERICAN	0.00%	0.94%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.70%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.17%	0.00	**Underutilized**
WOMEN	4.03%	7.88%	0.51	**Underutilized**
MBE	0.00%	0.11%	0.00	**Underutilized**
TOTAL MWBE	9.73%	24.10%	0.40	**Underutilized**
NON-MWBE	90.27%	75.90%	1.19	**Overutilized**
FY 2012				
AFRICAN AMERICAN	5.14%	14.30%	0.36	**Underutilized**
ASIAN AMERICAN	0.00%	0.94%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.70%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.17%	0.00	**Underutilized**
WOMEN	2.04%	7.88%	0.26	**Underutilized**
MBE	0.00%	0.11%	0.00	**Underutilized**
TOTAL MWBE	7.18%	24.10%	0.30	**Underutilized**
NON-MWBE	92.82%	75.90%	1.22	**Overutilized**
FY 2013				
AFRICAN AMERICAN	5.74%	14.30%	0.40	**Underutilized**
ASIAN AMERICAN	0.08%	0.94%	0.09	**Underutilized**
HISPANIC AMERICAN	0.00%	0.70%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.17%	0.00	**Underutilized**
WOMEN	5.31%	7.88%	0.67	**Underutilized**
MBE	0.00%	0.11%	0.00	**Underutilized**
TOTAL MWBE	11.13%	24.10%	0.46	**Underutilized**
NON-MWBE	88.87%	75.90%	1.17	**Overutilized**
FY 2014				
AFRICAN AMERICAN	9.69%	14.30%	0.68	**Underutilized**
ASIAN AMERICAN	0.00%	0.94%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.70%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.17%	0.00	**Underutilized**
WOMEN	0.66%	7.88%	0.08	**Underutilized**
MBE	0.00%	0.11%	0.00	**Underutilized**
TOTAL MWBE	10.35%	24.10%	0.43	**Underutilized**
NON-MWBE	89.65%	75.90%	1.18	**Overutilized**
TOTALS				
AFRICAN AMERICAN	7.53%	14.30%	0.53	**Underutilized**
ASIAN AMERICAN	0.02%	0.94%	0.02	**Underutilized**
HISPANIC AMERICAN	0.00%	0.70%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.17%	0.00	**Underutilized**
WOMEN	2.57%	7.88%	0.33	**Underutilized**
MBE	0.00%	0.11%	0.00	**Underutilized**
TOTAL MWBE	10.12%	24.10%	0.42	**Underutilized**
NON-MWBE	89.88%	75.90%	1.18	**Overutilized**

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Table 33: Disparity Indices – Goods (Prime)
Memphis Disparity Study

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2010				
AFRICAN AMERICAN	5.00%	9.33%	0.54	**Underutilized**
ASIAN AMERICAN	0.22%	0.92%	0.24	**Underutilized**
HISPANIC AMERICAN	0.00%	0.65%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.11%	0.00	**Underutilized**
WOMEN	0.68%	9.49%	0.07	**Underutilized**
MBE	0.00%	0.05%	0.00	**Underutilized**
TOTAL MWBE	5.91%	20.55%	0.29	**Underutilized**
NON-MWBE	94.09%	79.45%	1.18	**Overutilized**
FY 2011				
AFRICAN AMERICAN	2.38%	9.33%	0.26	**Underutilized**
ASIAN AMERICAN	0.17%	0.92%	0.18	**Underutilized**
HISPANIC AMERICAN	0.00%	0.65%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.11%	0.00	**Underutilized**
WOMEN	1.31%	9.49%	0.14	**Underutilized**
MBE	0.00%	0.05%	0.00	**Underutilized**
TOTAL MWBE	3.86%	20.55%	0.19	**Underutilized**
NON-MWBE	96.14%	79.45%	1.21	**Overutilized**
FY 2012				
AFRICAN AMERICAN	0.44%	9.33%	0.05	**Underutilized**
ASIAN AMERICAN	0.04%	0.92%	0.04	**Underutilized**
HISPANIC AMERICAN	0.00%	0.65%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.11%	0.00	**Underutilized**
WOMEN	0.62%	9.49%	0.07	**Underutilized**
MBE	0.00%	0.05%	0.00	**Underutilized**
TOTAL MWBE	1.10%	20.55%	0.05	**Underutilized**
NON-MWBE	98.90%	79.45%	1.24	**Overutilized**
FY 2013				
AFRICAN AMERICAN	1.81%	9.33%	0.19	**Underutilized**
ASIAN AMERICAN	0.00%	0.92%	0.00	**Underutilized**
HISPANIC AMERICAN	2.10%	0.65%	3.23	**Overutilized**
NATIVE AMERICAN	0.00%	0.11%	0.00	**Underutilized**
WOMEN	2.67%	9.49%	0.28	**Underutilized**
MBE	0.00%	0.05%	0.00	**Underutilized**
TOTAL MWBE	6.58%	20.55%	0.32	**Underutilized**
NON-MWBE	93.42%	79.45%	1.18	**Overutilized**
FY 2014				
AFRICAN AMERICAN	0.03%	9.33%	0.00	**Underutilized**
ASIAN AMERICAN	0.05%	0.92%	0.05	**Underutilized**
HISPANIC AMERICAN	0.00%	0.65%	0.00	**Underutilized**
NATIVE AMERICAN	0.97%	0.11%	8.82	**Overutilized**
WOMEN	0.00%	9.49%	0.00	**Underutilized**
MBE	0.00%	0.05%	0.00	**Underutilized**
TOTAL MWBE	1.05%	20.55%	0.05	**Underutilized**
NON-MWBE	98.95%	79.45%	1.25	**Overutilized**
TOTALS				
AFRICAN AMERICAN	1.43%	9.33%	0.15	**Underutilized**
ASIAN AMERICAN	0.08%	0.92%	0.09	**Underutilized**
HISPANIC AMERICAN	0.38%	0.65%	0.58	**Underutilized**
NATIVE AMERICAN	0.00%	0.11%	0.00	**Underutilized**
WOMEN	1.19%	9.49%	0.13	**Underutilized**
MBE	0.00%	0.05%	0.00	**Underutilized**
TOTAL MWBE	3.08%	20.55%	0.15	**Underutilized**
NON-MWBE	96.92%	79.45%	1.22	**Overutilized**

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3. Subcontractor Disparity Indices

Subcontractor Disparity Indices were calculated by comparing the Availability Estimates to the Utilization derived from the responses from the Prime Vendor Questionnaire.[88] Only Construction and A/E reported subcontractor use, which is typical.[89]

In Construction, African American owned firms were overutilized in 2012-2014 and averaged overutilization during the Study Period. Women owned firms were overutilized in 2011 and 2014, but overall were underutilized, but not statistically significantly so. Asian American owned firms were also overutilized in 2013. Overall, Asian American owned firms were underutilized, but not statistically significantly so. Non-MWBE owned firms were overutilized in 2010, 2011 and overall were underutilized, but not statistically significantly so. Overall, MWBEs were overutilized, on average throughout the Study Period as subcontractors in Construction.

In A/E, African American owned firms were overutilized in 2010, 2012, 2013, and overall were overutilized as subcontractors in A/E. Women owned firms were overutilized in 2011 and Asian American owned firms were overutilized in 2013. Overall, both women and Asian owned firms were underutilized. Non-MWBEs were overutilized in 2010, 2014, and overall.

88 There were minimal responses from the Prime Vendor Questionnaire so GSPC has undertaken to send the Prime Vendor Questionnaire out to vendors again in order to increase participation. The final draft of the Study will reflect the additional responses.

89 Goods reported 2 incidents of subcontracting which are not sufficient to allow GSPC to make any inferences about subcontracting in this area.

Table 34: Disparity Indices – Construction (Subcontractor)
Memphis Disparity Study

FY 2010				
AFRICAN AMERICAN	0.00%	23.66%	0.00	**Underutilized**
ASIAN AMERICAN	0.00%	1.07%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.95%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.48%	0.00	**Underutilized**
WOMEN	0.00%	7.02%	0.00	**Underutilized**
MBE	0.00%	0.24%	0.00	**Underutilized**
TOTAL MWBE	0.00%	33.41%	0.00	**Underutilized**
NON-MWBE	100.00%	66.59%	1.50	**Overutilized**
FY 2011				
AFRICAN AMERICAN	4.33%	23.66%	0.18	**Underutilized**
ASIAN AMERICAN	0.00%	1.07%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.95%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.48%	0.00	**Underutilized**
WOMEN	9.54%	7.02%	1.36	**Overutilized**
MBE	0.00%	0.24%	0.00	**Underutilized**
TOTAL MWBE	13.86%	33.41%	0.41	**Underutilized**
NON-MWBE	84.14%	66.59%	1.26	**Overutilized**
FY 2012				
AFRICAN AMERICAN	95.08%	23.66%	4.02	**Overutilized**
ASIAN AMERICAN	0.00%	1.07%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.95%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.48%	0.00	**Underutilized**
WOMEN	3.24%	7.02%	0.46	**Underutilized**
MBE	0.00%	0.24%	0.00	**Underutilized**
TOTAL MWBE	98.32%	33.41%	2.94	**Overutilized**
NON-MWBE	1.68%	66.59%	0.03	**Underutilized**
FY 2013				
AFRICAN AMERICAN	66.36%	23.66%	2.80	**Overutilized**
ASIAN AMERICAN	33.64%	1.07%	31.44	**Overutilized**
HISPANIC AMERICAN	0.00%	0.95%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.48%	0.00	**Underutilized**
WOMEN	0.00%	7.02%	0.00	**Underutilized**
MBE	0.00%	0.24%	0.00	**Underutilized**
TOTAL MWBE	100.00%	33.41%	2.99	**Overutilized**
NON-MWBE	0.00%	66.59%	0.00	**Underutilized**
FY 2014				
AFRICAN AMERICAN	43.85%	23.66%	1.85	**Overutilized**
ASIAN AMERICAN	0.00%	1.07%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.95%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.48%	0.00	**Underutilized**
WOMEN	16.40%	7.02%	2.34	**Overutilized**
MBE	0.00%	0.24%	0.00	**Underutilized**
TOTAL MWBE	60.25%	33.41%	1.80	**Overutilized**
NON-MWBE	39.75%	66.59%	0.60	**Underutilized**
TOTALS				
AFRICAN AMERICAN	48.65%	23.66%	2.06	**Overutilized**
ASIAN AMERICAN	0.93%	1.07%	0.87	Underutilized
HISPANIC AMERICAN	0.00%	0.95%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.48%	0.00	**Underutilized**
WOMEN	6.76%	7.02%	0.96	Underutilized
MBE	0.00%	0.24%	0.00	**Underutilized**
TOTAL MWBE	56.34%	33.41%	1.69	**Overutilized**
NON-MWBE	43.66%	66.59%	0.66	Underutilized

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Table 35: Disparity Indices – A/E (Subcontractor)
Memphis Disparity Study

FY 2010				
AFRICAN AMERICAN	18.17%	14.44%	1.26	**Overutilized**
ASIAN AMERICAN	4.18%	4.20%	1.00	Parity
HISPANIC AMERICAN	0.00%	0.26%	0.00	**Underutilized**
NATIVE AMERICAN	0.48%	0.52%	0.92	Underutilized
WOMEN	7.23%	19.95%	0.36	**Underutilized**
MBE	0.00%	0.00%	-	-
TOTAL MWBE	30.07%	39.37%	0.76	**Underutilized**
NON-MWBE	69.93%	60.63%	1.15	**Overutilized**
FY 2011				
AFRICAN AMERICAN	0.00%	14.44%	0.00	**Underutilized**
ASIAN AMERICAN	0.00%	4.20%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.26%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.52%	0.00	**Underutilized**
WOMEN	55.67%	19.95%	2.79	**Overutilized**
MBE	0.00%	0.00%	-	-
TOTAL MWBE	55.67%	39.37%	1.41	**Overutilized**
NON-MWBE	44.33%	60.63%	0.73	**Underutilized**
FY 2012				
AFRICAN AMERICAN	45.34%	14.44%	3.14	**Overutilized**
ASIAN AMERICAN	0.00%	4.20%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.26%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.52%	0.00	**Underutilized**
WOMEN	5.40%	19.95%	0.27	**Underutilized**
MBE	0.00%	0.00%	-	-
TOTAL MWBE	50.75%	39.37%	1.29	**Overutilized**
NON-MWBE	49.25%	60.63%	0.81	Underutilized
FY 2013				
AFRICAN AMERICAN	56.30%	14.44%	3.90	**Overutilized**
ASIAN AMERICAN	8.26%	4.20%	1.97	**Overutilized**
HISPANIC AMERICAN	0.00%	0.26%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.52%	0.00	**Underutilized**
WOMEN	0.00%	19.95%	0.00	**Underutilized**
MBE	0.00%	0.00%	-	-
TOTAL MWBE	64.55%	39.37%	1.64	**Overutilized**
NON-MWBE	35.45%	60.63%	0.58	**Underutilized**
FY 2014				
AFRICAN AMERICAN	0.00%	14.44%	0.00	**Underutilized**
ASIAN AMERICAN	0.00%	4.20%	0.00	**Underutilized**
HISPANIC AMERICAN	0.00%	0.26%	0.00	**Underutilized**
NATIVE AMERICAN	0.00%	0.52%	0.00	**Underutilized**
WOMEN	0.00%	19.95%	0.00	**Underutilized**
MBE	0.00%	0.00%	-	-
TOTAL MWBE	0.00%	39.37%	0.00	**Underutilized**
NON-MWBE	100.00%	60.63%	1.65	**Overutilized**
TOTALS				
AFRICAN AMERICAN	20.87%	14.44%	1.45	**Overutilized**
ASIAN AMERICAN	2.84%	4.20%	0.68	**Underutilized**
HISPANIC AMERICAN	0.00%	0.26%	0.00	**Underutilized**
NATIVE AMERICAN	0.07%	0.52%	0.13	**Underutilized**
WOMEN	5.64%	19.95%	0.28	**Underutilized**
MBE	0.00%	0.00%	-	-
TOTAL MWBE	29.43%	39.37%	0.75	**Underutilized**
NON-MWBE	70.57%	60.63%	1.16	**Overutilized**

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J. Determining the Significance of Disparity Indices

The determination that a particular ethnic or gender group has been overutilized or underutilized is not, standing alone, proof of discrimination. Typically, the determination of whether a disparity is "statistically significant" can be based on the depth of the disparity in that any disparity index that is less than .80 is considered to be a statistically significant underutilization and any disparity index over 1.10 is considered to be a statistically significant overutilization. The disparity indices impact as designated in Tables 29-33 as "overutilization", "underutilization", or "parity" have been bolded to indicate such statistically significant impact.

However, GSPC's approach to determining whether a measured disparity is significant in the general population versus being merely an artifact of our sample is nonparametric, meaning that we do not assume the data or population have any characteristic structure or parameters. In particular, we use a Wilcoxon test that considers whether or not the typical disparity index across all vendor categories is equal to unity. This constitutes a null hypothesis of "parity" and the Wilcoxon test estimates the probability that the typical disparity index departs from unity, and the magnitude of the calculated z-score indicates whether there is typically underutilization ($z < 0$) or overutilization ($z > 0$).

For all instances of the estimated disparity indices reported in the tables above, the Wilcoxon test rejected the null hypothesis of parity, and the z-score for the typical disparity index was negative, suggesting underrepresentation in all the relevant contracting categories, on average. As the Wilcoxon test is based upon the median or typical value in the distribution of disparity indices, the finding of underrepresentation overall applies to all groups except Non-MWBEs, as they are at the top of the disparity index distribution, with a disparity index that is, on average, greater than unity.

The existence of a statistically significant disparity between the availability and utilization of minority or women owned businesses that is determined to likely be the result of the owners' race, gender, or ethnicity will impact the recommendations provided as a result of this study. GSPC will, in such a case, make recommendations for appropriate and narrowly-tailored race/ethnicity/gender-neutral remedies for this discrimination to give all firms equal access to public contracting with the City. GSPC will also, if appropriate, recommend narrowly-tailored race/ethnicity/gender-conscious remedies. If no statistically significant disparity is found to exist or if such a disparity is not determined to be a likely result of firm owners' race, ethnicity, or gender on their success in the marketplace, GSPC may still make recommendations to support the continuation of engagement, outreach, small business development, and non-discrimination policies in the procurement processes of the City of Memphis.

K. Conclusion

Generally, every MWBE group was underutilized in each category in total throughout the Study Period as prime contractors. In subcontracting, there was very little reporting of subcontracting, which could be due to the low threshold dollars of the City's contracting, in that the substantial majority of contracts are under $100,000.

In the reported subcontracting, African American owned firms and were overutilized A/E. All other race/ethnicity/gender groups were underutilized, even if not statistically significantly so. This outcome may require the City to review its goal setting for subcontracting with regard to African Americans. However, the deep and substantial underutilization of African American owned firms, and all other MWBE groups in prime contracting will be addressed in GSPCs recommendations. Since contracting sizing is predominantly under $100,000 subcontracting does not appear to be dominant. This is supported by the only 7.88% of primes that reported any subcontracting in the Prime Vendor Questionnaire and the less than 1/3 reported in Construction.

V. PRIVATE SECTOR ANALYSIS

L. Introduction

In this section, GSPC considers the market entry, public contracting and subcontracting outcomes and experiences of Minority owned relative to Non-Minority owned firms in the relevant market area for the City of Memphis, Tennessee. Our analysis utilizes data from business firms that are either willing, able, or have actually contracted/subcontracted with the City of Memphis, with the aim of determining if the likelihood of successful contracting/subcontracting opportunities—actual and perceived—with the City of Memphis, is conditioned in a statistically significant manner on the race, ethnicity, or gender status of firm owners. Such an analysis is a useful and important complement to estimating simple disparity indexes, which assume all things important for success and failure are equal among business firms competing for public contracts, and are based on unconditional moments—statistics that do not necessarily inform causality or the source of differences across such statistics. As simple disparity indexes do not condition on possible confounders of new firm entry, and success and failure in public sector contracting/subcontracting of firms, they are only suggestive of disparate treatment, and their implied likelihood of success/failure could be biased.

Our analysis posits that there are possible confounders of success and failure in the entry of new firms in the market and public sector contracting/subcontracting that are sources of heterogeneity among business firms that lead to differences in success and failure. Failure to condition on the sources of heterogeneity in success/failure in new firm formation and public sector contracting/subcontracting outcomes can leave simple disparity indexes devoid of substantive policy implications as they ignore the exent to which firm owner race/ethnicity characteristics are causal factors. Disparate outcomes could possibly reflect in part or in whole outcomes driven by disparate business firm characteristics that matter fundamentally for success/failure in the formation of new firms and pubic sector contracting/subcontracting outcomes. If the race, ethnicity, or gender status of a firm owner conditions lower likelihoods of success/failure, this would be suggestive of these salient characteristics causing the observed disparities.

A broad context for considering disparities by firm ownership status can be informed by considering private sector outcomes in a market area relevant for the city of Memphis. In general, the success and failure of minority owned firms in public contracting could be conditioned by their outcomes in the private sector regarding their revenue generating capacity. In general, if being a minority owned firm in the private sector is associated with lower firm revenue, this lends support to the "but-for" justification for affirmative action in public procurement. Lower revenues for minority owned firms in the City of Memphis market area would suggest that private discrimination undermines their capacity to compete with Non-Minority owned firms for public contracting opportunities. This motivates a private discrimination justification for Affirmative Action in City of Memphis procurement policies; otherwise the City of Memphis is a passive participant in the private discrimination against minority owned firms with respect to its procurement practices.

Table 36 reports on firm ownership type and revenue for the Memphis Tennessee Metropolitan Area (Tenneseee, Arkanas, Mississippi) from the US Census Bureau's 2012 Survey of Business Owners (SBO).[90] The SBO Data are collected every 5 years since 1972, for years ending in "2" and "7", as part of the economic census. The program began as a special project for minority owned businesses in 1969 and was incorporated into the economic census in 1972, along with the Survey of Women owned Businesses. The GSPC analysis considers the percentage of representation in the population of firms and revenue across the firm ownership type classifications.

For the Memphis Tennessee Metropolitan Area, Table 36 reveals that relative to Non-MWBE owned firms, the revenue shares of each minority owned firm never exceeds 1.5 percent (Asians). This is particularly a stark finding for firms owned by Females and African-Americans, as each represent approximately 45 and 43 percent respectively of all non-publicly held classifiable firms, but each have revenue shares far smaller than their firm representation shares. In general, all minority owned firms have revenue shares below their firm representation shares, consistent with, but not causal evidence for, minority owned firms facing discriminatory barriers in the private sector of the Memphis Tennessee Market Area.

Table 36: Firm Ownership Type and Revenue Characteristics for the Memphis Tennessee Metropolitan Area (TN, AR, MS) 2012 Survey of Business Owners

City of Memphis Disparity Study

Ownership Structure	Number of Firms	Percentage of all Firms (approximate)	Market Area Total Revenue ($)	Percentage of Market Area Total Revenue (approximate)
All	127,279	100	171,253,853	100
Female	57,563	.4522	5,211,621	.0304
Non-MWBE	64,148	.5039	48,247,906	.2817
African American	55,159	.4334	1,577,360	.0092
American Indian & Alaskan	888	.0069	117,759	.0007
Asian	3,829	.0301	2,456,467	.0143
Asian Indian	1,134	.0089	1,000,844	.0058
Chinese	555	.0044	601,275	.0035
Filipino	308	.002	Withheld[a]	Withheld[a]
Japanese	78	.0006	13,525	.0001
Vietnamese	1,004	.008	40,879	.0002
Other Asian	499	.004	238,928	.0013
Native Hawaiian & Other Pacific	74	.0006	9,723	.0001
Native Hawaiian	25	.0002	2,329	.00001
Hispanic	3,049	.0239	449,936	.0026
Some Other Race	1,666	.0131	123,776	.0007
Publicly Held and not classifiable	2,854	.0224	118,735,058	.6933

Source: US Census Bureau Survey of Business Owners

Notes: [a]Data withheld by Census Bureau because estimate did not meet publication standards

[90] SBO data are publically available at http://www.census.gov/programs-surveys/sbo/data.html

M. Data

Our analysis is based on survey data compiled by GSPC, and constitutes a two-stage cluster sample of firms from the bidder and vendor lists provided by the City of Memphis. Clusters were constructed on the basis of assigned categories for a business enterprise's primary line of business. The GSPC survey categorized five primary lines of business: Construction, A/E, Other Professional Services, Other Services, and Goods.

The GSPC survey was a 53 item questionnaire that captured data on firm and individual owner characteristics. The GSPC research interest is in the extent to which a business firm owner's race, ethnicity, and gender status conditions success/failure in City of Memphis in a variety of relevant public contracting opportunities. As such, our use of the data in the GSPC survey is limited to the measured covariates that in our view are best suited for evaluating the extent to which a business firms owner's race, ethnicity and gender status are a possible cause of public contracting disparities, and the extent which the gender/ethnicity status of business owners in the City of Memphis are a determinant of private sector discrimination. Table 37 reports a summary on the description, mean and standard deviation of the covariates from the GSPC survey that are relevant to the analysis.[91]

[91] In the GSPC survey, no firm owners reported having the race/ethnicity category of Asian/Indian.

Table 37: Covariate Summary
City of Memphis, TN Disparity Study

Covariate	Description	Mean	Standard Deviation	Number of Observations
Number of prime contractor bids submitted to City of Memphis: FY 2010 - 2014	Categorical Variable: 1 = Zero bids 2 = 1 - 10 bids 3 = 11 - 25 bids 4 = 26 - 50 bids 5 = 51 - 100 bids 6 = More than 100 bids	1.90	0.901	282
Firm entered between market: FY 2010 - 2014	*Binary Variable*: 1 = Yes	.39	.194	282
Served as a prime contractor on a City of Memphis project: FY 2010 - 2014	*Binary Variable*: 1 = Yes	.284	.451	282
Served as a subcontractor on a City of Memphis project: FY 2010 - 2014	*Binary Variable*: 1 = Yes	.276	.449	282
Pre-qualification requirements are a barrier to submitting bids and securing contracts from City of Memphis	*Binary Variable*: 1= Yes	.134	.342	282
Performance bond requirements are a barrier to submitting bids and securing contracts from City of Memphis	*Binary Variable:* 1 = Yes	.095	.295	282
Bid bond requirements are a barrier to submitting bids and securing contracts from City of Memphis	*Binary Variable:* 1 = Yes	.103	.304	282
Financing is a barrier to submitting bids and securing contracts from City of Memphis	*Binary Variable:* 1 = Yes	.095	.295	282
Informal networks are a barrier to submitting bids and securing contracts from City of Memphis	*Binary Variable:* 1 = Yes	.121	.326	282
Selection process is a barrier to submitting bids and securing contracts from City of Memphis	*Binary Variable*: 1 = Yes	.269	.444	282
Majority firm owner is African American	*Binary Variable:* 1 = Yes	.258	.439	282
Majority firm owner is Asian Indian	*Binary Variable*: 1 = Yes	0	0	282
Majority firm owner is Asian or Pacific Islander	*Binary Variable*: 1 = Yes	.014	.118	282
Majority firm owner is Hispanic American	*Binary Variable:* 1 = Yes	.007	.084	282
Majority firm owner is Native American or Alaskan	*Binary Variable*: 1 = Yes	.003	.059	282
Majority firm owner is Bi/Multi-Racial	*Binary Variable:* 1 = Yes	.018	.132	282
Majority firm owner is Other Race	*Binary Variable:* 1 = Yes	.049	.217	282
Majority firm owner is a Woman	*Binary Variable:* 1 = Yes	.312	.464	282
Firm is a Certified Women or Minority Enterprise	*Binary Variable:* 1 = Yes	.354	.479	282
Firm owner has more than twenty years of experience	*Binary Variable:* 1 = Yes	.787	.409	282
Firm has more than ten employees	*Binary Variable:* 1 = Yes	.518	.501	282
Firm owner has a baccalaureate degree	*Binary Variable*: 1 = Yes	.394	.489	282

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N. Statistical and Econometric Framework

Methodologically, the GSPC statistical and econometric analysis of public contracting disparities in the City of Memphis conditioned on the race, ethnicity, and gender status of business firm owners utilizes a Categorical Regression Model (CRM) framework.[92] As the covariates measuring public contracting activity and success in Table 37 are categorical responses to questionnaire items (e.g. public contracting bid ranges, yes, no), a CRM views the categories as latent variables with likelihood thresholds that are conditioned on other covariates. In the case where there are more than two categories and the succession of categories have a natural ranking, a CRM permits a determination as to how particular covariates condition the likelihood/probability of being in the highest valued category relative to the lower-valued categories. In the case of just two categorical but not naturally ordered categories, the CRM reduces to a Binary Regression Model (BRM).[93]

For all the CRM/BRM parameter estimates below, we report them as "Odds Ratios", which measure the ratio of the probability of success and the probability of failure relative to the omitted group in all our specifications—Non-Minority owned firms. When the odds ratio is greater (less) than unity for a parameter, the measure characteristic has the effect of increasing (decreasing) the likelihood of the outcome under consideration relative to Non-minority owned firms. We determine the statistical significance of on the basis of the estimated coefficient's probability value—or P-value. The P-value is the probability of obtaining an estimate of the coefficient by chance alone, assuming that the null hypothesis of the variable having a zero effect is true. As a convention, GSPC rejects the null hypothesis of no effect, and concludes the estimated coefficient is statistically significant as long as P-value ≤ .10, which we highlight in bold for all parameter estimates.

While the GSPC sample constitutes a random stratified cluster sample, the response rate was approximately 56 percent. As nonresponse probabilities are unknown, we estimate all parameters from our CRM/BRM specifications with bootstrapped standard errors to minimize/eliminate the bias that can result from the sample being unrepresentative of the population of interest due to nonresponse.[94] To the extent that bootstrapped standard errors enable consistent estimation of parameters given misspecification that could result from the omission of sampling and nonresponse weights, CRM/BRM parameter estimates with bootstrapped standard errors effects can mitigate/eliminate the bias caused by a sample that may not be fully representative of the population of interest.[95]

92 See: Richard D. McKelvey and William Zavoina. 1975. "A Statistical Model for the Analysis of Ordinal Level Dependent Variables," ," Journal *of Mathematical Sociology*, 4: pp. 103 - 120.

93 More formally, if the latent realization of an outcome is Y_i^*, ranging from $-\infty$ to ∞, a structural and conditional specification for Y_i^* is $Y_i^* = \mathbf{x}_i \beta + \varepsilon_i$, where $\mathbf{x}$ is a vector of exogenous covariates, β is a vector of coefficients measuring the effects of particular covariates on the realization of Y_i^*, and ε_i is a random error. For categorical and ordinal outcomes $m = 1 \ldots J$, $Y_i = m$ if $\tau_{m-1} \leq Y_i^* < \tau_m$, where the τ_i are thresholds for the particular realizations of $Y_i^* = m$. Conditional on $\mathbf{x}$ the likelihood/probability that Y_i takes on a particular realization is $Pr(Y_i = m \mid \mathbf{x}) = \Phi(\tau_m - \mathbf{x}\beta) - \Phi(\tau_{m-1} - \mathbf{x}\beta)$, where Φ is the cumulative density function of ε.

94 See: Bradley Efron and Robert J. Tibshirani. 1993. *An Introduction to the Bootstrap*, Chapman and Hall, NY.

95 See: Silvia Goncalves and Halbert White. 2005. "Bootstrap Standard Error Estimates For Linear Regression," *Journal of the American Statistical Association*, 100: pp. 970 -979., and Stanislav Kolenikov. 2010. "Resampling Variance Estimation for Complex Survy Data," *Stata Journal*, 10: pp. 165 – 199.

O. The Relative New Firm Entry Propensities of Minority Firm Owners in the City of Memphis

We first examine the effects of minority owneship status on an individual's participation in the private sector as a relatively new business firm in the City of Memphis. To the extent that new minority owned firms have a lower likelihood of market entry relative to Non-Minority owned firms, it would suggest that private discrimination against minority owned firms is sufficiently present to warrant consideration of public sector legal remedies such as affirmative action and minority set-aside contracting, that would improve the prospects for the entry of new minority owned firms in the market. Such a perspective on discrimination suggests that entry barriers impede the formation of minority owned firms. The counterfactual is that in the absence of such entry barriers, manifested perhaps as discrimination against minority owned firms in access to capital, credit, etc., minority owned firms would be able to enter the market, and compete with Non-Minority owned firms in bidding and securing public contracts from the City of Memphis.

To determine if minority status is a barrier to the formation of new businesses in the City of Memphis, Table 38 reports the estimated parameters of a Logit BRM with a binary variable for a firm establishing itself between the years 2010 – 2014 as the dependent variable, or within the 5 previous years of our analysis. As standard control covariates we include the race/ethncity of the firm's majority owner, and whether or not the owner has a baccalaureate degree. As a goodness-of-fit measure, Pseudo-R^2 is reported.[96]

With respect to the minority status of the firm, the estimated coefficient is statistically significant and greater than one only for firms owned by African Americans and Females. This suggests that firms owned by African Americans and Females are more likely to be new entrants to the Memphis market relative to Non-Minority owned firms, a result that does not appear to the case for the other minority owned firms in the Memphis market area. To the extent that market experience is an important determinant of success in bidding and securing public contracts, the relatively higher probability of being a new firm for those owned by African Americans and Females could be of consequence. This is particularly the case if successful public contract bidding follows from having market tenure that translates into acquiring significant knowledge/experience about bidding and securing public contracts.

96 Pseudo- R^2 is not to be interpreted as the R^2 in standard Ordinary Least Squares (OLS) estimation, as OLS proceeds my minimizing variance to get parameter estimates. Probit specifications are likelihood-based, and higher values of Pseudo-R^2 indicate that the specified model is an increasingly better alternative to a null model with only an intercept.

Table 38: Logit Parameter Estimates (Odds Ratio)
Business Enterprise Ownership Status and New Firm Entry
In City of Memphis Market Area
City of Memphis, TN Disparity Study

Regressand: *Firm entered market: FY 2010-2014 (binary)*	**Coefficient**	**Standard Error**	**P-Value**
Constant	0.276	0.085	**0.0001**
Firm owner has a baccalaureate degree	1.10	3.99	.979
Majority firm owner is African American	3.50	2.56	**.087**
Majority firm owner is Asian or Pacific Islander	.0001	.00001	**.0001**
Majority firm owner is Hispanic American	.0001	.00001	**.0001**
Majority firm owner is Native American or Alaskan	.0001	.00001	**.0001**
Majority firm owner is Bi/Multi-Racial	.0002	.00001	**.0001**
Majority firm owner is Other Race	.0001	.00001	**.0001**
Majority firm owner is a Woman	4.23	2.35	**.0091**
Number of observations	282		
Pseudo - R^2	.115		

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1. Are Minority owned Firms Less Likely To Compete for Contracts in the City of Memphis?

One reason disparities in public contracting outcomes between minority owned and nonminority owned firms could exist is that relative to nonminority owned businesses, minority owned firms are less likely to submit bids for public contracts. To determine if this is the case in the City of Memphis, Table 39 reports Ordinal Logit parameter estimates of a CRM with the number of prime contracting bids submitted by a firm to the City of Memphis between 2010 -2014 as the dependent variable. As standard control covariates we include, in addition to whether the firm owner has a baccalaureate degree, measures for the number of employees the business employs, and the number of years of experience the firm owner has.

The parameter estimates in Table 39 suggest that relative to nonminority owned firms, minority owned firms are neither more or less likely to submit prime bid submissions in a statistically significant manner. To the extent that public contract success is proportional to the number of submissions, this suggests that any public contracting disparities between nonminority and minority owned firms cannot be explained by differential public bid submission rates in the City of Memphis.

Table 39:Ordinal Logit Estimates (Odds Ratio)
Minority Ownership Status and Prime Bid Submissions
In City of Memphis Market Area
City of Memphis, TN Disparity Study

***Regressand*:** Number of contractor bids submitted to City of Memphis: FY 2010-2014	**Odds Ratio**	**Standard Error**	**P-Value**
Firm owner has more than twenty years of experience	1.756	.4900	**.0441**
Firm has more than ten employees	1.594	.4811	.1223
Firm owner has a baccalaureate degree	1.008	.2629	.9740
Majority firm owner is African American	1.621	.5310	.1406
Majority firm owner is Asian or Pacific Islander	3.781	14.645	.7315
Majority firm owner is Hispanic American	.4117	2.424	.8802
Majority firm owner is Native American or Alaskan	1.423	.6333	.4270
Majority firm owner is Bi/Multi-Racial	3.601	2.965	.1207
Majority firm owner is Other Race	1.046	.6821	.9453
Majority firm owner is a Woman	.7556	.1885	.2611
Firm is certified with the City of Memphis	.8109	.2383	.4768
Number of observations	282		
Pseudo $-R^2$	.024		

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2. Minority owned Firms And Prime Contracting in the City of Memphis

To the extent that frequency of public contract bids reflects past experience as a prime contractor, minority owned firms can potentially become frequent prime contract bidders by actually gaining experience as succesful prime contractors. As such, the frequency of prime bids by minority owned firms need not be a concern if they are actually gaining valuable experience as prime contractors that will translate into frequent contract bids and success later. To explore if this is the case in the City of Memphis, Tables 40 and 41 report Logit BRM parameter estimates where the dependent variable is whether or not a firm served as a prime contractor in the City of Memphis between 2010 – 2014 for all firms and those in Construction Services respectively.

The parameter estimates in Table 40 suggest that relative to nonminority owned firms, those owned by Hispanics and Native Americans/Alaskans were less likely to have served as prime contractors, as the estimated odds ratio is statistically significant and less than one in these instances. To the extent that public contract success is proportional to prior experience as a prime contractor, this suggests that any public contact success disparities of firms owned by Hispanics and Native American/Alaskans reflect past constraints on public contract success, as current success is correlated with the experience gained from past success.

