



# GREENSBORO NORTH CAROLINA

**DISPARITY STUDY  
EXECUTIVE SUMMARY**  
MARCH 2018

# GREENSBORO DRAFT EXECUTIVE SUMMARY

## I. INTRODUCTION

In February, 2017, the City of Greensboro, North Carolina ("City") contracted with Griffin & Strong, P.C. ("GSPC") to conduct a disparity study. The purpose of this disparity study ("Study") was to analyze procurement data to determine the utilization of Minority Business Enterprises ("MBE"), Women Business Enterprises ("Nonminority Female") (collectively, "M/WBE") and Disadvantaged Business Enterprises ("DBE"), relative to the availability of such firms to compete for City business on Construction, Professional Services, Other Services, and Goods contracts. Governmental entities, such as the City, have authorized disparity studies in response to City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) 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 Study collected and analyzed relevant data on businesses in the industries of:

1. Construction
2. Professional Services
3. Other Services
4. Goods

The study period for the was a five (5) year period from July 1, 2011 - June 30, 2016 (FY2012-FY2016).

# **GRIFFIN & STRONG, P.C.** **PROJECT TEAM**

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## OBJECTIVES OF THE STUDY

The principal objectives of this Study were to answer the following research questions:

1. Is there is a statistically significant disparity in the relevant geographic and product markets between the number of qualified M/WBEs willing and able to provide goods or services to the City in each of the category of contracts and the number of such firms actually utilized by the City (whether as prime contractors/consultants or subcontractors/consultants)?
2. If a statistically significant disparity exists, have factors, other than race and gender been ruled out as the cause of that disparity, such that there can be an inference of discrimination?
3. Can the discrimination be adequately remedied with race and gender-neutral remedies?
4. If race and gender-neutral remedies are not sufficient, does the evidence from the Study legally support a race and/or gender conscious remedial program?
5. Are the proposed remedies narrowly tailored to the strong basis in evidence from the disparity study?

## 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 disparities regarding M/WBE 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.

## II. LEGAL BASIS AND UTILITY OF DISPARITY STUDIES

Disparity studies, which are a creation of the courts, serve several purposes: they are useful in providing a historical context regarding government procurement practices; they provide an overview of the challenges a governmental entity has faced and continues to face in seeking minority and/or female inclusion in procurement; they provide a contemporary snap-shot of procurement practices; and they are a predictive preview of future challenges/needs. There is also an important historical legal basis for the advent of disparity studies in the first instance, and a legal benefit in the event that an MWBE program or initiative is challenged in a court of law.

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

These decisions were subsequently upheld at the Circuit Court level in the Fourth Circuit decision (which is a controlling decision for the City of Greensboro) of H.B. Rowe Company, Incorporated v. W. Lyndo Tippet, 615 F.3d 233 (4th Cir. 2010). Having the benefit of the Supreme Court's thinking in Croson and Adarand, the Fourth Circuit addressed the constitutionality of North Carolina's M/WBE statute (N.C. Gen. Stat. § 136-28.4 (1990)) in the H. B. Rowe decision.

The H.B. Rowe company, a prime contractor, brought suit asserting that the goals set forth in § 136-28.4 violate the Equal Protection Clause, however the District Court upheld the challenged scheme as constitutional, both on its face and as applied. This decision was affirmed by the Fourth Circuit Court of Appeals, who stated that the State produced a "strong basis in evidence" justifying this scheme both on its face and as applied to African American and Native American subcontractors. It was determined that the State further demonstrated that the scheme was narrowly tailored to serve its compelling interest in remedying discrimination against these groups, but did not agree that the same was true as applied for other minority groups and Nonminority Women.

The State's disparity study was reviewed by the Court as the basis for determining that a factual predicate existed for the use of a race and gender goals program to promote inclusion of African American, Native American, and Nonminority Female-owned businesses, and that the goal setting statute in question was constitutional. The Court of Appeals focused prominently on the fact that the State's program had been going on since 1983, and had only achieved the inclusion numbers adduced in the 2004 study performed by the commissioned national researcher. H. B. Rowe, 615 F.3d 250.

This case solidified a trend that began in the other appellate courts of the United States. When presented with a viable challenge to a state's M/WBE program, the program must not only adhere to the requirements of Croson at inception, but also when the program's continued viability is at issue. See generally, H.B. Rowe, 615 F.3d at 238-39, 247-48, 251-53.

Such continuation must be well supported by more than just conjecture as to its necessity. There needs to be statistically sound collection of data from appropriate sources; testing of that data once collected to ensure high confidence; and anecdotal corroboration of findings to disprove other explanations for apparent disparities.

### III. FINDINGS

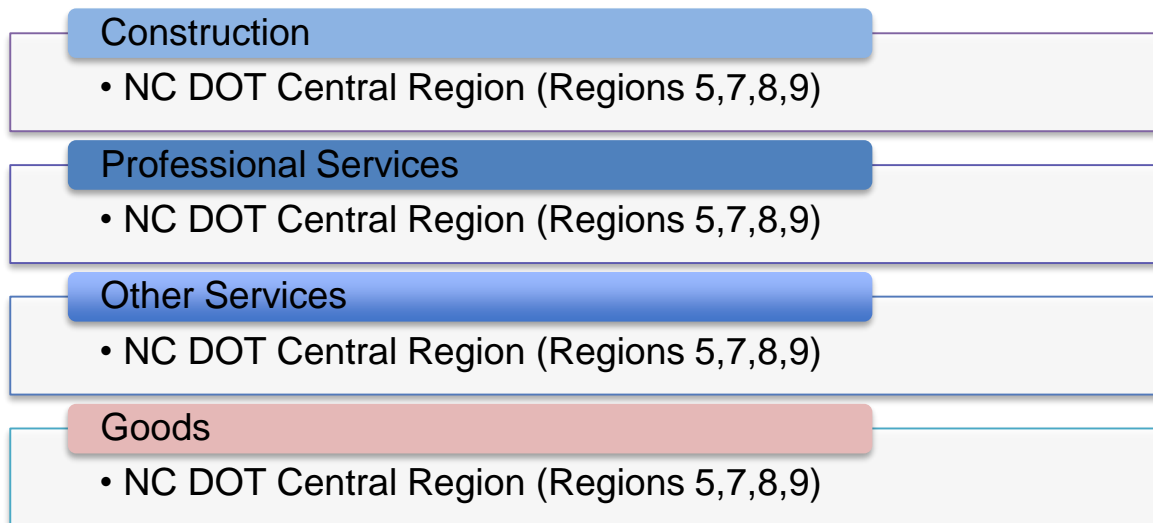
GSPC completed the City's disparity study in February, 2018. Included below are the objective findings of the Study, along with GSPC's conclusions, and recommendations. The courts have indicated that for a race- or gender-based preference program to be established or maintained, there must be a clear evidentiary foundation laid. As the findings below will demonstrate, GSPC found statistically significant underutilization of both minority and Nonminority Female owned firms as prime contractors and as subcontractors in all four (4) work categories that GSPC analyzed. A regression analysis was performed and found that there was evidence to indicate that the disparities were likely caused by the race, ethnicity, or gender status of the firm owners such that an inference of discrimination can be made. GSPC also collected and analyzed anecdotal evidence of the experiences of firms in the City's marketplace to help shape GSPC's recommendations.

