

Disparity Study for the Minority/Women Business Enterprise Program



Final Report

June 14, 2012

Submitted to:

City of Greensboro,
North Carolina

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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

In May 2011, MGT of America, Inc. (MGT), was retained to conduct a Minority and Women Business Enterprise Disparity Study for the City of Greensboro (City) to provide current data on the Greensboro Minority and Women Business Enterprise (M/WBE) Program. The city established an M/WBE program in February 1986 and conducted its first disparity study in 1997.

The following findings and recommendations are excerpts from Chapter 8.0 and are highlighted here for your consideration. Chapter 8.0 of this report contains more detailed findings and recommendations. Additional policy options are presented in **Appendix M - Selected Policies of Other M/W/DBE Programs**.

E.1 Findings for M/WBE Utilization and Availability

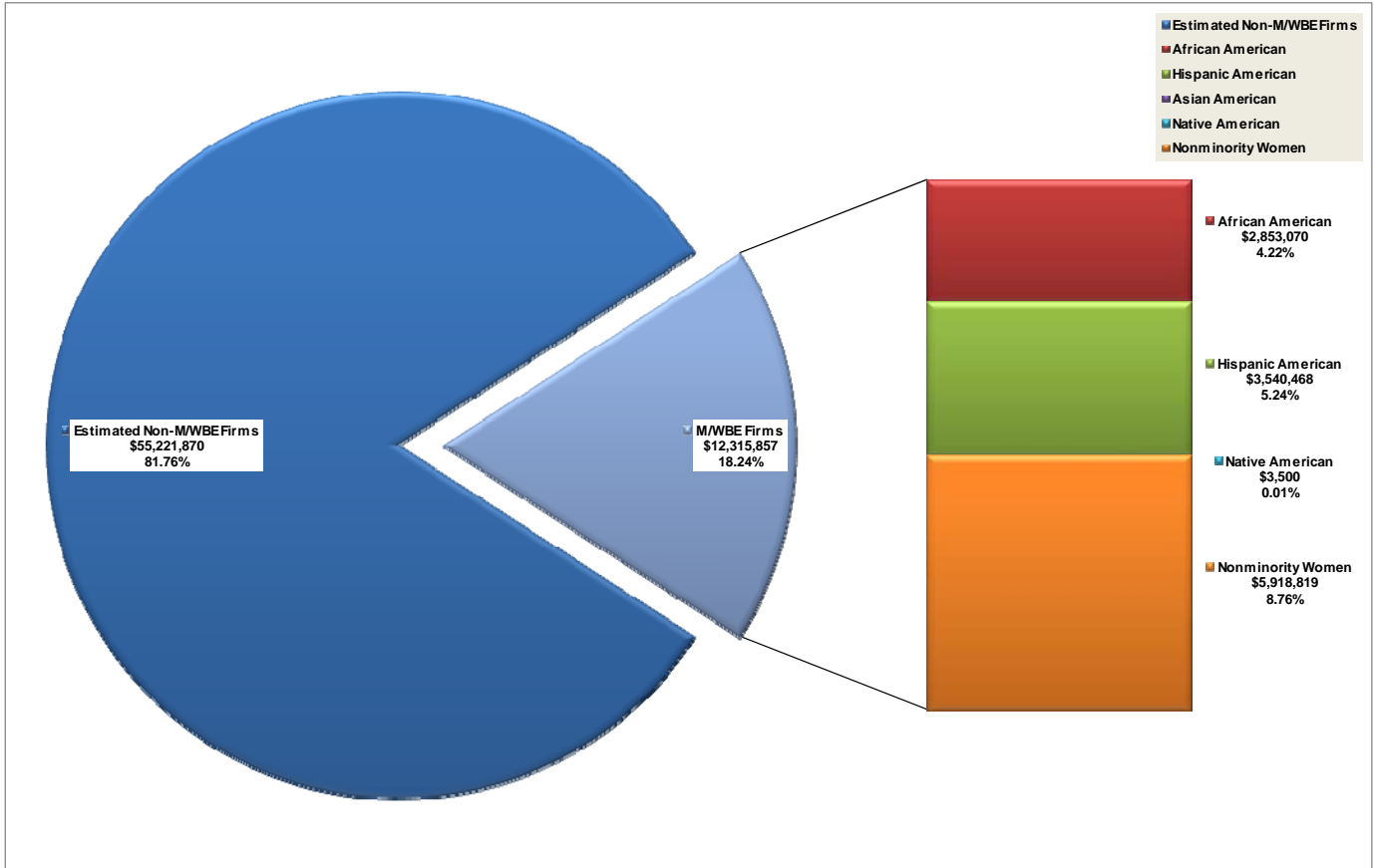
FINDING E-1: M/WBE Subcontractor Utilization, Availability, and Disparity

The dollar value of non-DBE and DBE subcontractor utilization by Greensboro over the current study period in the relevant market is shown in **Exhibits E-1 and E-2**, respectfully. A summary of utilization, availability, and disparity is provided in **Exhibit E-3**.