Table 40: Logit Parameter Estimates (Odds Ratio)
Minority Ownership Status and Prime Contracting
With City of Memphis
City of Memphis, TN Disparity Study

Regressand: *Served as a prime contractor on a City of Memphis project: FY 2010-2014*	**Odds Ratio**	**Standard Error**	**P-Value**
Constant	0.4364	0.2111	**0.0872**
Firm owner has more than twenty years of experience	.9208	.3537	.8305
Firm has more than ten employees	1.437	.5356	.3311
Firm owner has a baccalaureate degree	1.116	.3123	.6930
Majority firm owner is African American	.5528	.2612	.2100
Majority firm owner is Asian or Pacific Islander	1.581	8.354	.9317
Majority firm owner is Hispanic American	.0001	.00001	**.00001**
Majority firm owner is Native American or Alaskan	.0001	.00001	**.00001**
Majority firm owner is Bi/Multi-Racial	3.943	32.59	.8684
Majority firm owner is Other Race	1.496	4.434	.8920
Majority firm owner is a Woman	.8184	.4164	.6940
Firm is certified with the City of Memphis	2.069	.9396	**.1090**
Number of observations	282		
Pseudo - R^2	.035		

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Table 41: Logit Parameter Estimates (Odds Ratio)
Minority Ownership Status and Construction Services Firm Prime Contracting With City of Memphis
City of Memphis, TN Disparity Study

Regressand: *Served as subcontractor on a City of Memphis Project: FY 2010-2014*	**Odds Ratio**	**Standard Error**	**P-Value**
Constant	0.3237	0.1077	**0.0014**
Firm owner has more than twenty years of experience	.4278	.1271	**.0040**
Firm has more than ten employees	.7791	.1451	.1800
Firm owner has a baccalaureate degree	2.060	.2539	**.0001**
Majority firm owner is African American	1.038	.3443	.9100
Majority firm owner is Asian or Pacific Islander	.001	.00001	**.0001**
Majority firm owner is Hispanic	.0001	.00001	**.00001**
Majority firm owner is Native American or Alaskan	.0001	.00001	**.00001**
Majority firm owner is Bi/Multi-Racial	9.526	3.913	**.0001**
Majority firm owner is Other Race	.0001	.00001	**.00001**
Majority firm owner is a Woman	1.153	.1112	.1410
Firm is certified with the City of Memphis	1.877	.3298	**.0001**
Number of observations	282		
Pseudo - R^2	.087		

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For minority owned firms officially certified as a Minority Owned Business Enterprise, Women Owned Business Enterprise, or Disadvantaged Business Enterprise, relative to nonminority owned firms, the results in Table 40 suggest that they were more likely to have served as prime contractors with the City of Memphis between 2010 – 2014. This suggests that overall, minority owned firms benefitted from any City of Memphis public contracting practices that raised the public contracting shares of minority owned firms between 2010 – 2014. However, the patterns of statistical significance on the narrow racial characteristics of firm ownership suggest that those firms owned by Hispanics and Native Americans/Alaskans did not benefit accordingly.

For firms in Construction Services, the parameter estimates in Table 41 suggest that relative to nonminority owned firms, those owned by Asian/Pacific Islanders, Hispanics, Native Americans/Alaskans, and Other Race are/were less likely to have served as prime contractors, as the estimated odds ratio is statistically significant and less than one in these instances.[97] To the extent that public contract success is proportional to prior experience as a prime contractor, this suggests that any public contact success disparities of firms owned by Asian/Pacific Islanders, Hispanics, Native Americans/Alaskans, and Other Race reflect past constraints on public contract success, as current success is correlated with the experience gained from past success.

For minority owned firms officially certified as a Minority Owned Busines Enterprise, Women Owned Business Enterprise, or Disadvantaged Business Enterprise, relative to nonminority owned firms, the results in Table 40 suggest that they were more likely to have served as prime contractors on City of Memphis projects between 2010 – 2014. This suggests that, for Construction Services overall, minority owned firms benefitted from any City of Memphis public contracting practices that raised the public contracting shares of minority owned firms between 2010 – 2014. However, the patterns of statistical significance on the narrow racial characteristics of firm ownership suggests that those firms owned by Asian/Pacific Islanders, Hispanics, Native Americans/Alaskans, and Other Race did not benefit accordingly.

3. Minority owned Firms And Subcontracting in the City of Memphis

To the extent that submitting and winning public contract bids requires experience, which can also be gained through subcontracting with lead prime firms, minority owned firms can potentially become more frequent and successful prime contract bidders by acquiring experience as subcontractors. As such, the low frequency of prime bid submission and lower likelihood of being a prime contractor by minority owned firms need not be of concern, if they are gaining valuable subcontracting experience that will translate into high frequency contract bids and success later. To explore if this is the case in the City of Memphis, Table 40 reports Logit BRM parameter estimates where the dependent variable is whether or not a firm served as a subcontractor on a City of Memphis project between 2010 – 2014.

The parameter estimates in Table 42 suggest that, relative to nonminority owned firms, those owned by Native Americans/Alaskans were less likely to have served as subcontractors, as the estimated odds ratio is statistically significant and less than one in that instance. To the extent that public contract success is proportional to prior experience as a subcontractor, this suggests that any public contract success disparities of firms owned by Native Americans/Alaskans reflect constraints on access to subcontracting opportunities, as success with respect to securing prime contracts is plausibly correlated with the experience gained from experiences as a subcontractor on City of Memphis public contracts.

For minority owned firms officially certified as a Minority Owned Business Enterprise, Women Owned Business Enterprise, or Disadvantaged Business Enterprise, relative to nonminority owned firms, the

[97] Firms in the Construction Services category constituted approximately 17.3 percent of the GSPC Survey.

results in Table 42 suggest that they are/were more likely to have served as subcontractors on City of Memphis projects between 2010 – 2014. This suggests that for Construction Services overall, minority owned firms benefitted from any City of Memphis public subcontracting practices that raised the public contracting shares of minority owned firms between 2010 – 2014. However, the patterns of statistical significance on the narrow racial characteristics of firm ownership suggests that those firms owned by Native Americans/Alaskans, and Other Race did not benefit accordingly.

Table 42: Logit Parameter Estimates (Odds Ratio)
Minority Ownership Status and Prime SubContracting
In City of Memphis Market Area
City of Memphis, TN Disparity Study

Regressand: *Serving as a subcontractor on a City of Memphis Project: FY 2010-2014*	**Odds Ratio**	**Standard Error**	**P-Value**
Constant	0.1461	0.0716	**0.0001**
Firm owner has more than twenty years of experience	.6536	.2817	.3230
Firm has more than ten employees	1.388	.4917	.3540
Firm owner has a baccalaureate degree	.9899	.3092	.9740
Majority firm owner is African American	.5021	.2352	.1410
Majority firm owner is Asian/Pacific Islander	3.9999	32.528	.8690
Majority firm owner is Hispanic	1.476	15.782	.9710
Majority firm owner is Native American or Alaskan	.0001	.00001	**.0001**
Majority firm owner is Bi/Multi-Racial	5.418	20.520	.6550
Majority firm owner is Other Race	.9149	2.727	.9750
Majority firm owner is a Woman	.7376	.2428	.3550
Number of observations	282		
Pseudo - R^2	.076		

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Table 43: Logit Parameter Estimates (Odds Ratio)
Minority Ownership Status and Construction Services Firm Prime SubContracting In City of Memphis Market Area
City of Memphis, TN Disparity Study

Regressand: *Served as a subcontractor on a City of Memphis Project: FY 2010-*	**Odds Ratio**	**Standard Error**	**P-Value**
Constant	0.0684	0.056	**0.001**
Firm owner has more than twenty years of experience	.3004	.0830	**.0001**
Firm has more than ten employees	1.288	.3161	.3020
Firm owner has a baccalaureate degree	1.787	.2148	**.0001**
Majority firm owner is African American	.3759	.0677	**.0001**
Majority firm owner is Asian or Pacific Islander	.0001	.00001	**.0001**
Majority firm owner is Hispanic	5.464	6.022	.1230
Majority firm owner is Native American or Alaskan	.0001	.00001	**.0001**
Majority firm owner is Bi/Multi-Racial	4.181	2.116	**.0050**
Majority firm owner is Other Race	.9837	.4598	.9720
Majority firm owner is a Woman	1.245	.1759	.1210
Firm is certified with the City of Memphis	2.545	.5557	**.0001**
Number of observations	282		
Pseudo - R^2	.098		

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For firms in Construction Services, the parameter estimates in Table 43 suggest that relative to nonminority owned firms, those owned by African Americans, Asian/Pacific Islanders and Native Americans/Alaskans, were less likely to have served as subcontractors on City of Memphis projects, as the estimated odds ratio is statistically significant and less than one in these instances. To the extent that public contract success is proportional to prior experience as a subcontractor, this suggests that any public contract success disparities of Construction Services firms owned by African Americans, Asian/Pacific Islanders and Native Americans/Alaskans reflect past constraints on public subcontracting success, as current success is correlated with the experience gained from past success with subcontracting.

For minority owned firms officially certified as a Minority Owned Busines Enterprise, Women Owned Business Enterprise, or Disadvantaged Business Enterprise, relative to Non-minority owned firms, the results in Table 41 suggest that they were more likely to have served as subcontractors on City of Memphis projects between 2010 – 2014. This suggests that for Construction Services overall, minority owned firms

benefitted from any City of Memphis public contracting practices that raised the public contracting shares of minority owned firms between 2010 – 2014. However, the patterns of statistical significance on the narrow racial characteristics of firm ownership suggests that those firms owned by African Americans, Asian/Pacific Islanders and Native Americans/Alaskans, and Other Race did not benefit accordingly.

4. Do Minority owned Firms Face Additional Barriers in Submitting Bids And Securing Contracts With The City of Memphis?

The differential success in public contracting/subcontracting conditional on being a minority owned firm implied by the parameter estimates reported in Tables 42-48 are suggestive of race/ethnicity alone conditioning City of Memphis public contracting outcomes. Such an implication follows from the statistically significant odds ratios estimated in Table 42-48 being sensitive, in several instances, to the race/ethnic status of firm owners in a manner that lowers their likelihood of success in public contracting outcomes relative to nonminority firm owners—the comparison group in all the parameter estimates.

Of course, race/ethnicity alone, if at all, need not be the only barrier preventing minority owned firms from realizing public contracting success likelihoods that are similar to those of nonminority owned firms. Tables 42-48 report Logit BRM parameter estimates where the dependent variable measures the extent to which firm owners agree that there exist barriers to submitting bids and securing public contracts from the City of Memphis with respect to: Pre-Qualification Requirements, Performance Bond Requirements, Bid Bond Requirements, Financing, and Informal Networks.

Table 44: Logit Parameter Estimates (Odds Ratio)
Minority Ownership Status, Pre-Qualification Requirements, and Bid Submissions In City of Memphis Market Area
City of Memphis, TN Disparity Study

Regressand: *Pre-Qualification requirements are a barrier to submitting bids and securing contracts from the City of Memphis* ***Regressors***	**Odds Ratio**	**Standard Error**	**P-Value**
Constant	0.1065	0.0702	**0.001**
Firm owner has more than twenty years of experience	.6632	.3222	.3980
Firm has more than ten employees	.7673	.3085	.5100
Firm owner has a baccalaureate degree	.5924	.2988	.2990
Majority firm owner is African American	2.902	1.462	**.0350**
Majority firm owner is Asian or Pacific Islander	.0001	.00001	**.0001**
Majority firm owner is Hispanic	.0001	.00001	**.0001**
Majority firm owner is Native American or Alaskan	.0001	.0001	**.0001**
Majority firm owner is Bi/Multi-Racial	.0001	.0001	**.0001**
Majority firm owner is Other Race	1.177	5.108	**.0740**
Majority firm owner is a Woman	.6375	.3307	.3868
Firm is certified with the City of Memphis			
Number of observations	282		
Pseudo - R^2	.097		

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Table 45: Ordinal Logit Parameter Estimates (Odds Ratio)
Minority Ownership Status, Performance Bond Requirements, and Bid Submissions
In City of Memphis Market Area
City of Memphis, TN Disparity Study

Regressand**: Performance bond requirements are a barrier to submitting bids and securing contracts from the City of Memphis* ***Regressors	**Odds Ratio**	**Standard Error**	**P-Value**
Constant	0.0197	0.0191	**0.0001**
Firm owner has more than twenty years of experience	.7398	.3977	.5750
Firm has more than ten employees	.1366	.1224	**.0260**
Firm owner has a baccalaureate degree	1.104	.2197	.6170
Majority firm owner is African American	1.792	.6683	.1180
Majority firm owner is Asian or Pacific Islander	3.742	25.129	.8440
Majority firm owner is Hispanic	.0001	.0001	**.00001**
Majority firm owner is Native American or Alaskan	.0001	.00001	**.00001**
Majority firm owner is Bi/Multi-Racial	.00001	.00001	**.00001**
Majority firm owner is Other Race	.00001	.00001	**.00001**
Majority firm owner is a Woman	1.433	.6437	.4230
Firm is certified with the City of Memphis	1.193	.6437	.6530
Number of observations	282		
Pseudo - R^2	.171		

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Table 46: Logit Parameter Estimates (Odds Ratio)
Minority Ownership Status, Bid Bond Requirements, and Bid Submissions
In City of Memphis Market Area
City of Memphis, TN Disparity Study

Regressand**: Bid Bond requirements are a barrier to submitting bids and securing contracts from the City of Memphis* ***Regressors	**Odds Ratio**	**Standard Error**	**P-Value**
Constant	0.0385	0.0299	**0.0001**
Firm owner has more than twenty years of experience	1.004	.6330	.9940
Firm has more than ten employees	.2991	.1642	**.0280**
Firm owner has a baccalaureate degree	.7846	.5174	.7130
Majority firm owner is African American	2.439	1.533	.1560
Majority firm owner is Asian or Pacific Islander	4.536	46.109	**.8820**
Majority firm owner is Hispanic	.0001	.00001	**.0001**
Majority firm owner is Native American or Alaskan	.0001	.00001	**.0001**
Majority firm owner is Other Race	.0001	.00001	**.0001**
Majority firm owner is a Woman	1.428	.5169	.3250
Firm is certified with the City of Memphis	.9849	.7165	.9830
Number of observations	282		
Pseudo - R^2	.122		

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Table 47: Logit Parameter Estimates (Odds Ratio)
Minority Ownership Status, Financing Requirements, and Bid Submissions
In City of Memphis Market Area
City of Memphis, TN Disparity Study

Regressand: *Financing is a barrier to submitting bids and securing contracts from City of Memphis* ***Regressors***	**Odds Ratio**	**Standard Error**	**P-Value**
Constant	0.0385	0.0299	**0.0001**
Firm owner has more than twenty years of experience	.9137	.4724	.8620
Firm has more than ten employees	.2463	.1771	**.0510**
Firm owner has a baccalaureate degree	.8268	.3526	.6560
Majority firm owner is African American	5.312	4.445	**.0460**
Majority firm owner is Asian or Pacific Islander	.0001	.00001	**.0001**
Majority firm owner is Hispanic	.0001	.00001	**.0001**
Majority firm owner is Native American or Alaskan	.0001	.00001	**.0001**
Majority firm owner is Other Race	.0001	.00001	**.0001**
Majority firm owner is a Woman	1.739	.8790	.2730
Firm is certified with the City of Memphis	1.867	1.276	.3610
Number of observations	282		
Pseudo - R^2	.245		

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Table 48: Logit Parameter Estimates (Odds Ratio):
Minority Ownership Status, Informal Networks, and Bid Submissions
In City of Memphis Market Area
City of Memphis, TN Disparity Study

Regressand: *Informal Networks is a barrier to submitting bids and securing contracts from City of Memphis* ***Regressors***	**Odds Ratio**	**Standard Error**	**P-Value**
Constant	0.0197	0.0191	**0.0001**
Firm owner has more than twenty years of experience	.6140	.3483	.3900
Firm has more than ten employees	1.302	.7406	.6430
Firm owner has a baccalaureate degree	1.351	.5684	.4750
Majority firm owner is African American	2.453	1.269	**.0830**
Majority firm owner is Asian or Pacific Islander	.0001	.00001	**.0001**
Majority firm owner is Hispanic	9.942	135.04	.8660
Majority firm owner is Native American or Alaskan	.0001	.00001	**.0001**
Majority firm owner is Bi/Multi-Racial	.00001	.00001	**.00001**
Majority firm owner is Other Race	2.314	15.525	.9000
Majority firm owner is a Woman	1.541	.5058	.1870
Firm is certified with the City of Memphis	1.621	1.058	.4590
Number of observations	282		
Pseudo - R^2	.088		

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The parameter estimates in Tables 44-48 suggest that relative to Non-Minority owned firms, those owned by African Americans are more likely to face barriers in submitting bids and securing public contracts with the City of Memphis as a result of Pre-Qualification Requirements, Financing, and Informal Networks. For firms owned by African Americans, the estimated odds ratio is statistically significant and greater than one in these instances. For firms where the owner is Bi/Multi-racial, the estimated odds ratio is also positive and statistically significant in the case of Pre-Qualification requirements, suggesting that relative to nonMinority- owned firms, firm owners who are Bi/Multi-racial face Pre-Qualification barriers with respect to submitting bids and securing public contracts with the City of Memphis. It is plausible that public contracting success by firms is proportional to perceptions of fairness, and transparency in the public contracting process. In this context, the results in Tables 44-48 suggest that any efforts to enhance confidence in the legitimacy of the process by which bids are selected could improve public contracting outcomes for minority owned firms in the City of Memphis.

A policy relevant counterfactual is also implied by the Logit Parameter estimates in Table 48. The results suggest that in the absence of financing barriers, manifested perhaps as discrimination against African American owned firms in credit markets—a major source of financing—African American owned firms would be able to compete with nonMinority- owned firms in bidding and securing public contracts from the City of Memphis. In general, that being a African American owned firm increases the likelihood of financing being a barrier to securing public contracts with the City of Memphis lends some support to the "but-for" justification for affirmative action in public procurement.[98] The statistically significant and positive effect of being an African American owned firm on the likelihood of financing being a barrier to securing contracts with the City of Memphis suggests that private discimination in the market for credit undermines their capacity to compete with other firms. This motivates a private discrimination justification for Affirmative Action in City of Memphis procurement policies; otherwise, the City of Memphis is a passive participant in the private discrimination against minority owned firms with respect to its procurement practices.

P. Conclusion

GSPC's analysis of disparities in public contracting and subcontracting outcomes in the City of Memphis aimed to provide some policy relevant insight to observed unconditional disparity indexes. Our analysis explicitly links a business firm owner's race/ethnicity/gender to public contracting outcomes in the City of Memphis relevant market area. Indeed our results suggest that in general , a firm owner's race, ethnicity, and gender have, in several instances a statistically significant and adverse effect on entering the Memphis market area as a new firm, and for firms in general, and those in Construction Services, securing public contracting and subcontracting opportunities relative to nonminority owned firms. Our results also suggest that at least with respect to African American owned firms, the City of Memphis may be a passive participant in private discrimination, as African American owned firms are more likely to report financing—which is typically secure in private credit markets—to be a barrier to securing contracts with the City of Memphis. We also find that being a African American owned firm increases the likelihood of having a perception that the process by which bids are selected by the City of Memphis is not fair and transparent, perceived to be governed by biased informal networks, which could discourage participation from minority owned firms in the public contracting process—exacerbating racial/ethnic/gender disparities in public contracting outcomes for the City of Memphis.

[98] Firms categorized as Construction Services were approximate 17.3 percent of the GSPC sample.

VI. ANECDOTAL ANALYSIS

GSPC's anecdotal analysis is intended to create a diverse picture of the perspectives of firm owners in the Memphis marketplace as to their experiences in conducting business, or attempting to conduct business with the City of Memphis. It also allows a comparison between those experiences of minority and women owned, businesses and compared to non-minority owned businesses. GSPC solicited participation and responses from firms within the Memphis MSA through anecdotal interviews, focus groups, public hearings, surveys, meetings with local organizations, and an informational meeting. Interviewers gathered information concerning the primary line of business, gender and ethnicity of owner, organizational status, number of employees, year business established, gross revenues, and level of education. The GSPC Survey of Business Owners (shown in Appendix F) provides a broad examination of central issues for business owners in contracting and draws from a larger sample of firms to relate their experiences. Griffin & Strong PC also provided an email address (MemphisStudy@gspclaw.com) for anonymous feedback, though no comments were submitted through that forum.

The public hearings drew business owners to speak on the record about their experiences, each taking the floor for a certain amount of time and address GSPC and the wider public, as well as the officials and administrators from the City of Memphis. The focus group was intended to allow firm owners to discuss their experiences, and to interact with one another in a more relaxed and less exposed environment. The combination of these qualitative evidence gathering methods as well as the survey data available for review, create a well-rounded picture of the perception and experiences of business owners in the City.

A. Equal Business Opportunity Ordinance Extension Hearings

Griffin & Strong, P.C. ("GSPC") hosted two public hearings at the Benjamin L. Hooks Central Library 3030 Poplar Avenue, in Memphis Tennessee. The first hearing was held at 5:30 pm on June 9, 2015 and the second was held at 11am on June 10, 2015. The purpose of these hearings was to determine whether the purpose of the Equal Business Opportunity ("EBO") Program Ordinance has or has not yet been achieved. The purpose of the EBO Program Ordinance is to "fully remedy the ongoing effects of past and present discrimination against minority and women business owners both in the public and private sector of its marketplace."

Specifically, the testimony taken at the public hearings, along with a summary review of MWBE attainment from FY2011-FY2014 were used as evidence to support the City's EBO Program Ordinance extension until the completion of this 2016 disparity study. Griffin & Strong, P.C.'s team, represented by Project Executive, Rodney Strong and Deputy Project Manager, Imani Strong, also hosted a series of meetings with community organizations and activists in Memphis on June 9th and 10th in 2015. Among these organizations were the National Association of Women Business Owners ("NAWBO"), the Tri-State Minority Supplier Development Council ("TMSDC"), the Associated General Contractors of West Tennessee ("AGC") and a group of five African-American business owners and activists who volunteered to discuss the state of MWBE contracting opportunities and the EBO Program with GSPC prior to the hearings.

There were thirty-four attendants total at the hearings, and GSPC received public testimony from nineteen participants.

B. Exposure and Building Capacity of MWBE Firms

A representative from the Tri-State Minority Supplier Development Council, whose stated goal is to "match suppliers with major corporations" and certify minority businesses, finds that MWBE business owners in Memphis lack "exposure," though they may have the skills and capability to do the work. "They don't know what to ask for," she stated, "they are afraid to go back when they don't get what they want and ask why." Part of her role with TMSDC is to conduct seminars that instruct business owners on the necessity of asking these questions and correcting the issues in their bid documents. TMSDC also attempts to instruct businesses on how to create national presence, working with firms on "presentation and longevity…show them how long it actually takes to make money."

This community leader stated that it is difficult for small minority owned firms to network "because most of them don't have access to white corporations…they don't go to church together, don't golf together," so TMSDC provides networking sessions. However, she stated, people in the community are disillusioned and unwilling to attempt to gain business opportunities with larger corporations because they believe "they won't give me the business anyway."

A minority female owner of an established engineering firm that does work for the City and other jurisdictions stated that it is "incumbent upon business owners" to work on building their capacity. At the same time, she noted, it is the responsibility of the City to think of the potential growth of a small firm. "You can't look at a firm as it stands today," she stated, "and say 'You are a 5-person firm, this is what you can do,'" Rather, she said that it is important to ask firms where they want to "grow to" and to let them "handle getting the capacity" for the project.

It appears to be a common belief among those active in the minority business community that a lack of exposure and perceptions of limited capacity are significant barriers to opportunity for these firms. It is understood that the City can be a vehicle for change in this arena by assisting firms with potential for growth in partnerships and other ventures that will expose them to broader networks.

C. Awareness of "Fronts" and Contractor Fraud

There was discussion in multiple forums regarding the prevalence of "fronts," firms professing to be owned by a minority or woman that are not in fact owned or operated by that person. One community organization leader in a meeting with GSPC stated that she has "run across quite a few fronts" and knows it to be lucrative, saying that she "would probably do it too if I was making the money they're making." Similarly, a majority contractor, representing himself at the initial public hearing, stated that "I could take my daughter and give her 50% of my company and be a minority" and that "everybody's been talking to me to do it," but he chooses not to do business that way. He noted that he knows of "white contractors with a minority license."

One minority business owner stated that subcontractor partnerships between non-minority and minority firms in the City often don't work, because a non-minority firm "will call up and say they want to partner…but don't give the minority spend to them in the end." In these instances, he noted, the contract compliance officer at the City stepped in for him and "put an immediate stop" to the majority contractors' payments until his firm was paid. Another firm owner who spoke at the hearings has experienced prime contractors submitting her signature on paperwork without her knowledge and continuing on to do the job themselves. She stated that she received a call from the contract compliance officer asking if she was aware. The contract compliance officer was not required to do this, but this firm owner believes that the compliance officers go above and beyond what they are required to do on paper.

Many of those who testified believe that fronts and contractor fraud contributes to the appearance of increased minority and women owned firm participation when in fact, there is less utilization than the program is reporting. They view the contract compliance office as an essential in safeguarding against these harmful practices, which have the potential to undermine the program. The awareness across firm size and demographic groups of such practices leads to the conclusion that such practices are prevalent in the City.

D. Certifications

One business owner who met with GSPC prior to the hearings expressed his frustrations that his certifications with Shelby County do not transfer to the City and that he considers the process to be a "firewall" that is up "to keep us from getting in." The president of TMSDC did note that it seems that MMBC, the firm that provides certifications for the City, is most useful for "the people at the top who can help themselves." One community activist stated that MMBC "is not a good certifying agency and should not be able to certify for the city." The biggest bone of contention seems to be the fact that the organization charges for certification, whereas the "airport does DBE certification for free."

Another firm owner stated that the fees for MMBC's certifications have risen from $125 in 2013 to $350 in 2015. She believes that once a firm meets the Tennessee Department of Transportation's federal DBE requirements, they should be eligible for an expedited process, "why do we have to submit all of our paperwork over again…once you're established, unless there is a change in ownership, I don't see why it's so extensive." The current president of NAWBO, in conversation with GSPC's team, stated that while MMBC is a "power hub" for her because they are a "one stop shop" for multiple certifications, she knows of companies that "think that the fee is not worth the outcome." She believes that this eliminates some opportunities for small, woman owned and minority businesses. A female contractor at the second hearing stated that she has being "keeping up with certifications for 22 years" but only started to have costs a few years ago, "for what I don't know."

Certification costs and the lack of cohesion in the process is a barrier to full participation of MWBE firms. The program assists firms in getting certified and its continuation is necessary to provide information and outreach to firms that might otherwise not go through the process.

E. Goal-Setting and Bid Process

When GSPC's team sat down with several African American community leaders and business owners, much of the conversation was dominated by their issues with the City's goal setting and bid process. According to one contractor, who does regular work with the City and other jurisdictions, doing business with the City can be a particular hassle due to bonding and lack of response from purchasing staff. "I'm a service provider" he stated, "and I understand you getting a bond for a construction contract…but for services you should just be able to terminate the contract." One of their concerns was also the fact that the City does not "set annual goals for every division" currently. The goal setting issue recurred in every forum from which GSPC's team gathered information.

One contractor, well known by many present at the hearing with an established record of business with the City, made an emotional plea at the second hearing for lower goals. He stated that he is not "arguing to disband a program…but to tweak it and make it better" and that "we have to make it work and we will." However, he finds that "high percentages" of minority participation, such as a 43% MWBE goal on a recent project, are an issue. He claimed that he bid a project with 50% minority participation but that it was "kicked out" because his firm missed the 7% women owned goal. He stated that he has minority employees on his crew but no women, though he has had female employees in the past and "these men have wives." The percentages are hard to meet, he stated, and drives his firm to take "cheap" projects. One factor, he noted, on the aforementioned bid loss was his high bid. He went on to state that he is "right there" with the WBE goals, but is missing minority participation because of high goal setting.

GSPC also held a preliminary meeting with three members of the Association of General Contractors of Western, Tennessee. They stated that the goal setting by the City is disproportionately high. One contractor claimed that there are "very few MWBE contractors" available to meet goals on projects, but that it is the "M" not the "W" firms that are the problem, "the W's are strong." He stated that he has contractors "that have insurance and a safe workforce instead of individuals who try to sub things out," implying that minority firms in the City regularly engage in this process and lack the structure necessary to complete the job safely.

They indicated that they had attended the public hearings held by Shelby County and "it was a sour grapes attitude." One contractor present claimed that "these people" will never be successful because the people who are "out busting their gut" are the ones who are going to make it. Therefore, he believes that the County's focus should be on figuring out "how to incubate businesses" rather than giving business to people "who aren't capable of growing a successful business." He went on to state that "no one is going to risk going to jail over some front" to meet high goals.

The AGC representatives believe the flaw of the program is that the goal setting is not narrow enough. One stated that the City "is spending a lot of money on this program and it's not working, we need something that works." They acknowledge that the "pie" in Memphis is not large, and many firms are competing for a few jobs, but they also note that there is a shortage of skilled labor. On the labor issues, one stated "try to get people to pass a drug test." Starting by building up the skilled labor base, he claimed, will grow people who can be potential entrepreneurs in their fields. The AGC of Western Tennessee is, they assert, "mostly specialized" in terms of the types of jobs their contractors complete. One contractor stated that "we can't even bid City of Memphis work" because they do heavy structural bridge work and cannot meet a "40% goal" because there are no firms available who specialize in that type of work. Another general contractor, speaking at the public hearing, stated that "we don't have qualified people for the high goals the City has put out recently." While he agrees with the concept of goals, his problem is "getting a minority to bid the type of work I do," which is building the infrastructure for subdivisions, with a focus on five or six different disciplines including clearing, grubbing, grading, dirt removal, sewer and drain work, sidewalk and roadway construction.

On the other hand, the head of NAWBO, a business owner herself, claimed that the 2% goal for women owned businesses is "peanuts" and not enough of an incentive for firms to work with a WBE. She stated that she questions "where the numbers are coming from" and suggests looking at all of the eligible firms by

category and sector and making the goals flexible, following Memphis Light Gas and Water's example. She said that on both contracts she recently won, there were "at least two" minority contractors who "had their bids thrown out" due to incorrect paperwork and that, because the process is so complicated, she "feels bad for them." Their bids might have been lower, she stated, but the process is "confusing and intimidating." She believes that the EBO office should "be a resource," provide more bid seminars, and reach out more to encourage people to call the office with their questions. "Some of my competitors didn't ask the questions I did," she said "and they didn't have a shot…but I learned the hard way." Still, she believes that the program is doing good work. Her contract with the library, she stated, was a "big win" and she doubts that she could have done it without the assistance of the program

Most who testified at the hearings, including prime and general contractors, were not opposed to the continuation of MWBE goals through the EBO Program. However, the goal setting process was questioned and many had strong opinions about whether those goals are too high or too low. The lack of knowledge amongst business owners regarding how the goals are set and the reasoning behind the method indicates that further outreach efforts might be necessary in disseminating this information.

F. Bid Information

A speaker at the second public hearing, a minority contractor, stated that "primes get information before we do" and that sometimes the bid information "isn't even on the street" despite multiple "tools" including the B2G system to allow the City to disseminate information more efficiently. Another minority contractor who often works as a subcontractor on major projects stated that there a several projects in street and road construction that "we don't hear about" and that recently there was a sewer pipe project but she only received a call for a quote the day before the project was to begin.

A minority engineering and design services contractor stated that he built his business on a "relationship basis…doing smaller projects that don't have to go out to bid." This, he claimed, is because larger projects for professional services are not "readily available information" and that purchasing staff sends RFQ's to "firms that they want to bid." He stated that these contracts for design in construction or renovation are not always on the website and don't always get emailed to registered vendors.

G. Need for the EBO Program

Many of those that spoke, had complimentary things to say about the program and suggestions for its improvement. The majority of those that got up to speak on the record stated that they believed that the program should continue, not only for the benefit of small, minority and women owned businesses, but for the overall good of the community. It was addressed that small, local businesses hire those that might not be able to find work otherwise, reducing crime and contributing to the economy of the City.

An established business owner in Memphis with a successful contracting firm stated that he is "proud to say" that his firm "feeds families." This, he noted, is a credit to the EBO Program and for this reason it would be "absolutely devastating" and would have a "trickledown effect" if the program were dismantled. He argues that out-of-town contractors would not reach out to local contractors or give them the "benefit of the doubt" without the program. However, he stated, "it's time to get from good to great" and improve the program, not end it. He advocates for greater outreach because there are minority firms who provide services that majority firms don't know they provide.

One minority female contractor, a third generation business owner who inherited the company from her father, believes that eliminating the City's program would be "devastating" to her company and many others. She praises the contract compliance office at the City, noting that she can "pick up the phone" when she has a problem and "they will get on it." She stated that business with the City has grown her business "from a one to two-million-dollar company to a three to four million dollar one over the years." She stated that she would not be in business, period, without the program, which would be a detriment to the community because "a lot of our workers walk to work. They are a part of the underdeveloped…. we are providing them opportunities, giving them a trade."

A minority female owner of an engineering company in Memphis stated that it would be "absolutely detrimental to several hundred businesses" for the program not to continue. She implored that the program "stay intact as is" but "with improvements" and that she commends contract compliance for the work that they have done. "Without EBO we would be in dire straits," she asserted, because the contract compliance office works with the City's engineers to "make sure they are not dismissive" of the needs of MWBE firms. Of majority contractors, she stated that "the rubber meets the road when they see the percentage requirements" and that no matter how "good we may be" there will "always be other reasons they will find not to use us." Big firms, she claimed, "blow into town" and leave without engaging local minority and female owned businesses.

The president of the Memphis Area Minority Contractors Association insisted that the City's program, besides promoting inclusion, "provides exposure" that is needed by MWBE firms. He credits his success in the plumbing industry to the exposure provided by the program which, he stated, allowed him to work for major contractors and showed them that "I was as good a plumbing contractor as anyone else in the City." Minority participation on "majority private projects" continues to be an issue in 2015, he asserts, and the program helps to ameliorate this. He recalls several instances that his firm "tried to get included" and was not successful because of a lack of knowledge of ongoing procurements, stating that he "found out once the deal was cut and things were already in place. He described an instance in which he was unable to obtain full blueprints for a project that other contractors had access to prior to bidding. "We need the program" he concludes, because it advocates for minority and female owned businesses. According to this business owner, the program says "we are looking at you…we want to improve this" to procurement staff and general contractors.

A minority female business owner with an information technology firm stated that "companies will come in and sign us up as small or minority businesses" but "when it's time to execute, they don't include us." The role of the City's EBO program, she believes, is to "make sure that the contract is honored as it is written" and that the contract compliance officers at the City have been making sure that happens. For these

reasons, she stated that she "cannot imagine" the City ending the program. The program provides an avenue for the smaller firms in the City to partner with large firms that would, she believes, "take the money out of the City" because they can "do the work without blinking their eye." However, she claimed, now that the program is beginning to "get teeth in it" these large firms do not have an opportunity to not include small local firms.

A minority contractor who owns a security firm and has done business with the City in various capacities stated that, while he is aware that many claim that "the playing field is level," his experience has been that there is a need for the program in Memphis and elsewhere. He stated that availability cannot be determined by someone who "has something in a file folder" about his firm, but that he has to determine the jobs that he is capable of and available to complete. However, he noted that this information needs to be more widely disseminated. He does note, however, that it is each firm's responsibility to prove themselves and that "you've got to earn the right to get that business."

One business owner, also a member of NAWBO, stated at the hearing that it would be beneficial to continue monitoring activity through the program "and to hold people accountable in the RFP and RFQ process in terms of what they will do to attain the goals." She stated that accountability, such as the process at the airport whereby firms identify DBE subcontractors and identify what they will do on the project during the RFQ process, is essential to a successful program.

The EBO Program's role in oversight, advocacy, and assistance with the bid process is essential, according to those minority and female owned businesses who spoke. Majority firm owners, by and large, noted the utility of the program and suggested, as their MWBE peers did, that the program make some administrative and policy improvements. The issue of goal setting loomed large in every meeting and at the hearings, with majority and general contractors feeling that goals were not tailored tightly enough to their specialized areas of work and the actual availability of firms, and some minority and women business owners believing that goals were not set highly enough in other areas.

H. Informational Meeting

Griffin & Strong, PC's Project Manager, Michele Clark Jenkins, and Deputy Project Manager, Imani Strong, hosted an informational meeting on August 5, 2015 at the Benjamin L. Hooks Public Library. The purpose of this meeting was for GSPC to present on the process, purpose, and methodology of the study and to allow participants to ask questions and gain clarity on the research GSPC's team was conducting. There were 13 participants present and, after GSPC's presentation on the disparity study, several members of the audience, including organization members and council people, posed questions. IM-1 noted that there was a difference between "race-based and race neutral recommendations" and wondered how long the firm "would give a race neutral program an opportunity to work," to which GSPC's project manager replied that the two were not mutually exclusive, that there can be race neutral aspects to a race-conscious program but that benchmarking could be used to provide metrics.