## A. STATISTICAL FINDINGS

### FINDING 1: GEOGRAPHIC MARKETS

The figure below summarizes the geographical area where at least 75% of prime awardees were located in each industry. In analyzing the Relevant Market data, GSPC tabulated the percentage of dollars awarded, beginning with the City of Greensboro (by zip codes). GSPC continued counting in radius surrounding the City of Greensboro (by counties and established geographic divisions) 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 1: Summary of Relevant Geographic Market (by awards)  
City of Greensboro Disparity Study



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## FINDING 2: M/WBE UTILIZATION ON SMALLER PRIME CONTRACTS

As would be expected, M/WBEs won a larger share of smaller prime contracts on City projects.

On prime contracts less than \$300,000 M/WBEs were awarded 24.67% of Construction dollars, 7.68% of Professional Services dollars, 18.99% of Other Services dollars and 1.99% of Goods dollars.

On prime contracts less than \$1 million M/WBEs were awarded 17.21% of Construction dollars, 5.46% of Professional Services dollars, 10.28% of Other Services dollars and 2.03% of Goods dollars.

## FINDING 3: AVAILABILITY

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 Greensboro 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 the City of Greensboro.

The firms used to calculate Availability came from the Master Vendor File (which includes internal lists from the City of Greensboro as well as external governmental lists of vendors, bidders, subcontractors, awardees and certified firms). GSPC found that firms were available to provide goods and services to the City as reflected in the following percentages by each race, ethnicity, and gender group.

Table 1: Summary of Availability Estimates by Work Category In the Relevant Market  
(Based upon the Master Vendor File)  
City of Greensboro Disparity Study

Ethnicity	Construction	Professional Services	Other Services	Goods
African American	11.48%	17.38%	13.89%	13.87%
Asian American	1.02%	3.48%	1.03%	3.36%
Hispanic American	4.51%	2.94%	2.17%	2.75%
Native American	0.82%	0.53%	0.52%	1.22%
Total Minority	17.83%	24.33%	17.61%	21.20%
Nonminority Female	19.88%	21.93%	11.36%	27.44%
Total M/WBE	37.71%	46.26%	28.97%	48.64%
Non-M/WBE	62.30%	53.74%	71.04%	51.36%
Total	100%	100%	100%	100%

#### FINDING 4: M/WBE UTILIZATION

As the table below shows, the City of Greensboro awarded a total of \$738,541,060 in prime spending in the Relevant Market during the study period and \$36,454,454 of this amount, or 4.94%% of this amount was awarded with M/WBE firms as prime contractors.

Table 2: Summary of Prime Utilization by Work Category  
In the 24 County Relevant Market  
(Based upon Awards FY2012-FY2016)  
City of Greensboro Disparity Study

Prime Awards (using Contracts and Purchase Orders)										
	Construction		Professional Services		Other Services		Goods		Total	
African American	\$3,185,339	1.08%	\$2,543,027	2.10%	\$7,042,206	5.64%	\$561,510	0.29%	\$13,332,082	1.81%
Asian American	\$0	0.00%	\$593,475	0.49%	\$0	0.00%	\$2,799	0.00%	\$596,274	0.08%
Hispanic American	\$30,000	0.01%	\$0	0.00%	\$549,483	0.44%	\$0	0.00%	\$579,483	0.08%
Native American	\$0	0.00%	\$0	0.00%	\$5,692	0.00%	\$0	0.00%	\$5,692	0.00%
Total Minority	\$3,215,339	1.09%	\$3,136,502	2.59%	\$7,597,381	6.08%	\$564,309	0.29%	\$14,513,531	1.97%
Nonminority Female	\$15,015,933	5.08%	\$3,569,737	2.95%	\$1,604,810	1.28%	\$1,750,443	0.89%	\$21,940,923	2.97%
Total M/WBE	\$18,231,272	6.16%	\$6,706,239	5.54%	\$9,202,190	7.37%	\$2,314,752	1.18%	\$36,454,453	4.94%
Total Non M/WBE	\$277,574,951	93.84%	\$114,254,361	94.46%	\$115,713,165	92.63%	\$194,544,129	98.82%	\$702,086,606	95.06%
Total Firms	\$295,806,223	100.00%	\$120,960,600	100.00%	\$124,915,355	100.00%	\$196,858,881	100.00%	\$738,541,059	100.00%

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## FINDING 5: M/WBE TOTAL UTILIZATION (PRIME AND SUBCONTRACTOR COMBINED)

Since the City does not track Non-M/WBE subcontractors, GSPC could not determine a complete analysis of the percentage of dollars that M/WBE firms received in comparison to Non-M/WBE subcontractors. As an alternative method, GSPC compared total M/WBE award dollars (prime and subcontractor) to total Non-M/WBE award dollars in order to demonstrate the percentages of awards received by M/WBEs that can be compared to the existing M/WBE goals and Availabilities.

Of all total combined prime and subcontractor dollars in Construction, minority owned firms received 3.38% and WBEs received 8.02%, for a combined M/WBE total of 11.41%.

In Professional Services, MBEs received 5.73% and WBEs received 3.01%, for a combined total of 8.74% awarded to all M/WBEs in Professional Services during the Study Period.

Table 3: Summary of Total Utilization (Prime & Subcontractor Combined)

In the 24 County Relevant Market  
(Based upon Awards FY2012-FY2016)  
City of Greensboro Disparity Study

Business Ownership Classification	Construction		Professional Services	
	\$	%	\$	%
African American	\$ 8,105,829	2.74%	\$ 6,134,450	5.07%
Asian American	\$ -	0.00%	\$ 593,475	0.49%
Hispanic American	\$ 1,755,120	0.59%	\$ 35,890	0.03%
Native American	\$ 143,195	0.05%	\$ 166,920	0.14%
Total Minority	\$ 10,004,144	3.38%	\$ 6,930,735	5.73%
Nonminority Female	\$ 23,733,842	8.02%	\$ 3,643,189	3.01%
Total M/WBE	\$ 33,737,986	11.41%	\$ 10,573,924	8.74%
Non-M/WBE	\$ 262,068,236	88.59%	\$ 110,386,676	91.26%
Total	\$ 295,806,223	100.00%	\$ 120,960,600	100.00%

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## FINDING 6: SUMMARY OF DISPARITY ANALYSIS FOR FY2012-FY2016

The tables below indicate those M/WBE groups where a statistically significant disparity was found.

