

CITY OF TOLEDO OHIO

2022 Disparity Study | Executive Summary



ATTORNEYS AND PUBLIC POLICY CONSULTANTS

235 Peachtree Street, N.E. | Suite 400 | Atlanta, Georgia 30303
Phone: 404-584-9777 | Fax: 404-584-9730 | GSPClaw.com

INTRODUCTION

SCOPE OF WORK

In March 2021, The City of Toledo, Ohio (“City”) contracted with Griffin & Strong, P.C. (“GSPC”) to conduct a disparity study (“Study”), to evaluate and make improvement recommendations for contracting and procurement policies and practices with regard to minority and women-owned firms.

The Study focuses on the availability and utilization of Minority Business Enterprises (“MBE” or “Minority owned”), and Non-minority Woman Business Enterprises (“WBE” or “Non-minority Woman”) (collectively “MWBEs”) and examines relevant evidence of race or gender-based disparities in the City’s contracting.

Governmental entities across the country authorize disparity studies in response to City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) and subsequent cases in order to determine whether there is a compelling interest for the creation or continuation of remedial procurement programs, based upon race, gender, and ethnicity. In order for the legal requirements of Croson and its progeny to be satisfied for any race or gender-based activities, GSPC must determine whether the City has been a passive or active participant in any identified disparities with regard to the access of MBEs and WBEs to its procurement and contracting opportunities.

Toward achievement of these ends, GSPC has analyzed the prime contracting and subcontracting activities for the City’s purchases of Construction, Architecture & Engineering (“A&E”), Professional Services, Other Services and Goods during the five (5) year study period based on the City’s fiscal years from FY2016 through FY2020 (“Study Period”).

GRIFFIN & STRONG, P.C. PROJECT TEAM

Rodney K. Strong
Delmarie Griffin
Project Executives

Dr. Imani Strong-Tucker,
Anecdotal Oversight

Dr. J. Vincent Eagan,
Principal Investigator

Marcus Garner,
Anecdotal Analyst

Dr. Gregory Price,
Senior Economist

David Maher,
Legal and Policy Analyst

Michele Clark Jenkins,
Project Manager

Rose Nyaondo,
Data Analyst

Ana Paula Duarte
Deputy Project Manager

Susan G. Johnson,
Project Administrator

Creative Research Solutions,
Survey of Business Owners

N-Sync, LLC, Deborah Barnett, President,
Anecdotal Interviews, Focus Groups, PR, and
Community Outreach

I. OBJECTIVES

The principal research questions are to determine:

- Is there is a statistically significant disparity in the relevant geographic and product markets between the percentage of certified minority and women owned businesses willing and able to provide goods or services to the City in each of the categories of contracts and the percentage of dollars spent by the City or City contractors with such firms?
- If a statistically significant disparity exists, have factors, other than race and gender been ruled out as the cause of that disparity?
- Can the discrimination be adequately remedied with race- and gender-neutral remedies?
- If race- and gender-neutral remedies are not sufficient, does the evidence from the Study legally support race and/or gender conscious remedial program elements?
- Are the proposed remedies narrowly tailored to the strong basis in evidence from the Study?

II. TECHNICAL APPROACH

In conducting this Study and preparing its 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;
- Reviewing policy and processes;
- Collecting electronic data, inputting manual data, organizing, and cleaning data, as well as filling any data gaps;
- Conducting geographic and product market area analyses;
- Conducting utilization analyses;
- Determining the availability of qualified firms;
- Analyzing the utilization and availability data for disparity and statistical significance;
- Conducting private sector analysis including credit and self-employment analysis, as well as analysis of building permit data;
- Collecting and analyzing anecdotal evidence;
- Establishing findings of fact regarding the existence and nature of marketplace discrimination and /-or other barriers to MWBE participation in City contracts; and
- Preparing a final report that identifies and assesses the efficacy of various race- and gender-neutral and narrowly tailored race- and gender-based remedies if indicated by the findings.

LEGAL ANALYSIS

A. DEVELOPMENT OF THE RELEVANT LAW

The outgrowth of disparity studies was in large measure a response to constitutionally based legal challenges made against federal, state, and local minority business enterprise programs enacted to remedy past or present discrimination (whether real or perceived).

Such studies were effectively invited by the United States Supreme Court in rendering its seminal decision in *City of Richmond v. J. A. Croson Company*, 488 U.S. 469; 109 S. Ct. 706; 102 L. Ed. 2d 854 (1989), and subsequent judicial decisions have drawn a direct line between Croson and the utilization of disparity studies. See, for example, *Adarand Constructors, Inc. v. Slater (Adarand III)*, 228 F.3d 1147, 1172-73 (10th Cir. 2000) (“Following the Supreme Court’s decision in Croson, numerous state and local governments have undertaken statistical studies to assess the disparity, if any, between availability and utilization of minority-owned businesses in government contracting.”).

Disparity studies have therefore become an important tool for governmental entities in deciding whether to enact minority business programs or legislation, and in justifying existing programs or legislation in the face of constitutional challenge. To better understand the proper parameters of such programs, one must understand their judicial origin.

1. The Supreme Court's Decision in *City of Richmond v. Croson*

To fully appreciate the usefulness of disparity studies for development and defense of minority business programs, an overview of the Croson decision is helpful.

Laws that, on their face, favor one class of citizens over another, may run afoul of the Equal Protection Clause of the Fourteen Amendment. MBE/WBE programs and legislation are among the types of laws invoking such concerns. Depending on the nature of the differentiation (e.g., based on race, ethnicity, gender), courts evaluating the constitutionality of a minority business program will apply a particular level of judicial scrutiny. As explained at greater length below, race-based programs are evaluated under a "strict scrutiny" standard, and gender-based programs may be subject to strict scrutiny or under a less-rigorous "intermediate scrutiny" standard, depending on the federal circuit within which the entity sits.

In its Croson decision, the Supreme Court ruled that the City of Richmond's Minority Business Enterprise (hereinafter "MBE") program failed to satisfy the requirements of "strict scrutiny." "Strict scrutiny" review involves two co-equal considerations: First, the need to demonstrate a compelling governmental interest; Second, implementation of a program or method narrowly-tailored to achieve/remedy the compelling interest. In Croson, the Supreme Court concluded that the City of Richmond failed to show that its minority set-aside program was "necessary" to remedy the effects of discrimination in the marketplace.

In fact, the Court found that the City of Richmond had not established the necessary factual predicate to infer that discrimination in contracting had occurred in the first place. The Court reasoned that a mere statistical disparity between the overall minority population in Richmond (50% African American) and awards of prime contracts to minority-owned firms (0.67% to African American firms) was an irrelevant statistical comparison and insufficient to raise an inference of discrimination.