A councilperson present asked about local preference programs and another councilperson in the audience question the usefulness of disparity studies, stating that "this is our second study" and that she has "been hearing this same thing since the 80's and nothing has changed" (IM-3). She presented a view that the City is "still doing less than 1% of its business with minority businesses" and asked "When does it end? Where are we going with all of this?" (IM-3). GSPC's project manager replied noting that the study is necessary to keep the program in place but that it is up to representatives such as the Councilwoman, as well as her constituency, to ensure that there is action on the recommendations that emerge from the study (which can be found in Chapter VII of this document). It was also noted that this study would examine the recommendations undertaken at the end of the previous study for their effectiveness and implementation.

To the Councilwoman's statistic of "1%," another audience member, IM-5, noted that there is a "perception that we have not been successful" in accomplishing the goals of the MWBE program and asked if there are other cities that have been successful that Memphis might look to for best practices. GSPC's team responded, citing the fellow Tennessee city of Nashville as an example of one such successful program and assured her that the recommendations would look to other cities with track records of MWBE success.

IM-4 stated that he "would appreciate hearing why when African-American businesses come to the table is it so difficult for us to entertain them," while also expressing the view that "women fare better" in Memphis' marketplace than their minority counterparts. IM-4 also cited "MWBE's operating as subs when they're not of the property of a job" as an example of what he believes is poor monitoring on the part of the City. IM-6, noted that he "hears the word capacity a lot, the definition of capacity versus experience," and that he recently went for a major contract and learned that he was not selected because "we're not large enough" (IM-6). "To me," he states, "capacity and experience is different. My largest contract had been staffing 250 employees and I thought I was demonstrating capacity…when what they said was that they went with larger firms" (IM-6). He wonders, "how do you get that experience if you don't win?" (IM-6).

Another City Councilperson in the audience asked "what are the repercussions" of nonperformance of the MWBE program, specifically "what can we do to hold individuals accountable" for not meeting goals (IM-7). GSPC's team replied that the study will look at monitoring, enforcement, outreach, and post-contract award activity (which can be found in the Purchasing Practices, Policies, and Procedures Chapter of this study) to determine what processes may be implemented or improved to increase accountability.

I. Anecdotal Interviews

GSPC's anecdotal interviews included questions designed to establish a case study of each business. The interviews established very clear perspectives from the 30 business owners who participated in giving their impressions of doing business in and with the City of Memphis. The issues that were raised were varied and dealt with the overarching themes of marketplace discrimination, bonding and contract size, "fronts," administrative issues, and local business concerns.

1. Prime Contractors and the MWBE Program[99]

AI-8, an African-American female business owner, says that prime contractors "would not call us back" but that the organizations National Association of Women Business Owners ("NAWBO") and the Memphis Office of Resources and Enterprise ("MORE") provided assistance. Of this experience she states that "It is hard to have a voice as a sub especially with out of town companies." If there were no goals, AI-8, a non-minority woman does not think that primes would use MWBEs. "They will use who they know," AI-8 asserts regarding prime contracts. Similarly, AI-1, an African American male, believes that he "has been thwarted in receiving direct business" and that he must collaborate with larger companies to obtain business. He states that prime contractors only use MWBEs when they have to and that without a program MWBEs would be used less often because prime contractors' "hearts are not in it." AI-15, an African American woman, believes that prime contractors are forced to use MWBE's by City mandates but that "prejudice makes them believe that a woman does not know the job" (AI-15).

While he has not engaged in this practice, AI-16, a non-minority firm owner, has been urged by other Memphis business owners to put the company in his wife's name "for an advantage." However, he does not believe in this and that is why he and his wife own the business as "50/50" partners. AI-17, an African-American female business owner, was very vocal and opinionated on the topic of firms becoming certified as woman owned when they really are not. In her opinion "fronts" are used and "wives, nieces, daughters" are used as business owners to qualify as women owned businesses. She even suggested that some majority contractors will go so far as to even find "2% Cherokee" in their lineage to qualify for minority status. Of hiring minority and women owned firms, she states that, "they do not want to do it." Her belief is that primes think "if they help someone else it will cut their piece of the pie" (AI-17).

When asked whether he has experienced discrimination in business, AI-2, African American male, states that:

> "There are two partners here. One is an African American and one is a Non-MWBE. We have experienced where some people just do not want to do business with me. I have to let (my partner) …We flip the script and allow him to be the face and go in and we get the business. It happens. So once we recognize it we don't hang our feelings on our sleeve and go out of business. We do whatever we have to do and change."

On the other hand, AI-11, a non-minority male, states that "the goals are used as a quota" and feels that they are unfair. AI-11 believes that "successful" firms are limited in the City and that "MBE subcontracts end up being costlier than self-performing." According to this Non-minority firm owner, DBE programs exacerbate the problem "Folks would be willing to be more helpful without politics. No one is happy" (AI-11) GSPC's research team also heard from several women owned businesses that feel that the goals are geared toward minority owned firms. AI-14, a non-minority woman believes that "minorities are looked at first" and that they receive calls from prime contractors asking if they are minority owned who make it clear that they feel that they need to have an MBE to win. "It costs us business," (AI-14). AI-9, also a woman owned firm, states that they frequently compete with an MBE that is preferred for Information Technology contracts. They

99 Anecdotal subjects were not identified by name but by an assigned code e.g. AI-1, AI-2, AI-3 AI=Anecdotal Interviews; PH-=Public Hearing, etc.

"are not even a Memphis company," AI-9 says, but "we hardly ever win if (that firm) is involved because they are a huge company. I don't usually get the bid because the diversity spend has already been spent."

2. Administrative and Contract Issues

AI-26, an African American male, has had difficulty receiving prompt payment from the City. He states that he has had "invoices outstanding from 2012" and that "they will short my invoice and not tell me why." Administrative issues were a prevalent subject during the research gathering. AI-21, an African American male, recalls a director with whom he had legal issues. He would submit an invoice after performing the work but would only be paid part of the money. "He was unfair and had negative energy." Other parts of the City have been helpful. But at times it is "hard to get someone on the phone." AI-5, a non-minority male, has experienced difficulty with decision makers "spinning wheels" and not making a decision but believes that in general the City's procurement process is fairly straight forward usually going with the lowest bid.

AI-13 states that he is prevented from participating because of the way specifications are written. He cannot buy certain products that are required to bid directly, so he is excluded from bidding. The "drafting of the specs is skewed," AI-13 states. There is not enough lead time to negotiate with manufacturers, he states, and 1-2 weeks is not enough time for small businesses. He believes that the specifications are written for one company in particular.

According to AI-12, an African American male, bonding capacity is the biggest issue in City contracting. He states that, "the work is not the problem." However, AI-12 believes, due to financial issues, "there are small contractors out here that do great work but do not get to showcase their work." AI-30 believes that the City should "break up the project into smaller projects to include smaller companies." AI-19's company has never bid on a City project as a prime because of "the requirements of a bid or surety bond." Additionally, he expressed that the scope of the bids is a challenge. Due to the size of his company he has to serve as a subcontractor. The surety bond has been a hold back for his company

3. Informal Networks

AI-16, a non-minority male says that he does "not have relationships or contacts" that other businesses may have. His firm does not know about the bids. AI-16 recalls attending a pre-bid meeting where it appeared that "folks knew each other and he was not a part of the club." AI-22, an African-American contractor, states that he has been in competition with another MWBE who had relationships with the general contractors. "He would have a bid in but would withdraw his bid after I put my bid in and resubmit his bid lower than mine." Now AI-22 submits his bid later so that the bid is not shared." These difficulties in subcontracting and network preferences loomed large in the anecdotal evidence gathering for the City of Memphis.

Of this informal network, AI-24, an African American male states, passionately:

> "I feel there is an informal network that gives an advantage to select businesses but I can't prove it. People tend to go back to those that they know. Others have info and knowledge and we do not know about it. Some know the Mayor, Council people and Engineering. Some companies have 4 months of notice while others have 2 weeks.

AI-17, an African American woman, also sincerely believes that business is relationship driven. Therefore, she argues, small minority firms need to have an opportunity to build relationships. She suggested that this can be accomplished by forums that would allow the business the opportunity to "demonstrate and showcase capacity. Businesses could pitch to the City and showcase or speak about their wares." According to her the process should be "multifaceted and include staff communicating and speaking to vendors." She also shared that it would be helpful if the vendors knew what the city was looking for at the time.

AI-27, an African American male, fears retaliation if he were to appeal. "Because of the network and discretion involved in the procurement area, they would not consider an appeal a friendly or cooperative posture to take. So they would definitely retaliate and you would be black balled" (AI-27). AI-13, an African American male, also feels that if he were to file a complaint he would be retaliated against by "department heads that would be difficult" with him.

J. Focus Group

GSPC hosted a focus group on November 16, 2015 at the Benjamin L Hooks public library. The conversation began with GSPC providing a description of the disparity study process and history, before the floor was turned over to the participants to discuss their experiences in a roundtable setting.

FG-1 decided to kick off the meeting by noting that he had worked for a Fortune 500 company as the head of their diversity program and observed minority companies being mentored, which he feels is not the City's attitude. "Everybody in this room has been passed over because we're not big enough" FG-1 said, to the nods of several other individuals in the room. The program is, in FG-2's opinion, a "failure" and he refuses to bid again after having bid once and lost even though the winner was "two times higher than the lowest bid" (FG-2). FG-2, a co-owner of FG-1's firm said "If a person wants to stay within the parameters…and they are within 10% of our bid, that's fine" FG-2 says of the female owned firm that beat his firm out for the contract. "Veterans get no priority," says FG-2. He believes that the system is not fair and that the City's mentality should be "if this guy is an electrician and he wants to grow, give him more than he can handle and support him" (FG-2).

FG-2 asserted that the City's administration needs to "get with its own policies," which led into a discussion about fact checking the disparity study or "checks and balances," as well as the strong leadership Atlanta's program had under Mayor Jackson. The view was expressed by FG-2 that Memphis has not had "that kind of leadership" and that most of the work is going to "facilities and services…labor oriented work" to which FG-3 replied that his biggest issues are RFQ's and RFPs "written specifically for a company…they ask for a particular product that only one major corporation provides" (FG-3). As a supplier, he has found resistance

from the manufacturer who stated, when called for a quote, "'that's our contract'" and quoted a price to the City far under what was quoted to him. However, since this manufacturer was the only source for the highly tailored contract, FG-3 claims that he had no recourse. "(The contract) comes under LSBE, but I can't get the project," FG-3 says.

FG-5, an architect, has also struggled with "closed specs," mostly based on experience level. There is a disconnect, she says, between "what it takes and what happens," stating that once she left the corporate sector she started "on the bottom" (FG-5). FG-3 states that he has had an experience as a "pass-through" where a company offered to mentor his firm, offered special pricing on equipment that made him competitive, and paid him money to use his MWBE certification. FG-2 agrees, stating that "we know a company who will take your certification without you knowing it" to which FG-3 replies, "when they do it, nothing happens."

FG-5, the architect, states that the City does not "like to change architects" and you "have to know people to know there was even a building…it took me 10 years to get short listed" (FG-5). She states that the MWBE program was confusing for her at first, noting that she did not know that there were "two lists" and "nobody was sharing that I wasn't in the right place" (FG-5). To compound this issue, FG-5 claims that she does not see architectural project alerts coming through the MWBE program.

"The bid is transparent" FG-3 says, but "it's the drafting…it's done before it gets there," to which FG-5 murmurs her agreement. This leads the group into a discussion on minimum purchase amounts, which FG-3 says the City "can do whatever" without goals. FG-6 chimes in at this point, stating that "I never get those," referring to small purchases. "That's where you have to know somebody" FG-5 states. FG-7 claims that the purchasing department is "protective of their vendors" and that, though his company competes nationwide, in Memphis they encounter "red tape" and can't beat out other vendors "once the relationship has already been there" (FG-7). "The director shouldn't have that kind of power," FG-7 states.

FG-8 notes that his experience has been with the City "coming out with some additional requirements for qualifications after the fact" or after the bid is released. After these changes, both times, he was excluded from the bid for ineligibility. One was an addendum requiring five continuous years of specific service, though FG-7 claims there are only "one or two firms in the country" that fit that description for this particular type of work. FG-5 closed out by stating that the City has an obligation to "meet with small businesses and minorities and say 'are you being taken care of?'"

The focus group centered largely around the concerns of the participants, many of whom had difficulty with the way that bids are written and put out for the City of Memphis. The overall perception of the group seemed to be that there are significant barriers to entry for new firms through the existence of an informal network. This network, they believe, is especially active in the procurement process itself. There was a call for more mentoring of smaller and new firms in Memphis' marketplace and more transparency in the process, which was echoed at the final public hearing held for this study.

K. Public Hearing

GSPC held a public hearing at the Benjamin L Hooks public library on the evening of November 16, 2015. This public hearing, unlike the previous two, was advertised as an opportunity for business owners to participate in the study, rather than a request for input on the extension of the EBO program. Much ended up being addressed regarding the City's program, however, and the participants were vocal about the changes that they would like to see made in the certification and procurement processes.

1. Certification

The hearing participants were vocal on the issue of certification, its process and its usefulness in the City of Memphis. PH-4 rose to state that "The reason we're in business today, 10 years from when we started is because of this program. So, I can't imagine it not being in place" to which many participants murmured their agreement. However, this was the only positive comment regarding certification because the process seemed to confuse some participants such as PH-5, who stated that "I have been told that you have to be on some special list in order to get called to be a part of an RFP process" and PH-11, who says that certain businesses have told him that "I have to be certified in order to even bid on a contract" however "clearly there are businesses in here that have the capacity to bid as primes, regardless of whether they're certified or not." PH-11 believes that the whole "notion" of certification has become a "gatekeeper to keep folks out rather than creating more opportunities. Clearly, there are some people doing business that aren't certified that are minority owned or woman owned and are doing some level of business with the City" (PH-11).

As for the City's process for certification, PH-13 believes that the external certification agencies "talk too much. Your information leaks. That's why I'm not certified and yet we still are 100% a minority business and we do work with the City." PH-15 believes that there is an issue with the number of people that are certified, positing that "at one point recently the list of certified businesses had dropped to as low as 174 businesses total. I think it's about 214 businesses…. but clearly there are way more than 214 businesses…so there is a major issue with the certification process as a whole."

2. Procurement Process

Of the procurement process itself, PH-5 states that there is no transparency, but it's worse than that. It's done through specific connections of certain people. We don't know who they are" (PH-5). PH-7 indicates that there are rewards for not making waves by stating that "if you say too much, then that little bit (that you have) gets cut off. The process needs to change" (PH-7). However, PH-13 states that the process for filing a protest is flawed because "you could not file appeals adequately within the City's system to be about to stop it from being awarded" (PH-13). In addition to this, PH-14 states that some people "have a hard time getting contracts signed for the City and then have an even more difficult time getting paid. You cannot pay a small business six months out and expect that business to thrive" (PH-14).

3. Local Small Business Set-Asides

A major concern at the public hearing was the local small business set aside program, which PH-1 believes "hasn't been implemented." PH-6 recalls a project that was known to be an SBE set aside "but we didn't get the three bids necessary in order to keep it in the SBE program. So it had to go back out to bid but that didn't happen until, you know, we inquired about it."

PH-2 recalls the Liberty Bowl project that was "given to a contractor out of the state of Tennessee that didn't have a license to operate here…I shouted to the roof tops about this but it fell on a lot of deaf ears" PH-9 also spoke strongly on the issue, saying:

> "We want a fair shake as citizens of the community, okay? We do have a problem as small business owners…we have tax dollars that are coming out of our communities, and guess what, we're paying for that. We're paying for other companies to come in and take the business."

4. Monitoring and Oversight

An issue raised through the hearing was the need for more effective monitoring and oversight of the program. As PH-3 states, "It all lies in the rules. If you're going to set the rules up, you got to go straight by them, no deviations." For instance, PH-3 cites the electrical work on the Liberty Bowl project which, he claims, was awarded to a minority contractor who "then subbed that out to a non-minority contractor who did about 75% of the work and neither were removed from the City bid documents" (PH-3).

PH-12 believes that the Office of Contract Compliance with the City of Memphis "has no teeth. They cannot stop a contract from going through if it doesn't meet the necessary requirements. Contract Compliance should be able to hold that contract until that 20% is met but they cannot or they did not" (PH-12). PH-10 says that after bidding he hears nothing back and then hears that it has been awarded, "it's out there and people are executing on it…without that 20% spend" (PH-10). PH-19 agrees, stating that "there needs to be some meat added to that position" referring to Contract Compliance. PH-19 says that the position should be raised up to "director level…and it needs to have some teeth."

L. Conclusion

Table 49: Anecdotal Response Frequencies
City of Memphis Disparity Study

	Capacity Building	Fronts and Fraud	Certification Issues	Goalsetting	Informal Network/ Preferential Treatment
Organization Meeting	2	1	3	1	1
Anecdotal Interview	1	2	9	1	6
Public Hearing/ Focus Group	2	8	5	2	9
TOTAL FREQUENCY	**5**	**12**	**17**	**4**	**16**

Griffin & Strong, P.C. 2016

From its information-gathering efforts through informational meetings, public hearings, focus groups, anecdotal interviews and email comments, Griffin & Strong, P.C. has discovered that MWBE firms and non-MWBE firms alike are concerned about the program, either from an administrative, contract-letting standpoint or in its monitoring of MWBE certifications and the goal-setting process. Table 49 above shows the frequency of responses or mentions of certain topics in 5 categories of conversation throughout the anecdotal evidence gathering process. The certification process itself was also a cause for concern, with some participants intimating that their information was used inappropriately and several others indicating that the process is not widespread or efficient enough to capture the entire universe of MWBE-eligible firms in the Memphis marketplace. One of the overarching themes throughout the anecdotal evidence is the perceived discretion in the procurement process, which is seen as a barrier to entry to contracting with the City as well as one of the factors that makes it difficult to appeal or contest an award.

GSPC's research team heard repeatedly that Memphis business owners have had experiences with an informal network either within the City or in doing business with prime contractors as a subcontractor. Many of the MWBE's who came forward in the public hearing or were interviewed expressed a strong opinion that there would be little participation if goals were not in place—essentially that majority contractors must be required to work with minority and women owned businesses. Further information

from the regression, disparity, and threshold analyses will reveal whether or not there is a statistical or econometric basis for the concerns expressed by business owners in this chapter.

There was some consensus throughout the various forums that the MWBE program's oversight of contracts and goal setting mechanisms are a mystery to many members of the public, including those present at the informational meeting. More transparency and outreach in the procurement process and coming from the contract compliance office in particular would go a long way toward ameliorating this issue. In addition, there is an impression among many of those who provided comment that the program may be revamped to include more mentoring aspects for smaller firms to build capacity.

VII. FINDINGS AND RECOMMENDATIONS

This chapter presents the findings and conclusions resulting from the disparity study conducted for the City of Memphis related to procurement of Construction, A/E, Other Professional Services, Other Services, and Goods for FY2010-FY2014. In determining its recommendations, GSPC has assessed its previous recommendations from the 2010 Study, which are attached as Appendix G. GSPC has met and consulted with the Minority Business Development Oversight Commission, the Mayor's Transition Team, and the City Council's Minority Business task force, the newly formed Office of Business Diversity and Compliance and has analyzed and incorporated their various recommendations. GSPC has also consulted with Mayor Strickland's team on various issues during the study process. The new data assembled from the 2016 study, both anecdotal and quantitative, has produced a new set of findings and recommendations.

As outlined in the Legal History section of this Study, the courts have indicated that for a race-based or gender-based preference program to be maintained there must be a clear evidentiary foundation established for the continuation of existing programs. As the detailed findings below will demonstrate, GSPC found sufficient statistically significant underutilization of minority and woman owned firms as prime contractors and some areas of subcontracting in all five (5) work categories that GSPC analyzed. A regression analysis was performed and found that there was evidence to indicate that the disparities were caused by the race, ethnicity, or gender status of the firm owners such that an inference of discrimination can be made. In addition, substantial anecdotal evidence supports the need to remedy the discrimination found.

A. FINDINGS

FINDING 1: GEOGRAPHICAL RELEVANT MARKET

The figure below summarizes the geographical area where at least 75% of prime payees were located in each industry. In analyzing the relevant market data, GSPC tabulated the percentage of dollars spent, beginning with the City of Memphis (by zip codes). GSPC continued counting in radius surrounding the City of Memphis until the cumulative percentage was equal to or greater than 75%. The availability and utilization analyses were conducted only on firms with offices within the geographical markets. The results were as follows:

Figure 13: Summary of Relevant Geographic Market (by payments)

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FINDING 2: AWARD THRESHOLDS

GSPC reviewed the level of contracting undertaken by the City at various dollar thresholds in order to determine whether it was likely that all firms in its Master Vendor File could perform as primes. GSPC found that 76.37% of all of the City's prime contracts were under $100,000. In addition, the average contract was $208,612 and the median contract was $30,660. Small contract sizing would likely allow all firms on GSPC's Master Vendor File to perform as prime contractors for the City.

Table 50: Summary of Contract Award Thresholds for FY2010-FY2014

AWARD THRESHOLD	NUMBER OF AWARDS	PERCENT OF AWARDS	DOLLARS
5,000 TO 10,000	625	14.24%	$4,590,817
10,000 TO 25,000	1210	27.57%	$20,014,488
25,000 TO 50,000	1042	23.74%	$38,250,953
50,000 TO 100,000	475	10.82%	$33,696,475
100,000 TO 500,000	731	16.66%	$160,504,106
500,000 TO 1,000,000	148	3.37%	$101,269,300
1,000,000 TO 1,500,000	43	0.98%	$51,486,390
1,500,000 TO 2,000,000	31	0.71%	$52,430,798
2,000,000 TO 2,500,000	17	0.39%	$37,112,147
2,500,000 TO 5,000,000	41	0.93%	$139,839,390
OVER 5,000,000	26	0.59%	$276,404,717
TOTAL	4389	100.00%	$915,599,582

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FINDING 3: OVERALL MWBE UTILIZATION

As the table below shows, the City of Memphis spent a total of $663,947,876 in prime spending in the relevant market during the study period and $42,889,746 of this amount, or 6.46% of this amount was spent with MWBE firms as prime contractors.

Table 51: Summary of Prime Utilization for FY2010-FY2014
By Dollars in the Relevant Markets

Memphis Disparity Study Utilization Totals						
	Construction	Architecture and Engineering	Other Professional Services	Other Services	Goods	Totals
Prime						
African American	$3,988,795	$854,829	$6,510,832	$6,130,614	$2,746,866	$20,231,936
Asian American	$0	$136,145	$84,280	$14,836	$146,075	$381,336
Hispanic American	$0	$0	$54,985	$0	$737,111	$792,096
Native American	$0	$0	$0	$0	$0	$0
Women	$7,949,990	$154,164	$8,993,341	$2,094,526	$2,274,497	$21,466,518
MBE	$0	$0	$17,860	$0	$0	$17,860
Total MWBE/DBE	$11,938,785	$1,145,138	$15,661,298	$8,239,976	$5,904,549	$42,889,746
Non-MWBE/DBE	$202,065,342	$18,740,036	$131,280,044	$73,174,489	$185,798,219	$611,058,130
Total	$214,004,127	$19,885,174	$146,941,342	$81,414,465	$191,702,768	$653,947,876

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FINDING 4: COMPARISON TO 2010 DISPARITY ANALYSIS

In comparing the disparity analysis from the 2010 Study to the current study, GSPC found the following:

In Construction, the MWBE utilization dropped from 9.59% to 5.58%, however availability substantially increased from 18.64% to 33.41%. Overall the MWBE disparity index dropped from .51 to .17.[100]

In A/E, the MWBE utilization decreased from 11.69% to 5.76%, but availability increased from 28.57 to 39.37%. Overall the MWBE disparity index dropped from .41 to .15

In Other Professional Services, the MWBE utilization increased from 3.12% to 10.66% and availability increased from 14.14% to 35.13%. Overall the MWBE disparity index increased from .22 to .30.

In Other Services, MWBE utilization decreased from 11.42% to 10.12% and availability decreased from 25.39% to 24.10%. Overall the MWBE disparity index decreases from .45 to .42.

100 The further the disparity index is from 1.00, the greater the disparity.

In Goods, MWBE utilization decreased from 13.85% to 3.08%, however availability increased from 13.85% to 20.55%. Overall the MWBE disparity index dropped from .43 to .15

Except for Other Professional Services where there has been a greater relative utilization of MWBE firms, relative utilization (relative to availability) has decreased in all other work categories since the 2010 Study for FY2003-FY2008.

Table 52: Comparison of Disparity Analysis of Current Study to 2010 Study
Memphis Disparity Study

ETHNICITY/RACE AND GENDER GROUP	2016 DISPARITY STUDY PRIME UTILIZATION % (U1)	2016 DISPARITY STUDY PRIME AVAILABILITY % (AMV1)	DISPARITY INDEX (U1/AMV1)	2010 DISPARITY STUDY PRIME UTILIZATION % (U2)	2010 DISPARITY STUDY PRIME AVAILABILITY % (AMV2)	DISPARITY INDEX (U2/AMV2)
TOTAL CONSTRUCTION						
AFRICAN AMERICAN	1.86%	23.66%	0.08	8.35%	15.17%	0.55
ASIAN AMERICAN	0.00%	1.07%	0.00	0.00%	0.29%	0.00
HISPANIC AMERICAN	0.00%	0.95%	0.00	0.00%	0.00%	-
NATIVE AMERICAN	0.00%	0.48%	0.00	0.00%	0.00%	-
WOMEN	3.71%	7.02%	0.53	1.24%	3.18%	0.39
MBE	0.00%	0.24%	0.00	-	-	-
TOTAL MWBE	5.58%	33.41%	0.17	9.59%	18.64%	0.51
NON-MWBE	94.42%	66.59%	1.42	90.41%	81.36%	1.11
TOTAL A/E						
AFRICAN AMERICAN	4.30%	14.44%	0.30	10.61%	18.49%	0.57
ASIAN AMERICAN	0.68%	4.20%	0.16	0.00%	0.84%	0.00
HISPANIC AMERICAN	0.00%	0.26%	0.00	0.00%	2.52%	0.00
NATIVE AMERICAN	0.00%	0.52%	0.00	0.00%	0.00%	-
WOMEN	0.78%	19.95%	0.04	1.08%	6.72%	0.16
MBE	0.00%	0.00%	-	-	-	-
TOTAL MWBE	5.76%	39.37%	0.15	11.69%	28.57%	0.41
NON-MWBE	94.24%	60.63%	1.55	88.31%	71.43%	1.24
TOTAL OTHER PROFESSIONAL SERVICES						
AFRICAN AMERICAN	4.43%	22.64%	0.20	3.09%	12.03%	0.26
ASIAN AMERICAN	0.06%	1.62%	0.04	0.00%	0.47%	0.00
HISPANIC AMERICAN	0.04%	0.91%	0.04	0.00%	0.12%	0.00
NATIVE AMERICAN	0.00%	0.20%	0.00	0.00%	0.00%	-
WOMEN	6.12%	9.44%	0.65	0.03%	1.52%	0.02
MBE	0.01%	0.30%	0.03	-	-	-
TOTAL MWBE	10.66%	35.13%	0.30	3.12%	14.14%	0.22
NON-MWBE	89.34%	64.87%	1.38	96.88%	85.86%	1.13
TOTAL OTHER SERVICES						
AFRICAN AMERICAN	7.53%	14.30%	0.53	11.24%	22.90%	0.49
ASIAN AMERICAN	0.02%	0.94%	0.02	0.00%	0.11%	0.00
HISPANIC AMERICAN	0.00%	0.70%	0.00	0.00%	0.22%	0.00
NATIVE AMERICAN	0.00%	0.17%	0.00	0.00%	0.04%	0.00
WOMEN	2.57%	7.88%	0.33	0.18%	2.13%	0.08
MBE	0.00%	0.11%	0.00	-	-	-
TOTAL MWBE	10.12%	24.10%	0.42	11.42%	25.39%	0.45
NON-MWBE	89.88%	75.90%	1.18	88.56%	74.61%	1.19
TOTAL GOODS						
AFRICAN AMERICAN	1.43%	9.33%	0.15	4.88%	12.20%	0.40
ASIAN AMERICAN	0.08%	0.92%	0.09	0.00%	0.15%	0.00
HISPANIC AMERICAN	0.38%	0.65%	0.58	0.00%	0.00%	-
NATIVE AMERICAN	0.00%	0.11%	0.00	0.01%	0.05%	0.20
WOMEN	1.19%	9.49%	0.13	1.13%	1.45%	0.78
MBE	0.00%	0.05%	0.00	-	-	-
TOTAL MWBE	3.08%	20.55%	0.15	6.02%	13.85%	0.43
NON-MWBE	96.92%	79.45%	1.22	93.98%	86.15%	1.09

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FINDING 5: SUMMARY OF DISPARITY ANALYSIS FOR FY2010-FY2014

The tables below indicate those MWBE groups where a statistically significant disparity was found.

Table 53: Summary of Disparity Analysis of MWBEs in Prime Contracting
City of Memphis Disparity Study

	Construction	A & E	Other Professional Services	Other Services	Goods
African American	✓	✓	✓	✓	✓
Asian American	✓	✓	✓	✓	✓
Hispanic American	✓	✓	✓	✓	✓
Native American	✓	✓	✓	✓	✓
Woman	✓	✓	✓	✓	✓

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Table 54: Summary of Disparity Analysis of MWBEs in Subcontracting

(From Prime Vendor Questionnaire Sample)

CONSTRUCTION	A/E
African American owned- Overutilized	**African American owned- Overutilized**
Asian American owned – Underutilized (Not Statistically Significant)	**Asian American owned – Underutilized**
Hispanic American owned - Underutilized	**Hispanic American owned - Underutilized**
Native American owned - Underutilized	**Native American owned - Underutilized**
Women owned- Underutilized (Not Statistically Significant)	**Women owned- Underutilized**
Non-MWBE – Underutilized (Not Statistically Significant)	**Non-MWBE – Overutilized**

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FINDING 6: PRIVATE SECTOR DISCRIMINATION

Our analysis explicitly links a business firm owner's race/ethnicity/gender to public contracting outcomes in the City of Memphis relevant market area. Indeed, our results suggest that in general, a firm owner's race, ethnicity, and gender have, in several instances a statistically significant and adverse effect on entering the Memphis market area as a new firm, and for firms in general, and those in Construction Services, securing public contracting and subcontracting opportunities relative to non-minority owned firms. Our results also suggest that at least with respect to African American owned firms, the City of Memphis may be a passive participant in private discrimination, as African American owned firms are more likely to report financing—which is typically secure in private credit markets—to be a barrier to securing contracts with the City of Memphis.

Specifically, GSPC found that:

- MWBEs are EQUALLY LIKELY AS non-MWBEs to submit bids
- MWBEs are LESS LIKELY THAN non-MWBEs to have revenues that equal or exceed their market representation
- African Americans and Women owned firms are MORE LIKELY THAN non-MWBEs to be new entrants to the Memphis market
- Certified African American and Women owned firms have benefitted from the City's remedial programs and Hispanic and Native American owned firms did not benefit accordingly.
- African American owned firms are MORE LIKELY THAN non-MWBEs to face financing barriers
- African American owned firms are MORE LIKELY THAN non-MWBEs to perceive that the bidding process is unfair.

FINDING 7: PERCEPTIONS OF INFORMAL NETWORKS

We also found, in our private sector analysis, that being an African American owned firm increases the likelihood of having a perception that the process by which bids are selected by the City of Memphis is not fair and transparent, perceived to be governed by biased informal networks, which could discourage participation from minority owned firms in the public contracting process—exacerbating racial/ethnic/gender disparities in public contracting outcomes for the City of Memphis.

One of the overarching themes throughout the anecdotal evidence is the perceived discretion in the procurement process, which is seen as a barrier to entry to contracting with the City as well as one of the factors that makes it difficult to appeal or contest an award. GSPC's research team heard repeatedly that Memphis business owners have had experiences with an informal network either within the City or in doing business with prime contractors as a subcontractor. Many of the MWBE's who came forward in the public hearing or were interviewed expressed a strong opinion that there would be little participation if goals were not in place—essentially that majority contractors must be required to work with minority and women owned businesses.

FINDING 8: ANECDOTAL FINDINGS

GSPC heard consistently in its anecdotal analysis that the continued vestiges and current practice of social segregation have led to the creation of exclusive informal business networks which disadvantage MWBEs. Additionally, the lack of exposure to minority and women owned businesses has created a perception of limited capacity of those firms by non-MWBE owned firms and financial institutions. GSPC heard extensively that certification costs and the lack of cohesion in the process has been a barrier to full participation by MWBE firms. There was discussion in multiple forums regarding the prevalence of "fronts": firms professing to be owned by an MWBE but are in fact owned and/or operated by a non-MWBE. GSPC received substantial anecdotal evidence that suggests that the goal setting process by the City needs to be carefully reviewed and calibrated to reflect the availability in the marketplace. Finally, there were numerous comments regarding onerous insurance requirements and a need for prompt payment.

FINDING 9: INEFFICIENT CERTIFICATION

From its information-gathering efforts through informational meetings, public hearings, focus groups, anecdotal interviews and email comments, Griffin & Strong, P.C. has discovered that MWBE firms and non-MWBE firms alike are concerned about the program, either from an administrative, contract-letting standpoint or in its monitoring of MWBE certifications and the goal-setting process. The certification process itself was also a cause for concern, with some participants intimating that their information was used inappropriately and several others indicating that the process is not widespread or efficient enough to capture the entire universe of MWBE-eligible firms in the Memphis marketplace

The City accepts various certifications from UCA, TMSDC, and WBENC. Each agency charges approximately $300 for certification. Vendors have consistently complained about the fee charged and application process. The MWBEs and LOSBs have expressed that they have to pay to do business with the City under the various programs while majority owned companies do not have pay. The application process has been described as invasive and intrusive by MWBEs and LOSBs. There has been a constant concern of breaches of privacy as it relates to their information supplied to the various agencies. The perceived breach is not on the side of City as the City receives no financial data regarding the applicant. The LOSB is not race based as requires all applicants to provide the requested financial data. So majority owned companies are required to submit finances to participate as well.

FINDING 9: GOAL-SETTING

There was some consensus throughout the various forums that the MWBE program's oversight of contracts and goal setting mechanisms was a mystery to many members of the public, including those present at the informational meeting and there was a request for more transparency in the goal-setting process. *In addition, there is an impression among many of those who provided comment that the program may be revamped to include more mentoring aspects for smaller firms to build capacity.*

FINDING 10: BONDING THRESHOLDS AND INSURANCE REQUIREMENTS

Construction projects with an estimated cost of $100,000 or more generally require a bid bond at 5% of the bid amount. While on its face, a 5% bid bond may not appear to be excessive. However small, minority and women owned businesses can rarely afford to pull much needed money from their businesses for the bond. As a result, these businesses are placed in the unenviable position of serving in the consistent role of subcontractor rather than the prime position. Although the company may have the skills, licenses and experience to perform as a prime, finance is a major factor keeping them in the subcontractor role.

When a company wins a construction bid with the City, shortly thereafter a performance bond in the amount equal to the dollar value of the project is required. The ability to obtain a bond is based on experience, reputation, financial capability, and equipment readiness to name a few expectations. Finance is consistently a problem for small, minority and women owned businesses. While it is understandable the City has to balance the fiscal responsibility due taxpayers. It is also important to take into consideration other less burdensome options that can accomplish the same goal.

City insurance levels include $2,000,000 for professional liability and commercial general liability of $1,000,000, to identify a few. Vendors have consistently complained about the perceived high levels of insurance required to do business with the City. Although each contract should be reviewed to establish the appropriate insurance limits, in practice rarely are insurance levels lowered.

FINDING 11: LACK OF KNOWLEDGE OF RESOURCES

The City provides a wealth of services to all citizens including MWBEs through the Renaissance Business Center. The center offers construction licensing, low interest loans, and financial statement preparation instruction. With all of these resources, many in the community are unaware of the center and it many offerings. Marketing resources have not been deployed in a meaningful way to spread the word about the opportunities presented. With direct loan capabilities, many in the business community could benefit if they were aware of the assistance.