Table 4: Summary of Disparity Outcomes of Statistically Significant Underutilization of M/WBEs in Prime Contracting

City of Greensboro Disparity Study

	Construction	Professional Services	Other Services	Goods
<b>African American</b>	X	X	X	X
<b>Asian American</b>	X	X	X	X
<b>Hispanic American</b>	X	X	X	X
<b>Native American</b>	X	X	X	X
<b>Nonminority Female</b>	X	X	X	X

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Table 5: Summary of Disparity Outcomes of Statistically Significant Underutilization of M/WBEs in Total Utilization

	<b>Construction</b>	<b>Professional Services</b>
<b>African American</b>	<b>X</b>	<b>X</b>
<b>Asian American</b>	<b>X</b>	<b>X</b>
<b>Hispanic American</b>	<b>X</b>	<b>X</b>
<b>Native American</b>	<b>X</b>	<b>X</b>
<b>Nonminority Female</b>	<b>X</b>	<b>X</b>

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## QUANTITATIVE SUMMARY

Generally, every M/WBE group was underutilized in each category in total throughout the Study Period as prime contractors and subcontractors. In addition, GSPC also reviewed prime awards under \$1,000,000, under \$300,000, over \$300,000, and performed a bidder analysis. As would be expected the analysis of smaller contracts showed stronger M/WBE prime utilization. However, all analyses demonstrated, with few exceptions, underutilization of M/WBE in each procurement category.

## B. POLICY FINDINGS

### FINDING 7: POLICY FINDINGS

#### 1. AUTHORIZATION AND ENFORCEMENT OF CURRENT PROGRAM GOALS

There is an on-going discussion of the appropriate parameters of the current M/WBE program that must be resolved for there to be a cohesive and uniformly effective program. Under North Carolina G.S 160A-3 and 4 the City can only operate under the authority of the State. The question is: “Under what State authority does the M/WBE program and its Good Faith Efforts requirement operate?” The State has set a verifiable ten percent (10%) goal for participation of minority businesses based upon the total value of work for each project that “receives State appropriations for a building project or other State grant funds for a building project.”<sup>1</sup> Local government entities are required to follow those same goals, “provided, however, a local government unit may apply a different verifiable goal that was adopted prior to December 1, 2001, if the local government unit

had and continues to have a sufficiently strong basis in evidence to justify the use of that goal.” In fact, the City of Greensboro previously had a minority goal (the State’s definition of minority includes female owned businesses, as well as ethnic minorities) above 10%. Previous disparity studies and the current study provide the strong evidence to justify the continued use of different goals.

The current aspirational M/WBE goals set forth in the M/WBE Plan are as follows:

- Construction: 15%
- Professional Services: 11%
- Good and Services: 8%

These goals are based on the 2012 City disparity study.

GSPC reviewed hard copy documentation for forty (40) submissions on twelve (12) Construction projects between late 2015 and early 2017. All of the projects in this sample had M/WBE goals. The median MBE goal was 5% and median WBE goal was 6%. No combined MBE and WBE goal exceeded 19%. For goals submitted by primes, the median MBE goal was 4% and 4.8% for WBEs. For fourteen (14) submissions (35%), the bidder met both the MBE and WBE goals.

In a review of M/WBE goals in a sample of 40 projects from FY 2008 through FY 2009-10, the median M/WBE project goal was 12.4 percent.

#### 2. GOOD FAITH EFFORTS

The City applies Good Faith Efforts (“GFE”) requirements on bidders for Construction projects above \$300,000. In this model, only failure to satisfy GFE, not failure to meet project goals, impacts contract award. Failure to submit GFE makes the bid nonresponsive.

<sup>1</sup> In a review of M/WBE goals in a sample of 40 projects from FY 2008 through FY 2009-10, the median M/WBE project goal was 12.4 percent.

The City GFE list very similar to the State GFE list. Bidders can comply with the City's GFE requirements by satisfying the first five requirements without negotiating in good faith with M/WBEs. This feature has led to a concern amongst some City staff that the GFE requirements have been easily satisfied without using, or negotiating, with M/WBEs. For example, GSPC has reviewed GFE forms on projects with goals. Bidders claim 50 GFE points, with little or no achievement. They can claim 10 points for making contacts, 10 points for making plans available, 10 points for attending the pre-bid meeting, and 20 points for providing a quick pay agreement. If the prime bidder was discriminatory, there is nothing in those 50 points that would demonstrate that it made an earnest effort to subcontract to M/WBEs.

The GFE requirements for meeting the current program goals are authorized under [North Carolina §143.128.2\(f\)](#) and require the public entity to require bidders to undertake good faith efforts using a fifty (50) point system. However, it also authorizes that that public entity "may require that additional good faith efforts be taken, as indicated in its bid specifications."

The GFE Program, as implemented by the City, has not been as effective as it could be in determining the true good faith efforts of prime contractors in trying to attain the goals. The legislative purpose of Good Faith Efforts, which is partially expressed in §143.128.2(c)b, is to evidence that the bidder acted to recruit and select minority businesses for participation in the contract. Instead, the fifty (50) point system allows bidders to add up to the fifty (50) points without negotiating in good faith with an M/WBE. In such a case, a responsive and responsible minority firm could submit the lowest bid to the prime bidder, never get a response or be contacted, and yet the bidder can still obtain fifty (50) points and a determination of good faith efforts.

To take a recent example, the awardee on the \$50 million Tanger Center won the bid while only proposing about 3% M/WBE utilization.

Additionally, the M/WBE Program Office does not have the authority to make the final determination of good faith efforts. There have been several instances where the M/WBE Program has determined that good faith efforts were not met, but that determination was overruled by the City Manager. (City of Greensboro "Special Instructions to Respondents Regarding Compliance with The City of Greensboro Minority and Women Business Enterprise (M/WBE) Program", Section X).

### 3. ON-CALL CONTRACTS

The use of on-call contracts may be a barrier to M/WBE participation due to their selection and award process. Once on-call firms are selected, the list is closed and there may be no opportunities to bid or gain awards in those areas for three to five years.