Addressing the disparity evidence that Richmond proffered to justify its MBE program, the Court emphasized the need to distinguish between "societal discrimination," which it found to be an inappropriate and inadequate basis for social classification, and the type of identified discrimination that can support and define the scope of race-based relief.

Specifically, the Court opined that a generalized assertion of past discrimination in an entire industry provided no guidance in determining the present scope of the injury a race-conscious program seeks to remedy and emphasized that "there was no direct evidence of race discrimination on the part of the City in letting contracts or any evidence that the City's prime contractors had discriminated against minority-owned subcontractors."

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Accordingly, the Court concluded there was no prima facie case of a constitutional or statutory violation by anyone in the construction industry that might justify the MBE program. Justice O'Connor nonetheless provided some guidance on the type of evidence that might indicate a proper statistical comparison:

[W]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise. [*Croson*, 488 U.S. at 509]

Stated otherwise, the statistical comparison should be between the percentage of MBEs in the marketplace qualified to do contracting work (including prime contractors and subcontractors), and the percentage of total government contract awards (and/or contractual dollars paid) to minority firms. The relevant question among lower federal courts has been which tools or methods are best for such analysis; a matter addressed in the detailed discussion of statistical comparison provided below.

Additionally, the Court in *Croson* stated that identified anecdotal accounts of past discrimination also could provide a basis for establishing a compelling interest for local governments to enact race-conscious remedies. However, conclusory claims of discrimination by City officials, alone, would not suffice, nor would an amorphous claim of societal discrimination, simple legislative assurances of good intention, or congressional findings of discrimination in the national economy. In order to uphold a race- or ethnicity-based program, the Court held, there must be a determination that a strong basis in evidence exists to support the conclusion that the remedial use of race is necessary.

Regarding the second prong of the strict scrutiny test, the *Croson* Court ruled that Richmond's MBE program was not narrowly tailored to redress the effects of discrimination. First, the Court held that Richmond's MBE program was not remedial in nature because it provided preferential treatment to minorities such as Eskimos and Aleuts, groups for which there was no evidence of discrimination in Richmond. Thus, 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 identified discrimination. Specifically, the Court criticized the City for its lack of inquiry into whether a particular minority business, seeking racial preferences, had suffered from the effects of past 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.²

Subsequent to the decision in *Croson*, the Supreme Court and the federal Circuit Courts of Appeal have provided additional guidance regarding the considerations, measurements, information, and features surrounding an MBE/WBE program which will assist in protecting the program from constitutional challenge under a strict scrutiny

analysis. These recommendations have in many respects provided a roadmap of sorts for useful disparity studies and are therefore discussed in greater detail below.

2. The Supreme Court's Decision in *Adarand v. Peña* and Subsequent Circuit Court Proceedings

Six years after its decision in *Croson*, the Supreme Court was again confronted with an equal protection challenge to a minority business program, in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995) (*Adarand II*). This time, however, the program under challenge was enacted by the federal government, thus implicating the Fifth Amendment rather than the Fourteenth Amendment analysis required for the local (state) program in *Croson*.

Reversing the decision of the Tenth Circuit, the Supreme Court ruled that federal programs are not reviewed for constitutionality under a more lenient standard (as had been indicated in some prior Supreme Court opinions); strict scrutiny is likewise to be applied to such programs.³ Because the district court and the Tenth Circuit had not applied the proper standard of review, the Supreme Court remanded the case back to the district court to apply strict scrutiny to the program, consistent with *Croson*.⁴

On remand, the district court (D. Colo.) essentially ruled that no program can meet the strict scrutiny standard --- i.e., it is "fatal in fact." The Tenth Circuit disagreed, upholding the federal program even under a strict scrutiny standard, finding a compelling state interest, and the required narrow tailoring to achieve such compelling interest. *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 2000) (*Adarand III*).

Consistent with *Croson* and subsequent opinions, the Tenth Circuit described its task regarding the compelling state interest as follows:

[O]ur inquiry necessarily consists of four parts: First, we must determine whether the government's articulated goal in enacting the race-based measures at issue in this case is appropriately considered a "compelling interest" under the governing case law; if so, we must then set forth the standards under which to evaluate the government's evidence of compelling interest; third, we must decide whether the evidence presented by the government is sufficiently strong to meet its initial burden of demonstrating the compelling interest it has articulated; and finally, we must examine whether the challenging party has met its ultimate burden of rebutting the government's evidence such that the granting of summary judgment to either party is proper. We begin, as we must, with an inquiry into the meaning of "compelling interest." [*Adarand III*, 228 F.3d at 1164]

If satisfied that the compelling state interest prong had been met, the court then needed to determine whether the federal DBE program was narrowly tailored, as required under *Croson* (and strict scrutiny jurisprudence generally).⁵

The court first found that the government's proffered interest -- "remedying the effects of racial discrimination and opening up federal contracting opportunities to members of previously excluded minority groups" -- met the standard.⁶

As for the “strong basis in evidence” that remedial action was necessary, the court in *Adarand III* found that the government established that minority contractors faced significant discriminatory barriers to entry into the disbursement programs, such as a classic “old boy” network of contractors, denial of access to capital, and denial of or difficulty in obtaining union membership to assist in access.⁷

The government also demonstrated, the court found, that existing minority contractors faced barriers to competition, owing to various methods of “discrimination by prime contractors, private sector customers, business networks, suppliers, and bonding companies[.]”⁸

In support of its position, the government produced statistical and anecdotal evidence, both direct and circumstantial, taken from local disparity studies which demonstrated under-utilization of minority subcontractors (described in more detail below), and the effect on utilization rates when affirmative action programs or efforts were discontinued for one reason or another.⁹

The Court went on to discuss at length its reasoning that the government also adequately demonstrated that its program was narrowly tailored to achieve the compelling interest discussed previously.¹⁰ In sum, the Court found that the government satisfactorily met the following important factors: “the necessity for the relief and the efficacy of alternative remedies; the flexibility and duration of the relief, including the availability of waiver provisions; the relationship of the numerical goals to the relevant labor market; and the impact of the relief on the rights of third parties.”¹¹

The case was therefore returned to the district court for further proceedings “consistent with this opinion.”¹²

3. The Sixth Circuit’s Decision in *Associated General Contractors v. Drabik*

Having the benefit of the Supreme Court’s thinking in *Croson* and *Adarand*, the Sixth Circuit addressed the constitutionality of the State of Ohio’s minority business enterprise statute (“MBEA”) in *Associated Gen. Contrs. of Ohio, Inc. v. Drabik*, 214 F.3d 730, 735 (6th Cir. 2000), an opinion which remains among the most significant M/WBE appellate decisions in the Circuit covering Cuyahoga County.