FINDING 12: ADMINISTRATIVE AUTHORITY AND THE CONTRACT COMPLIANCE OFFICER (CCO)

The EBO Program is clear in its designation and description of the CCO as being charged with oversight of MWBE issue, concerns, information distribution, etc. The CCO, in conjunction with the division of finance, is specifically charged with providing MWBEs with information and assistance regarding city contracting opportunities. In an effort to increase the attention given to small, minority and women owned businesses, oversight boards and other entities have been created. However, there needs to be more hands on deck to support contract compliance rather than pulling the office is several directions. The office of MORE should report to the Contract Compliance Office rather than be separate and apart. Two offices with a similar focus provides confusion in the marketplace.

While MORE is a good idea, there are no measurable provided to the office to determine its effectiveness. MORE is tasked with providing MWBEs with information regarding city contracting opportunities, although the ordinance clearly states this is a part of the CCO duties. This consistently adds to MWBE confusion as to where to go for information or assistance.

The accomplishment or lack thereof of goals and the "numbers" are placed squarely at the feet of the CCO. Therefore, the CCO should be able to direct the resources and assignments of MORE to better assistance MWBEs as is clearly detailed in the EBO ordinance. However clearly defining the scope of services of MORE can also solve the problem so that there is no overlap in responsibilities between MORE and Contract Compliance (CC). Business development may be a great position for MORE if it is to remain separate and apart from CC.

B. RECOMMENDATIONS

The 2016 City of Memphis Disparity Study is the second Disparity Study conducted for the City of Memphis by Griffin & Strong, P.C. GSPC also conducted the 2010 study for the City in which it made a number of recommendations that were not fully implemented during the intervening period. As demonstrated by the findings above, we have determined that the City of Memphis has a compelling governmental interest in the continuation of an EBO Program. We have included a copy of the recommendations made in the 2010 study in Appendix G (Executive Summary to the 2010 Disparity Study) to this report, and we continue to believe that many of those recommendations would be beneficial for the City to implement.

In making our specific recommendations with regard to ameliorating the findings of this Study, GSPC is not seeking to give its opinion with regard to the specific recommendations of either of the three entities mentioned at the beginning of this chapter (MBDOC, Mayor's Transition Team, and City Council's Minority Business Task Force) with whom GSPC has interacted. The recommendations made below reflect what GSPC believes to be the critical issues which must be addressed in order for the program to achieve its objectives.

It should be noted that the newly appointed Office of Business Diversity and Compliance has already begun to make substantial operational, administrative, and programmatic changes, including some of the ones recommended by GSPC below.

RECOMMENDATION 1: MWBE GOALS

The findings of this study indicate that the City of Memphis should continue to implement a program to promote MWBE utilization.

1. The annual goalsetting process the City has engaged in under the current program should be continued. The benchmarks for goalsetting should be based on relative MWBE availability as determined in this study.

2. Based on the decline in MWBE participation during the study period, described in Finding 2 above, the City is justified in taking a granular approach to goalsetting. We therefore recommend goals tied both to procurement categories and to the projected spend of each division or department of City government. Goals should be set for both prime and subcontracting. In addition, there should continue to be project specific goals set by the goalsetting committee.

3. The City should also consider encouraging joint ventures on the prime contracting level as part of an enhanced MWBE program.

4. Finally, the City should develop a process to ensure the participation of MWBE firms in nontraditional areas, including financial services, pension investment management and real estate investment and management.

RECOMMENDATION 2: DEVELOP MWBE SPENDING PLAN

The City should consider reviewing all of its anticipated expenditures for each upcoming fiscal year as part of its budget approval process, based on the anticipated expenditures of each department. MWBE spending targets could be set based on MWBE availability to perform the work anticipated on various projects. Anticipated expenditures could be made public as a forecast which would allow MWBE firms to understand early on what projects are anticipated in the coming fiscal year and to prepare to compete for them.

RECOMMENDATION 3: PERFORMANCE STANDARDS FOR STAFF

The City should consider evaluating all employees with procurement authority based on their efforts and results in utilizing MWBEs as part of their annual performance reviews.

RECOMMENDATION 4: PERFORMANCE STANDARDS FOR MANAGEMENT

Every department head should be trained on the MWBE program and the department heads should ensure that every individual with any procurement authorization within their department is also trained. Part of the performance review of department heads should be their effort and results with regard to MWBE participation.

RECOMMENDATION 5: CONTINUED ENHANCEMENT OF THE OFFICE OF BUSINESS DIVERSITY AND COMPLIANCE

Recent Changes-The Strickland Administration has enhanced what was formerly the Office of Contract Compliance by creating a new Office of Business Diversity and Compliance, combining staffs of both the Office of Contract Compliance and MORE (Memphis Office of Resources and Enterprise), elevating the leader of the organization to the Director level and having her report directly to the Chief Financial Officer. This has resulted in substantial improvements.

Additional Changes Needed—We recommend that control of the Renaissance Business Center be consolidated under the Office of Business Diversity and Contract Compliance.

Adequate Staffing-- We recommend that adequate staff be put in place to allow for effective contract administration of all City divisions', departments' and agencies' procurements. The City should also ensure that adequate staff is in place to do effective monitoring of all contracts that are in progress.

RECOMMENDATION 6: CERTIFICATION ISSUES

One of the biggest issues facing the City is the lack of a public certification process. We recommend that the City take complete control of its certification process. The City may choose to outsource some of the functions associated with certification or to provide those services in house. Regardless, the City must have complete control of the list of firms considered to be certified for purposes of doing business with the City of Memphis which take advantage of opportunities provided by the Office of Business Diversity and Contract Compliance. The ultimate certification decision should be made by the Director of the Office of Business Diversity and Compliance.

The City should certainly also consider the acceptance of reciprocal certification from various agencies, and should streamline the process as much as possible, making it as easy and transparent as possible to become certified, while simultaneously ensuring that the process is robust enough to filter out firms that do not legitimately qualify for the benefits of the program. Our primary concern is that the City of Memphis control its own process and maintain its own database of certified firms.

RECOMMENDATION 7: BONDING AND INSURANCE ISSUES

The City should review its bonding and insurance requirements in an effort to reduce the burden on small, minority and woman-owned businesses. Our review indicates that many of the City's insurance requirements in particular are higher than many other jurisdictions. A comprehensive effort should be undertaken to ensure that the City is not requiring limits which are higher than necessary to protect the City's interests.

RECOMMENDATION 8: ACCOUNTABILITY OF EXISTING SUPPORTIVE SERVICES PROGRAMS

The City currently financially supports various non-profit agencies that provide supportive services to MWBEs and other small businesses throughout the City. GSPC recommends that these organizations become more accountable to the City for the progress and results of their programs. Specifically, GSPC recommends that each non-profit receiving funding from the City of Memphis develop an annual plan in conjunction with the staff of the Office of Business Diversity to set measurable objectives. Benchmarks should be set which result in quarterly reports on progress towards meeting the objectives.

C. CONCLUSION

It is important that the City of Memphis is committed to provide equal access to its procurement process for all diverse businesses. However, although the City's EBO Program appears to have made an impact on subcontracting, the majority of the City's contracts do not utilize subcontractors, possibly due to relatively small contract size. The small average contract award should have provided more opportunities for MWBEs to perform as prime contractors, but it has not. In fact, MWBE participation as prime contractors has declined overall during the Study Period as compared to the results of the previous disparity study.

As a result, GSPC has made recommendations which will assist the City in ensuring inclusion. The process of improving the program has already begun with some new changes already implemented by the current administration through the newly developed Office of Business Diversity and Compliance. If the recommendations made above are implemented along with the modifications already made, the impact of these changes will increase equal access to business opportunities for minority and women owned firms.

APPENDIX A

GRIFFIN & STRONG, P.C.
CITY OF MEMPHIS, TN
SUMMARY OVERVIEW OF MWBE ATTAINMENT
FY2011-FY2014

Griffin & Strong, P.C. ("GSPC") reviewed the attainment of MWBE's as compared to availability for purposes of determining whether, in GSPC's expert opinion, the purposes of the City of Memphis' EBO Program Ordinance have been achieved.

GSPC is preparing to undertake an update of the 2010 City of Memphis Disparity Study ("2016 Updated Study") which will take approximately one year to complete. In that comprehensive update, GSPC will collect detailed data and conduct extensive analysis to determine whether a disparity exists between the percentages of available firms in each race and gender ownership group (African American, Asian American, Hispanic American, Native American, White Female, and Non-MWBE) as compared to the utilization of such groups by the City. Further, GSPC will test the disparity for significance and determine through a regression analysis that controls for capacity whether the disparity can legally give rise to an inference of discrimination. If such an inference can be made to establish a compelling governmental interest in remedying such discrimination, the City may establish or maintain a narrowly tailored remedial program.

For this summary overview of MWBE attainment, GSPC utilized pre-existing summaries of MWBE[1] participation for FY years 2011-2014 and compared them to the availability estimates from the 2010 City of Memphis Disparity Study Although the data is not ideal, it will provide a reasonable suggestion as to whether the purposes of the EBO Program Ordinance have been achieved in order to determine whether there is a basis for the City of Memphis to extend the ordinance until GSPC can complete the disparity study update.

1. Availability

The 2010 Study included availability estimates of each race and gender group based upon the relevant geographic market for each work category. However, since the City's MWBE attainment summaries for FY2011-2014 include all MWBEs no matter where they are located,

[1] The summaries do not break down the MWBE participation by race or gender group or by work category (construction, A&E, professional services, non-professional services, and goods), so GSPC used the category of MWBE as compared to total dollars awarded.

GSPC utilized the 2010 Master Vendor File (Excel) that was included as Appendix G of the Study to provide availability estimates for all MWBE firms by race and gender category as compared to all firms in the 2010 Master Vendor File. Since the utilization data was not broken down by work category, GSPC determined overall MWBE availability by taking the percentage of all MWBE firms to all firms. That availability estimate that GSPC reported in Table 1 below and for purposes of this analysis is 19.67%. [2]

City of Memphis
Table 1: MWBE Availability
From 2010 Disparity Study Master Vendor File

Work Category	MWBE FIRMS	ALL FIRMS	AVAILABILITY OF DBE FIRMS
Construction	300	964	31.12%
A/E	76	211	36.02%
Other Professional Services	121	870	13.91%
Other Services	959	4219	22.73%
Goods	555	3962	14.01%
Total	**2011**	**10226**	**19.67%**

Griffin & Strong, P.C. 2015

2. Utilization

GSPC utilized the City of Memphis Office of Contract Compliance's MWBE Summary Report for FY 2011-2014 determine MWBE attainment (combined for primes and subcontractors). Those summary reports are attached hereto as Appendix A.

3. Disparity Indices

Disparity Indices calculate the difference between the percentage of utilization of MWBEs by the City and the percentage of available MWBEs.

The Disparity Index is defined as the ratio of the percentage of MWBE firms utilized (U) divided by the percentage of such firms available in the marketplace, (A):

Let: U =Utilization percentage for the MWBE group

A =Availability percentage for the MWBE group

[2] Although the Master Vendor File contains available firms from 2010, it is the most recent data that is available to measure against.

DI =Disparity Index for the MWBE group

DI = *U/A* or Utilization divided by Availability

When the *DI* is 1.00, which indicates that the utilization percentage equals the availability percentage, there is parity or an absence of disparity. The results obtained by a disparity analysis will result in one of three conclusions: overutilization, underutilization or parity. Underutilization is when the Disparity Index is below 1.00. Overutilization is when the Disparity Index is over 1.00. Parity is when the Disparity Index is 1.00.

The determination that a particular ethnic or gender group has been over-utilized or under-utilized is not, standing alone, proof of discrimination. To arrive at a conclusion that discrimination has occurred GSPC must first determine whether a measured disparity is statistically significant and not just an artifact of randomness with no causal explanation across groups.

Typically the determination of whether a disparity is "statistically significant" can be based on the depth of the disparity in that any disparity index that is less than .80 is considered to be a statistically significant underutilization and any disparity index over 1.10 is considered to be a statistically significant overutilization. The disparity indexes impact as designated in the following tables as "overutilization", "underutilization", or "parity" have been indicated in red to indicate such statistically significant impact.

In addition, GSPC would typically conduct a regression analysis to determine whether the cause of the statistically significant disparity is the race and/or gender status of the firm owners. In this case, GSPC is merely determining whether there is a sufficient indication to continue the EBO Ordinance that is already in place based on a previous finding that supported an inference of discrimination, until the previous study can be updated. GSPC will therefore not undertake a regression analysis at this point, but will include a regression analysis in the 2016 Updated Study.

The disparity indices are set forth in Tables 2-5 below.

City of Memphis

Table 2: 2011 MWBE Availability/Utilization Disparity Indices

MWBE Summary Report

Department	Total MWBE	Total	MWBE Utilization	Availability	Simple Disparity	Over- or Underutilized or Parity
Community Enhancement	$ 1,754,673	$ 4,092,949	42.87%	19.67%	2.18	OVERUTILIZED
Engineering	$ 4,312,052	$ 23,082,538	18.68%	19.67%	0.95	UNDERUTILIZED
Executive	$ 33,842	$ 763,587	4.43%	19.67%	0.23	UNDERUTILIZED
Finance	$ 178,134	$ 428,861	41.54%	19.67%	2.11	OVERUTILIZED
Fire	$ 1,205,222	$ 15,350,872	7.85%	19.67%	0.40	UNDERUTILIZED
General Services	$ 477,054	$ 26,654,198	1.79%	19.67%	0.09	UNDERUTILIZED
HCD	$ 2,795,857	$ 5,618,783	49.76%	19.67%	2.53	OVERUTILIZED
Human Resources	$ 542,691	$ 29,406,276	1.85%	19.67%	0.09	UNDERUTILIZED
Information Services	$ 6,995,218	$ 20,757,102	33.70%	19.67%	1.71	OVERUTILIZED
Law Division	$ 504,048	$ 8,096,432	6.23%	19.67%	0.32	UNDERUTILIZED
Parks	$ 395,375	$ 3,895,265	10.15%	19.67%	0.52	UNDERUTILIZED
Police	$ 465,874	$ 10,371,521	4.49%	19.67%	0.23	UNDERUTILIZED
Public Services	$ 290,462	$ 4,683,665	6.20%	19.67%	0.32	UNDERUTILIZED
Public Works	$ 1,551,658	$ 31,190,304	4.97%	19.67%	0.25	UNDERUTILIZED
Totals	**$21,502,160**	**$ 184,392,353**	**11.66%**	**19.67%**	**0.59**	**UNDERUTILIZED**

Griffin & Strong, P.C. 2015

City of Memphis

Table 3: 2012 MWBE Availability/Utilization Disparity Indices

MWBE Summary Report

Department	Total MWBE	Total	MWBE Utilization	Availability	Simple Disparity	Over- or Underutilized or Parity
Community Enhancement	$ 2,588,833	$ 4,127,277	62.72%	19.67%	3.19	OVERUTILIZED
Engineering	$ 6,341,528	$ 33,271,760	19.06%	19.67%	0.97	UNDERUTILIZED
Executive	$ 62,163	$ 944,796	6.58%	19.67%	0.33	UNDERUTILIZED
Finance	$ 120,446	$ 283,763	42.45%	19.67%	2.16	OVERUTILIZED
Fire	$ 640,911	$ 2,853,913	22.46%	19.67%	1.14	OVERUTILIZED
General Services	$ 402,588	$ 1,848,554	21.78%	19.67%	1.11	OVERUTILIZED
HCD	$ 3,114,334	$ 7,652,438	40.70%	19.67%	2.07	OVERUTILIZED
Human Resources	$ 782,824	$ 1,179,547	66.37%	19.67%	3.37	OVERUTILIZED
Information Services	$ 6,246,259	$ 19,096,868	32.71%	19.67%	1.66	OVERUTILIZED
Law Division	$ 497,540	$ 2,226,737	22.34%	19.67%	1.14	OVERUTILIZED
Parks	$ 376,931	$ 3,109,094	12.12%	19.67%	0.62	UNDERUTILIZED
Police	$ 846,408	$ 4,656,225	18.18%	19.67%	0.92	UNDERUTILIZED
Public Services	$ 1,676,178	$ 3,402,956	49.26%	19.67%	2.50	OVERUTILIZED
Public Works	$ 18,096,672	$ 49,957,736	36.22%	19.67%	1.84	OVERUTILIZED
Totals	**$ 41,793,615**	**$ 134,611,664**	**31.05%**	**19.67%**	**1.58**	**OVERUTILIZED**

Griffin & Strong, P.C. 2015

City of Memphis

Table 4: 2013 MWBE Availability/Utilization Disparity Indices

MWBE Summary Report

Department	Total MWBE	Total	MWBE Utilization	Availability	Simple Disparity	Over- or Underutilized or Parity
Community Enhancement	$ 1,642,328	$ 2,452,975	66.95%	19.67%	3.40	OVERUTILIZED
Engineering	$ 5,044,605	$ 28,467,037	17.72%	19.67%	0.90	UNDERUTILIZED
Executive	$ 2,878,794	$ 9,218,591	31.23%	19.67%	1.59	OVERUTILIZED
Finance	$ 414,286	$ 583,277	71.03%	19.67%	3.61	OVERUTILIZED
Fire	$ 337,309	$ 12,569,808	2.68%	19.67%	0.14	UNDERUTILIZED
General Services	$ 751,707	$ 33,542,709	2.24%	19.67%	0.11	UNDERUTILIZED
HCD	$ 13,607,370	$ 42,214,200	32.23%	19.67%	1.64	OVERUTILIZED
Human Resources	$ 1,353,989	$ 30,092,846	4.50%	19.67%	0.23	UNDERUTILIZED
Information Services	$ 7,512,437	$ 17,085,712	43.97%	19.67%	2.24	OVERUTILIZED
Law Division	$ 499,754	$ 2,447,973	20.42%	19.67%	1.04	OVERUTILIZED
Parks	$ 1,350,887	$ 4,687,779	28.82%	19.67%	1.47	OVERUTILIZED
Police	$ 1,106,736	$ 9,852,820	11.23%	19.67%	0.57	UNDERUTILIZED
Public Services	$ 99,589	$ 513,105	19.41%	19.67%	0.99	UNDERUTILIZED
Public Works	$ 4,278,677	$ 24,381,905	17.55%	19.67%	0.89	UNDERUTILIZED
Totals	**$ 40,878,468**	**$ 218,110,737**	**18.74%**	**19.67%**	0.95	**UNDERUTILIZED**

Griffin & Strong, P.C. 2015

City of Memphis

Table 5: 2014 MWBE Availability/Utilization Disparity Indices

MWBE Summary Report

Department	Total MWBE	Total	MWBE Utilization	Availability	Simple Disparity	Over- or Underutilized or Parity
Community Enhancement	$ 98,883	$ 105,290	93.91%	19.67%	4.77	OVERUTILIZED
Engineering	$ 7,249,681	$ 24,497,397	29.59%	19.67%	1.50	OVERUTILIZED
Executive	$ 2,059,788	$ 4,453,502	46.25%	19.67%	2.35	OVERUTILIZED
Finance	$ 271,544	$ 1,929,062	14.08%	19.67%	0.72	UNDERUTILIZED
Fire	$ 552,818	$ 29,926,243	1.85%	19.67%	0.09	UNDERUTILIZED
General Services	$ 1,172,982	$ 32,741,135	3.58%	19.67%	0.18	UNDERUTILIZED
HCD	$ 6,869,084	$ 30,441,336	22.56%	19.67%	1.15	OVERUTILIZED
Human Resources	$ 808,781	$ 34,767,527	2.33%	19.67%	0.12	UNDERUTILIZED
Information Services	$ 6,693,412	$ 15,922,465	42.04%	19.67%	2.14	OVERUTILIZED
Law Division	$ 1,114,487	$ 2,266,598	49.17%	19.67%	2.50	OVERUTILIZED
Parks	$ 1,267,745	$ 6,023,208	21.05%	19.67%	1.07	OVERUTILIZED
Police	$ 956,737	$ 5,280,802	18.12%	19.67%	0.92	UNDERUTILIZED
Public Services						
Public Works	$ 4,176,087	$ 53,322,778	7.83%	19.67%	0.40	UNDERUTILIZED
Totals	**$ 33,292,029**	**$241,677,343**	**13.78%**	**19.67%**	**0.70**	**UNDERUTILIZED**

Griffin & Strong, P.C. 2015

4. Conclusion

Tables 2-5 indicate the need to extend the EBO Program Ordinance, at least until the 2016 Updated Disparity Study is completed. From FY2011-2014, one (1) year, 2012 had statistically significant overutilization, but of the remaining years: 2011 and 2014 had statistically significant underutilization and 2013 had a simple disparity of underutilization but it was not statistically significant.

The 2012 and 2013 definitely showed improvement in MWBE utilization but when three out of four years still show some underutilization, the compelling government interest is likely to still exist. The 2016 Updated Study will assist the City of Memphis in determining whether a true statistically significant disparity still exists and what aspects of the current program are working and which are not.

It is GSPC's opinion that the EBO Program Ordinance should be extended for at least another year or until the 2016 Updated Disparity Study is completed.

Griffin & Strong, P.C.
June 15, 2015

GRIFFIN & STRONG, P.C.
CITY OF MEMPHIS, TN
SUMMARY OVERVIEW OF MWBE ATTAINMENT
FY2016 (through July 1, 2015-February 29, 2016)

GSPC is in the process of completing the update of the 2010 City of Memphis Disparity Study ("2016 Updated Study"). Due to the need to resolve some data issues, GSPC and the City desire to extend the time for completion of the Study until 8/31/2016. During this time GSPC will not only complete the data analysis, but will also start working with the City to be ready to roll out the results of the Study with some definitive plans on how the City should move forward.

The extension of the delivery date for the final Study will necessitate an additional 90-day extension of the EBO Ordinance which is set to expire on 6/30/2016[1]. To support the EBO Ordinance extension, GSPC demonstrates below that it is likely that the purposes of the EBO Ordinance have not been reached by comparing previously established availability estimates to the current attainment of MWBEs by the City (using the City's summary reports)

1. Availability

The 2010 Study included availability estimates of each race and gender group based upon the relevant geographic market for each work category. However, since the City's MWBE attainment summaries for FY2016 (7/1/15-2/29/16) include all MWBEs no matter where they are located, GSPC utilized the 2010 Master Vendor File (Excel) that was included as Appendix G of the Study to provide availability estimates for all MWBE firms by race and gender category as compared to all firms in the 2010 Master Vendor File.[2]

[1] The EBO Ordinance was previously extended for one year and supported by a report by GSPC of the Summary Overview of MWBE Attainment for FY11-FY14.

[2] Although the Master Vendor File contains available firms from 2010, it is the most recent data that is available to measure against.

City of Memphis
Table 1: MWBE Availability
From 2010 Disparity Study Master Vendor File

Work Category	MWBE FIRMS	ALL FIRMS	AVAILABILITY OF DBE FIRMS
Construction	300	964	31.12%
A/E	76	211	36.02%
Other Professional Services	121	870	13.91%
Other Services	959	4219	22.73%
Goods	555	3962	14.01%
Total	**2011**	**10226**	**19.67%**

Griffin & Strong, P.C. 2015

2. Utilization

GSPC utilized the City of Memphis Office of Contract Compliance's MWBE Summary Report for FY 2016(7/1/15-2/29/16), which was the most recent available data, to determine MWBE attainment (combined for primes and subcontractors).

3. Disparity Indices

Disparity Indices calculate the difference between the percentage of utilization of MWBEs by the City and the percentage of available MWBEs.

The Disparity Index is defined as the ratio of the percentage of MWBE firms utilized (*U*) divided by the percentage of such firms available in the marketplace, (*A*):

Let: *U* =Utilization percentage for the MWBE group

A =Availability percentage for the MWBE group

DI =Disparity Index for the MWBE group

DI = *U/A* or Utilization divided by Availability

When the *DI* is 1.00, which indicates that the utilization percentage equals the availability percentage, there is parity or an absence of disparity. The results obtained by a disparity analysis will result in one of three conclusions: overutilization, underutilization or parity. Underutilization is when the Disparity Index is below 1.00. Overutilization is when the Disparity Index is over

1.00. Parity is when the Disparity Index is 1.00.

The determination that a particular ethnic or gender group has been over-utilized or under-utilized is not, standing alone, proof of discrimination. To arrive at a conclusion that discrimination has occurred GSPC must first determine whether a measured disparity is statistically significant and not just an artifact of randomness with no causal explanation across groups.

Typically the determination of whether a disparity is "statistically significant" can be based on the depth of the disparity in that any disparity index that is less than .80 is considered to be a statistically significant underutilization and any disparity index over 1.10 is considered to be a statistically significant overutilization. The disparity indexes impact as designated in the following tables as "overutilization", "underutilization", or "parity" have been indicated in red to indicate such statistically significant impact.

In addition, GSPC would typically conduct a regression analysis to determine whether the cause of the statistically significant disparity is the race and/or gender status of the firm owners. In this case, GSPC is merely determining whether there is a sufficient indication to continue the EBO Ordinance that is already in place based on a previous finding that supported an inference of discrimination, until the previous study can be completed. GSPC will therefore not undertake a regression analysis at this point, but will include a regression analysis in the 2016 Updated Study.

The disparity indices are set forth in Table 2 below.

City of Memphis

Table 2: 2016 MWBE Availability/Utilization Disparity Indices

MWBE Summary Report

Department	Total MWBE	Total	MWBE Utilization	Availability	Simple Disparity	Over- or Underutilized or Parity
Prime Construction	$ 6,307,064	$50,168,155	12.57%	18.64%	0.67	**UNDERUTILIZED**
A/E	$ 1,921,015	$ 8,279,751	23.20%	28.57%	0.81	UNDERUTILIZED
Other Professional Services	$ 4,999,480	$65,152,998	7.67%	14.14%	0.54	**UNDERUTILIZED**
Non-Professional Services	$ 2,752,580	$48,735,805	5.65%	25.39%	0.22	**UNDERUTILIZED**
Goods & Supplies	$ 2,485,414	$35,221,865	7.06%	13.85%	0.51	**UNDERUTILIZED**

Griffin & Strong, P.C. 2015

4. Conclusion

Tables 2 indicates the need to extend the EBO Program Ordinance, at least until the 2016 Updated Disparity Study is completed. During FY2016 (7/1/15-2/29/16) all categories were underutilized and, except for A/E the underutilization was statistically significant. Based upon this preliminary finding, the compelling government interest is likely to still exist in order to continue the purposes of the EBO Ordinance. The 2016 Updated Study will assist the City of Memphis in determining whether a true statistically significant disparity still exists and what aspects of the current program are working and which are not.

It is GSPC's opinion that the EBO Program Ordinance should be extended for at least another 90 days or until the 2016 Updated Disparity Study is completed.

Griffin & Strong, P.C.
May 16, 2016

APPENDIX B

CITY OF MEMPHIS, TENNESSEE
2016 UPDATED DISPARITY STUDY
DATA ASSESSMENT REPORT

Griffin & Strong P.C. ("GSPC") conducted in-person data assessment meetings with City of Memphis ("City") staff on June 19, 2015 and by phone on June 23, 2015 regarding the City's 2016 Disparity Study ("Study"). This report will provide a detailed summary of those meetings and establish action items and preliminary questions that emerged from the discussions. It is important to issue a data assessment report that will confirm GSPC's understanding of how and where the data is kept by the City of Memphis prior to completing the data collection plan and releasing data requests to the City's staff.

I. Scope Statement

The purpose of this disparity study ("Study") is to determine whether there is a disparity between the number of minority and women owned businesses ("M/WBEs") in the Memphis marketplace and the dollars that Memphis awards to such M/WBE firms, such that Memphis is an active or passive participant in past or present discrimination.

The Study will collect and analyze relevant data on "ready, willing and able" vendors in the areas of:

1. Construction services
2. A&E
3. Other Professional Services
4. Non-Professional Services
5. Goods & Supplies

The dollars spent with these same types of businesses (whether as prime contractors or subcontractors) will also be collected and analyzed. The study period for the disparity study has been determined as a five (5) year study period from July 1, 2009-June 30, 2014.

II. Preliminary Purchasing Practices

Memphis has a centralized purchasing system, except that the Information Technology/Information Services department's procurements are outsourced to a an independent provider called Signs Application International Corporation ("SAIC") and are not overseen by the City's procurement department. The IT

director estimates that 2% to 5% of that department's purchases go through the City's purchasing system directly, and the rest are housed and conducted by SAIC. SAIC submits an invoice to the City with all procurement activity on a monthly basis and they are required to apply a 50% MWBE spend across the board (not per contract) in Goods and Services and a 30% goal in professional resources, broken down between WBEs and MBEs. SAIC's percentage goals were developed from historical data.

Like the SAIC contract for IS's procurement, the Public Works department has the Sewer Assessment Rehabilitation Project (SARP 10) project that has been outsourced to Black and Veatch which is estimated at about $400 Million. Unlike the SAIC contract, all of the agreements that come out the City's master agreement with Black &Veatch come before Goal Setting Committee for review.

Contracts/purchases under $5,000 do not come to the Procurement Department, but are at the discretion of the division directors. Contracts $5,000 to $50,000 require a purchase order and are competitively bid, but are not required to be advertised. Potential bidders are notified of these contracts if they are signed up in the system under that particular commodity code and there are no goals attached to this threshold. Contracts under $50,000 are primarily "low bid," which is understood to mean "lowest and best" bid. The procurement department issues Requests for Proposals if price is not the primary factor and Requests for Quotes for professional services. All contracts over $50,000 are required to be both advertised and competitively bid and will be seen by the goal-setting committee. Vendors are allowed to register by NIGP code and racial categories are a self-selection option on vendor sign-up, but do not count as an official certification by the City.

There is a 5% bid bond over a certain threshold that must be met for bids to be accepted. The City's has let a few large projects over the past five years, including the Pyramid, which was a 3.5 million dollar project, and is gearing up to do more, with the Raleigh Springs redevelopment and the Fairgrounds upcoming. Goal-setting for these projects and all others over $50,000 will be contract by contract and is broken out by availability in each work category.

The City has a current Equal Business Opportunity ("EBO") Program that was to sunset on June 30, 2015, but was extended for an additional one (1) year. The program is an SBE, MBE and WBE Program. However, the City does not self-certify. Firms are certified by 3 outside agencies: Uniform Certification Agency ("UCA"), WBEC and TriState Minority Supplier Development Council ("TMSDC"). The City does not accept certifications from any other organization or governmental entity. Certifications may cost as much as $300 for a one year term and have to be renewed each year

SBEs are certified only by UCA and must be separately certified. The SBE program, a provision of the EBO Ordinance, requires that three (3) or more registered SBEs in a category will make purchases of any amount an SBE set aside.

Except for SAICS's goals there are no across the board goals. Instead, goals are set project by project based upon the number of certified firms in each of 16 areas.

III. Data Assessment

A. General Data

Memphis maintains its data in Oracle, which is a centralized system. However, Information Technology is not managed by Oracle, as it has been outsourced to SAIC since January 1, 2012. The data held in Oracle dates back the five years of the study period. It was determined that payment data should be requested through the Finance department and most standard reporting requests should go through the purchasing agent, Eric Mayes. The data required from purchasing will be the vendor, bidder, award, and solicitation information. Memphis uses two commodity codes, NIGP and NAICS.

Issue:

GSPC will need to provide Anita Drake in IT with an interim data request to be sent to SAIC to determine what they can provide us with. Any extra work done by SAIC on this project will be a cost to the City.

B. Specific Data files

It was determined in the data assessment meetings that GSPC will need from Memphis:

1. Vendor List

Eric Mayes can provide the vendor list, which is a self-registration system with no prequalification requirements except a W-9 form. Firms can identify ethnicity without certification and can also sign up under more than one NIGP code and no primary code is required. They are able to register as vendors even if they only want to be notified about a bid.

Issue:

The vendor list may have firms listed multiple times with multiple addresses because when accounts payable has vendor information, they go into the same list and add a new vendor. The Oracle upgrade has also made duplicates and they will have to be sorted through. In addition, the vendor ID number may be different for the same firm because of the creation of a new vendor.

2. **Awards**

All award data has a contract number attached, however the award amount listed may not encompass all amounts for that award. The question of whether the data should show anything other than the original award amount was raised in GSPC's meetings. Award data is available electronically on the City's website, but will only show the last action taken on that award. For example, if $50,000 was recently added to an award, it would be the only amount shown and previous actions on or additions to the award would not be present on the website. For IT/IS procurements, an order letter is issued by the City to allow an award. These are electronic letters (PDF documents) but they will need to be consolidated by tracking through a work order to the SAIC system. The expenditure type is contained in the award data.

3. **Purchase Orders**

If there is no contract, then the payments were made by P.O. s approved by the division directors. Purchase Orders also use account numbers.

4. **Payments**

The Payment files are maintained by the Finance Department except payments for IS (sometimes referred to as IT). IS has been outsourced since 2000. IS payments will only show up as lump sum payments to SAIC who does all of the purchasing for suppliers and has paid them as a third party since January 1, 2012. Before SAIC, purchases were through ACS from 7/1/2009-12/31/2011. The only time GSPC will see payments from IS, it will be listed under citywide contracts. Since SAIC's policies were based on ACS' requirements, the information should be compatible. Each month there should be an invoice from SAIC that has all procurements plus the payment to SAIC.

GSPC should be able to back out the vendor payments to get the amount paid to SAIC. The vendor payments can be provided in Excel. There is a work category that will track these payments and it utilizes different commodity codes than the City.

Any IS data request should be made through Anita Drake who estimates the purchases at a low $6-7 Million per year to a high of about $22 Million per year. GSPC will be mindful of the fact the department is doing close out through August 31, 2015 when making our request. GSPC will also let Ms. Drake know in advance that the firm prefers to receive data in Excel format, so that the data is not sent in Oracle's reporting format.

Finance can provide GSPC with ACH and AP payments, but wire payments will have to be requested through Sam Johnson.

If there is a contract, payments are made by a check request. The payment data has both a narrative description of the type of contract that was let and an account number that indicates the type of payment. The account numbers will show the fund number, a 6-digit service number, a 6-digit account code, and 6 digits for a grant award, if applicable.

The City does very little in credit card or purchase card payments (probably $300,000 a year) and they are not competitive, so GSPC recommends not to include those in the study.

> **Issue:**
> GSPC will have to double check the SAIC data to make sure that we are not double counting what the firm gets from SAIC and the procurement and payment data from the City.

5. Bidders

Bidders are contained in an electronic report which will include solicitation numbers. For IS, every award has a summary spreadsheet that should include all bidders.

6. Subcontractors

Engineering will have some contractor information through Manny Belen and GSPC will also be able to obtain the prevailing wage information, which is required by ordinance, from Dwayne Jones. Prime contractors must send in payment data about their subcontractors.

GSPC is as yet unsure if there is a traceable requirement to pay all subcontractors that could be used to determine subcontractors' identities. The firm will check with Sam Johnson about this issue. Mary Bright monitors MWBE payments through the

B2G system and prime contractors have to enter the payments, which their MWBE subcontractors then confirm.

7. Certified M/WBE list

MWBEs and SBEs are certified separately and through outside certification agencies. The City does not do its own certifications. The three (3) outside certifying agencies are: Uniform Certification Agency ("UCA"), WBEC and TriState Minority Supplier Development Council ("TMSDC"). For WBEC and TMSDC the City has a passcode to get their databases. MMBC used to provide the list, but has not provided one since October 2014. Instead, firms come to the City to bring their certification and can go online to register their certification with the City to be part of the EBO/SBE Programs. Part of that registration is to select NAICS codes, which can be as many as wanted and can be added to later, but can only provide services in area in which certified, also ethnicity can be indicated. Firms have to both register for the EBO Program and register on the vendor's list with Purchasing and must list NAICS codes for both. If a firm is listed as a WBE, it means that they are a Caucasian Woman owned firm.

Certification is only good for one (1) year and many firms choose not to recertify for reasons not related to their ability (e.g. not getting work). There are currently about 174 MWBEs in the EBO Program. Mary Bright can provide us with a current certification list which is about 174 certified vendors. However, there may be as many as 340 certified vendors in the Memphis MSA even though their information may not be current on the certification registries. The B2G list is an outreach list that may also contain MWBE firms. For other local lists that GSPC might pursue, Memphis Light Gas and Water uses the UCA list and Shelby County does not have a program, but they do track MWBEs.