### 4. BONDING

City staff reports that bonding remains an issue for M/WBE contractors, including, on occasion, for subcontractors.

### 5. PROMPT PAYMENT

City staff report that prompt payment is still an issue, but that subcontractors are afraid to report payment problems for fear that prime contractors will not work with them again. City staff also reported that some primes are holding 10% retainage on subcontractors, rather than 5%. Only about 42.5% of M/WBE survey respondents reported being paid in less than thirty days for City of Greensboro projects.

## 6. CERTIFICATION

Originating department staff did report the exclusions of certain groups from certification above as being a problem in program implementation. First, the exclusion again narrows the pool of firms eligible to satisfy project M/WBE goals. Second, bidders in several instances submitted names of firms from the excluded list to satisfy project goals even though this information is provided in the pre-bid process. Some staff also felt that the geographic area for certification was too narrow.

## 7. BIFURCATED BIDDING

In April 2014, the City put into place a bifurcated bidding process to strengthen the GFE requirements. It was the result of criticisms by City staff and outside legal counsel that the apparent low bidder could receive a waiver of M/WBE goals that other bidders had complied with, putting the other bidders at a competitive disadvantage, or the apparent low bidder could engage in bid shopping of M/WBEs.

The bifurcated bidding process (which is not required on every project) has the following steps:

- Bidders submit sealed technical proposals and M/WBE GFE package separately. Bidders do not include their technical proposal or bid price in the GFE package.
- On bid opening, GFE envelopes are opened first. No technical proposal is opened until there is a final determination made on all GFE proposals.

Previously the City reviewed the GFE submissions of the low bidder. The low bidder also had the option of paying a 5% contract penalty in lieu of meeting the M/WBE goal or satisfying GFE requirements.

In the review of hard copy documentation for forty submissions on twelve Construction projects referred to above GSPC found:

- There were nine bids rejected for failing to meet the goals and the 50 points for GFE packages. Of those nine rejections, six rejections were reversed and three were upheld by the City Manager's office.
- Bidders always submitted GFE with more than 50 points, but when bidders failed GFE review, it was due to the M/WBE Office not granting points for certain components of bidders' GFE packages.

## 8. FINANCIAL AND MANAGEMENT ASSISTANCE

The City does not currently have a loan program or bonding program for small businesses. For minority business loans, the City's primary partner is the Greensboro Community Development Fund, formerly known as the Greensboro Venture Capital Fund.

The City has offered workshops on how to do business with the City. For most of its management and technical assistance, the City works with the Guilford Technical College Nussbaum Center, which provides business counseling.

The City started a Target Loan Program ("TLP") in 2005 with \$1 million in funding from Community Development Block grants and local banks. The TLP made eight loans for \$1.3 million between 2005 and 2010.

## 9. DBE PROGRAM

The 2016 City DBE plan proposed a triennial 2017-19 DBE goal of 5%, with 2% to be achieved by race neutral means and 3% through race conscious means.

## 10. M/WBE OFFICE BUDGET AND STAFFING

The City M/WBE office has an adopted budget of \$342,438 for FY 2016-17.

The City M/WBE office has a budgeted staff of 2.5 full time employees for FY 2016-17. However, the M/WBE Office has had an additional full-time staff person since mid-2015, funded by another department, bringing the total staff to 3.5 full-time equivalent employees.

## 11. REPORTING M/WBE UTILIZATION

The Purchasing Department and other City departments send M/WBE award data to the M/WBE Office on a quarterly basis. The M/WBE Office compiles this data but has not released an M/WBE utilization report yet.

## 12. ECONOMIC DEVELOPMENT

The City M/WBE Plan provides that when the City provides incentives for a project the City “shall require the developer to apply mandatory M/WBE subcontract participation goals to the construction portion of the project.” The City practice is to apply M/WBE subcontractor participation to the amount of the City incentive, not the value of the entire project. City resolutions and City contracts on the same project have not been consistent on this issue.

## POLICY SUMMARY

The 2014 City M/WBE Plan is a program in transition with new staffing and a new set of rules. The City M/WBE plan has race conscious and race neutral elements, although not all the program components have been implemented.

Some M/WBE Plan business development components have been implemented primarily through partnership and funding of external organizations. The City M/WBE Plan is also limited by the parameters of state local purchasing law which governs local procurement and local M/WBE programs.

The biggest controversies for the current City M/WBE Plan have been the bifurcated bidding process, the 50-point GFE system, and the certification definitions by geography, ethnic group and procurement type.

Controversies in these areas have led to frustration on the part of bidders, subcontractors, and City staff. The City has recently stepped up its efforts to bring more clarity to the GFE process. In addition, the use of on-call contracts may be a barrier to M/WBE participation because, once on-call firms are selected the list is closed, and there may be no additional opportunities to bid or gain awards in those areas for three to five years.

## C. PRIVATE SECTOR FINDINGS

### FINDING 8: PRIVATE SECTOR DISCRIMINATION

#### 1. REGRESSION ANALYSIS

Our analysis explicitly links a business firm owner’s race/ethnicity/gender to public contracting outcomes in the Greensboro-Highpoint relevant market area (“GHPMA”). 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 Greensboro-Highpoint market area as a new firm, and for firms in general, and those in Construction, securing public contracting and subcontracting opportunities relative to Non-M/WBE owned firms.

Specifically, GSPC found that:

- M/WBEs are LESS LIKELY to have served as prime contractors and subcontractors.
- M/WBEs are EQUALLY LIKELY AS Non-M/WBEs to submit bids.
- M/WBEs are LESS LIKELY THAN Non-M/WBEs to have revenues that equal or exceed their market representation.
- African Americans and Women owned firms are MORE LIKELY THAN Non-M/WBEs to be new entrants to the Greensboro-Highpoint market.
- African American owned firms are MORE LIKELY THAN Non-M/WBEs to face financing barriers.
- African American owned firms are MORE LIKELY THAN Non-M/WBEs to perceive that the bidding process is unfair.
- African American firms are MORE likely than Non-M/WBEs to be denied bank loans.

## 2. BUILDING PERMIT ANALYSIS

Among the 15,233 approved building permits, twenty, or approximately .001—or 1 tenth of one percent—were held by M/WBEs. The total value of the building permits was approximately 1.6 billion dollars, of which M/WBEs held a share of approximately .009—or approximately 1 percent. In general, the revenue share of M/WBEs is approximately identical to their share of building permits. However, in contrast to the market and revenue shares of M/WBEs suggested by the aggregate census data revealed in the Survey of Business Owners (“SBO”) and American Community Survey (“ACS”), the building permit shares of M/WBEs suggest that their underrepresentation among firms in the City of Greensboro is far more severe than for the Greensboro-Highpoint relevant market area in general.