In *Drabik*, the Court of Appeals affirmed the district court’s finding that Ohio’s 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.¹³

Specifically, the court 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.¹⁴ 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.”¹⁵ Although this was more data than was submitted in *Croson*, it was still insufficient under strict scrutiny, according to the court.¹⁶

Drabik thus underscores that M/WBE 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.¹⁷

Finally, expressly relying on *Croson*, the Drabik Court cited the requirement 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.¹⁸

EXECUTIVE SUMMARY

This presents the findings and recommendations resulting from the Study for the City of Toledo, Ohio related to the Industry Categories: Construction, Architecture & Engineering (A&E), Professional Services, Other Services, and Goods for FY2016-FY2020.

The courts have indicated that for race-based or gender-based preference programs to be maintained there must be a strong basis in the evidence for the establishment of such programs or the continuation of existing programs. As the detailed findings below will demonstrate, GSPC found some statistically significant underutilization of some MWBE firms in each of the five (5) Industry Categories that GSPC analyzed. The exceptions will be discussed in the findings below.

A regression analysis was performed and GSPC found that there was evidence to indicate disparities by race, ethnicity, or gender status of the firm owners even after controlling for capacity and other race- and gender-neutral factors. This statistical evidence found support in the anecdotal evidence of the experiences of firms in the City of Toledo's marketplace.

FINDINGS

FINDING 1: LEGAL FINDING

Consistent with the “narrow tailoring” aspect of the strict scrutiny analysis, the City of Toledo continues to implement race and gender neutral measures in addition to its MBE goals program to try to increase utilization of MBE firms, but the present Study shows that those measures have not been effective in resolving or significantly reducing the identified disparities.¹ Accordingly, the City has a basis to introduce some race and gender conscious remedies or policies toward that goal for some Industry Categories and for some ethnic and gender groups.²

Moreover, the use of a regression analysis and consideration of the contracting environment in the private sector as part of this Study allow the City to demonstrate that factors *other than* MBE and WBE status cannot fully account for the statistical disparities found. Stated otherwise, the City of Toledo can show that MBE and WBE status continues to have an adverse impact on a firm’s ability to secure contracting opportunities with the City, further supporting more aggressive remedial efforts.

Lastly, having obtained statistical and anecdotal evidence of disparities that are race, ethnicity, and gender specific, the City can ensure that the more robust remedies considered as a result of this Study can be limited to minority groups for which underutilization and an inference of discrimination has been identified.³

¹ See *City of Richmond v. J. A. Croson Company*, 488 U.S. 469, 507-508; 109 S. Ct. 706 (1989).

² *Id.*

³ *Id.*; see also *H.B. Rowe Company, Inc. v. W. Lindo Tippett*, 615 F.3d 233, 256-58 (4th Cir. 2010) (finding strong basis in evidence for remedial action for African American and Native American firms, but no similar basis for inclusion of other minority groups (including women-owned businesses) in the remedial policy).

STATISTICAL FINDINGS

FINDING 2: RELEVANT GEOGRAPHIC AND PRODUCT MARKETS

The Study compares the availability and utilization of firms in a common area, the Relevant Geographic Market, where about 75% of Toledo spending with vendors takes place. The Geographic Relevant Market was the Toledo Metropolitan Statistical Area (MSA)⁴, based on the following percentages of spending.

- In Construction, 81.11%
- In A&E, 88.30%
- In Professional Services, 45.01%
- In Other Services, 78.51%
- In Goods, 33.62%

Given that 76.46% of all Toledo spending was with firms located in this relevant market (and 80.78% of spending excluding Goods), GSPC determined that one consistent Relevant Geographic Market across all Industry Categories was appropriate.

FINDING 3: AVAILABILITY

The measures of availability utilized in this Study incorporate all of the criteria of availability required by City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).

- The firm does business within an industry group from which Toledo makes certain purchases.
- The firm's owner has taken steps to demonstrate interest in doing business with government.
- The firm is located within a relevant geographical area such that it can do business with Toledo.

The firms used to calculate Availability came from the Master Vendor File in the Relevant Market Area. GSPC found that firms were available to provide goods and services to Toledo as reflected in the following percentages by each race, ethnicity, and gender group (Table 1).

⁴ The MSA includes the counties of Fulton, Lucas, Ottawa, and Wood in Ohio.

Table 1: Availability Estimates by Work Category

*In the Relevant Market
(Based upon the Master Vendor File)
Toledo Disparity Study*

Business Owner Classification	Construction	A&E	Professional Services	Other Services	Goods
African American	7.13%	2.20%	5.61%	4.70%	1.57%
Asian American	0.22%	1.10%	0.00%	0.16%	0.26%
Hispanic American	2.67%	3.30%	0.35%	0.82%	0.39%
Native American	0.45%	1.10%	0.70%	0.08%	0.00%
TOTAL MINORITY	10.47%	7.69%	6.67%	5.77%	2.23%
Non-Minority Woman	3.12%	4.40%	0.35%	0.74%	1.70%
TOTAL MWBE	13.59%	12.09%	7.02%	6.67%	4.06%
TOTAL NonMWBE	86.41%	87.91%	92.98%	93.33%	95.94%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%

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FINDING 4: MWBE PRIME UTILIZATION

As Table 2 below shows, Toledo paid a total of \$709.59 million in prime construction spending in the Relevant Market during the Study Period and \$96.20 million of this amount, or 13.56% was paid with MWBE firms as prime contractors. MWBEs were paid 3.81% of A&E Services, 35.65% of Professional Services, 10.85% of Other Services, and 1.88% of Goods. MWBEs won 11.69% of prime payments across all purchasing categories.

Table 2: Summary of Prime Utilization by Work Category

*In the Relevant Market
(Based upon Payments FY2016-FY2020)
Toledo Disparity Study*

Business Ownership Classification	Construction	A&E	Professional Services	Other Services	Goods	Total
	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)
African American	\$ 1,835,696	\$ 368,737	\$ 3,507,921	\$ 635,296	\$ 14,240	\$ 6,361,890
Asian American	\$ -	\$ -	\$ -	\$ 48,594	\$ 1,250,091	\$ 1,298,685
Hispanic American	\$ 94,120,857	\$ 2,508,396	\$ -	\$ 1,394,758	\$ 19,138	\$ 98,043,149
Native American	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL MINORITY	\$ 95,956,553	\$ 2,877,133	\$ 3,507,921	\$ 2,078,648	\$ 1,283,469	\$ 105,703,724
Non-minority Woman	\$ 243,096	\$ -	\$ -	\$ 6,874,037	\$ 435,620	\$ 7,552,753
TOTAL MWBE	\$ 96,199,649	\$ 2,877,133	\$ 3,507,921	\$ 8,952,685	\$ 1,719,089	\$ 113,256,477
TOTAL NON-MWBE	\$ 613,390,260	\$ 72,549,906	\$ 6,332,426	\$ 73,541,952	\$ 89,535,625	\$ 855,350,169
TOTAL FIRMS	\$ 709,589,909	\$ 75,427,039	\$ 9,840,347	\$ 82,494,637	\$ 91,254,714	\$ 968,606,646
Business Ownership Classification	TOTAL	TOTAL	TOTAL	TOTAL	TOTAL	Total
	(%)	(%)	(%)	(%)	(%)	(%)
African American	0.26%	0.49%	35.65%	0.77%	0.02%	0.66%
Asian American	0.00%	0.00%	0.00%	0.06%	1.37%	0.13%
Hispanic American	13.26%	3.33%	0.00%	1.69%	0.02%	10.12%
Native American	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
TOTAL MINORITY	13.52%	3.81%	35.65%	2.52%	1.41%	10.91%
Non-minority Woman	0.03%	0.00%	0.00%	8.33%	0.48%	0.78%
TOTAL MWBE	13.56%	3.81%	35.65%	10.85%	1.88%	11.69%
TOTAL NON-MWBE	86.44%	96.19%	64.35%	89.15%	98.12%	88.31%
TOTAL FIRMS	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