Respectfully submitted this 9th day of August, 2015

By Michele Clark Jenkins
Project Manager
Griffin & Strong, P.C.

APPENDIX C

CITY OF MEMPHIS, TENNESSEE
DATA COLLECTION PLAN

The data collection plan utilizes the information gathered in the Data Assessment Report, and sets forth a preliminary plan for actual retrieval of the data.

A. Collect Electronic Data

Assigned	Task	Start	Finish	Completed
Mcj/fl	Submit request for electronic data including the following to **Eric Mayes in Purchasing**, specifying fields of information needed from Oracle. Eric will determine whether the request is available in a canned report or whether he will have to request it from SAIC for any data after 1/1/12 (keep in mind that the work from SAIC has a cost associated with it) 1. Vendor List – (Current) 2. Bidder List (for awards from 7/1/2009-6/30/2014) 3. Awards-(7/1/2009-6/30/2014) over $5,000 4. Solicitations-(for awards from 7/1/2009-6/30/2014) 5. Work code keys and descriptions.	8/14/15	9/4/15	
Mcj/fl	Submit request for electronic data, including the following to **Anita Drake in IS** to be provided to SAIC for IT procurements: 1. Bidder List (for awards from 7/1/2009-6/30/2014) 2. Awards-(7/1/2009-6/30/2014) over $5,000 3. Solicitations-(for awards from 7/1/2009-6/30/2014) 4. Work code keys and descriptions. 5. Order Letters (PDF format) from the City 6. Payments (7/1/2009-6/30/2014)	8/14/15	9/18/15	
Mcj/fl	Submit request for electronic data, including the following to **Eric Mayes in Purchasing to be provided to Black and Veatch** for the Sewer Assessment Rehabilitation Project (SARP 10) procurements: 1. Bidder List (for awards from 7/1/2009-6/30/2014) 2. Awards-(7/1/2009-6/30/2014) over $5,000 3. Solicitations-(for awards from 7/1/2009-6/30/2014) 4. Work code keys and descriptions. 5. Order Letters (PDF format) from the City	8/14/15	9/18/15	

Mcj/fl	Submit request for electronic data including the following to **Yolanda Alexander, Deputy Comptroller and cc: Myra Moses, Supervisor, Accts Payable**. Also send to Sam Johnson for ACH and AP payments. 1. Payments (7/1/2009-6/30/2014) (If possible filter out employee payments, travel, expenses, legal settlements, purchase of land, and if possible non-competitive contracts, if not, GSPC will filter out using GL codes. 2. GL codes and descriptions 3. P.O's (7/1/2009-6/3/2014) 4. Subcontractor Payments from Sam Johnson	8/14/15	9/18/15	
Mcj/fl	Submit request for PDF copies of **prevailing wage information from Dwayne Jones** for subcontractors. (7/1/2009-6/30/2014)	8/14/15	9/18/15	
Mcj/fl	Submit request for electronic data for subcontractor information for construction to **Manny Belen in Engineering** (7/1/2009-6/30/2014)	8/14/15	9/18/15	
Mcj/fl	Submit request for electronic data including the following to **Mary Bright in Contract Compliance** 1. MWBE Certification Lists 2. MWBE subcontractor payments (7/1/2009-6/30/2014 awards)	8/14/15	9/18/15	
	ALL ELECTRONIC DATA COLLECTED	9/18/15		

B. Prime Vendor Questionnaire

Assigned	Task	Start	Finish	Completed
Mcj/sj	Prepare questions for Prime Vendor Questionnaire – primary purpose is to obtain subcontractor data, as well as information on the prime itself to verify the City's data.	8/24/15	8/28/15	
Mcj/sj	Prepare letter for signature by City Manager/Mayer to accompany the questionnaire (letter should be dated 9/21/15	8/24/15	8/28/15	
Mcj/sj	Obtain data file of all contracts and awards from Eric Mayes, Anita Drake (from SAIC) and from Black & Veatch.	8/14/15	8/31/15	
fl	Clean data files to prepare for mail merge	9/3/15	9/5/15	
Sj to Mailing House	Send survey instrument to mailing house to do mail merge a)Vendor Name & Address and b) Contract information, then questionnaires sent by mailing house with a return date of 10/2/2015	9/9/15	9/9/15	
Ra/spm	Phone or email follow up on all unreturned questionnaires 10/5/2015	10/5/15	10/9/15	
	ALL COMPLETED QUESTIONNAIRES IN BY	10/9/15		

C. Survey of Business Owners

Assigned	Task	Start	Finish	Completed
Igs/price	Prepare questions for Survey of Business Owners primary use is for Private Sector Analysis and Anecdotal Evidence	10/5/15	10/9/15	
Mcj	Obtain City of Memphis's current Vendor list from Eric Mayes	8/14/15	9/11/15	
Fl	Clean data files	9/14/15	9/18/15	
Mcj/tj/price	Take a random stratified sample of firms in each of the major purchasing category construction, professional services, other services, or goods	9/21/15	9/25/15	
Burruss Institute	Send questions and sample information to Burruss to conduct the telephone survey of at least 300 firms	9/28/15	11/20/15	
	ALL SURVEYS RECEIVED BY GSPC	11/20/15		

D. Purchasing Practices, Policies & Procedures Interviews

Assigned	Task	Start	Finish	Completed
CMc	Contact Purchasing buyers and departments to make appoints to be interviewed	8/10/15	9/25/15	
CMc	Conduct approx. 60 minute interviews with each department or persons to ascertain their understanding of both policy and practices	8/10/15	9/25/15	
CMc	Interviews will be written up as completed	8/15/15	9/25/15	
	PURCHASING PRACTICES INTERVIEWS COMPLETED	9/25/15		

E. Anecdotal Evidence

Assigned	Task	Start	Finish	Completed
Mc/FL	Take random sample of Relevant market Vendors, ask Mary Bright for outspoken vendors and civil leaders to interview in addition to the sample.	9/1/15	9/11/15	
CMc	Set up in-person interviews	9/14/15	9/25/15	
CMc	Conduct interviews using a script but receiving information not on script as well (interviews are recorded) and write up summary of interviews, particularly documenting any accounts of marketplace discrimination	9/14/15	11/20/15	
Rks/igs	Conduct public hearing	11/1/15	11/15/15	
	ANECDOTAL EVIDENCE COLLECTED	11/20/15		

F. Private Sector Analysis

Assigned	Task	Start	Finish	Completed
Price	Collect publicly available data e.g. census and economic data as useful	11/1/15	3/18/16	
	PRIVATE SECTOR DATA COLLECTED	3/18/16		

G. External Data

Assigned	Task	Start	Finish	Completed
Igs/mcj	Request electronic vendor data from State of Tennessee, Shelby County, Memphis County Schools, MetroNashville Government	8/14/15	10/9/15	
lgs	Research and request recent disparity studies (executive summaries) from nearby jurisdictions	8/14/15	10/9/15	
	EXTERNAL DATA COLLECTED	10/9/15		

Personnel Assigned Key

Mcj – Michele Clark Jenkins, Project Manager

Igs-Imani Strong, Deputy Project Manager

Tj-Tanesha Jones, Data Analyst

Fl-Felicia Loetscher, Data Analyst

Sj-Susan Johnson, Project Administrator

Ams-Andrea Stokes, Administration Support/Data Entry

Ra-Rachel Anderson, Administration Support/Data Entry

CMc-Carlee McCullough, Local Subcontractor

Pc-Paul Cheng, Data Entry

Price-Dr. Gregory Price, Senior Economist

Respectfully submitted this 10th day of August, 2015

By Michele Clark Jenkins
Project Manager
Griffin & Strong, P.C.

APPENDIX D

Table A
Contract Thresholds by Race/Ethnicity/Gender
Memphis Disparity Study

African American			
Award Threshold	**Number of Awards**	**Percent of Awards**	**Dollars**
5,000 to 10,000	10	14.08%	$75,727
10,000 to 25,000	18	25.35%	$310,715
25,000 to 50,0000	14	19.72%	$490,608
50,000 to 100,000	7	9.86%	$511,110
100,000 to 500,000	18	25.35%	$4,367,404
500,000 to 1,000,000	1	1.41%	$535,000
1,000,000 to 1,500,000	2	2.82%	$2,211,892
1,500,000 to 2,000,000	1	1.41%	$1,954,511
2,000,000 to 2,500,000		0.00%	
2,500,000 to 5,000,000		0.00%	
5,000,000 to 7,500,000		0.00%	
7,500,000 to 10,000,000		0.00%	
10,000,000 to 15,000,000		0.00%	
15,000,000 to 20,000,000		0.00%	
20,000,000 to 25,000,000		0.00%	
25,000,000 to 30,000,000		0.00%	
Under 36,500,000		0.00%	
Total	71	100.00%	$10,456,967
Griffin & Strong, P.C. 2016			

Average: $ 147,281

Table B
Contract Thresholds by Race/Ethnicity/Gender
Memphis Disparity Study

Asian American			
Award Threshold	**Number of Awards**	**Percent of Awards**	**Dollars**
5,000 to 10,000	0	0.00%	$0
10,000 to 25,000	3	4.23%	$40,204
25,000 to 50,0000	4	5.63%	$120,000
50,000 to 100,000	1	1.41%	$51,600
100,000 to 500,000	1	1.41%	$410,008
500,000 to 1,000,000	1	1.41%	$883,620
1,000,000 to 1,500,000	0	0.00%	$0
1,500,000 to 2,000,000	0	0.00%	$0
2,000,000 to 2,500,000	0	0.00%	$0
2,500,000 to 5,000,000	0	0.00%	$0
5,000,000 to 7,500,000	0	0.00%	$0
7,500,000 to 10,000,000	0	0.00%	$0
10,000,000 to 15,000,000	0	0.00%	$0
15,000,000 to 20,000,000	0	0.00%	$0
20,000,000 to 25,000,000	0	0.00%	$0
25,000,000 to 30,000,000	0	0.00%	$0
Under 36,500,000	0	0.00%	$0
Total	10	14.08%	$1,505,431
Griffin & Strong, P.C. 2016		0.00%	

Average:	**$ 150,543**

Table C
Contract Thresholds by Race/Ethnicity/Gender
Memphis Disparity Study

Hispanic American			
Award Threshold	**Number of Awards**	**Percent of Awards**	**Dollars**
5,000 to 10,000	0	0.00%	$0
10,000 to 25,000	0	0.00%	$0
25,000 to 50,0000	0	0.00%	$0
50,000 to 100,000	0	0.00%	$0
100,000 to 500,000	0	0.00%	$0
500,000 to 1,000,000	0	0.00%	$0
1,000,000 to 1,500,000	0	0.00%	$0
1,500,000 to 2,000,000	0	0.00%	$0
2,000,000 to 2,500,000	0	0.00%	$0
2,500,000 to 5,000,000	0	0.00%	$0
5,000,000 to 7,500,000	0	0.00%	$0
7,500,000 to 10,000,000	0	0.00%	$0
10,000,000 to 15,000,000	0	0.00%	$0
15,000,000 to 20,000,000	0	0.00%	$0
20,000,000 to 25,000,000	0	0.00%	$0
25,000,000 to 30,000,000	0	0.00%	$0
Under 36,500,000	0	0.00%	$0
Total	0	0.00%	$0
Griffin & Strong, P.C. 2016		0.00%	

Average: $0

Table D
Contract Thresholds by Race/Ethnicity/Gender
Memphis Disparity Study

Native American			
Award Threshold	Number of Awards	Percent of Awards	Dollars
5,000 to 10,000	0	0.00%	$0
10,000 to 25,000	0	0.00%	$0
25,000 to 50,0000	0	0.00%	$0
50,000 to 100,000	0	0.00%	$0
100,000 to 500,000	0	0.00%	$0
500,000 to 1,000,000	0	0.00%	$0
1,000,000 to 1,500,000	0	0.00%	$0
1,500,000 to 2,000,000	0	0.00%	$0
2,000,000 to 2,500,000	0	0.00%	$0
2,500,000 to 5,000,000	0	0.00%	$0
5,000,000 to 7,500,000	0	0.00%	$0
7,500,000 to 10,000,000	0	0.00%	$0
10,000,000 to 15,000,000	0	0.00%	$0
15,000,000 to 20,000,000	0	0.00%	$0
20,000,000 to 25,000,000	0	0.00%	$0
25,000,000 to 30,000,000	0	0.00%	$0
Under 36,500,000	0	0.00%	$0
Total	0	0.00%	$0
Griffin & Strong, P.C. 2016		0.00%	

Average:	**$0**

Table E
Contract Thresholds by Race/Ethnicity/Gender
Memphis Disparity Study

Woman			
Award Threshold	**Number of Awards**	**Percent of Awards**	**Dollars**
5,000 to 10,000	9	18.00%	$74,813
10,000 to 25,000	13	26.00%	$186,789
25,000 to 50,0000	12	24.00%	$396,262
50,000 to 100,000	5	10.00%	$378,312
100,000 to 500,000	7	14.00%	$1,292,901
500,000 to 1,000,000	2	4.00%	$1,396,927
1,000,000 to 1,500,000	1	2.00%	$1,221,625
1,500,000 to 2,000,000	1	2.00%	$1,892,696
2,000,000 to 2,500,000	0	0.00%	$0
2,500,000 to 5,000,000	0	0.00%	$0
5,000,000 to 7,500,000	0	0.00%	$0
7,500,000 to 10,000,000	0	0.00%	$0
10,000,000 to 15,000,000	0	0.00%	$0
15,000,000 to 20,000,000	0	0.00%	$0
20,000,000 to 25,000,000	0	0.00%	$0
25,000,000 to 30,000,000	0	0.00%	$0
Under 36,500,000	0	0.00%	$0
Total	50	100.00%	$6,840,327
Griffin & Strong, P.C. 2016		0.00%	

Average:	**$**	**136,807**

Table F
Contract Thresholds by Race/Ethnicity/Gender
Memphis Disparity Study

MBE			
Award Threshold	**Number of Awards**	**Percent of Awards**	**Dollars**
5,000 to 10,000	0	0.00%	$0
10,000 to 25,000	0	0.00%	$0
25,000 to 50,0000	0	0.00%	$0
50,000 to 100,000	0	0.00%	$0
100,000 to 500,000	0	0.00%	$0
500,000 to 1,000,000	0	0.00%	$0
1,000,000 to 1,500,000	0	0.00%	$0
1,500,000 to 2,000,000	0	0.00%	$0
2,000,000 to 2,500,000	0	0.00%	$0
2,500,000 to 5,000,000	0	0.00%	$0
5,000,000 to 7,500,000	0	0.00%	$0
7,500,000 to 10,000,000	0	0.00%	$0
10,000,000 to 15,000,000	0	0.00%	$0
15,000,000 to 20,000,000	0	0.00%	$0
20,000,000 to 25,000,000	0	0.00%	$0
25,000,000 to 30,000,000	0	0.00%	$0
Under 36,500,000	0	0.00%	$0
Total	0	0.00%	$0
Griffin & Strong, P.C. 2016		0.00%	

Average:	**$0**

Table G
Contract Thresholds by Race/Ethnicity/Gender
Memphis Disparity Study

Total MWBE			
Award Threshold	Number of Awards	Percent of Awards	Dollars
5,000 to 10,000	19	26.76%	$150,540
10,000 to 25,000	34	47.89%	$537,708
25,000 to 50,0000	30	42.25%	$1,006,871
50,000 to 100,000	13	18.31%	$941,022
100,000 to 500,000	26	36.62%	$6,070,313
500,000 to 1,000,000	4	5.63%	$2,815,547
1,000,000 to 1,500,000	3	4.23%	$3,433,517
1,500,000 to 2,000,000	2	2.82%	$3,847,207
2,000,000 to 2,500,000	0	0.00%	$0
2,500,000 to 5,000,000	0	0.00%	$0
5,000,000 to 7,500,000	0	0.00%	$0
7,500,000 to 10,000,000	0	0.00%	$0
10,000,000 to 15,000,000	0	0.00%	$0
15,000,000 to 20,000,000	0	0.00%	$0
20,000,000 to 25,000,000	0	0.00%	$0
25,000,000 to 30,000,000	0	0.00%	$0
Under 36,500,000	0	0.00%	$0
Total	131	184.51%	$18,802,725
Griffin & Strong, P.C. 2016		0.00%	

Average:	**$ 142,483**

Table H
Contract Thresholds by Race/Ethnicity/Gender
Memphis Disparity Study

Non MWBE			
Award Threshold	**Number of Awards**	**Percent of Awards**	**Dollars**
5,000 to 10,000	606	14.23%	$4,440,277
10,000 to 25,000	1176	27.62%	$19,476,779
25,000 to 50,0000	1012	23.77%	$37,244,083
50,000 to 100,000	462	10.85%	$32,755,453
100,000 to 500,000	705	16.56%	$154,433,793
500,000 to 1,000,000	144	3.38%	$98,453,753
1,000,000 to 1,500,000	40	0.94%	$48,052,874
1,500,000 to 2,000,000	29	0.68%	$48,583,591
2,000,000 to 2,500,000	17	0.40%	$37,112,147
2,500,000 to 5,000,000	41	0.96%	$139,839,390
5,000,000 to 7,500,000	10	0.23%	$61,561,442
7,500,000 to 10,000,000	6	0.14%	$52,153,176
10,000,000 to 15,000,000	4	0.09%	$51,149,067
15,000,000 to 20,000,000	5	0.12%	$81,541,032
20,000,000 to 25,000,000	0	0.00%	$0
25,000,000 to 30,000,000	0	0.00%	$0
	1	0.02%	$30,000,000
Total	4258	100.00%	$896,796,857
Griffin & Strong, P.C. 2016		0.00%	

Average:	**$**	**210,615**

APPENDIX E

Prime Vendor Questionnaire
Memphis Updated Disparity Study - 2016

Prime Vendor Name_____ Memphis Vendor ID#_____

Prime Vendor Address_____City_____ ST_____Zip_____

Prime Vendor Phone_____Prime Vendor Email_____

Prime Vendor 51% or More Ownership: Caucasian Man Caucasian Woman African American Asian Hispanic Native American

Publicly Traded Not-for-Profit Governmental Entity If certified, list one current Certifying Agency _____

Project/Contract Number_____ Project/Contract Description _____ Project/Contract Date_____

Prime Vendor NIGP Code _____Contract Work Category (circle one) Construction A/E Other Professional Services Non-Professional Services

Goods & Supplies

DID YOU USE SUBCONTRACTORS? YES NO. PLEASE PROVIDE INFORMATION BELOW FOR ANY SUBCONTRACTORS UTILIZED.

Subcontractor/ Subconsultant Memphis Vendor ID No.	Subcontractor/ Subconsultant Name	Subcontractor City, State, Zip	MWBE/DBE Status of Subcontractor (see list above)	Scope of Work Performed (Description)	Subcontractor NIGP Code or Work Category (Const. A/E, Other Prof Svces, Non-Prof Svces, or Goods/Supplies	Actual Subcontractor Award, including modifications	Actual Prime Contract Award, including modifications

Please return questionnaire by July 13, 2016 to: Memphis Disparity Study, c/o Griffin & Strong, P.C., Box 368, Kennesaw, GA 30144 or email to MemphisStudy@gspclaw.com, or fax to 404-584-9730

Question #1: How many years has your firm been in operation? _____

Question #2: How many employees do you have on staff? _____

Question #3: How many full-time employees do you have? _____

Question #4: How many part-time employees do you have? _____

For the following financial questions, please circle the appropriate response.

Question #5: What was the gross revenue of your company for 2014? Circle the correct range.

Under $100,000	$100,000-$249,000	$250,000-$499,000	$500,000-$749,000	$750,000-$999,999	$1,000,000-$4,999,999	$5,000,000-$9,999,999	$10,000,000 $25,000,000	$25,000,000 and above

Question #6: What was the highest individual public or private contract/award received by your firm since 2010? If under $500,000 check here_____.

2010	**2011**	**2012**	**2013**	**2014**
$500,000 to $1,000,000	$500,000 to $1,000,000	$500,000 to $1,000,000	$500,000 to $1,000,000	$500,000 to $1,000,000
$1,000,001 to $2,000,000	$1,000,001 to $2,000,000	$1,000,001 to $2,000,000	$1,000,001 to $2,000,000	$1,000,001 to $2,000,000
$2,000,001 to $3,000,000	$2,000,001 to $3,000,000	$2,000,001 to $3,000,000	$2,000,001 to $3,000,000	$2,000,001 to $3,000,000
$3,000,001 and $5,000,000	$3,000,001 and $5,000,000	$3,000,001 and $5,000,000	$3,000,001 and $5,000,000	$3,000,001 and $5,000,000
$5,000,001 to $7,500,000	$5,000,001 to $7,500,000	$5,000,001 to $7,500,000	$5,000,001 to $7,500,000	$5,000,001 to $7,500,000
$7,500,001 to $10,000,000	$7,500,001 to $10,000,000	$7,500,001 to $10,000,000	$7,500,001 to $10,000,000	$7,500,001 to $10,000,000
$10,000,001 to $20,000,001	$10,000,001 to $20,000,001	$10,000,001 to $20,000,001	$10,000,001 to $20,000,001	$10,000,001 to $20,000,001
$20,000,000 and greater	$20,000,000 and greater	$20,000,000 and greater	$20,000,000 and greater	$20,000,000 and greater

APPENDIX F

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q1 Which one of the following is your company's primary line of business?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Construction services	13 10.7%	12 19.7%	19 26.0%	0 0.0%	2 100.0%	1 100.0%	1 20.0%	1 7.1%	49 17.4%
Architecture and Engineering	10 8.2%	5 8.2%	2 2.7%	3 75.0%	0 0.0%	0 0.0%	0 0.0%	1 7.1%	21 7.4%
Other Professional Services	34 27.9%	20 32.8%	32 43.8%	0 0.0%	0 0.0%	0 0.0%	3 60.0%	6 42.9%	95 33.7%
Non-Professional Services	4 3.3%	2 3.3%	8 11.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	4 28.6%	18 6.4%
Goods & Supplies	61 50.0%	21 34.4%	10 13.7%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	2 14.3%	96 34.0%
No response	0 0.0%	1 1.6%	2 2.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	3 1.1%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q2 In what year range was your company established?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Before 1961	23 18.9%	3 4.9%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 40.0%	3 21.4%	31 11.0%
1960-1979	39 32.0%	9 14.8%	6 8.2%	0 0.0%	0 0.0%	0 0.0%	2 40.0%	5 35.7%	61 21.6%
1980-1989	27 22.1%	9 14.8%	3 4.1%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	3 21.4%	44 15.6%
1990-1999	18 14.8%	18 29.5%	26 35.6%	2 50.0%	1 50.0%	1 100.0%	0 0.0%	3 21.4%	69 24.5%
2000-2009	13 10.7%	17 27.9%	32 43.8%	1 25.0%	1 50.0%	0 0.0%	0 0.0%	0 0.0%	64 22.7%
2010-2015	0 0.0%	5 8.2%	6 8.2%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	11 3.9%
No response	2 1.6%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 0.7%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q3 Is your company a sole proprietor, partnership, corporation, or other?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Sole proprietor	10 8.2%	11 18.0%	25 34.2%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	47 16.7%
Corporation	83 68.0%	31 50.8%	26 35.6%	1 25.0%	1 50.0%	1 100.0%	1 20.0%	7 50.0%	151 53.5%
Limited Liability Corporation	22 18.0%	13 21.3%	16 21.9%	2 50.0%	1 50.0%	0 0.0%	1 20.0%	0 0.0%	55 19.5%
Partnership	1 0.8%	2 3.3%	3 4.1%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	6 2.1%
Limited Liability Partnership	2 1.6%	4 6.6%	1 1.4%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	7 2.5%
Non-Profit Organization	1 0.8%	0 0.0%	1 1.4%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	6 42.9%	9 3.2%
Governmental Agency	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 7.1%	1 0.4%
Other (specify)	1 0.8%	0 0.0%	1 1.4%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	0 0.0%	3 1.1%
Publicly Traded Company (Owners of publicly traded stock)	1 0.8%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	0 0.0%	2 0.7%
No response	1 0.8%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 0.4%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q4 On average, how many employees does your company keep on the payroll, including full-time and part-time staff?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
1-10	38 31.1%	34 55.7%	55 75.3%	2 50.0%	1 50.0%	1 100.0%	1 20.0%	4 28.6%	136 48.2%
11-30	27 22.1%	17 27.9%	11 15.1%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	3 21.4%	60 21.3%
31-50	10 8.2%	4 6.6%	1 1.4%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	1 7.1%	17 6.0%
51-75	12 9.8%	1 1.6%	3 4.1%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 14.3%	18 6.4%
76-100	8 6.6%	1 1.6%	2 2.7%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	1 7.1%	13 4.6%
Over 100	24 19.7%	4 6.6%	1 1.4%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	3 21.4%	34 12.1%
No response	3 2.5%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	0 0.0%	4 1.4%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q5 On average, how many racial or ethnic minority employees does your company keep on the payroll, including full-time and part-time staff?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
None	25 20.5%	12 19.7%	4 5.5%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	0 0.0%	42 14.9%
1-5	37 30.3%	31 50.8%	42 57.5%	3 75.0%	2 100.0%	1 100.0%	0 0.0%	2 14.3%	118 41.8%
6-10	11 9.0%	8 13.1%	12 16.4%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	1 7.1%	33 11.7%
11-15	9 7.4%	2 3.3%	7 9.6%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 14.3%	20 7.1%
16-20	3 2.5%	0 0.0%	3 4.1%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	1 7.1%	8 2.8%
21 or More	29 23.8%	5 8.2%	5 6.8%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	5 35.7%	45 16.0%
No response	8 6.6%	3 4.9%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 40.0%	3 21.4%	16 5.7%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q6 On average, how many women employees does your company keep on the payroll, including full-time and part-time staff?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
None	8 6.6%	1 1.6%	10 13.7%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	0 0.0%	21 7.4%
1-5	52 42.6%	46 75.4%	50 68.5%	2 50.0%	2 100.0%	1 100.0%	0 0.0%	2 14.3%	155 55.0%
6-10	18 14.8%	7 11.5%	7 9.6%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	2 14.3%	35 12.4%
11-15	10 8.2%	1 1.6%	2 2.7%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	1 7.1%	15 5.3%
16-20	7 5.7%	1 1.6%	1 1.4%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	4 28.6%	13 4.6%
21 or More	21 17.2%	4 6.6%	3 4.1%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	3 21.4%	32 11.3%
No response	6 4.9%	1 1.6%	0 0.0%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	2 14.3%	11 3.9%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q8 Is at least 51% percent of your company owned and controlled by a woman or women?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	4 3.3%	57 93.4%	22 30.1%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	3 21.4%	88 31.2%
No	116 95.1%	3 4.9%	49 67.1%	3 75.0%	2 100.0%	1 100.0%	2 40.0%	5 35.7%	181 64.2%
No response	2 1.6%	1 1.6%	2 2.7%	0 0.0%	0 0.0%	0 0.0%	2 40.0%	6 42.9%	13 4.6%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q9 What is the highest level of education completed by the owner of your company?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Some High School	1 0.8%	1 1.6%	0 0.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	0 0.0%	3 1.1%
High School graduate	9 7.4%	6 9.8%	4 5.5%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	19 6.7%
Some College	14 11.5%	16 26.2%	22 30.1%	0 0.0%	0 0.0%	1 100.0%	0 0.0%	1 7.1%	54 19.1%
College Graduate	57 46.7%	23 37.7%	25 34.2%	3 75.0%	1 50.0%	0 0.0%	1 20.0%	1 7.1%	111 39.4%
Post Graduate Degree	30 24.6%	12 19.7%	13 17.8%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	4 28.6%	61 21.6%
Trade or Technical Certificate	1 0.8%	0 0.0%	4 5.5%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	1 7.1%	7 2.5%
Don't know	10 8.2%	3 4.9%	5 6.8%	0 0.0%	0 0.0%	0 0.0%	2 40.0%	7 50.0%	27 9.6%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q10 How many years of experience in your company's business line does the primary owner of your company have?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
1-5	2 1.6%	1 1.6%	3 4.1%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	6 2.1%
6-10	0 0.0%	5 8.2%	4 5.5%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 7.1%	10 3.5%
11-15	1 0.8%	5 8.2%	13 17.8%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 7.1%	20 7.1%
16-20	4 3.3%	4 6.6%	13 17.8%	1 25.0%	1 50.0%	0 0.0%	0 0.0%	1 7.1%	24 8.5%
More than 20	107 87.7%	44 72.1%	38 52.1%	3 75.0%	1 50.0%	1 100.0%	4 80.0%	7 50.0%	205 72.7%
Don't know	8 6.6%	2 3.3%	2 2.7%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	4 28.6%	17 6.0%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q11 Company gross revenues for calendar year 2014

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
$50,000 or less	1 0.8%	4 6.6%	13 17.8%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	18 6.4%
$50,001 - $100,000	2 1.6%	2 3.3%	12 16.4%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	17 6.0%
$100,001 - $300,000	6 4.9%	4 6.6%	12 16.4%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 7.1%	23 8.2%
$300,001 - $500,000	6 4.9%	3 4.9%	9 12.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	18 6.4%
$500,001 - $1,000,000	10 8.2%	11 18.0%	9 12.3%	0 0.0%	1 50.0%	1 100.0%	0 0.0%	2 14.3%	34 12.1%
$1,000,001 - $3,000,000	22 18.0%	19 31.1%	9 12.3%	2 50.0%	0 0.0%	0 0.0%	2 40.0%	4 28.6%	58 20.6%
$3,000,001 - $5,000,000	14 11.5%	4 6.6%	4 5.5%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	22 7.8%
$5,000,001 - $10,000,000	10 8.2%	2 3.3%	1 1.4%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	0 0.0%	14 5.0%
Over $10 million	33 27.0%	6 9.8%	2 2.7%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	3 21.4%	46 16.3%
No response	18 14.8%	6 9.8%	2 2.7%	0 0.0%	0 0.0%	0 0.0%	2 40.0%	4 28.6%	32 11.3%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q12 Company public sector gross (government) revenues for calendar year 2014.

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
$50,000 or less	16 13.1%	20 32.8%	34 46.6%	1 25.0%	1 50.0%	0 0.0%	1 20.0%	5 35.7%	78 27.7%
$50,001 - $100,000	23 18.9%	5 8.2%	6 8.2%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 7.1%	35 12.4%
$100,001 - $300,000	11 9.0%	9 14.8%	10 13.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	30 10.6%
$300,001 - $500,000	7 5.7%	3 4.9%	7 9.6%	1 25.0%	0 0.0%	1 100.0%	0 0.0%	1 7.1%	20 7.1%
$500,001 - $1,000,000	9 7.4%	7 11.5%	3 4.1%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 14.3%	21 7.4%
$1,000,001 - $3,000,000	7 5.7%	2 3.3%	3 4.1%	1 25.0%	1 50.0%	0 0.0%	0 0.0%	0 0.0%	14 5.0%
$3,000,001 - $5,000,000	7 5.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 7.1%	8 2.8%
$5,000,001 to $10,000,000	7 5.7%	1 1.6%	2 2.7%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	1 7.1%	12 4.3%
over $10 million	14 11.5%	2 3.3%	0 0.0%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	1 7.1%	18 6.4%
No response	21 17.2%	12 19.7%	8 11.0%	0 0.0%	0 0.0%	0 0.0%	3 60.0%	2 14.3%	46 16.3%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q13 Are you required to have bonding for the type of work your company bids?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	26 21.3%	6 9.8%	31 42.5%	0 0.0%	1 50.0%	1 100.0%	1 20.0%	2 14.3%	68 24.1%
No	84 68.9%	50 82.0%	36 49.3%	4 100.0%	1 50.0%	0 0.0%	3 60.0%	6 42.9%	184 65.2%
99	12 9.8%	5 8.2%	6 8.2%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	6 42.9%	30 10.6%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q14 What is your current aggregate bonding limit?

	Caucasian Male	Caucasian Female	African American	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Below $100,000	1 4.0%	0 0.0%	5 16.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	6 9.1%
$100,001 to $500,000	2 8.0%	1 16.7%	6 20.0%	0 0.0%	0 0.0%	0 0.0%	1 50.0%	10 15.2%
$500,001 to $1,000,000	1 4.0%	0 0.0%	5 16.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	6 9.1%
$1,000,001 to $1,500,000	3 12.0%	1 16.7%	3 10.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	8 12.1%
Over $1,500,000	14 56.0%	4 66.7%	10 33.3%	1 100.0%	0 0.0%	1 100.0%	1 50.0%	31 47.0%
Don't know	4 16.0%	0 0.0%	1 3.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	5 7.6%
Total	25 100.0%	6 100.0%	30 100.0%	1 100.0%	1 100.0%	1 100.0%	2 100.0%	66 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q15 What is your current single project bonding limit?

	Caucasian Male	Caucasian Female	African American	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Below $100,000	1 4.2%	0 0.0%	5 16.7%	0 0.0%	0 0.0%	0 0.0%	1 50.0%	7 10.8%
$100,001 to $500,000	3 12.5%	1 16.7%	5 16.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	9 13.8%
$500,001 to $1,000,000	4 16.7%	0 0.0%	4 13.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	8 12.3%
$1,000,001 to $1,500,000	3 12.5%	3 50.0%	5 16.7%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	12 18.5%
Over $1,500,000	9 37.5%	2 33.3%	8 26.7%	1 100.0%	0 0.0%	1 100.0%	0 0.0%	21 32.3%
Don't know	4 16.7%	0 0.0%	3 10.0%	0 0.0%	0 0.0%	0 0.0%	1 50.0%	8 12.3%
Total	24 100.0%	6 100.0%	30 100.0%	1 100.0%	1 100.0%	1 100.0%	2 100.0%	65 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q16_1 From 2010-2014, how many times has your company submitted bids or proposals for projects as prime contractor on – City of Memphis Public Projects

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
None	33 27.0%	25 41.0%	19 26.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	5 35.7%	83 29.4%
1-10	52 42.6%	21 34.4%	34 46.6%	2 50.0%	1 50.0%	1 100.0%	2 40.0%	4 28.6%	117 41.5%
11-25	12 9.8%	3 4.9%	10 13.7%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	2 14.3%	29 10.3%
26-50	3 2.5%	1 1.6%	5 6.8%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	9 3.2%
51-100	2 1.6%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 0.7%
Over 100	1 0.8%	1 1.6%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 0.7%
No response	19 15.6%	10 16.4%	5 6.8%	1 25.0%	0 0.0%	0 0.0%	2 40.0%	3 21.4%	40 14.2%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q16_2 From 2010-2014, how many times has your company submitted bids or proposals for projects as prime contractor on - Private Sector Projects

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
None	26 21.3%	16 26.2%	15 20.5%	0 0.0%	1 50.0%	0 0.0%	1 20.0%	6 42.9%	65 23.0%
1-10	17 13.9%	11 18.0%	28 38.4%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	57 20.2%
11-25	8 6.6%	7 11.5%	5 6.8%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	2 14.3%	23 8.2%
26-50	8 6.6%	4 6.6%	9 12.3%	1 25.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	23 8.2%
51-100	9 7.4%	4 6.6%	3 4.1%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	17 6.0%
Over 100	26 21.3%	6 9.8%	2 2.7%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	2 14.3%	37 13.1%
No response	28 23.0%	13 21.3%	11 15.1%	1 25.0%	0 0.0%	0 0.0%	3 60.0%	4 28.6%	60 21.3%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q16_3 From 2010-2014, how many times has your company submitted bids or proposals for projects as prime contractor on – Other Public Sector (non-City Projects)

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
None	25 20.5%	22 36.1%	16 21.9%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	4 28.6%	68 24.1%
1-10	28 23.0%	11 18.0%	30 41.1%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	3 21.4%	74 26.2%
11-25	12 9.8%	8 13.1%	6 8.2%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	1 7.1%	28 9.9%
26-50	10 8.2%	1 1.6%	4 5.5%	1 25.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	17 6.0%
51-100	5 4.1%	2 3.3%	1 1.4%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 7.1%	9 3.2%
Over 100	10 8.2%	1 1.6%	2 2.7%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	2 14.3%	16 5.7%
No response	32 26.2%	16 26.2%	14 19.2%	1 25.0%	1 50.0%	0 0.0%	3 60.0%	3 21.4%	70 24.8%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q17_1 From 2010-2014, has your company performed any work as a prime contractor for City of Memphis Public Projects?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	37 52.9%	16 61.5%	17 34.7%	2 66.7%	0 0.0%	0 0.0%	3 100.0%	5 83.3%	80 50.3%
No	30 42.9%	9 34.6%	31 63.3%	1 33.3%	1 100.0%	1 100.0%	0 0.0%	1 16.7%	74 46.5%
Don't know	3 4.3%	1 3.8%	1 2.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	5 3.1%
Total	70 100.0%	26 100.0%	49 100.0%	3 100.0%	1 100.0%	1 100.0%	3 100.0%	6 100.0%	159 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q17_2 From 2010-2014, has your company performed any work as a prime contractor for Private Sector Projects?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Other (specify)	Total
Yes	47 70.1%	19 59.4%	37 78.7%	2 66.7%	1 100.0%	1 100.0%	4 100.0%	111 71.6%
No	15 22.4%	11 34.4%	10 21.3%	1 33.3%	0 0.0%	0 0.0%	0 0.0%	37 23.9%
Don't know	5 7.5%	2 6.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	7 4.5%
Total	67 100.0%	32 100.0%	47 100.0%	3 100.0%	1 100.0%	1 100.0%	4 100.0%	155 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q17_3 From 2010-2014, has your company performed any work as a prime contractor for Other Public Sector (non-City projects)?