- MBEs won construction subcontracts for \$6.39 million (9.47% of the total). WBEs won construction subcontracts for \$5.91 million (18.76% of the total). There was substantial disparity for African American-, Asian American-, Native American- and Nonminority women-owned firms.
- MBE won construction subcontracts for \$2.07 million (9.57% of the total) through the DBE program. WBEs won construction subcontracts for \$2.07 million (9.57% of the total) through the DBE program. There was substantial disparity for all ethnic/gender groups.

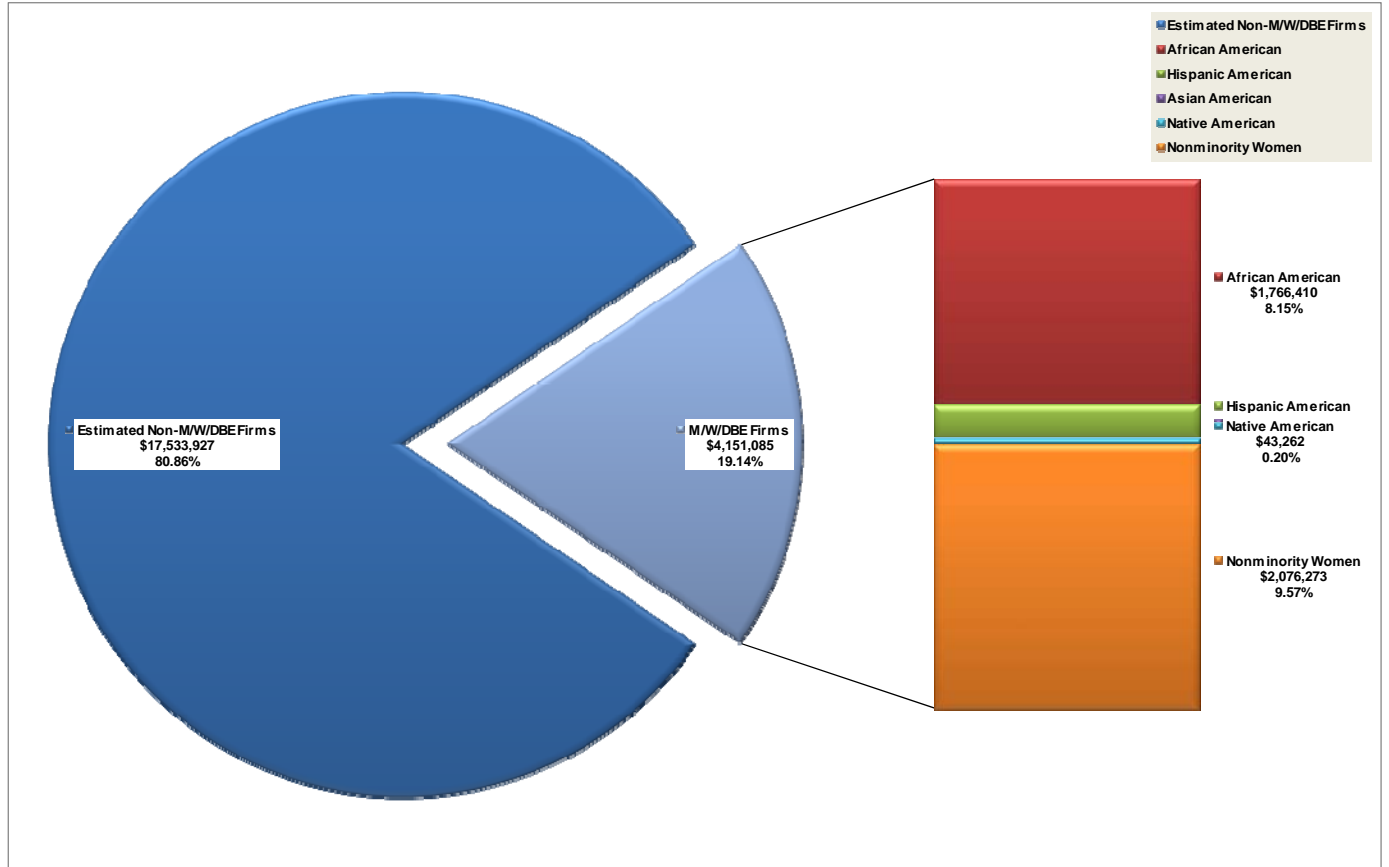
Overall Greensboro spent \$16.47 million with M/WBE subcontractors over the study period.