FINDING 5: MWBE TOTAL UTILIZATION

Total Utilization (prime plus subcontracting) as represented in Table 3. MWBEs received 19.17% of Total Construction dollars, 6.51% of Total A&E dollars, 36.73% of Professional Services, and 12.41% of Other Services dollars. There was little to no subcontract dollars in Goods, which is common.

Table 3: Total Utilization- Construction Services, A&E, Professional Services, Other Services

*In the Relevant Geographic Market
Distribution of Dollars by Business Ownership and Fiscal Year
(Using Payment Dollars, FY 2016-2020)
Toledo Disparity Study*

Business Ownership Classification	Construction	A&E	Professional	Other Services
	(\$)	(\$)	Services	(\$)
African American	\$ 30,561,270	\$ 550,237	\$ 3,507,921	\$ 1,919,933
Asian American	\$ -	\$ 194,665	\$ -	\$ 48,594
Hispanic American	\$ 99,013,867	\$ 4,144,144	\$ 106,585	\$ 1,394,758
Native American	\$ 2,177,454	\$ -	\$ -	\$ -
TOTAL MINORITY	\$ 131,752,591	\$ 4,889,046	\$ 3,614,506	\$ 3,363,285
Non-minority Woman	\$ 4,250,419	\$ 17,654	\$ -	\$ 6,874,037
TOTAL MWBE	\$ 136,003,010	\$ 4,906,700	\$ 3,614,506	\$ 10,237,322
TOTAL NON-MWBE	\$ 573,586,899	\$ 70,520,339	\$ 6,225,841	\$ 72,257,315
TOTAL FIRMS	\$ 709,589,909	\$ 75,427,039	\$ 9,840,347	\$ 82,494,637
Business Ownership Classification	Construction	A&E	Professional	Other Services
	(%)	(%)	Services	(%)
African American	4.31%	0.73%	35.65%	2.33%
Asian American	0.00%	0.26%	0.00%	0.06%
Hispanic American	13.95%	5.49%	1.08%	1.69%
Native American	0.31%	0.00%	0.00%	0.00%
TOTAL MINORITY	18.57%	6.48%	36.73%	4.08%
Non-minority Woman	0.60%	0.02%	0.00%	8.33%
TOTAL MWBE	19.17%	6.51%	36.73%	12.41%
TOTAL NON-MWBE	80.83%	93.49%	63.27%	87.59%
TOTAL FIRMS	100.00%	100.00%	100.00%	100.00%

FINDING 6: SUMMARY OF DISPARITY ANALYSIS FOR FY2016-FY2020

Table 4 below indicates those MWBE groups where a statistically significant disparity (X) was found in prime utilization for Construction, A&E, Professional Services, Other Services, or Goods. There was underutilization in prime contracts for some MWBEs groups, however, there was overutilization of African Americans in Professional Services, Asian Americans in Goods, Hispanic Americans in Construction Services, A&E, and Other Services and Non-minority Women in Other Services.

*Table 4: Summary of Statistically Significant Underutilization of MWBEs in Prime Utilization
Toledo Disparity Study*

Business Owner Classification	Construction	A&E	Professional Services	Other Services	Goods
African American	X	X		X	X
Asian American	X	X		X	
Hispanic American			X		X
Native American	X	X	X	X	
Non-minority Women	X	X	X		X

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Disparity was also examined eliminating larger prime projects using award data. Disparity was found for all MWBE groups for prime payments less than \$500,000 and less than \$1 million for all procurement categories, except that Hispanic Americans were overutilized in A&E for projects less than \$500,000 and less than \$1,000,000.

For Total Utilization (prime plus subcontracting) African Americans were overutilized in Professional Services. Hispanic Americans were over utilized in all four categories, as were Non-minority Women in Other Services. (Table 5).

*Table 5: Summary of Statistically Significant Underutilization of MWBEs in Total Utilization
Toledo Disparity Study*

Business Owner Classification	Construction	A&E	Professional Services	Other Services
African American	X	X		X
Asian American	X	X		X
Hispanic American				
Native American	X	X	X	X
Non-minority Women	X	X	X	

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POLICY FINDINGS

FINDING 7: THRESHOLDS

With respect to contract thresholds, informal procurement methods generally can be used by the City for contracts and purchases less than \$40,000. Contracts and purchases totaling \$40,000 or more require use of formal procurement (“competitive bidding”), and there are special considerations and processes for construction contracts valued over \$100,000.

FINDING 8: APPRENTICESHIP AND PROJECT LABOR AGREEMENT (PLA) REQUIREMENTS

Again, construction projects and purchases of goods and services costing over \$40,000 require competitive bidding consistent with the City ordinances.

For construction contracts valued over \$100,000, however, special evaluation criteria and award approval procedures apply. For example, included in the criteria are “whether the bidder’s employees participate in a bona fide apprenticeship program that is approved by the Ohio State Apprenticeship Council and the U.S. Department of Labor[,]” and “whether the bidder is in compliance with any affirmative action or disadvantaged business enterprise program that the City is required by law to enforce in connection with the funds to be spent.”

Also, where funded by the City of Toledo or other funding sources that do not exclude Project Labor Agreements (PLAs), successful bidders for \$100,000-plus construction projects must negotiate a PLA with the Northwest Ohio Building and Construction Trades Council (NWOBTC).

FINDING 9: MBE GOALS PROGRAM

The City has a commitment to greater inclusion and sets contract goals on construction projects and on goods and services. The Office of Diversity and Inclusion is tasked with collecting and reporting MBE utilization data, and interviewees confirmed that monthly, quarterly, and annual MBE utilization reports were generated during the Study period.