	Caucasian Male	Caucasian Female	African American	Asian	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	42 64.6%	13 56.5%	32 74.4%	2 66.7%	1 100.0%	0 0.0%	6 85.7%	96 67.1%
No	19 29.2%	9 39.1%	11 25.6%	1 33.3%	0 0.0%	1 100.0%	1 14.3%	42 29.4%
Don't know	4 6.2%	1 4.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	5 3.5%
Total	65 100.0%	23 100.0%	43 100.0%	3 100.0%	1 100.0%	1 100.0%	7 100.0%	143 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q18_1 From 2010-2014, did your company use a subcontractor or sub-consultant on projects in City of Memphis Public Projects?

	Caucasian Male	Caucasian Female	African American	Asian	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	14 40.0%	6 40.0%	8 47.1%	2 100.0%	2 66.7%	1 20.0%	33 42.9%
No	19 54.3%	9 60.0%	9 52.9%	0 0.0%	1 33.3%	4 80.0%	42 54.5%
Don't know	2 5.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 2.6%
Total	35 100.0%	15 100.0%	17 100.0%	2 100.0%	3 100.0%	5 100.0%	77 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q18_2 From 2010-2014, did your company used a subcontractor or sub-consultant on projects in Private Sector Projects?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Other (specify)	
Yes	31 66.0%	8 44.4%	17 45.9%	1 50.0%	1 100.0%	1 100.0%	1 25.0%	60 54.5%
No	14 29.8%	9 50.0%	20 54.1%	1 50.0%	0 0.0%	0 0.0%	3 75.0%	47 42.7%
Don't know	2 4.3%	1 5.6%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	3 2.7%
Total	47 100.0%	18 100.0%	37 100.0%	2 100.0%	1 100.0%	1 100.0%	4 100.0%	110 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q18_3 From 2010-2014, did your company use a subcontractor or sub-consultant on projects in Other Public Sector (non-City Projects)?

	Caucasian Male	Caucasian Female	African American	Asian	Native American	Other (specify)	Total
Yes	23 56.1%	8 61.5%	18 56.3%	2 100.0%	1 100.0%	2 33.3%	54 56.8%
No	16 39.0%	5 38.5%	14 43.8%	0 0.0%	0 0.0%	4 66.7%	39 41.1%
Don't know	2 4.9%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 2.1%
Total	41 100.0%	13 100.0%	32 100.0%	2 100.0%	1 100.0%	6 100.0%	95 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q19_1 How frequently do you use minority or woman-owned subcontractors or sub-consultants on City of Memphis Public Projects?

	Caucasian Male	Caucasian Female	African American	Asian	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Very Often	8 57.1%	1 16.7%	3 37.5%	0 0.0%	1 50.0%	1 100.0%	14 42.4%
Often	4 28.6%	4 66.7%	2 25.0%	0 0.0%	0 0.0%	0 0.0%	10 30.3%
Seldom	1 7.1%	1 16.7%	0 0.0%	2 100.0%	0 0.0%	0 0.0%	4 12.1%
Never	0 0.0%	0 0.0%	1 12.5%	0 0.0%	1 50.0%	0 0.0%	2 6.1%
Don't know	1 7.1%	0 0.0%	2 25.0%	0 0.0%	0 0.0%	0 0.0%	3 9.1%
Total	14 100.0%	6 100.0%	8 100.0%	2 100.0%	2 100.0%	1 100.0%	33 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q19_2 How frequently do you use minority or woman-owned subcontractors or sub-consultants on Private Sector Projects?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Other (specify)	Total
Very Often	4 13.3%	2 25.0%	10 58.8%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	16 27.1%
Often	13 43.3%	1 12.5%	2 11.8%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	17 28.8%
Seldom	8 26.7%	2 25.0%	4 23.5%	1 100.0%	1 100.0%	1 100.0%	0 0.0%	17 28.8%
Never	1 3.3%	1 12.5%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 3.4%
Don't know	4 13.3%	2 25.0%	1 5.9%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	7 11.9%
Total	30 100.0%	8 100.0%	17 100.0%	1 100.0%	1 100.0%	1 100.0%	1 100.0%	59 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q19_3 How frequently do you use minority or woman-owned subcontractors or sub-consultants on Other Public Sector (non-City Projects)?

	Caucasian Male	Caucasian Female	African American	Asian	Native American	Other (specify)	Total
Very Often	4 17.4%	1 12.5%	10 55.6%	0 0.0%	0 0.0%	1 50.0%	16 29.6%
Often	12 52.2%	4 50.0%	4 22.2%	0 0.0%	0 0.0%	1 50.0%	21 38.9%
Seldom	5 21.7%	1 12.5%	2 11.1%	2 100.0%	1 100.0%	0 0.0%	11 20.4%
Never	0 0.0%	1 12.5%	1 5.6%	0 0.0%	0 0.0%	0 0.0%	2 3.7%
Don't know	2 8.7%	1 12.5%	1 5.6%	0 0.0%	0 0.0%	0 0.0%	4 7.4%
Total	23 100.0%	8 100.0%	18 100.0%	2 100.0%	1 100.0%	2 100.0%	54 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q20 Did you serve as a subcontractor on a City of Memphis project between 2010 and 2015?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	31 25.4%	16 26.2%	21 28.8%	3 75.0%	1 50.0%	0 0.0%	3 60.0%	3 21.4%	78 27.7%
No	79 64.8%	41 67.2%	46 63.0%	0 0.0%	1 50.0%	1 100.0%	2 40.0%	9 64.3%	179 63.5%
No response	12 9.8%	4 6.6%	6 8.2%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	2 14.3%	25 8.9%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q21 How often have you served as a subcontractor on a City of Memphis project from 2010-2015?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
1-10 times	19 63.3%	8 53.3%	19 90.5%	2 66.7%	1 100.0%	2 66.7%	2 66.7%	53 69.7%
11-25 times	7 23.3%	2 13.3%	2 9.5%	1 33.3%	0 0.0%	0 0.0%	1 33.3%	13 17.1%
26-50 times	2 6.7%	2 13.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	4 5.3%
51-100 times	1 3.3%	1 6.7%	0 0.0%	0 0.0%	0 0.0%	1 33.3%	0 0.0%	3 3.9%
Don't know	1 3.3%	2 13.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	3 3.9%
Total	30 100.0%	15 100.0%	21 100.0%	3 100.0%	1 100.0%	3 100.0%	3 100.0%	76 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q22 Have you been invited to participate in bids for public contracts with prime contractors that you...

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	39 32.0%	19 31.1%	28 38.4%	3 75.0%	1 50.0%	1 100.0%	2 40.0%	3 21.4%	96 34.0%
No	58 47.5%	31 50.8%	36 49.3%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	7 50.0%	133 47.2%
No response	25 20.5%	11 18.0%	9 12.3%	1 25.0%	0 0.0%	0 0.0%	3 60.0%	4 28.6%	53 18.8%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q23 What is the amount of time that it typically takes to receive payment from the City of Memphis fo...

	Caucasian Male	Caucasian Female	African American	Asian	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Less than 30 days	4 11.4%	1 6.7%	5 29.4%	0 0.0%	0 0.0%	1 20.0%	11 14.3%
30-60 days	19 54.3%	11 73.3%	10 58.8%	1 50.0%	2 66.7%	3 60.0%	46 59.7%
60-90 days	9 25.7%	2 13.3%	1 5.9%	1 50.0%	0 0.0%	1 20.0%	14 18.2%
90-120 days	3 8.6%	1 6.7%	1 5.9%	0 0.0%	1 33.3%	0 0.0%	6 7.8%
Total	35 100.0%	15 100.0%	17 100.0%	2 100.0%	3 100.0%	5 100.0%	77 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q24 How would you rate the quality of interaction with City of Memphis on contract opportunities?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Extremely satisfied	10 8.2%	2 3.3%	4 5.5%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	16 5.7%
Satisfied	22 18.0%	13 21.3%	9 12.3%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	2 14.3%	48 17.0%
Somewhat satisfied	14 11.5%	7 11.5%	8 11.0%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	3 21.4%	33 11.7%
Neutral	28 23.0%	19 31.1%	18 24.7%	0 0.0%	1 50.0%	1 100.0%	1 20.0%	3 21.4%	71 25.2%
Somewhat dissatisfied	15 12.3%	1 1.6%	9 12.3%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	1 7.1%	27 9.6%
Dissatisfied	7 5.7%	8 13.1%	13 17.8%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	2 14.3%	31 11.0%
Extremely dissatisfied	10 8.2%	5 8.2%	8 11.0%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	1 7.1%	26 9.2%
No response	16 13.1%	6 9.8%	4 5.5%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	2 14.3%	30 10.6%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_1 Encountered in your attempts to obtain work on projects for the City of Memphis - Pre-qualification requirements					
	Caucasian Male	Caucasian Female	African American	Other (specify)	Total
Yes	9 100.0%	10 100.0%	17 100.0%	2 100.0%	38 100.0%
Total	9 100.0%	10 100.0%	17 100.0%	2 100.0%	38 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_2 Encountered in your attempts to obtain work on projects for the City of Memphis - Performance bond requirements					
	Caucasian Male	Caucasian Female	African American	Asian	Total
Yes	5 100.0%	7 100.0%	14 100.0%	1 100.0%	27 100.0%
Total	5 100.0%	7 100.0%	14 100.0%	1 100.0%	27 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_3 Encountered in your attempts to obtain work on projects for the City of Memphis - Bid bond requirements					
	Caucasian Male	Caucasian Female	African American	Asian	Total
Yes	6 100.0%	7 100.0%	15 100.0%	1 100.0%	29 100.0%
Total	6 100.0%	7 100.0%	15 100.0%	1 100.0%	29 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_4 Encountered in your attempts to obtain work on projects for the City of Memphis - Financing				
	Caucasian Male	Caucasian Female	African American	Total
Yes	1 100.0%	6 100.0%	20 100.0%	27 100.0%
Total	1 100.0%	6 100.0%	20 100.0%	27 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_5 Encountered in your attempts to obtain work on projects for the City of Memphis - Insurance requirements						
	Caucasian Male	Caucasian Female	African American	Asian	Other (specify)	Total
Yes	7 100.0%	5 100.0%	7 100.0%	1 100.0%	1 100.0%	21 100.0%
Total	7 100.0%	5 100.0%	7 100.0%	1 100.0%	1 100.0%	21 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_6 Encountered in your attempts to obtain work on projects for the City of Memphis - Bid specifications				
	Caucasian Male	Caucasian Female	African American	Total
Yes	26 100.0%	18 100.0%	13 100.0%	57 100.0%
Total	26 100.0%	18 100.0%	13 100.0%	57 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_7 Encountered in your attempts to obtain work on projects for the City of Memphis - Limited time given to prepare bid package or quote

	Caucasian Male	Caucasian Female	African American	Hispanic	Other (specify)	Total
Yes	14 100.0%	13 100.0%	18 100.0%	1 100.0%	2 100.0%	48 100.0%
Total	14 100.0%	13 100.0%	18 100.0%	1 100.0%	2 100.0%	48 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_8 Encountered in your attempts to obtain work on projects for the City of Memphis – Limited knowledge of purchasing / contracting policies and procedures						
	Caucasian Male	Caucasian Female	African American	Hispanic	Native American	Total
Yes	13 100.0%	8 100.0%	8 100.0%	1 100.0%	1 100.0%	31 100.0%
Total	13 100.0%	8 100.0%	8 100.0%	1 100.0%	1 100.0%	31 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_9 Encountered in your attempts to obtain work on projects for the City of Memphis - Lack of experience					
	Caucasian Male	Caucasian Female	African American	Other (specify)	Total
Yes	2 100.0%	4 100.0%	3 100.0%	1 100.0%	10 100.0%
Total	2 100.0%	4 100.0%	3 100.0%	1 100.0%	10 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_10 Encountered in your attempts to obtain work on projects for the City of Memphis - Lack of personnel				
	Caucasian Male	Caucasian Female	African American	Total
Yes	3 100.0%	2 100.0%	4 100.0%	9 100.0%
Total	3 100.0%	2 100.0%	4 100.0%	9 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_11 Encountered in your attempts to obtain work on projects for the City of Memphis - Contract too large				
	Caucasian Male	Caucasian Female	African American	Total
Yes	3 100.0%	7 100.0%	12 100.0%	22 100.0%
Total	3 100.0%	7 100.0%	12 100.0%	22 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_12 Encountered in your attempts to obtain work on projects for the City of Memphis - Contract too expensive to bid					
	Caucasian Male	Caucasian Female	African American	Other (specify)	Total
Yes	4 100.0%	3 100.0%	6 100.0%	1 100.0%	14 100.0%
Total	4 100.0%	3 100.0%	6 100.0%	1 100.0%	14 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_13 Encountered in your attempts to obtain work on projects for the City of Memphis - Informal networks						
	Caucasian Male	Caucasian Female	African American	Hispanic	Other (specify)	Total
Yes	8 100.0%	7 100.0%	16 100.0%	1 100.0%	2 100.0%	34 100.0%
Total	8 100.0%	7 100.0%	16 100.0%	1 100.0%	2 100.0%	34 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_14 Encountered in your attempts to obtain work on projects for the City of Memphis - Selection process

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	26 100.0%	19 100.0%	24 100.0%	1 100.0%	1 100.0%	1 100.0%	1 100.0%	3 100.0%	76 100.0%
Total	26 100.0%	19 100.0%	24 100.0%	1 100.0%	1 100.0%	1 100.0%	1 100.0%	3 100.0%	76 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_15 Encountered in your attempts to obtain work on projects for the City of Memphis - Competing with large companies							
	Caucasian Male	Caucasian Female	African American	Asian	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	16 100.0%	20 100.0%	35 100.0%	2 100.0%	1 100.0%	4 100.0%	78 100.0%
Total	16 100.0%	20 100.0%	35 100.0%	2 100.0%	1 100.0%	4 100.0%	78 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q25_16 Encountered in your attempts to obtain work on projects for the City of Memphis - None						
	Caucasian Male	Caucasian Female	African American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	43 100.0%	12 100.0%	10 100.0%	2 100.0%	4 100.0%	71 100.0%
Total	43 100.0%	12 100.0%	10 100.0%	2 100.0%	4 100.0%	71 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q26 Is your company a certified Minority, Woman, or Disadvantaged Business Enterprise?

	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	39 69.6%	55 82.1%	3 100.0%	1 50.0%	1 100.0%	1 20.0%	0 0.0%	100 69.4%
No	17 30.4%	12 17.9%	0 0.0%	1 50.0%	0 0.0%	4 80.0%	10 100.0%	44 30.6%
Total	56 100.0%	67 100.0%	3 100.0%	2 100.0%	1 100.0%	5 100.0%	10 100.0%	144 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q27_1 Are you a certified MBE (Minority Business Enterprise)?							
	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Total
Yes	9 24.3%	53 96.4%	3 100.0%	1 100.0%	1 100.0%	0 0.0%	67 68.4%
No	28 75.7%	2 3.6%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	31 31.6%
Total	37 100.0%	55 100.0%	3 100.0%	1 100.0%	1 100.0%	1 100.0%	98 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q27_2 Are you a certified WBE (Women Business Enterprise)?							
	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Total
Yes	35 94.6%	12 25.0%	1 33.3%	0 0.0%	0 0.0%	0 0.0%	48 52.7%
No	2 5.4%	36 75.0%	2 66.7%	1 100.0%	1 100.0%	1 100.0%	43 47.3%
Total	37 100.0%	48 100.0%	3 100.0%	1 100.0%	1 100.0%	1 100.0%	91 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q27_3 Are you a certified MWBE (Disadvantaged Business Enterprise)?

	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Total
Yes	11 29.7%	30 58.8%	2 66.7%	1 100.0%	1 100.0%	0 0.0%	45 47.9%
No	26 70.3%	21 41.2%	1 33.3%	0 0.0%	0 0.0%	1 100.0%	49 52.1%
Total	37 100.0%	51 100.0%	3 100.0%	1 100.0%	1 100.0%	1 100.0%	94 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q28_1 Why is your company not certified? - We do not meet one or more of the requirements for certification				
	Caucasian Female	African American	Other (specify)	Total
Yes	4 100.0%	1 100.0%	4 100.0%	9 100.0%
Total	4 100.0%	1 100.0%	4 100.0%	9 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q28_2 Why is your company not certified? - The process of certification is confusing				
	Caucasian Female	African American	Other (specify)	Total
Yes	2 100.0%	2 100.0%	1 100.0%	5 100.0%
Total	2 100.0%	2 100.0%	1 100.0%	5 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q28_3 Why is your company not certified? - Certification is too expensive			
	Caucasian Female	African American	Total
Yes	1 100.0%	2 100.0%	3 100.0%
Total	1 100.0%	2 100.0%	3 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q28_5 Why is your company not certified? - I have not had time to get certified/the process is too time-consuming					
	Caucasian Female	African American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	6 100.0%	2 100.0%	1 100.0%	1 100.0%	10 100.0%
Total	6 100.0%	2 100.0%	1 100.0%	1 100.0%	10 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q28_6 Why is your company not certified? - Certification does not benefit and/or will negatively impact my company					
	Caucasian Female	African American	Hispanic	Other (specify)	Total
Yes	1 100.0%	4 100.0%	1 100.0%	1 100.0%	7 100.0%
Total	1 100.0%	4 100.0%	1 100.0%	1 100.0%	7 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q28_7 Why is your company not certified? - Other (specify)					
	Caucasian Female	African American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	2 100.0%	3 100.0%	1 100.0%	6 100.0%	12 100.0%
Total	2 100.0%	3 100.0%	1 100.0%	6 100.0%	12 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q29 Do you believe that there is favoritism or disparate treatment in the certification process?

	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	14 24.6%	15 22.4%	2 66.7%	2 100.0%	1 100.0%	2 50.0%	4 36.4%	40 27.6%
No	16 28.1%	32 47.8%	1 33.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	49 33.8%
Don't know	27 47.4%	20 29.9%	0 0.0%	0 0.0%	0 0.0%	2 50.0%	7 63.6%	56 38.6%
Total	57 100.0%	67 100.0%	3 100.0%	2 100.0%	1 100.0%	4 100.0%	11 100.0%	145 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q30_3 Are you certified with any of the following agencies? - Federal Small Business Administration

	Caucasian Female	African American	Asian	Hispanic	Native American	Total
Yes	8 22.2%	15 38.5%	1 50.0%	0 0.0%	1 100.0%	25 31.6%
No	24 66.7%	23 59.0%	1 50.0%	1 100.0%	0 0.0%	49 62.0%
Don't know	4 11.1%	1 2.6%	0 0.0%	0 0.0%	0 0.0%	5 6.3%
Total	36 100.0%	39 100.0%	2 100.0%	1 100.0%	1 100.0%	79 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q30_4 Are you certified with any of the following agencies? - Women's Business Enterprise National Council						
	Caucasian Female	African American	Asian	Hispanic	Native American	Total
Yes	14 38.9%	4 12.1%	0 0.0%	0 0.0%	0 0.0%	18 24.7%
No	18 50.0%	27 81.8%	2 100.0%	1 100.0%	1 100.0%	49 67.1%
Don't know	4 11.1%	2 6.1%	0 0.0%	0 0.0%	0 0.0%	6 8.2%
Total	36 100.0%	33 100.0%	2 100.0%	1 100.0%	1 100.0%	73 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q30_5 Are you certified with any of the following agencies? - Tennessee Minority Supplier Development Council

	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Total
Yes	4 11.1%	12 29.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	16 19.5%
No	26 72.2%	25 61.0%	2 100.0%	1 100.0%	1 100.0%	0 0.0%	55 67.1%
Don't know	6 16.7%	4 9.8%	0 0.0%	0 0.0%	0 0.0%	1 100.0%	11 13.4%
Total	36 100.0%	41 100.0%	2 100.0%	1 100.0%	1 100.0%	1 100.0%	82 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q30_8 Are you certified with any of the following agencies? - Mid-South Minority Business Council/MBDA

	Caucasian Female	African American	Asian	Hispanic	Native American	Total
Yes	18 50.0%	43 79.6%	2 66.7%	1 100.0%	1 100.0%	65 68.4%
No	13 36.1%	8 14.8%	1 33.3%	0 0.0%	0 0.0%	22 23.2%
Don't know	5 13.9%	3 5.6%	0 0.0%	0 0.0%	0 0.0%	8 8.4%
Total	36 100.0%	54 100.0%	3 100.0%	1 100.0%	1 100.0%	95 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q30_10 Are you certified with any of the following agencies? - State of Tennessee

	Caucasian Female	African American	Asian	Hispanic	Native American	Total
Yes	18 50.0%	23 57.5%	3 100.0%	0 0.0%	1 100.0%	45 55.6%
No	15 41.7%	16 40.0%	0 0.0%	1 100.0%	0 0.0%	32 39.5%
Don't know	3 8.3%	1 2.5%	0 0.0%	0 0.0%	0 0.0%	4 4.9%
Total	36 100.0%	40 100.0%	3 100.0%	1 100.0%	1 100.0%	81 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q30_7 Are you certified with any of the following agencies? - Other States						
	Caucasian Female	African American	Asian	Hispanic	Native American	Total
Yes	6 17.6%	14 45.2%	3 100.0%	0 0.0%	0 0.0%	23 32.9%
No	25 73.5%	16 51.6%	0 0.0%	1 100.0%	1 100.0%	43 61.4%
Don't know	3 8.8%	1 3.2%	0 0.0%	0 0.0%	0 0.0%	4 5.7%
Total	34 100.0%	31 100.0%	3 100.0%	1 100.0%	1 100.0%	70 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q31 Do you feel as though you experienced discriminatory behavior from the private sector?

	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	9 15.8%	34 50.7%	2 66.7%	0 0.0%	1 100.0%	1 25.0%	2 18.2%	49 33.8%
No	33 57.9%	19 28.4%	0 0.0%	2 100.0%	0 0.0%	1 25.0%	7 63.6%	62 42.8%
Don't know	15 26.3%	14 20.9%	1 33.3%	0 0.0%	0 0.0%	2 50.0%	2 18.2%	34 23.4%
Total	57 100.0%	67 100.0%	3 100.0%	2 100.0%	1 100.0%	4 100.0%	11 100.0%	145 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q32 Did you apply for a commercial (business) bank loan between 2010-2015?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	22 18.0%	18 29.5%	28 38.4%	0 0.0%	0 0.0%	1 100.0%	1 20.0%	3 21.4%	73 25.9%
No	71 58.2%	35 57.4%	37 50.7%	3 75.0%	2 100.0%	0 0.0%	2 40.0%	6 42.9%	156 55.3%
No response	29 23.8%	8 13.1%	8 11.0%	1 25.0%	0 0.0%	0 0.0%	2 40.0%	5 35.7%	53 18.8%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q33 How many times did you apply for a commercial (business) bank loan from 2010-2015?

	Caucasian Male	Caucasian Female	African American	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
1-10	19 90.5%	16 88.9%	28 96.6%	1 100.0%	1 100.0%	3 100.0%	68 93.2%
11-25	0 0.0%	0 0.0%	1 3.4%	0 0.0%	0 0.0%	0 0.0%	1 1.4%
26-50	0 0.0%	1 5.6%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 1.4%
Don't know	2 9.5%	1 5.6%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	3 4.1%
Total	21 100.0%	18 100.0%	29 100.0%	1 100.0%	1 100.0%	3 100.0%	73 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q34 How many times were you approved for a commercial (business) bank loan from 2010-2015?

	Caucasian Male	Caucasian Female	African American	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
None	0 0.0%	3 16.7%	9 32.1%	0 0.0%	1 100.0%	0 0.0%	13 18.1%
1-10	20 95.2%	14 77.8%	19 67.9%	1 100.0%	0 0.0%	3 100.0%	57 79.2%
Don't know	1 4.8%	1 5.6%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 2.8%
Total	21 100.0%	18 100.0%	28 100.0%	1 100.0%	1 100.0%	3 100.0%	72 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q35 What was the largest commercial loan you received from 2010-2015?

	Caucasian Male	Caucasian Female	African American	Native American	Other (specify)	Total
$50,000 or less	2 9.5%	3 21.4%	2 10.0%	0 0.0%	1 33.3%	8 13.6%
$50,001 - $100,000	2 9.5%	1 7.1%	4 20.0%	0 0.0%	0 0.0%	7 11.9%
$100,001 - $300,000	5 23.8%	5 35.7%	6 30.0%	0 0.0%	1 33.3%	17 28.8%
$300,001 - $500,000	0 0.0%	2 14.3%	5 25.0%	1 100.0%	0 0.0%	8 13.6%
$500,001 - $1,000,000	5 23.8%	0 0.0%	1 5.0%	0 0.0%	0 0.0%	6 10.2%
$1,000,001 - $3,000,000	3 14.3%	2 14.3%	2 10.0%	0 0.0%	0 0.0%	7 11.9%
$3,000,001 - $5,000,000	1 4.8%	1 7.1%	0 0.0%	0 0.0%	1 33.3%	3 5.1%
over $10,000,000	1 4.8%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 1.7%
Don't know	2 9.5%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 3.4%
Total	21 100.0%	14 100.0%	20 100.0%	1 100.0%	3 100.0%	59 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q36 How many times were you denied a commercial (business) bank loan from 2010-2015?

	Caucasian Male	Caucasian Female	African American	Native American	Other (specify)	Total
None	21 100.0%	12 80.0%	11 55.0%	0 0.0%	1 33.3%	45 75.0%
1-10	0 0.0%	2 13.3%	8 40.0%	1 100.0%	2 66.7%	13 21.7%
11-25	0 0.0%	0 0.0%	1 5.0%	0 0.0%	0 0.0%	1 1.7%
51-100	0 0.0%	1 6.7%	0 0.0%	0 0.0%	0 0.0%	1 1.7%
Total	21 100.0%	15 100.0%	20 100.0%	1 100.0%	3 100.0%	60 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q37 How many times have you sought venture capital from 2010-2015?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
None	80 65.6%	44 72.1%	51 69.9%	3 75.0%	2 100.0%	1 100.0%	2 40.0%	9 64.3%	192 68.1%
1-10	4 3.3%	6 9.8%	14 19.2%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	1 7.1%	26 9.2%
99	38 31.1%	11 18.0%	8 11.0%	1 25.0%	0 0.0%	0 0.0%	2 40.0%	4 28.6%	64 22.7%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q38_1 Between 2010-2015, did your company apply and receive any of the following? - Business start-up loan?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Never applied	88 72.1%	51 83.6%	56 76.7%	3 75.0%	2 100.0%	1 100.0%	2 40.0%	11 78.6%	214 75.9%
Applied - Never approved	0 0.0%	0 0.0%	3 4.1%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	3 1.1%
Applied - Some approved	0 0.0%	2 3.3%	1 1.4%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	3 1.1%
Applied - All approved	0 0.0%	1 1.6%	1 1.4%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 0.7%
No response	34 27.9%	7 11.5%	12 16.4%	1 25.0%	0 0.0%	0 0.0%	3 60.0%	3 21.4%	60 21.3%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q38_2 Between 2010-2015, did your company apply and receive any of the following? - Operating capital loan?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Never applied	73 59.8%	42 68.9%	38 52.1%	3 75.0%	1 50.0%	0 0.0%	2 40.0%	9 64.3%	168 59.6%
Applied - Never approved	0 0.0%	1 1.6%	7 9.6%	0 0.0%	0 0.0%	1 100.0%	0 0.0%	0 0.0%	9 3.2%
Applied - Some approved	0 0.0%	2 3.3%	7 9.6%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	9 3.2%
Applied - All approved	17 13.9%	8 13.1%	10 13.7%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	2 14.3%	38 13.5%
No response	32 26.2%	8 13.1%	11 15.1%	1 25.0%	0 0.0%	0 0.0%	3 60.0%	3 21.4%	58 20.6%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q38_3 Between 2010-2015, did your company apply and receive any of the following? - Equipment loan?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Never applied	69 56.6%	40 65.6%	40 54.8%	3 75.0%	1 50.0%	1 100.0%	2 40.0%	9 64.3%	165 58.5%
Applied - Never approved	0 0.0%	0 0.0%	7 9.6%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	7 2.5%
Applied - Some approved	0 0.0%	2 3.3%	6 8.2%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	8 2.8%
Applied - All approved	22 18.0%	12 19.7%	8 11.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	2 14.3%	45 16.0%
No response	31 25.4%	7 11.5%	12 16.4%	1 25.0%	0 0.0%	0 0.0%	3 60.0%	3 21.4%	57 20.2%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q38_4 Between 2010-2015, did your company apply and receive any of the following? - Commercial/Professional liability insurance?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Never applied	36 29.5%	13 21.3%	14 19.2%	1 25.0%	2 100.0%	0 0.0%	1 20.0%	5 35.7%	72 25.5%
Applied - Some approved	0 0.0%	2 3.3%	10 13.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	12 4.3%
Applied - All approved	56 45.9%	38 62.3%	37 50.7%	2 50.0%	0 0.0%	1 100.0%	1 20.0%	6 42.9%	141 50.0%
No response	30 24.6%	8 13.1%	12 16.4%	1 25.0%	0 0.0%	0 0.0%	3 60.0%	3 21.4%	57 20.2%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_1_1 For the BUSINESS START-UP loan applications that were denied, what reasons were given? - Insufficient documentation		
	Caucasian Female	Total
Yes	1 100.0%	1 100.0%
Total	1 100.0%	1 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_1_2 For the BUSINESS START-UP loan applications that were denied, what reasons were given? - Insufficient business history		
	Caucasian Female	Total
Yes	1 100.0%	1 100.0%
Total	1 100.0%	1 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_1_3 For the BUSINESS START-UP loan applications that were denied, what reasons were given? - Confusion about process		
	Caucasian Female	Total
Yes	1 100.0%	1 100.0%
Total	1 100.0%	1 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_1_4 For the BUSINESS START-UP loan applications that were denied, what reasons were given? - Credit history			
	Caucasian Female	African American	Total
Yes	2 100.0%	3 100.0%	5 100.0%
Total	2 100.0%	3 100.0%	5 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_1_5 For the BUSINESS START-UP loan applications that were denied, what reasons were given? - Other (specify)		
	African American	Total
Yes	2 100.0%	2 100.0%
Total	2 100.0%	2 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_2_1 For the OPERATING CAPITAL loan applications that were denied, what reasons were given? - Insufficient documentation		
	Caucasian Female	Total
Yes	1 100.0%	1 100.0%
Total	1 100.0%	1 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_2_2 For the OPERATING CAPITAL loan applications that were denied, what reasons were given? - Insufficient business history			
	Caucasian Female	African American	Total
Yes	1 100.0%	1 100.0%	2 100.0%
Total	1 100.0%	1 100.0%	2 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_2_3 For the OPERATING CAPITAL loan applications that were denied, what reasons were given? - Confusion about process

	Caucasian Female	African American	Total
Yes	1 100.0%	1 100.0%	2 100.0%
Total	1 100.0%	1 100.0%	2 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_2_4 For the OPERATING CAPITAL loan applications that were denied, what reasons were given? - Credit history				
	Caucasian Female	African American	Native American	Total
Yes	2 100.0%	4 100.0%	1 100.0%	7 100.0%
Total	2 100.0%	4 100.0%	1 100.0%	7 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_2_5 For the OPERATING CAPITAL loan applications that were denied, what reasons were given? - Other (specify)		
	African American	Total
Yes	6 100.0%	6 100.0%
Total	6 100.0%	6 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_2_6 For the OPERATING CAPITAL loan applications that were denied, what reasons were given? - Don't know			
	Caucasian Female	African American	Total
Yes	1 100.0%	5 100.0%	6 100.0%
Total	1 100.0%	5 100.0%	6 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_3_1 For the EQUIPMENT loan applications that were denied, what reasons were given? – Insufficient documentation		
	Caucasian Female	Total
Yes	1 100.0%	1 100.0%
Total	1 100.0%	1 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_3_2 For the EQUIPMENT loan applications that were denied, what reasons were given? - Insufficient business history			
	Caucasian Female	African American	Total
Yes	1 100.0%	2 100.0%	3 100.0%
Total	1 100.0%	2 100.0%	3 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_3_3 For the EQUIPMENT loan applications that were denied, what reasons were given? - Confusion about process			
	Caucasian Female	African American	Total
Yes	1 100.0%	1 100.0%	2 100.0%
Total	1 100.0%	1 100.0%	2 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_3_4 For the EQUIPMENT loan applications that were denied, what reasons were given? - Credit history			
	Caucasian Female	African American	Total
Yes	2 100.0%	4 100.0%	6 100.0%
Total	2 100.0%	4 100.0%	6 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_3_5 For the EQUIPMENT loan applications that were denied, what reasons were given? - Other (specify)		
	African American	Total
Yes	3 100.0%	3 100.0%
Total	3 100.0%	3 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_3_6 For the EQUIPMENT loan applications that were denied, what reasons were given? - Don't know		
	African American	Total
Yes	3 100.0%	3 100.0%
Total	3 100.0%	3 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_4_1 For the COMMERCIAL/PROFESSIONAL LIABILITY INSURANCE applications that were denied, what reasons were given? - Insufficient documentation

	Caucasian Female	Total
Yes	1 100.0%	1 100.0%
Total	1 100.0%	1 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_4_2 For the COMMERCIAL/PROFESSIONAL LIABILITY INSURANCE applications that were denied, what reasons were given? – Insufficient business history			
	Caucasian Female	African American	Total
Yes	1 100.0%	1 100.0%	2 100.0%
Total	1 100.0%	1 100.0%	2 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_4_3 For the COMMERCIAL/PROFESSIONAL LIABILITY INSURANCE applications that were denied, what reasons were given? – Confusion about process			
	Caucasian Female	African American	Total
Yes	1 100.0%	1 100.0%	2 100.0%
Total	1 100.0%	1 100.0%	2 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_4_4 For the COMMERCIAL/PROFESSIONAL LIABILITY INSURANCE applications that were denied, what reasons were given? - Credit history

	Caucasian Female	African American	Total
Yes	1 100.0%	2 100.0%	3 100.0%
Total	1 100.0%	2 100.0%	3 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_4_5 For the COMMERCIAL/PROFESSIONAL LIABILITY INSURANCE applications that were denied, what reasons were given? - Other (specify)		
	African American	Total
Yes	3 100.0%	3 100.0%
Total	3 100.0%	3 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q39_4_6 For the COMMERCIAL/PROFESSIONAL LIABILITY INSURANCE applications that were denied, what reasons were given? - Don't know

	Caucasian Female	African American	Total
Yes	1 100.0%	4 100.0%	5 100.0%
Total	1 100.0%	4 100.0%	5 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q40 Do you believe that your race, gender, or ethnicity was a factor in any of the denials of your loan or insurance applications?