## PRIVATE SECTOR SUMMARY

GSPC’s analysis of disparities in public contracting and subcontracting outcomes in

the City of Greensboro aimed to provide some policy-relevant insight into observed unconditional disparity indexes. A descriptive private sector analysis of the Greensboro-High Point NC Metropolitan Market Area (“GHPMA”) private sector revealed that, in general, being an M/WBE in the GHPMA is associated with lower firm revenue and less self-employment, which lends some support to the “but-for” justification for Affirmative Action in public procurement. Lower revenues for M/WBEs in the GHPMA is suggestive of private sector discrimination that undermines minority owned firms’ capacity to compete with Nonminority owned firms for public contracting opportunities.

## D. ANECDOTAL FINDINGS

### FINDING 9: ANECDOTAL FINDINGS

#### 1. CULTURAL ISSUES AND DISCRIMINATION

Several interviewees feel that the Greensboro geographic region maintains a perceived culture of discrimination, evidenced by a lack of social diversity, feeling unwelcome in downtown Greensboro, and a perception that there is little desire for the City to change.

Respondents in several forums recounted experiences of discriminatory conduct across both sectors, but this behavior was reported with a far higher frequency within the private sector, where M/WBE firms spoke openly about negative experiences with Non-M/WBE. Despite this, Non-M/WBE firms asserted that they have no problem working with minorities, but survey results revealed that they might simply be turning a blind eye to the issues behind “political correctness.”

#### Survey Results:

- 14% of total respondents reported having experienced discriminatory conduct in the private sector, including 34% of African-Americans and 11% of Women-owned firms

- 58% of Non-M/WBE males and 51% of Nonminority females neither agree nor disagree with the statement that “Some non-minority prime contractors only utilize M/W/DBE companies when required to do so by the City of Greensboro. 45% of African-Americans “strongly” agreed and 27% agreed.
- 32.9% of online survey respondents either ‘Agree’ or ‘Strongly Agree’ with the statement that M/W/DBE businesses are viewed as “less competent” than Non-M/WBEs, including 66% of Bi-or Multi-racial business owners, 32.5% of Nonminority Females, and 57.3% of African Americans.

#### Key Quotes:

- “I was tricked by the cultural resources in Greensboro into thinking there was more social diversity and acceptance”
- “You send me out there to work with this racist man, and I have to bite my tongue to try to get along with him because he’s writing my checks...but it gets to a point where you can’t be agreeable anymore”
- “I prefer not to focus on race...I care more about reliability.”

## 2. INFORMATION NETWORKS AND TRANSPARENCY

While the City was not directly implicated as having discriminatory dealings on the basis of race, gender or ethnicity, several minority firm owners discussed issues with getting business (or even knowing about business) at the City, and the Coliseum in particular. There was also a widespread belief that the regeneration of downtown has been exclusionary to minority firms—that they are not welcome. However, “mixed” organizations like the Chamber of Commerce asserted that effort is being put in to provide networking opportunities for all businesses in Greensboro and that the regeneration efforts have been inclusive.

#### Survey Results:

- 40% of total respondents believe there is an informal network of vendors who do business within the City, including 73% of African-Americans, 28% of Non-M/WBE males, 32% of Nonminority Females, and 30% of Hispanic Americans
- 46.3% of survey participants who feel this network exists, either ‘Agree’ or ‘Strongly Agree’ that its presence has a disproportionate impact on women and minority businesses.

#### Key Quotes:

- “Everything is done behind closed doors,”
- “Sometimes people don’t make waves out of fear”
- “There is no actual dialogue between the City and the constituents that the City serves, except to a few”
- The officials at the Coliseum “do whatever they want to do”  
Of the downtown area: “they don’t want us down there, it’s not for us”

## 3. M/WBE PROGRAM STRUCTURE AND MONITORING

While M/WBE Program Staff are lauded for their commitment and dedication, there is a belief that the M/WBE Program lacks the statutory oversight to effectuate change. Vendors recognize the need for additional authority for the program to help mediate issues between prime and subcontractors and ensure that M/WBE subcontractors have equal opportunity to participate on City contracts.

### Survey Results:

- 36.1% of total survey respondents, including 41.3% of Nonminority Females, 59.6% of African Americans and 62.5% of Native Americans, either 'Agree' or 'Strongly Agree' that prime contractors will contact Minority, Nonminority Female, or Disadvantaged Businesses Enterprises to ask for quotes to meet "Good Faith Effort" but never give their proposal consideration.
- 24.5% of Respondents who are not currently certified state they are not certified because they do not understand the certification process, including 53.8% of African Americans.
- 27.2% of survey respondents who are not currently certified state that they are not certified because they do not understand how certification can benefit their company, including 47.4% of Nonminority Females.

### Key Quotes

"Certification is a waste of time... (the program) only maintain(s) the status quo" and is designed to "pacify" the minority community.

The "ladies of M/WBE" at the City are "phenomenal" in assisting with the contracting process

The City of Greensboro "has one of the most progressive M/WBE programs that I've seen since the '60's... but the problem...is implementation"

M/WBE program officers "need to be placed on a peer-level with purchasers"

### 4. OTHER BARRIERS TO PARTICIPATION

- Varying inspection standards
- Late payments
- WBE set asides can only be filled by Nonminority Females
- Bonding and insurance requirements
- Lack of prime opportunities for small businesses

### ANECDOTAL SUMMARY

Among the primary issues raised were outreach and awareness of bids, late payment, prime contractor discrimination and misconduct, exclusionary practices on City contracts, certification requirements, the M/WBE program structure, contract sizing, and on-site monitoring.

There were differing perspectives given on race relations, with many MBEs stating that they had experienced discrimination of some form in either the public or private sector versus those of Non-M/WBEs. Testimonies were made regarding hostile work environments, disparaging racial comments from City officials, and discriminatory tactics by inspectors and prime contractors alike.

Several references were made to the Greensboro Coliseum and downtown Greensboro, more generally, as being unwelcome toward minority business owners. Concerns were expressed that purchasing at the Coliseum does not seem to follow the guidelines of the City and is therefore enabled in exclusionary practices against minorities, such as the utilization of informal bid networks.