Guidance for the MBE Program and an affirmation that Good Faith Efforts (GFEs) at MBE participation have been undertaken on a project are provided to bidders on covered projects:

Ordinance No. 838-91 established Minority Business Enterprise (MBE) goals for all City of Toledo construction projects, HUD assisted construction projects, and suppliers of goods and services. Likewise, Administrative Policy & Procedure# 13 reiterated and enhanced the City of Toledo's MBE goals. Specifically, the MBE goals for the City of Toledo are: 21% in HUD assisted construction projects, 15.0% in City construction projects, 10% in City-funded purchases of goods, materials, supplies and services. Ordinance# 838-91, as well as AP&P# 13, requires that the Office of Diversity & Inclusion establish procedures and guidelines for the implementation of this goal. All City of Toledo departments, divisions, boards, and agencies, as well as other entities that receive funds through the City of Toledo for construction, renovation projects, goods, materials, supplies, and services shall commit to a "Good Faith Effort" in achieving the City of Toledo's MBE goals.

FINDING 10: CERTIFICATION

The City has its own certification process for MBEs, which must be renewed every two (2) years, but it also grants reciprocity for MBE certifications granted by the State (Ohio D.A.S.). Policy interviews also revealed that the City will accept certifications for firms located in nearby southern Michigan, if certified by a state or local program.

FINDING 11: LACK OF SBE-SPECIFIC PROGRAM

Toledo does not currently have a purchasing inclusion program for small businesses (SBEs) through which bid preferences, goals, or other participation tools may be utilized. Local SBEs are eligible for the City's local preference program, but that program is also open to non-SBEs.

FINDING 12: LOCAL PREFERENCE PROGRAM

The City implements a Local Preference program which gives bid preferences ranging from 2.25% to 5% depending on the value of the contract and on whether the bidder's business is located in the City of Toledo, in Lucas City (but outside the City), or within the Northwest Ohio 10 City Area. The greatest percentage bid preference of 5% is available on contracts valued under \$40,000 to firms with their principal place of business in the City; such firms receive a 3% bid preference on contracts valued above \$40,000. The maximum amount of the preference is \$300,000, regardless of the percentage attached.

FINDING 13: EDL LOANS

The City's Economic Development Division is tasked with administering a development loan program intended to assist local small businesses increase competitiveness and capacity. Loans under the EDL program can be used for a number of business purposes, including purchase of machinery or equipment, inventory, fixtures, or furniture, and working capital.

In addition to the EDL program, block grants, inclusion grants, and programs providing more favorable financing are also available through coordination between the City's Economic Development Division and the private sector.

FINDING 14: CONTRACT BUNDLING/UNBUNDLING

City ordinance establishes the potential for bundling or unbundling of projects or contracts, and policy interviews showed that some unbundling does occur in an effort to increase SBE and MBE participation, but it is not common.

FINDING 15: BONDING AND INSURANCE

Bid bonds are required for informal and formal purchases (i.e., awards under \$40,000 and over \$40,000). The bid bonds are 5% of the value of the award, with a maximum of \$1,000 for informal and \$200,000 for formal purchases.

Performance bonds equal to the value of the contract are also required for contracts over \$40,000 but can be waived for “single delivery” contracts. Interviews indicated that there were some complaints by bidders or potential bidders that bonds requirements were a barrier to participation in City contracting.

Insurance requirements are established by Risk Management group (in the Law Department). Insurance likewise was occasionally cited in interviews as a potential barrier to participation.

About 17.5% of MWBE survey respondents reported performance bonds as a barrier. Insurance likewise was occasionally cited in interviews as a potential barrier to participation. However, only 5.0% of MWBE survey respondent reported insurance as a barrier.

FINDING 16: PROMPT PAYMENT

The City does not address prompt payment requirements in its ordinances or policies, and interviews indicated a lack of clarity on this issue. Interviewees shared that the City has been improving on its record of timely paying contractors, but that during the Study Period there were complaints by primes and subcontractors regarding prompt payment.

FINDING 17: STAFFING

Concerns were also raised about the proper level of staffing for the Office of Diversity and Inclusion generally, and the MBE program specifically. With three full-time positions, and multiple responsibilities for each position, there were concerns that compliance, outreach, certification site visits, and supportive services may not be as robust as intended. Interviews also indicated lots of turnover in the Office, perhaps due to the current staffing levels.

REGRESSION ANALYSIS AND PRIVATE SECTOR FINDINGS***FINDING 18: LOWER REVENUES FOR SMALL, MINORITY, AND WOMEN OWNED FIRMS***

Relative to non-SMWBEs, the proxied revenue shares of all SMWBEs is collectively, and approximately .01%—or approximately 1/10 of 1%. Lower revenues for SMWBEs in the Toledo Market Area are suggestive of private sector discrimination that undermines their capacity to enter the market and compete with non-SMWBEs firms for public contracting and subcontracting opportunities.

FINDING 19: PACIFIC ISLANDERS LESS LIKELY TO BE SELF EMPLOYED AND AFRICAN AMERICAN SELF-EMPLOYMENT IS INCREASING

Relative to non-SMWBEs, Pacific Islanders less likely to be self-employed in the Toledo Market Area. This is suggestive of these firms facing barriers to self-employment in the Toledo Market Area. The lower likelihood for being self-employed for these type of SMWBEs could reflect disparities in public contracting as there is evidence that the self-employment rate of African Americans is increasing with respect to the provisioning and establishment of SMWBE public procurement programs.

FINDING 20: WOMEN, NATIVE AMERICAN, ASIAN AMERICANS, AND OTHER RACES LESS LIKELY TO BE SELF-EMPLOYED IN CONSTRUCTION

Relative to non-SMWBEs, Women, Native Americans, Asian Americans, and Other Race are less likely to be self-employed in the Toledo Market Area construction sector. This is suggestive of these types of SMWBEs facing barriers to self-employment in the construction sector.

FINDING 21: NON-SMWBE FIRMS DOMINATE COMMERCIAL CONSTRUCTION

The estimated low commercial building permit shares for SMWBEs, suggests that, in the Toledo market area there are private sector barriers that constrain the ability of these type of firm to participate in the economy. For firms not classified as SMWBEs, Black-owned or Women-owned, account for approximately 99% of building permits in the Toledo during the 2015 - 2021 calendar years.

FINDING 22: CERTIFIED MBES, BLACK, AND HISPANIC OWNED FIRMS HAVE MORE COMMERCIAL LOAN DENIALS

Certified Minority-owned businesses, and those owned by African Americans, and Hispanic Americans have more commercial bank loan denials relative to non-SMWBEs. This suggests that these type of SMWBEs are relatively more likely to have their capacity to compete in the market for public procurement constrained as a result of private sector credit market discrimination.

FINDING 23: IN THE AGGREGATE MBES SUBMIT MORE PRIME BIDS

Relative to non-SMWBEs, firms classified as Minority submit more prime bids. This suggests that for certified Minority Business firms, any public contracting disparities between them and non-SMWBEs cannot be explained by differences in prime bid submissions.