	Caucasian Female	African American	Native American	Total
Yes	2 50.0%	13 61.9%	0 0.0%	15 57.7%
No	2 50.0%	8 38.1%	1 100.0%	11 42.3%
Total	4 100.0%	21 100.0%	1 100.0%	26 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q41_1 From 2010-2015, have you experienced discriminatory behavior from City of Memphis due to the GENDER of your firm's owner(s)?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	9 7.4%	4 6.6%	8 11.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 14.3%	23 8.2%
No	95 77.9%	50 82.0%	58 79.5%	3 75.0%	2 100.0%	1 100.0%	4 80.0%	9 64.3%	222 78.7%
No response	18 14.8%	7 11.5%	7 9.6%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	3 21.4%	37 13.1%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q41_2 From 2010-2015, have you experienced discriminatory behavior from City of Memphis due to the RACE of your firm's owner(s)?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	15 12.3%	8 13.1%	16 21.9%	1 25.0%	1 50.0%	1 100.0%	1 20.0%	3 21.4%	46 16.3%
No	89 73.0%	46 75.4%	49 67.1%	2 50.0%	1 50.0%	0 0.0%	3 60.0%	8 57.1%	198 70.2%
No response	18 14.8%	7 11.5%	8 11.0%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	3 21.4%	38 13.5%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q41_3 From 2010-2015, have you experienced discriminatory behavior from City of Memphis due to the ETHNICITY of your firm's owner(s)?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	11 9.0%	6 9.8%	14 19.2%	2 50.0%	1 50.0%	0 0.0%	1 20.0%	2 14.3%	37 13.1%
No	92 75.4%	48 78.7%	52 71.2%	1 25.0%	1 50.0%	1 100.0%	3 60.0%	8 57.1%	206 73.0%
No response	19 15.6%	7 11.5%	7 9.6%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	4 28.6%	39 13.8%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q42 How often has your company experienced this racial, gender, or ethnicity discriminatory behavior from the City?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Seldom	3 17.6%	2 20.0%	5 29.4%	0 0.0%	1 100.0%	1 100.0%	1 100.0%	0 0.0%	13 25.0%
Often	5 29.4%	4 40.0%	8 47.1%	1 50.0%	0 0.0%	0 0.0%	0 0.0%	1 33.3%	19 36.5%
Very Often	2 11.8%	2 20.0%	3 17.6%	1 50.0%	0 0.0%	0 0.0%	0 0.0%	1 33.3%	9 17.3%
Don't know	7 41.2%	2 20.0%	1 5.9%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 33.3%	11 21.2%
Total	17 100.0%	10 100.0%	17 100.0%	2 100.0%	1 100.0%	1 100.0%	1 100.0%	3 100.0%	52 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q43A From 2010-2015, was it expressed to you by City of Memphis that you could not bid or would not be awarded a contract because your company did not have enough contracting experience in your trade?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	1 0.8%	3 4.9%	7 9.6%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	11 3.9%
No	97 79.5%	46 75.4%	53 72.6%	3 75.0%	2 100.0%	1 100.0%	3 60.0%	11 78.6%	216 76.6%
No response	24 19.7%	12 19.7%	13 17.8%	1 25.0%	0 0.0%	0 0.0%	2 40.0%	3 21.4%	55 19.5%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q43B How often have you experienced discrimination by City of Memphis based on your supposed lack of contracting experience in your trade?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Never	1 0.8%	0 0.0%	1 1.4%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 0.7%
Seldom	0 0.0%	2 3.3%	2 2.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	4 1.4%
Often	0 0.0%	0 0.0%	2 2.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 0.7%
Very often	0 0.0%	0 0.0%	2 2.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 0.7%
No response	121 99.2%	59 96.7%	66 90.4%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	272 96.5%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q43C From 2010-2015, was it expressed to you by City of Memphis that you could not bid or would not be awarded a contract because your company did not have enough contracting experience with City of Memphis?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	0 0.0%	2 3.3%	8 11.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	10 3.5%
No	100 82.0%	46 75.4%	52 71.2%	3 75.0%	1 50.0%	1 100.0%	3 60.0%	11 78.6%	217 77.0%
No response	22 18.0%	13 21.3%	13 17.8%	1 25.0%	1 50.0%	0 0.0%	2 40.0%	3 21.4%	55 19.5%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q44 How often have you experienced discrimination by City of Memphis based on your supposed lack of contracting experience with the city of Memphis?

	Caucasian Female	African American	Total
Seldom	1 50.0%	3 37.5%	4 40.0%
Often	1 50.0%	3 37.5%	4 40.0%
Very Often	0 0.0%	2 25.0%	2 20.0%
Total	2 100.0%	8 100.0%	10 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q45 Is there an informal network of prime and subcontractors doing business with the city that monopolize the public contracting process?

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	35 28.7%	26 42.6%	47 64.4%	1 25.0%	0 0.0%	1 100.0%	3 60.0%	2 14.3%	115 40.8%
No	39 32.0%	9 14.8%	8 11.0%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	2 14.3%	59 20.9%
No response	48 39.3%	26 42.6%	18 24.7%	3 75.0%	1 50.0%	0 0.0%	2 40.0%	10 71.4%	108 38.3%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q46 My company's exclusion from this network has prevented us from bidding on contracts with the city

	Caucasian Male	Caucasian Female	African American	Asian	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Strongly agree	12 34.3%	7 28.0%	18 38.3%	1 100.0%	0 0.0%	0 0.0%	1 50.0%	39 34.2%
Agree	11 31.4%	8 32.0%	13 27.7%	0 0.0%	1 100.0%	0 0.0%	1 50.0%	34 29.8%
Neither agree nor disagree	7 20.0%	7 28.0%	10 21.3%	0 0.0%	0 0.0%	2 66.7%	0 0.0%	26 22.8%
Disagree	4 11.4%	3 12.0%	5 10.6%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	12 10.5%
Strongly disagree	1 2.9%	0 0.0%	1 2.1%	0 0.0%	0 0.0%	1 33.3%	0 0.0%	3 2.6%
Total	35 100.0%	25 100.0%	47 100.0%	1 100.0%	1 100.0%	3 100.0%	2 100.0%	114 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q47 My company's exclusion from this network has prevented us from winning contracts with the city

	Caucasian Male	Caucasian Female	African American	Asian	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Strongly agree	14 40.0%	5 20.0%	14 29.8%	1 100.0%	0 0.0%	0 0.0%	0 0.0%	34 29.8%
Agree	7 20.0%	7 28.0%	8 17.0%	0 0.0%	1 100.0%	0 0.0%	1 50.0%	24 21.1%
Neither agree nor disagree	11 31.4%	13 52.0%	19 40.4%	0 0.0%	0 0.0%	2 66.7%	1 50.0%	46 40.4%
Disagree	2 5.7%	0 0.0%	6 12.8%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	8 7.0%
Strongly disagree	1 2.9%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 33.3%	0 0.0%	2 1.8%
Total	35 100.0%	25 100.0%	47 100.0%	1 100.0%	1 100.0%	3 100.0%	2 100.0%	114 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q48 Exclusion from this informal network has a disproportionate impact on women and minority-owned businesses.

	Caucasian Male	Caucasian Female	African American	Asian	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Strongly agree	3 8.8%	5 20.0%	23 50.0%	1 100.0%	0 0.0%	0 0.0%	1 50.0%	33 29.7%
Agree	1 2.9%	9 36.0%	13 28.3%	0 0.0%	0 0.0%	1 50.0%	1 50.0%	25 22.5%
Neither agree nor disagree	17 50.0%	7 28.0%	10 21.7%	0 0.0%	1 100.0%	1 50.0%	0 0.0%	36 32.4%
Disagree	5 14.7%	2 8.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	7 6.3%
Strongly disagree	8 23.5%	2 8.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	10 9.0%
Total	34 100.0%	25 100.0%	46 100.0%	1 100.0%	1 100.0%	2 100.0%	2 100.0%	111 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q49 Double standards in qualification and performance make it more difficult for minority and women-owned businesses to win bids or contracts.

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Strongly agree	5 4.1%	3 4.9%	25 34.2%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	34 12.1%
Agree	6 4.9%	13 21.3%	14 19.2%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	2 14.3%	36 12.8%
Neither agree nor disagree	41 33.6%	23 37.7%	22 30.1%	2 50.0%	1 50.0%	1 100.0%	2 40.0%	7 50.0%	99 35.1%
Disagree	26 21.3%	5 8.2%	4 5.5%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	1 7.1%	37 13.1%
Strongly disagree	22 18.0%	7 11.5%	1 1.4%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	1 7.1%	32 11.3%
No response	22 18.0%	10 16.4%	7 9.6%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	3 21.4%	44 15.6%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q49B The amount of experience required of a firm in order to bid or win contracts with City of Memphis is unnecessary and makes it more difficult for minority and women-owned businesses to win bids or contracts.

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Strongly agree	0 0.0%	1 1.6%	12 16.4%	0 0.0%	0 0.0%	0 0.0%	1 20.0%	0 0.0%	14 5.0%
Agree	3 2.5%	9 14.8%	16 21.9%	1 25.0%	1 50.0%	1 100.0%	0 0.0%	0 0.0%	31 11.0%
Neither agree nor disagree	42 34.4%	22 36.1%	28 38.4%	1 25.0%	0 0.0%	0 0.0%	3 60.0%	7 50.0%	103 36.5%
Disagree	33 27.0%	12 19.7%	7 9.6%	1 25.0%	1 50.0%	0 0.0%	0 0.0%	2 14.3%	56 19.9%
Strongly disagree	21 17.2%	6 9.8%	3 4.1%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 14.3%	32 11.3%
No response	23 18.9%	11 18.0%	7 9.6%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	3 21.4%	46 16.3%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q50 Sometimes, a prime contractor will include a MWBE subcontractor on a bid to meet the "good faith effort" requirement, then drop the company as a subcontractor after winning the award.

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Strongly agree	5 4.1%	4 6.6%	20 27.4%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	30 10.6%
Agree	7 5.7%	9 14.8%	16 21.9%	1 25.0%	1 50.0%	1 100.0%	1 20.0%	0 0.0%	36 12.8%
Neither agree nor disagree	72 59.0%	33 54.1%	23 31.5%	1 25.0%	0 0.0%	0 0.0%	3 60.0%	10 71.4%	142 50.4%
Disagree	9 7.4%	3 4.9%	6 8.2%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	0 0.0%	19 6.7%
Strongly disagree	7 5.7%	2 3.3%	1 1.4%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 7.1%	11 3.9%
No response	22 18.0%	10 16.4%	7 9.6%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	3 21.4%	44 15.6%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q51 In general, MWBEs tend to be viewed by the general public as less competent than non-minority male-owned businesses.

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Strongly agree	2 1.6%	5 8.2%	21 28.8%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	0 0.0%	30 10.6%
Agree	10 8.2%	15 24.6%	16 21.9%	2 50.0%	1 50.0%	1 100.0%	1 20.0%	0 0.0%	46 16.3%
Neither agree nor disagree	65 53.3%	27 44.3%	22 30.1%	0 0.0%	0 0.0%	0 0.0%	2 40.0%	8 57.1%	124 44.0%
Disagree	13 10.7%	2 3.3%	7 9.6%	0 0.0%	1 50.0%	0 0.0%	0 0.0%	2 14.3%	25 8.9%
Strongly disagree	10 8.2%	2 3.3%	1 1.4%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 7.1%	14 5.0%
No response	22 18.0%	10 16.4%	6 8.2%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	3 21.4%	43 15.2%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

All questions are crosstabbed by:
The race or ethnic origin that the person or persons that own at least 51% of the company identifies.

Q52 I believe that some non-minority prime contractors only utilize MWBE companies when required to do so by City of Memphis

	Caucasian Male	Caucasian Female	African American	Asian	Hispanic	Native American	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Strongly agree	12 9.8%	8 13.1%	37 50.7%	1 25.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	58 20.6%
Agree	23 18.9%	22 36.1%	17 23.3%	2 50.0%	1 50.0%	1 100.0%	1 20.0%	1 7.1%	68 24.1%
Neither agree nor disagree	54 44.3%	19 31.1%	8 11.0%	0 0.0%	1 50.0%	0 0.0%	3 60.0%	9 64.3%	94 33.3%
Disagree	8 6.6%	0 0.0%	4 5.5%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	1 7.1%	13 4.6%
Strongly disagree	4 3.3%	2 3.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	6 2.1%
No response	21 17.2%	10 16.4%	7 9.6%	1 25.0%	0 0.0%	0 0.0%	1 20.0%	3 21.4%	43 15.2%
Total	122 100.0%	61 100.0%	73 100.0%	4 100.0%	2 100.0%	1 100.0%	5 100.0%	14 100.0%	282 100.0%

APPENDIX G

Executive Summary

City of Memphis, Tennessee

March 2010

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GRIFFIN & STRONG, P.C.

ATTORNEYS AT LAW & PUBLIC POLICY CONSULTANTS

I. Introduction

During November 2007, the City of Memphis, Tennessee ("City") contracted with Griffin & Strong, P.C. ("GSPC") to conduct a comprehensive disparity study ("Study"), which included all City departments except Memphis Light, Gas & Water, Memphis Area Transit Authority, and Memphis Housing Authority. The purpose of the disparity study is to determine if the City of Memphis still has a compelling interest in continuing the Minority and Women-Owned business enterprise ("MWBE") program for the City.

The study is designed to determine whether existing City efforts have eliminated active and passive discrimination; to analyze City procurement trends and practices for the five (5) year period beginning July 1, 2002 and ending June 30, 2007 ("Study Period"); and to evaluate various options for future program development. The study also addresses and recommends solutions for the concerns expressed by the U.S. Supreme Court in City of Richmond v. J.A. Croson, 488 U.S. 469 with regard to procurement programs for Minority and Woman owned firms. Governmental entities, such as the City, have authorized disparity studies in response to City of Richmond v. J.A. Croson Co.[1] and the cases which followed, to determine whether there has been a compelling interest for remedial procurement programs, based upon ethnicity, race, and gender.

The City adopted its current MWBE program in 1995 as a result of the findings in the 1994 Disparity Study, conducted by D.J. Miller & Associates. The Memphis City Council adopted two primary findings to support establishment of the MWBE Program under the Memphis City Code §2-325: first, that construction, professional services and supply firms owned by MWBEs in the Memphis MSA were disproportionately underutilized in City of Memphis contracts and in the Memphis private marketplace; and secondly, that the City of Memphis had been a direct and passive participant in the system of discrimination present in the private marketplace. As such, the City Council found that the City had a compelling interest in remedying the present and past effects of discrimination against African American and women business owners. Additionally, the City Council stated in the ordinance that its affirmative duty to remedy the effects of the past and present discrimination also extended to the development of initiatives which encouraged the development of local small businesses.

II. Measurable Accomplishments under the City of Memphis Minority and Women Business Enterprise Procurement Program

Since the enactment of the City's Minority and Women Business Enterprise Procurement Program,[2] there has been a significant increase in the participation of Woman owned, Minority owned and small businesses in the City's procurement activities.

The data showed increases in the absolute and relative value of MWBE utilization since the 1994 Memphis Disparity Study, as indicated by the following:

- MWBE Construction prime contracting utilization increased from $5.3 million out of $85.4 million total dollars spent during the 1994 Study Period, which represents 6.2% participation, to $18.3 million in MWBE participation out of $190.5 million total dollars spent, which represents 9.6% of total construction dollars spent during the current Study Period. Therefore, MWBE participation increased 3.4% in the current Study Period over the totals in the 1994 Study Period.
- MWBE Professional services including A/E utilization grew from $202,609 during the 1994 Study Period, to $10.3 million, or 3.86% of the total during the current Study Period.
- MWBE Other Services and Goods/Supplies utilization grew in percentage terms from about 5.85% in the 1994 Study Period to 9.2 % during the current Study Period.

In addition, the City has also accomplished the following:

Improved utilization of MWBEs during the course of the Study Period;
Consistently set and met aspiration goals;
Established a strong local business program;
Provided outstanding management and technical assistance to MWBEs;
Collaborated with existing financial assistance providers to assist MWBEs inProvided MWBE outreach workshops and seminars;
Issued contracts in smaller dollar amounts, thus expanding the opportunity for small businesses.

III. Understanding the Legal Basis for a Study

Disparity studies like this one are a product of court decisions and rely on scientific processes and analyses in economics and statistics which continue to be modified by developing requirements from the courts. After the civil rights movement of the 1960's and the general recognition that racial discrimination had been a barrier to both the existence and success of Minority businesses, the federal government created remedial programs in an attempt to level the playing field. The first major federal legislation of this type was the Public Works Employment Act, enacted in 1977. The Public Works Employment Act sought to address the lack of Minority participation in federally funded construction contracts by setting aside, to the extent feasible, ten percent (10%) of those contracts for Minority businesses. Minority firms could, in some instances, be awarded contracts even though they were not the lowest bidder.

Soon after enactment, this law was tested by a court challenge which was ultimately decided by the United States Supreme Court in Fullilove v. Kluznick, 448 U.S. 448 (1980). In Fullilove, several associations of construction contractors and subcontractors complained that the Act was unconstitutional under the Equal Protection Clause and that it violated the Civil Rights Act of 1964.[3] The Supreme Court held that the set aside program in the Public Works Employment Act of 1977 was constitutional based upon Congress' Spending Powers under Article I of the Constitution and that Congress does not have to act in a "color-blind" fashion when it seeks to remedy the effects of prior discrimination.

After this ruling by the Supreme Court, many governmental entities elected to enact their own remedial legislation, using the federal model, in order to secure a level playing field and ensure that public contracting opportunities were equally available to minorities and then later, to women.

One such governmental entity was the City of Richmond, Virginia. However, in 1989 the Supreme Court struck down Richmond's attempts to remedy discrimination against Minority contractors in Croson.[4] Croson and the cases which followed, in particular, Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S.Ct. 2097 (1995), made clear that courts must apply strict judicial scrutiny to "race conscious" remedies for discrimination.

Croson states that the strict scrutiny test allows a public entity to establish a race-conscious program only if 1) there is a "compelling governmental interest" upon which the program is based and 2) the program is narrowly tailored to achieve that governmental interest. The strict scrutiny test further requires a "searching judicial inquiry into the justification for such race-based measures" to determine whether the classifications are remedial or "in fact, motivated by the illegitimate notions of racial inferiority or simple racial politics".[5]

In the Croson decision, the Supreme Court ruled that the City of Richmond's Minority Business Enterprise (hereinafter "MBE") program failed to satisfy the two prongs of the strict scrutiny standard:[6] First, the City failed to show that its Minority set-aside program was "necessary" to remedy the effects of past discrimination in the marketplace. Strict scrutiny requires a strong basis in evidence of either active participation by the government in prior discrimination or passive participation by the government in discrimination by the local industry.[7]

The Court in Croson questioned whether the City of Richmond had actually proven relevant past discrimination. The Court reasoned that a mere statistical disparity between the overall Minority population in Richmond (50 percent African-American) and awards of prime contracts to Minority owned firms (0.67 percent to African-American firms) was an irrelevant statistical comparison and insufficient to raise an inference of discrimination. The Court noted that a generalized assertion that there has been past discrimination in an entire industry provided no guidance to determine the present scope of the injury a race-conscious program seeks to remedy. The Court also made clear, however, 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".[8] In other words, the statistical comparison must be one between the percentage of MBEs in the market

qualified to do contracting work (including prime contractors and subcontractors) and the percentage of total dollars that the City of Richmond awarded to Minority firms.

It is this reasoning by the courts that is the foundation of the statistical analysis contained in the present Study. Additionally, the Court stated that identified anecdotal accounts of past discrimination also could provide the basis to establish a compelling interest for local governments to enact race-conscious remedies.

Regarding the second prong of the strict scrutiny test, the Court ruled that Richmond's MBE program was not narrowly tailored to redress the effects of discrimination. First, the program extended to a list of ethnic minorities (e.g. Aleuts) for which the Court held that the City had established no evidence of discrimination. Thus, the Court found that the scope of the City's program was too broad. Second, the Court ruled that the thirty percent (30%) goal for MBE participation in the Richmond program was a rigid quota not related to any identified discrimination. Third, the Court expressed disappointment that the City failed to consider race-neutral alternatives to remedy the under-representation of minorities in contract awards. Finally, the Court highlighted the fact that the City's MBE program contained no sunset provisions for a periodic review process intended to assess the continued need for the program.[9]

This Study is designed to assist the City of Memphis, Tennessee in determining whether there is a constitutional basis for the City to utilize race/gender/ethnicity classification in order to correct the present effect of past discrimination.

IV. Scope of This Study

The purpose of this Study is to examine any existing disparity between the availability of Minority owned and Woman owned businesses for participation in the City of Memphis, Tennessee's procurement process and in their actual utilization by the City over the Study Period. In addition, because the City has an interest in ensuring that it is not indirectly assisting firms that discriminate based on race or gender and that it is not a passive participant in any discrimination in the private marketplace, this Study also contains a private sector review. The central question to be answered by the private sector report is: How are Minority owned and Woman owned firms utilized in the private sector in the absence of race and gender based numeric goals? If it is determined that such firms are underutilized in the private sector, then the next questions are whether the underutilization is the likely result of discrimination and to what extent, if any, has the City of Memphis, Tennessee been a passive participant in identified private sector discrimination.

This Study contains a full analysis of the statistical data collected from the City of Memphis, Tennessee relative to the availability and utilization of Minority and Woman owned businesses and a discussion of the levels of disparity for the City's prime contractors and subcontractors, and the private sector from July 1, 2002 through June 30, 2007. In addition, the study includes a detailed overview of U. S. Supreme Court and Sixth Circuit case law; analysis of anecdotal data collected from personal interviews and telephone surveys; and a review of the City's purchasing policies, practices, and procedures.

GSPC has been careful to remain cognizant of the foundational case law of Croson and its progeny in this evolving area of jurisprudence. GSPC has utilized methodologies intended to be acceptable to the courts in the Sixth Circuit to support any resultant program.

As outlined in the detailed legal overview, the courts have indicated that for a race-based or genderbased preference program to be maintained or created there must be a clear evidentiary foundation established. Generally, this evidence must be relied upon as part of the implementation of the jurisdiction's decision-making process related to the race-conscious program in order for it to be relevant in any subsequent legal action.

V. Findings of the City of Memphis, TN Disparity Study

After a comprehensive review of the quantitative and qualitative data the Griffin & Strong, P.C. study team made the following findings:

A. STATISTICAL ANALYSIS FINDINGS

FINDING 1: Overall MWBE Utilization

Throughout the Study Period, the City spent $54.1 million with MWBEs within the relevant market across all procurement categories at the prime level. Payments to WBEs represented $4.98 million or .68% of total City spending of $735.1 million for the Study Period.

FINDING 2: Relevant Market

The relevant market for each procurement category is the area in which 75% or more of the dollars were spent during the Study Period. The relevant markets for this Study by procurement categories are:

Construction – Memphis, TN MSA
Professional Services (A/E) – Memphis, TN MSA
Other Professional Services – United States
Other Services – State of Tennessee
Goods/Supplies – United States

FINDING 3: City MWBE Prime Utilization and Availability

The dollar value of MWBE prime utilization during the Study Period in the relevant market by the City is shown below:

- 49 MWBEs received $18.3 million in Construction contract dollars on City projects, which rep resent 9.59 % of the total dollars spent by the City on Construction.

- 19 MWBEs received $2.7 million in prime A/E dollars which represent 11.7 % of total A/E dol lars spent by the City on A/E.

- 62 MWBEs received $7.6 million in Other Professional Services dollars, which represent 3.1% total dollars spent by the City on Other Professional Services.

- 243 MWBEs received $15.0 million in Other Services dollars, which represent 14.62 % of dollars spent by the City on Other Services.

- 212 MWBEs received $10.5 million in Goods/Supplies dollars, which present 6.0 % of total dollars spent by the City on Goods/Supplies.

FINDING 4: MWBE MSA Prime Availability within the Relevant Market

Table 1

Business Category	African American %	Asian American %	Hispanic American %	Native American %	White Female %	MWBE Firms %
Construction	15.17%	0.29%	0.00%	0.00%	3.18%	18.64%
Professional Services – A&E	18.49%	0.84%	2.52%	0.00%	6.72%	28.57%
Other Professional Services	12.03%	0.47%	0.12%	0.00%	1.52%	14.14%
Other Services	22.90%	0.11%	0.22%	0.04%	2.13%	25.39%
Goods/Supplies	12.20%	0.15%	0.00%	0.05%	1.45%	13.85%

Griffin & Strong, P.C. (2009) Source: Master Vendor Database

FINDING 5: Disparity in MWBE Prime Utilization

MWBEs were underutilized across all procurement categories during the Study Period. However, the underutilization of the following MWBE groups was determined to be significant enough to suggest the presence of discrimination:

Construction Prime Contractors: African American, Asian American, and White Female-owned firms;

A/E: African American, Asian American, Hispanic American, and White Female-owned firms; Other Professional Services: African American, Asian American, Hispanic American, and White Female-owned firms;

Other Services: African American, Asian American, Hispanic American, Native American, and White Female-owned firms;

Goods/Supplies:African American, Asian American, Native American, and White Female-owned firms.

It is also significant that Non-Minority Male-owned firms were overutilized in all procurement categories during the Study Period.

FINDING 6: Comparison with 1994 Disparity Study

The data showed increases in the absolute and relative value of MWBE utilization since the 1994 Memphis Disparity Study, as indicated by the following:

> MWBE Construction prime contracting utilization increased from $5.3 million out of $85.4 mil lion total dollars spent during the 1994 Study Period, which represents 6.2% participa tion, to $18.3 million in MWBE participation out of $190.5 million total dollars spent, which rep resents 9.6% of total construction dollars spent during the current Study Period. There fore, MWBE participation increased 3.4% in the current Study Period over the totals in the 1994 Study Period.
>
> MWBE Professional services including A/E utilization grew from $202,609 during the 1994 Study Period, to $10.3 million, or 3.86% of the total during the current Study Period.
>
> MWBE Other Services and Goods/Supplies utilization grew in percentage terms from about 5.85% in the 1994 Study Period to 9.2 % during the current Study Period.

FINDING 7: MWBE Construction Subcontractor Utilization and Disparity Analyses

African American-owned firms have significant over-utilization as construction subcontractors, and Hispanic American, Asian American, and White Females were statistically significantly underutilized as construction subcontractors.

FINDING 8: Subcontractor Anecdotal Perceptions

Major concerns in anecdotal testimony regarding experience as a subcontractor were changes in bidding procedures when they are not required to hire MWBEs and inadequate good faith efforts by prime contractors. Of the MWBEs who responded to our telephone questions about experiences as a subcontractor, key issues noted were as follows:

> - a group of payment issues: payment delayed (36%), untimely release of retainage (22%), and not paid per contract (20%).
>
> - double standards in qualifications and performance (56% of MWBE respondents);
>
> - never served as subcontractor in the private sector (64% of MWBE respondents).

FINDING 9: Project Goal Setting for MWBE Subcontractor Utilization

The City's MWBE Ordinance speaks to establishing annual overall MWBE participation goals which shall be used as benchmarks for evaluating the performance of the program. The City's ordinance describes the methodology establishing annual overall goals however it does not specifically address how to establish project specific goals nor to establishing separate goals for primes and subs.

B. Findings for Private Sector Analysis

FINDING 10: Disparities in Self-Employment and Revenue Earnings

In general, findings from the U.S Bureau of the Census Public Use Micro Sample (PUMS) 2000 data indicate that there were disparities in entry into and earnings from self-employment by women and minorities after controlling for education, age, wealth, and other variables. When self-employment rates were stratified by race and by business type, trends varied within individual race-by-type cells, but disparities persisted, in general, for African Americans, Asian Americans, Hispanic Americans, and Non-minority women. When group self-employment rates were submitted to analysis of disparity due to minority status, findings supported the conclusion that disparities for these four groups (of adequate sample size to permit interpretation) were likely the result of some customer discrimination; that is, an unwillingness on the part of some sectors of the private marketplace to do business with firms owned by women and minorities.

FINDING 11: Regression Analysis

Self-employment findings were supported by analyses of the telephone survey of vendors. After adjusting for impact of non-MWBE factors, such as number of employees, age of company, owner's experience, and owner's education level, the analyses showed that MWBE firms had significantly lower 2007 revenues than similar Non-minority Male firms. The consistency of the lower 2007 revenues of MWBE firms for the all-industries analyses and for African Americans and White Females among the different industry grouping analyses, further strengthens the evidence that the disparities are due, at least in part, to the race and/or gender status of the firms.

FINDING 12: Private Sector Utilization in the Memphis Construction Industry

The utilization of MWBE firms on private commercial construction in the City of Memphis in comparison with MWBE utilization by the public sector and Reed Construction Data[10] for prime contractors is shown in Table 2. MWBE utilization was substantially higher for the public sector than for the private marketplace. Moreover, the public sector used many more MWBEs, particularly in proportion to its spending, than did the private sector commercial construction market.

Table 2
CITY OF MEMPHIS
Comparison of Public and Private Sector PRIME CONTRACTOR UTILIZATION

	African American (%)	Asian American (%)	Hispanic American (%)	Native American (%)	White Female (%)	Minority & White Female (%)	Non-Minority Male (%)
Public Construction Prime Contractors (City of Memphis Actual Payments)	8.35	0	0	0	1.24	9.59	90.41
Private Construction Prime Contractors (Building Permits)	0.16	0	0	0	0.08	0.25	99.75
Private Construction Prime Contractors (Reed Construction Data)	3.56	1.68	0	0	0.99	6.23	93.77

Source: Griffin & Strong, P.C. (2008) Source: City of Memphis Building Permits, Reed Construction Data Utilization Analysis.

FINDING 13: Disparities in Loan Denials

An econometric analysis of small business lending in the region containing Memphis from the National Survey of Small Business Finance (NSSBF) found evidence of disparities in loan denial rates for African Americans and White Females after controlling for variables representing firm assets and creditworthiness, raising an inference of discrimination in lending.

FINDING 14: Disparities in Interest Rates

Data from the NSSBF showed that when a loan is approved the interest rates charged to MWBEs were all higher than that of Non-minority Males with the exception of Asian Americans, with Hispanic American having the highest rate charged of 20.9 %.

C. Anecdotal Findings

FINDING 15: Anecdotal Evidence

Perceptions of Discrimination

There were not a large number of specific incidents of discrimination by the City reported in either the anecdotal testimony or survey responses. The primary concern regarding discrimination in the anecdotal testimony was the impediments to opportunity resulting from informal networks and discrimination in the private sector.

Nineteen percent of the participating firms indicated that they had experienced discrimination in their business dealings with the private sector. Whereas seven percent indicated they had experienced discrimination from the City.

Major concerns in anecdotal testimony regarding barriers to work with the City were the advantages possessed by large and incumbent vendors, an informal network and the selection process. Of the MWBEs who responded to our telephone questions about barriers to doing business, key issues noted were as follows:

- financing (17% of MWBE respondents);
- limited knowledge of purchasing/contracting policies and procedures (14% of MWBE respondents);
- bid and performance bond requirements (16% of MWBE respondents);
- time allotted to prepare bids and quotes (12% of MWBE respondents);
- expenses associated with bid preparation (11% of MWBE respondents);
- prequalification requirements (11% of MWBE respondents);
- insurance (11% of MWBE respondents); and
- bid specifications (11% of MWBE respondents).

FINDING 16: Limited Information

There were anecdotal reports of inadequate pre-bid information on projects. One of the key concerns reported in the survey was the availability and accessibility of information about pending projects (25% of 337 MWBE respondents).

FINDING 17: Disparity Analysis

Although the City has improved MWBE prime participation since the 1994 Disparity Study, there still remains significant disparity between the utilization and availability of MWBEs. The subcontractor analysis indicates that MWBEs have done well. This portion of the analysis indicates that the current subcontracting program has been successful during the Study Period; although that assessment must be tempered somewhat by the data limitations which were previously noted. Yet even in this area, based on the qualitative evidence in the anecdotal chapter and the quantitative private sector evidence, an inference of discriminatory exclusion from private sector construction can be drawn. Detailed statistical evidence also supports the claim that customer discrimination against MWBEs persists even after controlling for both individual and firm characteristics. This combined evidence suggests that absent affirmative measures the City would be a passive participant in a pattern of exclusion of MWBEs.

D. Procurement Findings

FINDING 18: Vendor Lists

Currently, Purchasing (which reports to the Assistant Director of Finance) maintains an updated list of vendors, suppliers and contractors in Oracle Purchasing Software. There are no specified written guidelines concerning how vendors are placed on individual buyer lists. There is no written policy for soliciting MWBEs for small purchases.

FINDING 19: Department Purchase Orders

For purchases of goods and services under $2,500 department managers may make purchasing decisions. For purchase over $2,500 but less than $25,000 Purchasing solicits three verbal or written quotes and process the order with the lowest bidder. The department purchasing policies thus vary in their support for utilizing MWBE firms.

FINDING 20: Post-Bid Information

A number of MWBEs complained about lack of information on projects, in particular, a lack of understanding as to why they are not securing opportunities with the City when their bids or proposals for City business have been rejected.

FINDING 21: Contract Compliance Program Staffing

The Contract Compliance Office is comprised of two staff members. Their focus is goal setting, compilation of the annual MWBE performance report. However the Contract Compliance Office does not monitor projects nor are there consequences for Primes who do not report the information they are suppose to report.

FINDING 22: Program Awareness

City personnel revealed that the Departments are aware of the existence of the MWBE program and their responsibility to report accomplishments once a year, but felt detached from their responsibility to implement and grow the program. The departments see the responsibility for carrying forward this program resting in Contract Compliance or Purchasing. Most division personnel did not know the annual goal established for the year, nor could they explain why project goals were or were not established for certain projects. Many division managers responded that they would be told by Purchasing or Contract Compliance when an MWBE goal was necessary and did not articulate knowledge of the existence of goal setting committees.

Division personnel seemed generally unaware of when goals were required to be established or what the Overall Annual MWBE goals were for any of the categories. Conversely, Division Directors were concerned and aware of their Division's MWBE yearly accomplishments.

FINDING 23: Antidiscrimination Rules

The City does not have a formal commercial nondiscrimination component in its MWBE program.

FINDING 24: MWBE Program Data

At present, prime contractors are not required to list all subcontractors and the value of their subcontracts, including MWBE firms, in their bid submissions. The City is still behind with regard to tracking MWBE spending. In particular, the City still does not have a good source of subcontractor utilization and availability data. There is no central filing system within the Construction/Architect/ Engineer Division – project managers keep their own project files.

FINDING 25: Data Management

Oracle system does not track vendor by vendor id number and does not tie commodity codes to vendor
Contract and subcontract data is not electronic
No tracking of subcontractor payments
There is a breakdown of reporting construction/architect/engineering contract and payment information to the Compliance office

FINDING 26: Management and Technical Services

The City provides management and technical services to small and MWBE firms secured primarily through a partnership with the Renaissance Business Center. The center provides management and technical assistance programs through classes and workshops covering many facets of business operations.

FINDING 27: Access to Capital, Bonding, and Insurance

The City does not maintain a financial assistance or bonding program. It has partnered with local financial assistance programs in the Memphis MSA.

FINDING 28: Payment Policy

The City does not have in place a policy to address prompt payment. Therefore there may be inconsistencies in how vendors are paid and in what time frame.

FINDING 29: MWBE Certification

To be certified for the City's MWBE program the owner must be a minority person as "those persons, citizens of the United States and lawfully admitted resident aliens, who are African American (persons whose origins are in one of the Black regional groups of Africa)."[11] The definition for women includes non-minority females and the minority or woman owned business enterprise must be located within the Memphis MSA. At present the City contracts with the Mid-South Minority Business Council (MMBC) to make certification decisions of MWBE-owned business status. In this capacity MMBC is the arbiter of who is approved as an MWBE without right of veto by the City.

The City has taken steps towards establishing its own LBE certification process, certification list, and size standards for certification. However at the time of this study this program has not been implemented.

FINDING 30: MWBE Web Site

The City includes the following information on its Web site: vendor registration, MWBE certification information, answers to questions about RFPs.

FINDING 31: Performance Measures

At present, the City provides limited tracking of MWBE certification and MWBE utilization. It is therefore difficult to measure the results of increased outreach or the attainment of goals. It is recommended that, along with the institution of goals, there be put in place a system for tracking the attainment of those goals, as well as incentives for procurement personnel that are responsible for reaching the desired goals.

VI. Recommendations

A. Recommendations for Prime Contracting

RECOMMENDATION 1: Annual Aspirational MWBE Goals

This study provides evidence to support the establishment of a moderate program to promote MWBE utilization in the MSA. This conclusion is based primarily on disparities in current MWBE utilization, substantial disparities in the private marketplace, evidence of discrimination in business formation and revenue earned from self-employment, and some anecdotal evidence of discrimination. The City should tailor its minority participation programs to remedy each of these specific disparities. The City should be commended for its efforts to establish flexible annual aspirational goals rooted in its own estimates of MWBE availability. Table 3 provides guidance on setting initial annual goals for an MWBE program. These MWBE goals by business category are annual goals, not rigidly set project goals. Goals were set at 80% of the availability determined by this study in each business category for each race/gender/ethnicity category.