Many issues facing M/WBEs stem not only from their race, ethnicity, or gender, but also from the relative size of their firms. Several business owners discussed issues of late payment by prime contractors, which has the potential to put small firms out of business, and cited difficulties with contract sizing at the City of Greensboro.

It is clear that many M/WBE's hold the program in great esteem, and desire that it remain and grow to its greatest potential for effectiveness. Much praise was heard for the program and certification. In fact, several who took issue with certification did so because they were excluded from participating due to their location and desired to be a part of the program.

## E. OTHER FINDINGS

### FINDING 10: EFFECTIVENESS OF RACE-NEUTRAL MEASURES

The City's race and gender-conscious program has been demonstrated in these findings to not be effective in remedying the statistically significant underutilization of M/WBE groups in every work category. In addition, since the City does not apply its race and gender-conscious program to awards under \$300,000 in Construction, the awards in those categories would demonstrate whether a race-neutral program has been effective.

GSPC conducted a separate analysis for M/WBE subcontractor utilization on those Construction Awards under \$300,000. In those awards, GSPC found that M/WBE construction subcontractors were awarded 3.77% of Construction Award dollars. This is evidence of the limits of current race and gender-neutral conscious measures.

### FINDING 11: COMPARISON TO THE PREVIOUS CITY DISPARITY STUDY

Tables 75 and 76 shows a comparison in M/WBE utilization between the last City disparity study and the current Study, for prime contractors and subcontractors, respectively. For prime contracting, M/WBE utilization increased for all groups in absolute dollar terms and in percentages. For subcontracting, M/WBE utilization increased for all groups in absolute dollar terms (except Hispanic Americans, who were not covered by goals during the study period), but decreased in percentage terms for all groups. The subcontractor percentages are a percentage of the prime contract dollars, not the subcontract dollars.

TABLE 6: COMPARISON OF PRIME AWARDS IN CURRENT STUDY TO PREVIOUS MGT STUDY

Current Study (FY2012-FY-2016) compared to MGT Study (FY2006-FY2010)

(in the 10-County Current M/WBE Program Area)

In Construction

Business Ownership Classification	Current M/WBE Program Area -- 10 Counties				
	Prime (2006-2010 Disparity Study)		Prime (2012-2016 Disparity Study)		Difference (+/-)
	\$	%	\$	%	
African American	\$ 198,310	0.21%	\$ 3,185,339	1.30%	1.08%
Asian American	\$ -	0.00%	\$ -	0.00%	0.00%
Hispanic American	\$ -	0.00%	\$ 30,000	0.01%	0.01%
Native American	\$ -	0.00%	\$ -	0.00%	0.00%
<b>TOTAL MINORITY</b>	<b>\$ 198,310</b>	<b>0.21%</b>	<b>\$ 3,215,339</b>	<b>1.31%</b>	<b>1.09%</b>
Nonminority Female	\$ 2,637,505	2.85%	\$ 15,015,933	6.11%	3.26%
<b>TOTAL M/WBE</b>	<b>\$ 2,835,815</b>	<b>3.07%</b>	<b>\$ 18,231,271</b>	<b>7.42%</b>	<b>4.35%</b>
NON-M/WBE	\$ 89,566,997	96.93%	\$ 227,522,262	92.58%	-4.35%
<b>TOTAL PRIME AWARDS</b>	<b>\$ 92,402,811</b>	<b>100.00%</b>	<b>\$ 245,753,533</b>	<b>100.00%</b>	

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Table 7: Comparison of Subcontractor Awards in Current Study to Previous MGT Study

Current Study (FY2012-FY-2016) compared to MGT Study (FY2006-FY2010)

(in the 10-County Current M/WBE Program Area)

In Construction

Business Ownership Classification	Current M/WBE Program Area--10 counties				
	Subcontractors (2006-2010 Disparity Study)		Subcontractors (2012-2016 Disparity Study)		Difference (+/-)
	\$	% Relative to Total Prime \$	\$	% Relative to Total Prime \$	
African American	\$ 2,853,070	3.09%	\$ 5,155,603	2.10%	-0.99%
Asian American	-	0.00%	\$ -	0.00%	0.00%
Hispanic American	\$ 3,540,468	3.83%	\$ 1,725,120	0.70%	-3.13%
Native American	\$ 3,500	0.00%	\$ 143,195	0.06%	0.05%
<b>TOTAL MINORITY</b>	<b>\$ 6,397,038</b>	<b>6.92%</b>	<b>\$ 7,023,918</b>	<b>2.86%</b>	<b>-4.06%</b>
Nonminority Female	\$ 5,918,819	6.41%	\$ 9,518,959	3.87%	-2.53%
<b>TOTAL M/WBE</b>	<b>\$ 12,315,857</b>	<b>13.33%</b>	<b>\$ 16,542,877</b>	<b>6.73%</b>	<b>-6.60%</b>
<b>TOTAL PRIME AWARDS</b>	<b>\$ 92,402,811</b>		<b>\$ 245,753,533</b>		

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## F. CONCLUSION OF FINDINGS

The objectives of this Study were defined by five (5) research questions. The findings and recommendations of the Study form the responses to those questions as follows:

1. Based upon the outcome of its Availability/Utilization Disparity analysis, GSPC found that there is a statistically significant disparity in the relevant geographic and product markets between the number of qualified M/WBEs willing and able to provide goods or services to the City in each of the category of contracts, and the number of such firms actually utilized by the City (whether as prime contractors/consultants or subcontractors/consultants). GSPC found that M/WBEs were statistically significantly underutilized as prime contractors, as subcontractors, and as prime and subcontractors combined in every work category during the Study Period, with the exception of African American owned firms in Other Services on prime contracts less than \$300,000. GSPC also found very low utilization of M/WBEs on private sector commercial projects.

2. Having found that a statistically significant disparity exists, race and gender are still significant after controlling for other factors. Specifically, GSPC found that being an M/WBE does have an adverse impact on securing public contracting and subcontracting opportunities relative to Non-M/WBEs in general.

3. The City of Greensboro currently has no remedial program for M/WBE subcontractors on Construction contracts under \$300,000 which would make it a race-neutral program. In those awards, GSPC found that M/WBE construction subcontractors were awarded 3.77% of construction award dollars. This

would indicate that race- and gender-neutral remedies alone are insufficient to remedy the identified disparities.

4. GSPC found quantitative and qualitative evidence from the Study to legally support race and/or gender conscious elements in a remedial program.

5. GSPC has proposed recommendations that are narrowly tailored to the strong basis in evidence from the disparity study as is explained in the recommendations themselves below.