When disaggregating by race/ethnicity/gender, there are no differences in prime bid submissions between firms owned by non-SMWBEs and SMWBEs. This suggests that any disparities in public outcomes between firms owned by ethnic/racial/gender minorities and non-SMWBEs in the City of Toledo market area cannot be explained by lower bid submissions of firms owned by ethnic/racial/gender minorities.

FINDING 24: MINORITY, AFRICAN AMERICANS, AND WOMEN MORE LIKELY TO PERCEIVE DISCRIMINATION

Firms owned by African Americans, and classified as Minority and Women, are more likely to perceive discrimination against them by the City of Toledo. This suggests that, at least for SMWBEs owned by African Americans, Women, and Minorities as a whole, the City of Toledo public contracting disparities may at least in part be explained by perceived discrimination, which could possibly disincentivize prime bid submissions, that lower chances at successfully winning prime contracts at City of Toledo.

FINDING 25: AFRICAN AMERICAN AND BI/MULTIRACIAL OWNED FIRMS MORE LIKELY TO NEVER BEEN A PRIME OR SUBCONTRACTOR

Firms owned by African Americans and Bi/Multiracials are more likely to have “never” been a prime contractor or subcontractor with the City of Toledo.

Certified Disadvantaged firms received fewer City of Toledo prime contracts since July of 2015, which could constrain them from acquiring experience that is potentially beneficial for enhancing the likelihood of securing future public contracts with the City of Toledo.

FINDING 26: SMWBES, AFRICAN AMERICANS, BI/MULTIRACIALS AND WOMEN EXCLUDED FROM INFORMAL NETWORKS

For all broadly classified SMWBEs and for firms owned by African Americans, Bi/Multiracials and Women, contracting disparities between them and non-SMWBEs are potentially explained by their exclusion from

informal Toledo public contracting informal networks that reduces their ability to secure prime contracts and subcontracts.

ANECDOTAL FINDINGS

FINDING 27: INFORMAL NETWORKS

In anecdotal interviews, focus groups, and public hearings, City vendors reported that informal networks in the City is a problem that particularly affects small and minority firms. According to the Survey of Business Owners, the question “*Do you believe that there is an informal network of prime and subcontractors doing business with City of Toledo that monopolizes the public contracting process?*” 46.1% (n=59) of participants responded yes, while 53.9% (n=69) responded no.

FINDING 28: PLANET BIDS

Although it was noted that PlanetBids was a great addition to the procurement process for the City of Toledo, there were a number of issues noted that might be preventing small and minority businesses to bid for projects and even use the platform.

Some participants found it difficult to navigate PlanetBids, and how to submit bids. Participants noted that it took them a while to figure out how to submit bids, and where in PlanetBids they could submit bids in the portal. Participants that noted that there was not guidance from the City on how to use it.

One important and repetitive comment was that there was no communication or feedback from PlanetBids in that there is no one to talk to if a vendor is having difficulties and there is no feedback once the bid is submitted. A number of business owners would like the City to improve their communication with vendors, especially when they are having questions about bids and the bidding process. Additionally, participants tended to feel that pre-bid meetings are beneficial but noted that the City of Toledo has stopped doing pre-bid meetings. Finally, participants feel that the City of Toledo needs to be more transparent about their bidding process through PlanetBids, and better support vendors throughout the bidding process.

FINDING 29: PROMPT PAY

Participants in anecdotal data collection stated that prompt pay is often an issue. A number of business owners shared concerns that the City of Toledo needs to improve how fast they pay their prime contractors because it particularly affects subcontractors. Small and minority firms usually take on more projects as subcontractors, and therefore might experience more delayed payments from the City and prime contractors.

In the Survey of Business Owners, we asked the questions “*What is the amount of time that it typically takes to receive payment, from the date you submit your invoice, from City of Toledo for your services on City of Toledo projects?*” On table 54, you can see the results to these questions. 39.3% (n=22) responded that it usually takes 30-59 days to receive a payment. 25% (n=14) responded that it takes less than 30 days and 10.7% (n=6) responded that it takes 60-89 days to receive a payment.

FINDING 30: PERCEPTIONS ON BIDDING PROCESS

City of Toledo vendors that participated in our anecdotal collection felt that the bidding process required too much time, focus and staffing resources for small businesses to take on. Vendors that participated in the Study would like to see bids that require less paperwork, and that can be done in a short period of time.

FINDING 31: CERTIFICATION

Participants felt frustrated with the length of process to get a certification, and the amount of work needed to do to get certified. They also shared frustration with the lack of certification reciprocity.

In the Survey of Business Owners, when asked if they were certified 36.58% of the WBE respondents and 38.63% of MBE respondents said they were not certified. When asked why they were not certified, of those firms that were not certified, 34.48% (10 out of 29) MWBEs said they did not understand how their firm would benefit and likewise another 34.48% (10 out of 29) MWBEs said the process was too time consuming, and 31.03% (9 out of 29) MWBEs said they did not understand the certification process.

FINDING 32: UNFAIR COMPETITION AGAINST LARGE FIRMS

Firms stated that they believed there was unfair competition with larger firms that have greater resources and time to submit a competitive bid package. In the Survey of Business Owners when asked to select from a list of things that may prevent companies from bidding or obtaining work on a project. In their experience, have any of the following been a barrier to your firm obtaining work on projects for City of Toledo, 16.4% of respondents (21 out of 128) which included 39.4% (13 out of 33) Black respondents selected unfair competition with large firms. This was further expressed in the following ways:

1. The scope of work for some of the projects were too broad, so that only a large company could bid for them, suggesting that projects should be broken down into smaller part in order to allow multiple smaller firms to bid on projects. In the Survey of Business Owners when asked if they agreed that sometimes the bid specs are not clear in that smaller scale project work is contained within the larger project work and it is hard to decipher, 27.9% (34 of 122) of respondents agreed or strongly agreed which included 25% of the Women (10 of 40) and 48.5% (16 of 33) of Black respondents.
2. RFPs are sometimes written for big companies. This creates an immediate exclusion of small and minority businesses from winning certain projects.
3. Smaller firms are not getting the work that they deserve because they are competing with larger firms and being left with less desirable projects.

FINDING 33: BIG COMPANIES CIRCUMVENTING MWBE GOALS

MWBE vendors expressed concerns that larger companies acting as prime contractors with the City were circumventing MWBE goals, leaving MWBE firms behind.

In the Survey of Business Owners, when asked whether *“Sometimes, a prime contractor will contact a Minority, Woman, Disadvantaged or Small business to ask for quotes, but never give the proposal sufficient review to consider giving the firm that award,”* 26.2% (32 out of 122) of respondents agreed or strongly agreed which included 51.5% (17 of 33) Black, 40% (2 of 5) Hispanic, compared to 10.2% (4 of 39) Non-minority respondents.