To establish a benchmark for goal setting, goals should be based on relative MWBE availability. MWBE goals based on vendor availability are reasonable, if not conservative. MWBE vendor-based aspirational goals range from .00 % to 18.33 %.[12] The primary means for achieving these aspirational goals should be outreach and adjustments in City procurement policy.

Table 3
RECOMMENDED RACE AND GENDER SPECIFIC ANNUAL ASPIRATIONAL GOALS FOR PRIME CONTRACTING FOR EACH BUSINESS CATEGORY BY RACE/ETHNIC/GENDER CLASSIFICATIONS MEMPHIS MBA

Business Category by MWBE Classification	% of Contract $	% of Available Firms	Availability Index Goal-80.0
Construction Prime Contractors			
African Americans	8.35%	15.17%	12.14%
Asian Americans	0.00%	0.29%	0.23%
Hispanic Americans	0.00%	0.00%	0.00%
Native Americans	0.00%	0.00%	0.00%
White Females	1.24%	3.18%	2.54%
A/E Prime Contractors			
African Americans	10.61%	18.49%	14.49%
Asian Americans	0.00%	0.84%	0.67%
Hispanic Americans	0.00%	2.52%	2.01%
Native Americans	0.00%	0.00%	0.00%
White Females	1.08%	6.72%	5.38%
Goods/Supplies Prime Contractors			
African Americans	4.88%	12.20%	9.76%
Asian Americans	0.00%	0.15%	0.12%
Hispanic Americans	0.00%	0.00%	0.00%
Native Americans	0.01%	0.05%	0.04%
White Females	1.13%	1.45%	1.16%
Other Services Prime Contractors			
African Americans	14.31%	22.90%	18.33%
Asian Americans	0.00%	0.11%	0.09%
Hispanic Americans	0.00%	0.22%	0.18%
Native Americans	0.00%	0.04%	0.03%
White Females	0.31%	2.13%	1.70%
Other Professional Services Prime Contractors			
African Americans	3.09%	12.03%	9.62%
Asian Americans	0.00%	0.47%	0.38%
Hispanic Americans	0.00%	0.12%	0.10%
Native Americans	0.00%	0.00%	0.00%
White Females	0.03%	1.52%	1.22%

Griffin & Strong, P.C. (2009)

COMMENDATION and RECOMMENDATION 2: MWBE and SBE Outreach

The City should be commended for providing MWBE outreach workshops and seminars. There are several vehicles by which City outreach efforts can be strengthened. For example, the data shows zero availability for Hispanic owned Construction firms in the Memphis MSA, however Census Data reports 1,083 Hispanic owned Construction firms in the State of Tennessee. This means that there are likely a number of Hispanic-owned Construction firms that could be doing business with the City of Memphis but they are not getting certified. It is recommended that the City undertake a program to indentify those Hispanic-owned firms that are ready, willing, and able to work for the City and assist them in obtaining certification.

The City should work with Building and Construction Department on providing more forecasts of business opportunities to MWBE vendors.
The City should partner with federal procurement efforts to market to MWBE firms in the region. If there are firms already certified with the City, the City could assist those firms in growing their capacity by exposing those firms to federal assistance programs and other resources of the federal government, particularly those of the Minority Business Development Agency.
City agencies can feature MWBEs and SBEs in employee newsletters to promote firm awareness.

The effectiveness of MWBE and SBE outreach can be improved by classifying businesses into three categories:

Category A: Firms that are new to government contracting. These firms should be directed to the Procurement Technical Assistance Center (PTAC), the Small Business Development Centers (SBDC), and the Minority Business Development Center (MBDC). The Contract Compliance Office should not duplicate PTAC, SBDC, or MBDC services.

Category B: Firms that are familiar with government contracting in general but not with the particular agency. These firms should be handled via an enhanced Web site that answers routine questions and quarterly group seminars.

Category C: Firms that already have government contracts and are looking for more specific assistance. Some agencies allow for new businesses to have 15-minute presentations of corporate capabilities to program managers. The City can also provide unsuccessful bidders with feedback and brief MWBEs and SBEs on quality assurance standards.

COMMENDATION AND RECOMMENDATION 3: Contract Sizing

The City should be commended for its efforts on issuing contracts in small dollar amounts, thus expanding the opportunities that small MWBE firms have to do business with the City of Memphis. However additional criteria that can be utilized and reviewed in determining whether projects can be divided include multiple locations within one project, size and complexity of the procurement, similarity of goods and services procured, and safety. This list is not exhaustive. As recommended in the Office of Management and Budget (OMB) Contract Bundling Report, the City should consider limiting the use of contract bundling to those instances where there are considerable and measurable benefits such as decreased time in acquisition, at least 10 % in cost savings, or improved contract terms and conditions.[13]

RECOMMENDATION 4: Promoting MWBE Collaboration

If contract size cannot be reduced to match MWBE capacity, the City should look for instances in which MWBE capacity can be increased to match contract size. MWBE capacity can be increased by encouraging joint ventures among MWBEs. For example, in Oregon the Northeast Urban Trucking Consortium, an organization composed of seven MWBE independent trucking firms with 15 trucks, joined together to win a $2 million trucking contract. MWBE collaboration can be encouraged by citing consortium examples in CCO newsletters and increasing outreach for projects where such collaboration may be effective.

The City may also cautiously encourage joint ventures between MWBEs and non-minority firms on large-scale projects. For example, the City of Atlanta encourages establishment of joint ventures on large projects over $10 million,[14] where economically feasible, to ensure prime contracting opportunities for all businesses, including certified MWBEs. This type of joint venture poses potential illicit "front" risks, and the City must examine these joint ventures carefully.

RECOMMENDATION 5: Bidder Rotation

The City should consider a system of bidder rotation, which would include majority and MWBE firms. Some political jurisdictions use bidder rotation schemes to limit habit purchases from majority firms and to ensure that MWBEs have an opportunity to bid along with majority firms. The City already does some rotation of firms in A&E, but it is here being suggested that new firms be invited to bid with each new RFP and that race-neutral preference be given to firms that have not previously done business with the City, in procurement categories where appropriate.

Miami-Dade County, FL uses small purchase orders for the Community Business Enterprise program and rotates on that basis. In addition, Miami-Dade County utilizes an Equitable Distribution Program, whereby a pool of qualified A&E professionals is rotated awards of county miscellaneous A&E services as prime contractors and subcontractors.

Other bidder rotation best practices: Dekalb County, Georgia "Bidder Box"; Port Authority of New York & New Jersey.

RECOMMENDATION 6: Uniform Procedures for Department Solicitation of MWBE and SBE Bids

The City should establish uniform procedures for department solicitation of MWBE bids or quotes. If the City does establish uniform departmental purchasing policies, such procedures should be included.

RECOMMENDATION 7: Debriefings

The City should increase the frequency of debriefing sessions after contract awards are made, particularly for those projects where there is sufficient MWBE availability to compete for and win contracts but they did not win the bid. Assistance is given to firm to help them determine why they did not win the bid.

RECOMMENDATION 8: Performance Reviews

The City should require employees with procurement authority to be evaluated on their MWBE and SBE, utilization as part of their performance review. The City should also ensure that all personnel with purchasing power are fully trained concerning the City's MWBE and SBE program and conform with the program requirements when they solicit bids and make purchases.

Recommendations for Subcontracting

RECOMMENDATION 9: Narrow Tailoring of MWBE Program

Recent developments in court cases involving federal DBE programs provide important insight regarding the design of local MWBE programs. In January 1999, the United States Department of Transportation (USDOT) published its final DBE rule in Title 49, Code of Federal Regulations, Part 26 (49 CFR 26). In the course of several cases involving the DBE program, the courts found the new DBE regulations to be narrowly tailored.[15] The federal DBE program features listed in Table 4 are important to this characterization of a narrowly tailored remedial procurement preference program. In particular, the DOT DBE regulations provide a variety of measures that put race- and gender-neutral techniques first and then use race- and gender-conscious project goals as a supplemental device when race- and gender-neutral techniques are found inadequate to reduce disparity in DBE (or MWBE) utilization.

Table 4

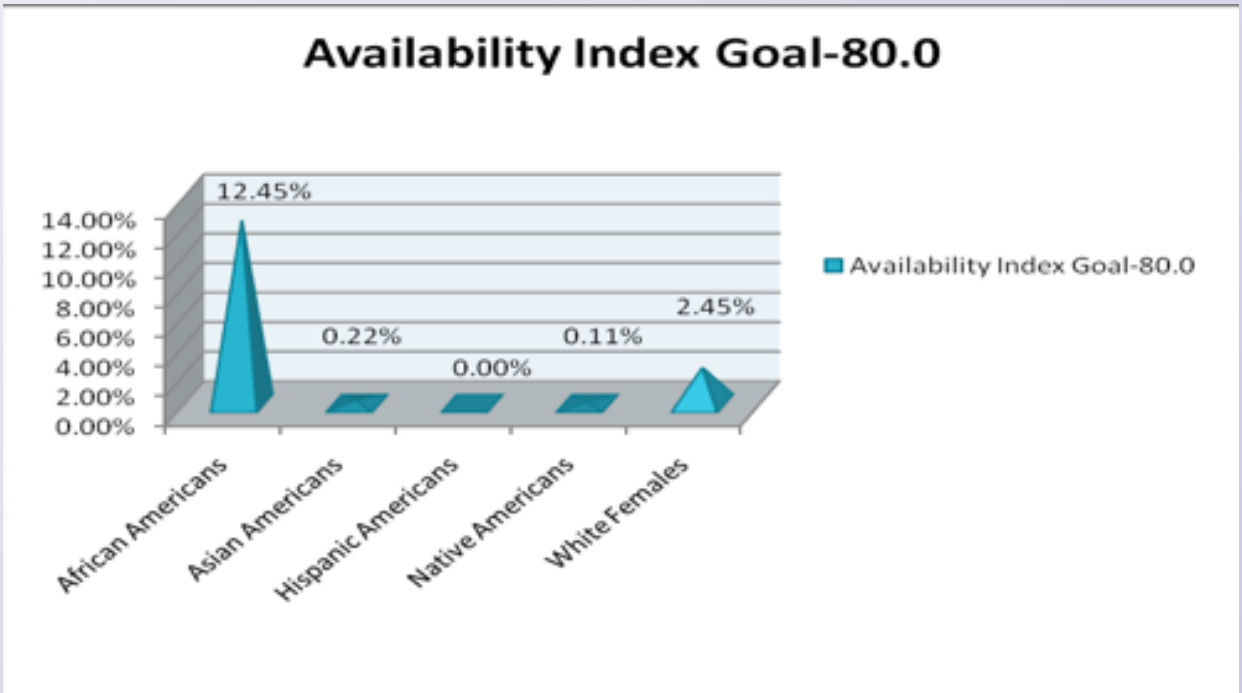
	Narrowly Tailored Goal-Setting Features	DBE Regulations
1	The City should not use MWBE quotas.	49 CFR 26(43)(a)
2	The City should use race- or gender-conscious set-asides only in extreme cases.	49 CFR 26(43)(b)
3	The City should meet the maximum amount of MWBE goals through race-neutral means.	49 CFR 26(51)(a)
4	The City should use MWBE project goals only where race-neutral means are not sufficient.	49 CFR 26(51)(d)
5	The City should use MWBE project goals only where there are subcontracting possibilities.	49 CFR 26(51)(e)(1)
6	If the City estimates that it can meet all MWBE aspirational goals with race-neutral means, then the City should not use MWBE project goals.	49 CFR 26(51)(f)(1)
7	If it is determined that the City is exceeding its MWBE aspirational goals, then the City should reduce the use of MWBE project goals.	49 CFR 26(51)(f)(2)
8	If the City exceeds MWBE aspirational goals with race-neutral means for two years, then the City should not set MWBE project goals the next year.	49 CFR 26(51)(f)(3)
9	Net worth requirements to determine social and economic disadvantage.	49 CFR 26(67)
10	If the City exceeds MWBE aspirational goals with project goals for two years then the City should reduce use of MWBE project goals the next year.	49 CFR 26(51)(f)(4)
11	If the City uses MWBE project goals, then the City should award only to firms that made good faith efforts.	49 CFR 26(53)(a)
12	The City should give bidders an opportunity to cure defects in good faith efforts.	49 CFR 26(53)(d)

The City's MWBE program is already narrowly tailored in a number of aspects, including the rejection of quotas, the absence of race-conscious set-asides, use of good faith efforts, project goals based on individual project review and linked to MWBE availability, and bidder rights to cure good faith efforts. The City should take more steps to further refine its MWBE program along the lines suggested in the DOT DBE regulations—in particular items 3 through 10 in Table 4 above.

RECOMMENDATION 10: Annual Aspirational MWBE Goals for Construction Subcontracting

The City should also establish annual aspirational goals of MWBE subcontracting (separate from prime contractor aspirational goals) (Table 5). Goals should be adjusted each year according to the utilization of MWBEs by business category, gradually reducing race- and/or gender-conscious goals and increasing race- and gender-neutral goals. The ultimate objective is to eliminate the need for a race- and/or gender-based program and to replace it completely with race- and gender-neutral options. Goals were set at 80% of the availability determined by this study for each race/gender/ethnicity category.

FIGURE 1
ASPIRATIONAL GOALS FOR CONSTRUCTION SUBCONTRACTING BY RACE/ETHNIC/GENDER CLASSIFICATION



Griffin & Strong, P.C. (2009)

COMMENDATION AND RECOMMENDATION 11: Consistency in Goal Setting Methods

Setting project goals separate from the overall aspirational goals serves to further narrowly tailor an agency's MWBE program. Project goals should be set based on the characteristics of the project, the percentage of that type of work that is typically performed by MWBEs, the areas in which MWBEs are known to provide services, and the goals set by the County.

Setting project goals distinct from overall aspirational goals would raise MWBE program costs. Setting project goals would require an additional part-time staff person. Such project goals should also be subject to periodic review by a goal-setting committee.

RECOMMENDATION 12: Mandatory Subcontracting

As a part of some SBE subcontracting programs some agencies impose mandatory subcontracting clauses which would promote SBE utilization and be consistent with industry practices.

City of Columbia, SC. The City of Columbia Subcontracting Program established in 2003 applies to City contract of $200,000 or more. A prime must subcontract a minimum percentage of its bid. The minimums are shown below:

Table 5
CITY OF COLUMBIA, S.C
MANDATORY SUBCONTRACTING MINIMUMS

Projects	Minimum subcontracting
Parks	20%
Pipelines (water & sewer)	20%
Pump Stations	20%
Street Improvements	20%
Traffic Signals/ Street Lighting	20%
Building Project by Project	Not to exceed 49%
Miscellaneous projects	20%

Bidders must make affirmative efforts to outreach to Disadvantaged Business Enterprises (DBEs), Disabled Veteran Business Enterprises (DVBEs) and Other Business Enterprises (OBEs) (defined as a business that does not qualify as either a DBE or a DVBE). A bidder will be deemed non-responsive for failure to meet 80 out of 100 points for good faith efforts. Points are granted on a pass/fail basis, i.e., either zero or full points.
San Diego. As part of its Subcontractor Outreach Program (SCOPe) San Diego requires mandatory outreach, mandatory use of subcontractors, and mandatory submission of an outreach document. Whether a contract has mandatory subcontracting is determined by the engineer on the project.

Contra Costa. The Contra Costa County (California) Outreach Program sets mandatory subcontracting minimums on a contract by contract basis. The Contra Costa Outreach Program requires that MBEs and WBEs be considered by contractors as possible sources of supply and subcontracting opportunities.

RECOMMENDATION 13: Review City of Jacksonville's Program

The City of Jacksonville, FL implemented a hybrid program by establishing a declining schedule of race conscious targets.[16] In the first program year, Jacksonville proposed to meet 70 % of its MWBE goal with race-conscious means, the second year, 50 %, and the third year, 25 %. At the end of the three year period the program is to be evaluated.

The City of Memphis should consider creating and funding many components of the initiatives of the City of Jacksonville, Florida program to include the following:

- Creation of SBE program with MWBE component
- Creation of Bond Enhancement Program
- Creation of Access to Capital Program
- Creation of Accounting Grants
- Creation of Educational Summits
- Semi-monthly payments to MWBEs
- A cap on the number and total dollar value of contracts that may be set-aside per year
- Appropriating the funds necessary to implement all programs

RECOMMENDATION 14: Reciprocal Certification

Memphis should accept the certification decisions of other governmental entities and not require MWBEs and SBEs to submit to a lengthy process. At a minimum, for firms that are already certified by other governmental entities[17], Memphis should only request the necessary documentation to verify compliance with City of Memphis' policies and procedures and conduct site visits for further verification, if warranted.

RECOMMENDATION 15: Steering Committee

The true success of a SBE and MWBE Program cannot fall on the shoulders of one office in the organization. The Contract Compliance Office alone cannot make this effort successful. The participation of all procurement professionals is needed to reach out to firms to get certified, to encourage inclusion of new firms and not just the firms that they are used to doing business with, and to assist firms in growing their capacity.

This means that there must be accountability and regular reporting on performance, as well as continuing development of program strategies. A key component is to assemble, senior staff members in the organization, who should serve as a steering committee to drive home the importance of full participation, including the City Administrator, Deputy City Administrators, and User Department Heads. A communications strategy should be established to get the message out that the total integration of MWBEs and LSBEs into the procurement process is important enough to implement, track, and report, by department and division heads. The steering committee should be responsible for a quarterly review and the ultimate outcomes.

Recommendations for Race-Neutral Alternatives

COMMENDATION AND RECOMMENDATION 16: SBE Program

Memphis should be commended for its establishment of a local business program. The City should move forward with setting SBE goals. A strong SBE program is at the center of maintaining a narrowly tailored program to promote MWBE utilization. It is certainly conceivable that a larger portion of City MWBE utilization can be achieved through the City SBE program.

Larger MWBE utilization through the SBE program can be achieved by increasing the scope of contracts placed in the SBE program, applying SBE goals to more contracts, applying a bid incentive to SBE contracts and changing the SBE size standard (discussed below). Further guidance on SBE programs can come from features of the other SBE programs around the United States, including:

- setting SBE goals for contracts (City of Charlotte) [18], (Miami-Dade County, FL[19];
- setting department goals for SBE utilization (City of Charlotte SBE program);
- making SBE utilization part of department performance review (City of Charlotte SBE program);
- rejecting bids for bidder noncompliance with the SBE program (City of Charlotte SBE program);
- and imposing mandatory subcontracting clauses where such clauses would promote SBE and MWBE utilization, and be consistent with industry practice (City of San Diego Subcontractor Outreach Program).[20]

RECOMMENDATION 17: Mentor-Protégé Program

Memphis' MWBE program has assisted in developing successful MWBE subcontractors, some of which have graduated to undertaking prime projects. It is recommended that the City consider an MWBE mentor-protégé program where MWBEs serve as mentors for other MWBE subcontractors. Such an approach has been tried with some success in Orlando, FL. The City should consider partnering with organizations such as the Associated General Contractors, local builders association, the Association of Women Contractors, the National Association of Minority Contractors and similar organization in such a program.

RECOMMENDATION 18: HUBZones

Another variant of an SBE program provides incentives for SBEs located in distressed areas. For example, under the 1997 Small Business Reauthorization Act, the federal government started the federal HUBZone program. A HUBZone firm is a small business that is: (1) owned and controlled by U.S. citizens; (2) has at least 35 % of its employees who reside in a HUBZone; and (3) has its principal place of business located in a HUBZone.[21]

The same preferences that can be given to SBEs can be given to HUBZone firms. For example, the City of New York has a HUBZone type program providing subcontracting preferences to small construction firms (with less than $2 million in average revenue) that either perform 25 % of their work in economically distressed areas or for which 25 % of their employees are economically disadvantaged individuals.[22]

All HUBZone programs are race neutral, HUBZone programs can serve as a vehicle for encouraging MWBE contract utilization. Nationally, there are 5,357 female and minority HUBZone firms, representing 56.2 % of total HUBZone firms.[23] In the Phoenix MSA there are 46 women and minority HUBZone firms (107 in the State of Arizona), representing 64.8 % of total HUBZone firms in the city.

RECOMMENDATION 19: Two Tier Size Standard

The federal case law and the DOT DBE regulations point to the use of size standards and net worth requirements as one factor in the narrow tailoring of remedial procurement programs.

Size standards for remedial procurement programs face a dilemma. If the size standard is placed too high, large firms crowd out new firms. If the size standard is placed too low, then too many experienced firms lose the advantages of the remedial program. The City should consider adopting a two-tier standard and a net worth requirement for MWBEs and should update its requirements for SBE firms.

Both the State of New Jersey and the federal government use a two-tier size standard. In this scheme there are separate size standards for small businesses and emerging small businesses. For large projects the State of New Jersey carves out portions of the contract for both tiers of small business. Thus, a single solicitation requires that the prime spend a certain percentage of the contract with small firms and another percentage with emerging small firms. Along related lines the federal government sets aside contracts for bidding only amongst small firms and other contracts may be set aside for bidding only by emerging small firms.

RECOMMENDATION 20: Commercial Antidiscrimination Rules

Some courts have noted that putting in place antidiscrimination rules is an important component of race-neutral alternatives.[24] Nationally, some agencies have adopted requirements to ensure that their procurement is not discriminatory (e.g., Baltimore, MD; Oakland, CA; Cincinnati, OH; Jackson, MS; Dade County, FL; Seattle, WA; Atlanta Public Schools, GA and Charlotte, NC).

Features of an antidiscrimination policy would include:

- submission of a Business Utilization report on MWBE subcontractor utilization;
- review of the Business Utilization report for evidence of discrimination;
- a mechanism whereby complaints may be filed against firms that have discriminated in the marketplace;
- due process, in terms of an investigation by agency staff;
- a hearing process before an independent hearing examiner;
- an appeals process to the agency manager and ultimately to a court; and
- imposition of sanctions, including:
    a. disqualification from bidding with the agency for up to five years;
    b. termination of all existing contracts; and
    c. referral for prosecution for fraud.

RECOMMENDATION 21: Private Sector Initiatives

Bexar County, TX added SMWBE participation to their county tax incentive policy in 2004. The county currently considers tax abatements of up to 40 % on qualified real property improvement and new personal property investment. A number of entities such as the City of Tampa, FL, Atlanta, GA, Saint Paul, MN have created private sector initiatives such as including MWBE goals in their economic development contracts and measuring MWBE participation on private sector projects performed by City prime contractors.

COMMENDATION AND RECOMMENDATION 22: Outsourcing Management and Technical Services

The City should be commended for its current efforts in providing management and technical assistance through it partnership with the Renaissance Business Center. These efforts could be strengthened by contracting with an outside management and technical assistance provider to provide needed technical services related to business development and performance, particularly in the area of loans and bonding. Such a contract should be structured to include providing incentives to produce results, such as the number of MWBEs being registered as qualified vendors with the City, the number of MWBEs graduating from subcontract work to prime contracting, and rewarding firms that utilize MWBEs in their private sector business activities.

RECOMMENDATION 23: Surety Assistance and Wrap-Up Insurance

A small business surety assistance program should provide technical assistance to small firms, track subcontractor utilization by ethnicity, coordinate existing financial as well as management and technical assistance resources, and provide for quality surety companies to participate in the bonding program. The Port Authority of New York and New Jersey uses a Contractor Insurance Program (CIP), a form of wrap-up insurance under which the Port Authority provides various insurance coverages to approved on-site contractors and subcontractors for construction contracts. In particular, the Port Authority buys and pays the premiums on public liability insurance ($25 million per occurrence), builders' risk insurance, and workers' compensation and employers' liability insurance. In general, the CIP can reduce an owner's project costs by an average of 1 to 2 % compared to traditional contractor procured insurance programs. The Port Authority CIP does help alleviate barriers from insurance costs to MWBE participation in Port Authority construction projects. Similarly, the City of Atlanta and Fulton County provide surety assistance programs as a part of their Owner Controlled Insurance Program (OCIP).

C. Organizational Recommendations

RECOMMENDATION 24: MWBE Program Data

It is imperative for the City to closely monitor the utilization of all businesses by race, ethnicity, gender, and business category over time to determine whether an LSBE program has the potential to eliminate race and gender disparities without applying specific race and gender goals. The City is still behind in some aspects of its tracking of MWBE spending.

The City should require that all contractors maintain data for subcontractors they have employed for a City project. This includes all subcontractors utilized (minority, women, and nonminority) and the total amount paid. These data should be submitted to the City before the prime contractor's final payment for services.

Availability analysis requires a good data source, such as the centralized bidder registration systems for prime vendors and contractors that are becoming increasingly common. For future availability analysis, it is equally important to identify not only the number of prime vendors but also the number of subcontractors available and the services provided by all vendors. Because the City does not collect these

data, it is limited in the type of availability analysis it can conduct. In order for Memphis to monitor an M/W/SBE program accurately and improve future availability analyses, it should require all contractors to submit a list of all subcontractors contacted in preparation of their bid package. The list of potential subcontractors should include the proposed service and bid amount. The data will allow the City to identify with accuracy the number of actual subcontractors available. These data should be analyzed and reviewed at least annually and the MWBE program adjusted according to review results.

Ideally, the City data management should rest upon Internet-based data tracking. Such a system would assist in the acquisition of subcontracting data, reduce the costs of disparity analysis, facilitate CCO time management of its staff, and shift focus of CCO staff from certification to contract compliance.

RECOMMENDATION 25: Listing of Subcontractors

The City should require all contractors to submit a list of all subcontractors contacted in preparation of their bid package. The list of potential subcontractors should include the proposed service and bid amount. The listing of subcontractors would reduce the possibility of bid shopping. Contractors sometimes solicit bids from a number of subcontractors, only to request that the same contractor that they have worked with before match the lowest bid. This means that Minority and Women-Owned Businesses would still not have an opportunity to obtain subcontracting contracts even though they are qualified and have the lowest bid. It is preferable that contractors submit this list with the bid submission.

Having this list could also assist the City during the submission review process, goal-setting process, and goal attainment review, and help avoid administrative issues of handling noncompliance after contract award. Some agencies reduce bid shopping with the following requirements:

- prime contractors must report all subcontractors with the bid submission;
- subcontractor bids must remain confidential to prevent bid shopping by sharing one subcontractor's bid with another subcontractor;
- prime contractors must contract with subcontractors in the same dollar amount upon which the prime bid was based;
- prime contractors must seek written approval of the substitution of subcontractors; and each pay request must identify the dollar amount to be paid to subcontractors.

RECOMMENDATION 26: Historically Underutilized Subcontractors

Memphis should find ways to encourage the award of contracts to qualified MWBEs that have participated in bidding but that have not won any bids and therefore, have not previously done business with the City. The City could provide bonus points or other incentives when a prime utilizes an "untried" business.

COMMENDATION and RECOMMENDATION 27: Access to Capital

The City should be commended for its collaboration with existing financial assistance providers. Other examples of lending assistance programs include linked deposit programs and collateral enhancement programs. Agencies use linked deposit programs to subsidize lower rates for business and

COMMENDATION and RECOMMENDATION 27: Access to Capital

The City should be commended for its collaboration with existing financial assistance providers. Other examples of lending assistance programs include linked deposit programs and collateral enhancement programs. Agencies use linked deposit programs to subsidize lower rates for business and housing loans by accepting a lower rate on their deposits with participating financial institutions. Under a collateral enhancement program the City would not loan funds directly to businesses, but instead would place a collateral reserve account at a bank. The business would then be required to secure financing from a lending institution, which could be conditioned on receipt of additional collateral supplied by the collateral enhancement program.

The cities of Phoenix, AZ, Saint Paul, MN are a couple of examples that offer capital program that have established or partnered with local lending assistance programs and CDC lending programs. Such programs should be evaluated for their impact on SMWBE growth, development and utilization.

RECOMMENDATION 28: Prompt Payment

The City should establish a prompt payment policy. One such policy operates at the Orlando Orange County Expressway Authority (OOCEA) in Florida:

- The OOCEA cuts checks every Tuesday.
- The OOCEA has a Quick Pay program that can pay vendors within two weeks.
- The OOCEA also makes mobilization payments for project preparation.
- The OOCEA payment policy allows for joint checks payable to small and MWBE firms and the materials supplier.
- The OOCEA's payment policy provides for no progress payments to the prime contractor until the prime has certified disbursement of a pro rata share of payments to subcontractors.

The State of Minnesota covers subcontractors in their prompt payment statute. Some small vendors still have problems with prompt payment particularly payments by prime contractors to subcontractors. Certain subcontractors that work on an early phase in a project can suffer from retainage withheld on lengthy projects. The prompt payment policy should address this issue. The City should require that retainage be released when the tasks for the subcontractors phase of work is accepted rather than at the end of the project. [25] This policy has been adopted by a number of state departments of transportation and federal DOT grant recipients.

RECOMMENDATION 29: Oversight Committee

It is important that major stakeholders (including representatives of general contractors and MWBE contractors) take part in discussions about the City's MWBE program. Consequently, the City should provide a vehicle for stakeholder input in the review of any reforms of its MWBE program.

In addition, MWBEs are facing challenges in the general marketplace related to capital, private sector bid opportunities, prompt payment, contract compliance, and business operations. There are a number of entities within the Memphis MSA that operate an MWDBE program or who suspended their program. These governmental entities should enter into an inter-local agreement and work in concert to ensure increased contract access, contract compliance, and a coordinated effort to ensure the growth and viability of Memphis MWBEs.

RECOMMENDATION 30: Additional Features for MWBE Web site

Other agencies put the following information on their Web site: directory of certified firms in electronic format (City of New York), uniform certification application, MWBE program description, SBE program description, how to do business information, bid tabulations, direct links to on-line purchasing manuals, capacity and experience data on certified firms, bid opportunities, vendor application, information on loan programs, and forecasts of business opportunities for MWBEs.

RECOMMENDATION 31: Performance Reviews

A means of increasing understanding of the ordinance would be to identify means of broader distribution of program requirements. A first step would be revision of the Purchasing Policies and Procedures manual section, Minority and Women Business Enterprise (C-050) to include more details regarding the ordinances provisions.
Secondly, additional internal materials providing the program highlights could be developed and distributed during a training session for supervisors, managers and directors. Most City personnel interviewed indicated it had been a number of years since they had gone through training for the program. Following implementation of the new ordinance would be an ideal time to schedule training.

The City should require employees with procurement authority to be evaluated on their MWBE utilization as part of their performance review. The City should also ensure that all personnel with purchasing power are fully trained concerning the City's MWBE program and conform with the program requirements when they solicit bids and make purchases.

RECOMMENDATION 32: Staffing and Program Monitoring

Increase staff, training and resources of the Contract Compliance Office to ensure the necessary resources to operate the MWBE program, train the internal customers and to track the data necessary to report on accomplishment. Specifically, this staff would be responsible to perform outreach, respond to public inquiries about the program, set project and overall goals, analyze bid requirements, monitor compliance from current contracts, and perform dispute resolution, collect and report on data related to contract awards and expenditures and to respond to the needs of the internal customers regarding interpretation, assistance and compliance.

RECOMMENDATION 33: Balanced Scorecard

The City should develop additional measures to gauge the effectiveness of its efforts. Jacksonville, Florida has had a balanced scorecard approach.
Possible measures include:

- growth in the number of MWBEs winning their first award from the City;
- growth in percentage of MWBE utilization by the City;
- growth in MWBE prime contracting;
- growth in MWBE subcontracting to prime contractors;
- number of firms that receive bonding;
- number of firms that successfully graduate from the MWBE program;
- number of graduated firms that successfully win City projects;
- percentage of MWBE utilization for contracts not subject to competitive bidding requirements;
- growth in the number of MWBEs utilized by the City;
- number of joint ventures involving MWBEs

VII. Conclusion

The City of Memphis, Tennessee has a legal and economic interest in ensuring that MWBEs participate fully in the economic opportunities created by the City's procurement. The City also has a governmental interest in ensuring that MWBE's have equal access to capital on a non-discriminatory basis.

While utilization of Minority and Women owned firms by the City did improve during the five-year period of this study and since the previous study of 1994, both in relative and absolute terms, substantial disparities did remain in some areas. Disparities in firm revenue and in entry into and earnings from self-employment were also evident after controlling for firm characteristics. MWBEs faced higher barriers in the private sector than in City of Memphis procurement.

To bridge the gap between the disparities found in the Study and the fair, open and inclusive procurement process that the City seeks to have, it will be necessary to address the present effects of past discrimination. The current Minority and Women Owned Business Enterprise Procurement Program should continue to be developed to address the Findings of this Study.

Also, if the recommendations of the Study are enacted, the City should achieve a higher degree of remedial success in its procurement processes and enhance its overall economic environment.

Griffin & Strong, P.C.
March, 2010

Footnotes:

1 City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).
2 Enacted in February, 1996
3 The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution states that no state shall "deny to any person within its jurisdiction the equal protection of the laws" and Title VI of the Civil Rights Act of 1964 states, "No person in the United States shall, on ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."
4 All references to statements made in the Croson decision refer to Justice O'Connor delivering the opinion of the Court unless otherwise noted.
5 488 U.S. at 493
6 Id. at 469, 507.
7 Croson, 488 U.S. at 491-92, 109 S.Ct. at 537-38.
8 Id. at 509.
9 Id. at 500.
11 Memphis City Code section 2-325(c) Definitions
12 The MWBE aspirational goal is 80 % of availability. These aspirational goals are set below estimated MWBE availability. The 80 % is derived from the concept that if MWBE utilization is less than 80 % then disparity is substantial. This conservative adjustment reflects a concern that the program errs on the side of narrow tailoring. In principle, goals can be slightly above estimated MWBE availability.
13 Office of Management and Budget, "Contract Bundling—A Strategy for Increasing Federal Contracting Opportunities for Small Business" (October 2002).
14 City of Atlanta Ordinance Sec. 2-1450 and Sec. 2-1451.
15 Adarand v. Slater, 228 F.3d 1147 (10th Cir 2000), Sherbrooke Sodding v. MDOT (2001 US Dist Lexis 19565) (November 14, 2001), Gross Seed v. Nebraska Department of Roads, Case No. 4:00CV3073 (NB 2002), Western States Paving v. Washington DOT, Case No. C00-5204-RBL (WA 2003).
16 City of Jacksonville, Executive Order No. 04-02
17 The State of Florida has an MBE Certification program. It has a larger size standard than the Orange County, FL program. (http://osd.dms.state.fl.us/eligibil.htm) Chapter 288, The 2005 Florida Statues and Chapter 38A-20, Florida Administrative Code.
18 A description of the Charlotte SBE program can be found at www.charmeck.org/Departments/Economic+Development/Small+Business/Home.htm.
19 10-33.02 Code of Miami (CSBE); www.co.miami-dade.fl.us/dbd Ordinance 01-103, Administrative Order 3-32 CBE Program)
20 San Diego as part of its Subcontractor Outreach Program (SCOPe) has mandatory outreach, mandatory use of subcontractors, and mandatory submission of an outreach document. Whether a contract has subcontracting is determined by the engineer on the project.
21 13 C.F.R. 126.200 (1999). The State of California provides a 5 % preference for a business work site located in state enterprise zones and an additional 1-4 % preference (not to exceed $50,000 on goods and services contracts in excess of $100,000) for hiring from within the enterprise zone. (Cal Code Sec 4530 et seq.) Minnesota's bid preferences are limited to small businesses operating in high unemployment areas.
22 New York Administrative Code § 6-108.1. For a description of the New York local business enterprise program see http://www.nyc.gov/html/sbs/html/lbe.html. Miami-Dade has a Community Workforce Program that requires all Capital Construction Projects contractors to hire 10 % of their workforce from Designated Target Areas (which include Empowerment Zones, Community Development block grant Eligible Block Groups, Enterprise Zones and Target Urban Areas) in which the Capital Project is located. (Miami Ordinance 03-237.)
23 Based on the SBA pro-net database located at http://pro-net.sba.gov/pro-net/search.html.
24 Engineering Contractors v. Dade County, 943 F.Supp. 1546 (SD Fla 1996).
25 49 CFR Part 26.29(b)