## IV. COMMENDATIONS

Within the Disparity Study process, GSPC is careful to look for opportunities to highlight the successes and advancements being made through equitable processes and diverse contracting initiatives. The set of commendations below are areas where we believe the City of Greensboro and its staff should be noted for their contributions to inclusion and equity.

### COMMENDATION 1: DEDICATED M/WBE PROGRAM STAFF

Throughout the Anecdotal Evidence collection, the most consistent source of praise for the City of Greensboro was for the staff of the M/WBE Program Office. Specifically, it was requested that the M/WBE Office be allocated additional resources and increased autonomy to help them be more effective in their charge. They were consistently referred to as the local “champions” for the M/WBE community, and were noted to be gracious, helpful, and dedicated to connecting and advancing the Greensboro business community.

The M/WBE Office in collaboration with the Field Operations Department and the Code Enforcement Division utilized the vendor rotation program element on occasion to increase opportunities for M/WBE firms that may not otherwise have been able to obtain a contract with the City.

Six M/WBE firms were pre-qualified to participate in this Program.

### COMMENDATION 3: CONTRACT DE-BUNDLING

The Police Department utilized the de-bundling program element on occasion to enhance the ability of M/WBE firms to bid and compete for security services contracts at various City locations. This use of this program enabled an MBE to receive its first contract with the City.

### COMMENDATION 4: MENTOR-PROTÉGÉ PROGRAM

The Mentor Protégé Program was established to enhance the capacity of M/WBE firms, foster relationships between M/WBE firms and the private sector and increase the number of qualified firms in the Greensboro marketplace. In 2016, four M/WBE firms participated in the City's Mentor Protégé Program. M/WBE firms received training at one of the City's Water Treatment Plants in process piping integration, power distribution unit upgrades and bridge maintenance and repair administration. Periodic reports were collected from the team to access the effectiveness of the training. The first program participants will graduate in 2017.

### COMMENDATION 5: APPROVAL FOR SUBCONTRACTOR TERMINATION OR SUBSTITUTION

The City already required that any subcontractor that is bid with a project is required to stay on the project unless the City approved their termination or substitution.

A survey of DBE mentor-protégé programs found that project-specific mentor-protégé agreements are preferable because: (1) M/WBEs "earn while they learn," (2) the agreements provide specific assistance, and (3) the agreements require less legal assistance than agreements lasting many years.<sup>3</sup>

## V. RECOMMENDATIONS

As demonstrated by the findings above, GSPC has determined that the City of Greensboro has a compelling governmental interest in the continuation of a race and gender based remedial program. The recommendations made below reflect the issues that GSPC believes should be addressed in order for the program to achieve its objectives.

### RECOMMENDATION 1: M/WBE GOALS

The findings of this Study<sup>4</sup> indicate that the City of Greensboro should continue to implement a program to promote M/WBE utilization.

1. The City should review its current annual aspirational goals and should set contract by contract goals based upon the determined availability of firms in each trade group where there are subcontracting opportunities on individual contracts. The City should do a periodic review of the contract goal-setting process.
2. The City should establish clear, consistent, and authoritative guidelines for good faith efforts that supplements the fifty (50) point requirement to better carry out the legislative intent of good faith efforts. This might include a requirement that at least some of the fifty (50) point requirement be satisfied through consideration and utilization of any M/WBE that is the lowest, responsible and responsive bidder.

<sup>3</sup> Cynthia Ordnoff et al, Defining the Problem: Disadvantaged Business Enterprise Program Impediments Identified by Survey of Program Administrators, [Public Works Management & Policy, 2011](#).

<sup>4</sup> The need for the continuation of a race and gender conscious subcontractor program is also demonstrated through a comparison of the outcomes from the current Study compared to the previous disparity study by MGT of America. In that comparison, although the subcontractor award dollars to M/WBEs in Construction have increased the relative percentage spent with M/WBE Construction subcontractors has decreased by 6.60%. To the contrary, both the award dollars and the relative percentage spent with M/WBE prime contractors has increased. This supports GSPC's recommendations that M/WBEs should be encouraged to continue to bid as prime contractors and the City should strengthen its M/WBE subcontractor Program.

3. M/WBE goals should include African American, Asian American, Hispanic American, Native American, and Nonminority Female owned businesses.
4. Annual aspirational goals should be based upon some demonstrated measure of availability for each work category. The DBE program approach to aspirational goal setting is one widely accepted by the federal courts. Contract goals should be set contract-by-contract and set in accordance with the percentage of availability of MBE and WBE firms in each trade where subcontracting opportunities are available.
5. The City's current MWBE program only includes MWBEs within the ten-counties of Guilford, Randolph, Rockingham, Alamance, Surry, Davidson, Davie, Forsyth, Stokes, and Yadkin. Although the Relevant Market Area, for purposes of this Study, is the North Central North Carolina, numerous jurisdictions have used a narrower geographic area as their program area. A rational basis for narrowing the program area may be to give more opportunities to local MWBE firms. However, it should be understood that if the program area is narrowed, the availability percentages used to set goals should match the availability of the narrower geographic area.

## RECOMMENDATION 2: DEVELOP FORECASTING PLAN

The City should consider reviewing all anticipated expenditures for each upcoming fiscal year as part of its budget approval process, based on the anticipated expenditures of each department. M/WBE spending targets could be set based on M/WBE availability to perform the work anticipated on various projects. Anticipated expenditures could be made public as a forecast which would allow M/WBE firms to

understand early on what projects are anticipated in the coming fiscal year and to prepare to compete for them.

Planning plays an important role in establishing and maintaining effective remedial programs. This begins with understanding what services and goods the City will be buying in the year to come.

1. Targeted Outreach- Annual forecasting will enable the contract compliance personnel to recruit and target capable firms for notification of the work;
2. 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;
3. Supportive Services - Annual forecasting will allow the City to provide supportive services well in advance of the bid issuance, if needed. 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.

## RECOMMENDATION 3: GREATER OVERSIGHT BY M/WBE PROGRAM OFFICE

The City should increase the monitoring capacity of the M/WBE Program Office with the ability to investigate and respond to accusations of misconduct.

The determination by the M/WBE Office that a bidder has not met Good Faith Efforts should not be overturned if supported by an objective checklist and observation. This undermines the effectiveness of the program itself when requirements are not met, yet the bidder continues in the process. If the overruling of the M/WBE Program Office is because there are differing subjective decisions, then the guidelines should be revised to be more objective.

Best practices for enforcement of Good Faith Efforts provisions is to launch a swift non-discrimination investigation.

This assumes that if a certain percentage of the goal, which is based upon contract by contract trade availability, that the City would ask, that if firms are available, why did the prime not use them? The prime would then affirmatively demonstrate why it did not use available firms.