In another statement in the Survey of Business Owners it stated *“Sometimes, a prime contractor will include a MWBE on a bid to meet participation goals, then drop the company as a subcontractor after winning the award,”* 34% (28 out of 122) of respondents agreed or strongly agreed which included 51.5% (17 of 33) Black, 15% (6 of 40) Women, and 7.7% (3 of 39) Non-minority respondents.

In response to another statement presented in the survey of business owners *“I believe that some non- MWBE prime contractors only utilize MWBE companies when required to do so by City of Toledo,”* 41.0% (50 out of 122) of respondents agreed or strongly agreed which included 66.7% (22 of 33) Black, 30% (12 of 40) Women, and 25.6% (10 of 39) Non-minority respondents.

FINDING 34: COMMUNICATION, OUTREACH AND VISIBILITY

Participants raised issues about a lack of communication, outreach, and visibility that could be rectified by increasing networking events, public hearings, and pre-bid meetings. Vendors perceive that these efforts will provide an opportunity for City of Toledo staff to learn more about their MWBE firms, and hopefully create stronger ties with the community. Additionally, consistent public hearings would enable City staff to hear about potential challenges and barriers that the community is facing, and hopefully improve practices.

Firms cited lack of communication during and after the proposal process, long and strenuous bid packages. In addition to the difficulties of putting together a bid package, there was concern about the lack of communication from the City on project bids. Vendors say that they usually have questions about the bids that are not answered by City staff.

COMMENDATIONS

COMMENDATION 1: The City should be commended for already approving and adding staff to its Office of Diversity and Inclusion in anticipation of a more robust program.

COMMENDATION 2: The City should be commended for its Economic Development Loan (EDL) Program and Other Financial Assistance administered by the City's Economic Development Division to assist local small businesses.

COMMENDATION 3: The City should be commended for already approving the acquisition of contract compliance software to better monitor and track commitments and payments, particularly to minority and women owned businesses.

COMMENDATION 4: Although there is still some statistically significant underutilization of MWBEs in various categories, the City should be commended for its current MWBE subcontractor goals program which encourages the use of MWBEs.

COMMENDATION 5: The City should be commended for its efforts to unbundle certain contracts to allow small businesses to bid as prime contractors.

RECOMMENDATIONS

RECOMMENDATION 1: ESTABLISH POLICY TO INVESTIGATE POSSIBLE DISCRIMINATION

It is GSPC's recommendation that the City implement a regulation permitting an investigation into possible intentional discrimination in cases where the lowest bidding prime contractor has failed to reach a certain percentage of MWBE participation that might be expected on a project based upon a review of the Availability for the Industry and the relevant scopes of work. This recommendation is intended to prevent the City from passively and/or unwittingly participating in or funding private discriminatory conduct. This tool does not have to be used for every project but should be consistently utilized for larger projects in which bidders submit little to no proposed MWBE utilization.

Passive participation can be found where a governmental entity fails to adjust its procurement practices to account for the effects of private discrimination on the availability and utilization of minority- and women-owned businesses. Stated otherwise, the governmental entity can refuse to essentially fund private discrimination in the award of public contracts (*i.e.*, infusing funds into a discriminatory industry). GSPC submits that a significant failure to achieve or approach the expected participation of MWBEs in a project raises the potential for private discrimination such that the City risks becoming a passive participant to discrimination if it fails to inquire further about the potential for intentional discrimination before awarding a contract implicating public monies.

RECOMMENDATION 2: ANNUAL AND CONTRACT-BY-CONTRACT ASPIRATIONAL GOALS

GSPC found substantial underutilization of most MWBE groups in prime contracting, but in Total Utilization where subcontracting was allocated to the various MWBE groups, GSPC found that there was overutilization for some ethnicities in some Industry Categories. This is likely because the City has been utilizing MWBE subcontracting goals and but for these goals, the overutilization would not exist. This is supported by the regression analysis of the Toledo Market Area. However, since the City does not have contracts in which there are no goals for GSPC to compare (to determine what happens in subcontracting when there are no goals) GSPC recommends that the City continue to utilize aspirational goals to increase and sustain MWBE participation as subcontractors.

Aspirational goals are an internal measure of how well the City has reached the Availability benchmarks established by the Disparity Study. It is the aggregated annual attainment of MBE and WBE attainment using all of the “tools” for promoting MBE and WBE participation. Although aspirational goals as based upon Availability, they can be ramped up to achieving full Availability over several years. GSPC can work with the EOC Office to set annual goals for the first year and the formula for succeeding years. The City should set separate MBE and WBE aspirational goals.

It is not recommended that the same aspirational goals be applied to every contract in an Industry Category, but that they be adjusted on a contract-by-contract basis by accessing the Availability of MBE and WBE firms for the scopes of work on that particular contract. Those contract-by-contract aspirational goals should be communicated to prime contractors in the solicitation requesting that the prime assist the City in meeting those goals. Once the prime contractor has submitted its MBE and WBE achievement in the bid submission, that achievement should become part of the prime contractors’ contract commitment. This commitment should be tracked by the City to make sure that the prime contractor adheres to this contractual commitment.

It is not the intention of this recommendation that a bid be rejected if a certain aspirational goal is not met, however certain failures to adhere to the City’s Non-Discrimination Policies may result in an investigation and rejection of a bid in accordance with Recommendation 1 above.

RECOMMENDATION 3: SMALL BUSINESS RESERVE PROGRAM

Many small and MWBE firms complained about unfair competition against large firms in prime contracting where GSPC found the deepest disparities. Since many MWBE firms are also small businesses, one method to assist in increasing MWBE participation as well as increase the capacity of small businesses is a small business reserve program. GSPC recommends that the City establish a threshold under which only small businesses can bid. GSPC will work with the City to establish that threshold.

RECOMMENDATION 4: STREAMLINE THE CERTIFICATION PROCESS & INITIATE A CAMPAIGN TO FOR MWBE FIRMS TO CERTIFY

The anecdotal evidence seems to be in concert in pointing to certification as an issue for firms in Toledo. GSPC recommends that the City streamline its certification process and initiate a campaign for MWBE firms to certify. The most important aspect of such a campaign should be to educate firms on how certification will benefit them. The City should also review ways to expedite certification. There is also

some misunderstanding about the City's reciprocal certification policies. However, those policies should be reviewed to make sure that they are no cumbersome to firms seeking reciprocity.

RECOMMENDATION 5: STREAMLINE PLANETBIDS AND SMALL PROJECT BID DOCUMENTS

The City should review the PlanetBids process to streamline it for so that the required submissions are not overly burdensome, particularly for small firms on smaller projects. It is also important that firms get feedback once they have submitted their bids and that during the process there is a live person help desk to assist firms with their submissions.