EXHIBIT E-1
CITY OF GREENSBORO
NON-DBE SUBCONTRACTOR UTILIZATION
FY 2006 THROUGH FY 2010



Source: MGT developed a subcontract database for the City of Greensboro covering the period between July 1, 2005 and June 30, 2010.

EXHIBIT E-2
CITY OF GREENSBORO
DBE SUBCONTRACTOR UTILIZATION
FY 2006 THROUGH FY 2010



Source: MGT developed a subcontract database for the City of Greensboro covering the period between July 1, 2005 and June 30, 2010.

**EXHIBIT E-3
CITY OF GREENSBORO
M/WBE SUBCONTRACTOR UTILIZATION, AVAILABILITY, AND DISPARITY
FY 2006 THROUGH FY 2010**

Business Category by Business Owner Classifications	\$ Dollars	% of Dollars	% of Available Firms
Construction Firms at the Subcontractor Level on Non-DBE Projects			
African Americans	\$2,853,070	4.22%	15.15%
Hispanic Americans	\$3,540,468	5.24%	2.52%
Asian Americans	\$0	0.00%	0.39%
Native Americans	\$3,500	0.01%	0.97%
Nonminority Women	\$5,918,819	8.76%	16.31%
Total MWBE Firms	\$12,315,857	18.24%	35.34%
Construction Firms at the Subcontractor Level on DBE Projects			
African Americans	\$1,766,410	8.15%	15.15%
Hispanic Americans	\$265,140	1.22%	2.52%
Asian Americans	\$0	0.00%	0.39%
Native Americans	\$43,262	0.20%	0.97%
Nonminority Women	\$2,076,273	9.57%	16.31%
Total MWDBE Firms	\$4,151,085	19.14%	35.34%

Source: MGT developed a subcontract database for the City of Greensboro covering the period between July 1, 2005 and June 30, 2010. MGT developed an availability database based on vendor availability.

¹ The percentage of dollars is taken from prime utilization shown in **Chapter 4.0**.

² The percentage of available firms is taken from availability shown in **Chapter 4.0**.

³ The disparity index is the ratio of % of dollars (utilization) to % available firms times 100.

* An asterisk is used to indicate a substantial level of disparity – disparity index below 80.00.

** Two asterisks are used to indicate that the ratio of utilization to availability is statistically significant at a 0.05 level

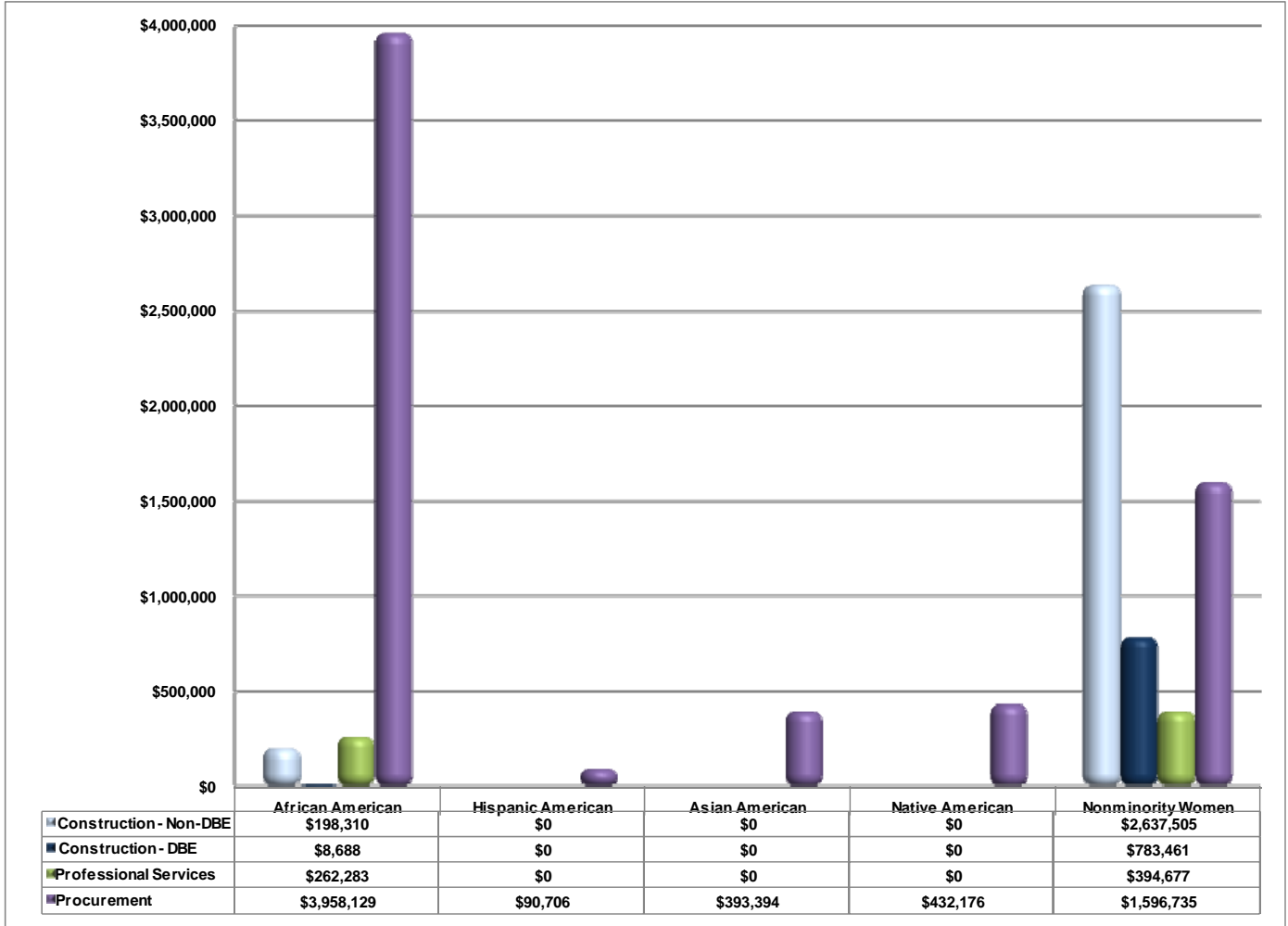
FINDING E-2: Greensboro M/WBE Prime Utilization and Availability