#### RECOMMENDATION 4: ON-CALL CONTRACTS

Of the 49 on-call contracts awarded, two were awarded to African American owned firms, one to a Nonminority Female owned firm, and the remaining 46 to Non-M/WBE firms. On-call contracts can be a deterrent to an open procurement process, particularly when they are closed to any new entrants for 3-5 years. Whenever possible, contracts should be separately bid, except in emergency situations.

#### RECOMMENDATION 5: 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. 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 6: SMALL BUSINESS RESERVE PROGRAM

There is such an underutilization of M/WBE firms as primes that it is important that the City increase their participation levels. Availability estimates and the low median level of contracting shown in the Threshold Analysis demonstrate that small businesses can most likely perform as prime contractors on the majority of contracts.

Since most M/WBE firms are small businesses, this means that they have a better chance to be successful at winning awards when competing only against other small businesses.

The first step is to institute a race- and gender-neutral program that designates certain contracts, particularly in Construction, that can only be bid on by small businesses in accordance with the SBA guidelines or other guidelines that the City might set.

The City of Charlotte has a Targeted Outreach and Designated Contracts program for SBEs. Under this program the City can designate certain contracts for solicitation of SBEs only. For Construction and Commodities Contracts, the SBE program is limited to informal contracts. In deciding on these designated SBE contracts the City considers the size and scope of the project, SBE availability and the views of the City Department issuing the contract. For Charlotte SBEs are defined as firms with 25 % or less of the US SBA small business size standards.

<sup>5</sup> City of Charlotte, Charlotte Business Inclusion Program, Part A Background and Administration, Section 2.3 Targeted Outreach and Designated Contracts for SBEs.

<sup>6</sup> N.C.G.S. 136-28.10 Highway Fund and Highway Trust Fund Small Project Bidding.

The NCDOT SBE program, started in 1994, allows for the restriction of solicitation and awards to SBEs. construction, maintenance and repair projects of \$500,000, after soliciting at least three informal written bids from SBEs, award contracts to the lowest responsible bidder. For NCDOT SBEs are defined as firms with an annual net income of \$1,500,000, or less, after cost of goods sold is deducted.

\*North Carolina Law may require the small business enterprise program be approved by the North Carolina General Assembly.

#### RECOMMENDATION 7: REFORM DATA INFRASTRUCTURE

GSPC had numerous challenges as it relates to collecting the data for this Study:

- The City does not accurately track or maintain subcontracting data. Since the M/WBE program is a subcontracting program, it is imperative that the City immediately track the firms, addresses, work descriptions and race/ethnicity and gender of subcontractors.
- Most of the data did not clearly indicate, and in very little detail what work was done. The City should begin using commodity codes (i.e. NIGP)
- Much of the data extracted were duplicates which could cause inaccurate tracking and reporting.
- Addresses were often times incorrect. GSPC utilized the emails contained in the bid notification data files and the majority of them bounced back as no good. This means that firms who can potentially perform work for the City are not being notified of bid opportunities.
- The information comes from too many data sources that do not connect.

#### RECOMMENDATION 8: ESTABLISH POLICY TO INVESTIGATE POSSIBLE DISCRIMINATION

It is our recommendation that the City of Greensboro implement a policy permitting an investigation into possible intentional discrimination in cases where the lowest bidding prime contractor utilization of MWBEs is substantially below the M/WBE participation goal set for the contract/project. This investigation would be triggered regardless of any purported “good faith efforts,” and in fact, would be conducted as an interim step before any evaluation of proffered good faith is undertaken by the City. This recommendation is intended to prevent the City from passively and/or unwittingly participating in or funding private discriminatory conduct, and also to combat the (continued) subversion of the good faith efforts provision in the relevant statute (G.S. § 143-128.2(f)). This tool does not have to be used for every project, but particularly for larger projects for which bidders submit little to no proposed M/WBE utilization.

#### RECOMMENDATION 9: ECONOMIC DEVELOPMENT PROJECTS

The City should be commended for applying M/WBE goals to economic development projects that the City has providing some land, tax incentives, infrastructure improvements, or other pecuniary value to the overall project. The private sector goals program has a basis in the evidence of low private sector utilization of MWBEs in private sector commercial construction in Greensboro. The City should improve the tracking of compliance with this program element to determine the effectiveness of the goals program for economic development projects. Available evidence only showed 1% M/WBE utilization on private sector projects that had assistance from the City. The existing evidence suggests that more compliance efforts should be placed on M/WBE goals for private sector projects.

## RECOMMENDATION 10: VENDOR ROTATION

The City should be commended for having a vendor rotation component in its M/WBE program. Vendor rotation has been used by several jurisdictions to increase M/WBE utilization. According to staff interviews, however, vendor rotation has not been used that often in City procurement. Some other approaches to vendor rotation, including rotating diverse teams in a pre-selected pool, such as the City on-call contracts (to the extent that they continue to be utilized)

in procurement areas where such a practice is consistent with the state law prohibition against prequalification of firms in Professional Services.

Miami-Dade County has utilized an Equitable Distribution Program, a centralized rotational system, in which a pool of qualified small architecture and engineering professionals are rotated awards. Each firm's position in the qualified pools is based on their prior contracting. The rotational system applies to projects with an estimated construction cost of \$2 million or less and/or study engagements less than \$200,00.

## VI. CONCLUSION

This study provides evidence to support continued use of race- and gender-conscious elements in the Greensboro M/WBE program.

The 2014 City M/WBE Plan is a program in transition with new staffing and a new set of rules. The City M/WBE plan has race conscious and race neutral elements, although not all the program components have been implemented. Some M/WBE Plan business development components have been implemented.

Some M/WBE Plan business development components have been implemented primarily through partnership and funding of external organizations. The City M/WBE Plan is also limited by the parameters of State local purchasing law which governs local procurement and local M/WBE programs.

The biggest controversies for the current City M/WBE Plan have been the bifurcated bidding process, the 50-point Good Faith Efforts system, and the certification definitions by geography, ethnic group and procurement type. Controversies in these areas have led to frustration on the part of participants and staff.

The City of Greensboro M/WBE Program has not been fully effective. The City has made more relative progress in M/WBE prime utilization, than non-M/WBE primes have made in percentage utilization of M/WBE subcontractors. The key to the Program becoming more effective, may be to review the way that the Good Faith Efforts Program works. GSPC has presented some recommendations and additional tools to assist the City with improving participation moving forward and is ready to assist the City with implementing its recommendations.