Further, there were numerous concerns that smaller awards require the same amount of paperwork and formality as large contracts. GSPC recommends that the City streamline the paperwork needed to submit bid responses on smaller contracts to encourage small businesses with less resources to bid.

RECOMMENDATION 6: FORECASTING, OUTREACH, AND SUPPORTIVE SERVICES

46.1% of respondents to the Survey of Business Owners complained of the informal network. Part of an informal network is that firms that already have relationships with the City know about bids before they are issued. One way to partially address this issue is to forecast upcoming solicitation opportunities as far ahead of the bid as possible, preferably at least a year ahead of time. This gives all firms an equal opportunity to prepare for opportunities and gives time to plan for teaming or joint ventures. This will also allow the City to provide supportive services well in advance of the bid issuance, if needed. Where there is no formal bid, lists of the City's upcoming needs and types of services and goods anticipated should also be made available to firms with opportunities posted.

Supportive services may be offered internally in coordination with other agencies, the Small Business Administration bonding program, and the Small Business Development Centers. This is particularly important on the City's large capital projects to insure diverse supplier participation.

GSPC is further recommending a more formal relationship with business development centers, particularly ones that the City may be assisting or may seek out. They should have an accountability to the City which includes goals, reports, and accountability of how many businesses are being supported and tracking the success rate of firms in obtaining public and private contracts.

Specifically, the City should:

- **Conduct Targeted Outreach-** Annual forecasting will enable the contract compliance personnel to target firms that are capable of doing the work for notification of the work. This is important so that firms, including those outside of construction are aware of upcoming opportunities;
- **Encourage Teaming-** Knowing ahead of time what work will be presented in the coming year will give room for contract compliance to schedule networking events and encourage firms to team. It also gives more time for mandatory pre-bid conferences where potential prime contractors can meet potential subcontractors.

RECOMMENDATION 7: CONTRACT COMPLIANCE

To effectively administer effective remedial programs, the City should enhance its contract compliance efforts, including robust tracing and monitoring to make sure that prime contractors utilize firms as committed to in their bid package. The five (5) steps of Contract Compliance are:

- Assessment – An initial assessment of individual firm availability and capacity for specific scopes of work.
- Outreach – An on-going campaign to let the MWBE business community know that the City wants to do business with them, and that the City is willing to work with firms to create opportunities and assist, particularly local firms in building capacity.
- Certification/Verification –the City should continue to encourage and assist firms in getting certified and should accept bona fide third-party certifications but should have audit rights with any non-governmental agencies, including the right to reject the City’s acceptance of a certification that it deems not sufficiently supported.
- Procurement – All applicable solicitation packages and awarded contracts should include the MWBE commitments as contract terms, as well as City participation requirements, such as all firms performing commercially useful functions.
- Tracking & Monitoring – It is essential that there is close tracking and monitoring of vendor performance and the efficient closeout of projects to verify that MWBE firms are actually performing the work that they contracted to perform and that they are compensated in a timely manner and in the amounts committed. Monitoring vendor performance should also assure equal and fair treatment on contracts.

RECOMMENDATION 8: REVIEW THE THRESHOLD OF THE APPRENTICESHIP PROGRAM

The City requires that for construction contracts valued over \$100,000, bidder’s employees must participate in a bona fide apprenticeship program that is approved by the Ohio State Apprenticeship Council and the U.S. Department of Labor. This requirement, on its face may be a barrier to small, minority and women owned businesses that do not have the resources to have an internal apprenticeship program and may not be members of the unions that have these programs. The City should review the threshold and seek to find flexibility for small businesses.

RECOMMENDATION 9: ALLOW BONDING WAIVERS

Bid bonds are required for informal and formal purchases (i.e., awards under \$40,000 and over \$40,000) which have reportedly both from staff and businesses been a barrier to small, minority, and women owned firms. The City should grant authority to the Purchasing Agent to grant bonding and insurance on low-risk contracts. For example, the County Code in Fulton County, GA allows the County Purchasing Agent to reduce or waive performance and payment bond if they determine it is in the best interest of the County to do so. Similarly in 2011 Metropolitan Nashville Government authorized the Purchasing Agent to look at bonding on a project-by-project basis in construction to make sure that the limits were necessary.

RECOMMENDATION 10: PROMPT PAY

The City does not have a prompt pay ordinance and in practice, there seemed to be a lack of clarity on how quickly payments must be processed. GSPC heard complaints from both primes and subcontractor about slow pay and the survey revealed that 40% of interviewees shared that the City has been improving on its record of timely paying contractors, but that during the Study Period there were complaints by primes and subcontractors regarding prompt payment.

Despite a 30-day prompt pay act, firms reported getting paid well after the 30-day period. GSPC recommends that the City analyze payments at the departmental level to improve the time for prime contractors to get paid. It was stated that payments are delayed because the City is not getting valid invoices. Since this seems to be a pattern, the City may need to do more outreach and training of vendors on this issue. Process improvement may also be needed.

RECOMMENDATION 11: INSTITUTE DATA REFORM

GSPC encountered several challenges as it relates to collecting the data for this Study. It recommends that the City undertake to make the following data reforms which should be a priority in order to properly track and monitor the other program recommendations:

- **Vendor System/File:** Add a unique vendor number and make sure vendors have full addresses, ethnicities, and NAICS/commodity codes. Currently, the vendor system might have more than 1 entry for the same vendor with different vendor ids even though it is the same firm.
- **Subcontractor data:** Most of the data provided by the city was very organized. However, some of the subcontractor data was not collected throughout contract maintenance, especially with reference to Non-MWBE subcontractor data. It is important that the City tracks all subcontractor data, particularly Non-MWBE subcontractor data.
- **Commodity Codes:** the GL object codes are very vague and broad. GSPC recommends use of commodity codes to ensure accuracy of any analysis done on the City's data.
- **Bid tabs:** Create a data base for bid tabs that is readily available to the city without having to ask PlanetBids for a whole export. This will allow you to pull all bid tabs in a timely manner and provide columns such as bid number, date opened, date closed, vendor info, project detail, and so forth. This would also help eliminate the need to download hundreds of excel files.

RECOMMENDATION 12: ALLOCATING RESOURCES AND STAFFING

The following recommendations represent the need for an increase in both resources and staffing. The City should not undertake these recommendations without first considering allocating sufficient resources. This may include additional staffing. GSPC is aware that additional funding may be delayed due to the budgeting process. However, until resources can be applied, this time can be utilized with:

1. Accepting the Study and its Recommendations;
2. Conducting a Gap Analysis (What needs new legislation and what can be implemented under current authority)
3. Plan for Implementation (Steps, Phases, and Tasks)
4. Draft New Program Plan
5. Determine Budget and Staffing Needs for New Program Elements
6. Develop a Training Protocol and Train Staff