The dollar value of M/WBE prime utilization by Greensboro over the current study period in the relevant market is shown in **Exhibit E-4**: A summary of utilization, availability, and disparity is provided in **Exhibit E-5**.

- MBEs won prime construction contracts for \$193,310 (0.21% of the total). WBEs won prime construction contracts for \$2.63 million (2.85% of the total). There was substantial disparity for African American- and Nonminority women-owned firms.
- One MBE won a single prime construction contract for \$8,688 (0.03% of the total) through the DBE program. WBEs won prime construction contracts for \$783,461 (2.54% of the total) through the DBE program. There was substantial disparity for African American- and Nonminority women-owned firms.
- MBEs won professional services contracts for \$262,283 (0.80% of the total). WBEs won professional services contracts for \$394,677 (1.20 % of the total). There was substantial disparity for African American-, Hispanic American-, Native American-, and Nonminority women-owned firms (there was no availability for Asian American–owned firms).
- MBEs won procurement contracts for \$4.87 million (3.75% of the total). WBEs were awarded \$1.59 million (1.23% of the total). There was substantial disparity for African American-, Hispanic American-, and Nonminority women-owned firms and disparity for Native American-owned firms.

Overall, Greensboro spent \$10.8 million with M/WBE prime contractors over the study period in the relevant market area, 3.76% of the total. Of this amount, \$5.41 million was spent with WBEs, 1.89% of the total, and \$5.34 million with MBEs, 1.87 % of the total.

**EXHIBIT E-4
CITY OF GREENSBORO
M/WBE PRIME CONTRACTOR UTILIZATION
FY 2006 THROUGH FY 2010**



Source: MGT developed a prime contract and payment database for the City of Greensboro covering the period between July 1, 2005 and June 30, 2010.

**EXHIBIT E-5
CITY OF GREENSBORO
M/WBE PRIME CONTRACTOR UTILIZATION, AVAILABILITY, DISPARITY
FY 2006 THROUGH FY 2010**

Business Category by Business Owner Classifications	\$ Dollars	% of Dollars	% of Available Firms	Disparity Index	Disparate Impact of Utilization
Non-DBE Construction at the Prime Level					
African Americans	\$198,310	0.21%	12.37%	1.74	* Underutilization
Hispanic Americans	\$0	0.00%	0.00%	N/A	N/A
Asian Americans	\$0	0.00%	0.00%	N/A	N/A
Native Americans	\$0	0.00%	0.00%	N/A	N/A
Nonminority Women	\$2,637,505	2.85%	10.75%	26.55	* Underutilization
Total MWBE Firms	\$2,835,814	3.07%	23.12%		
DBE Construction at the Prime Level					
African Americans	\$8,688	0.03%	12.37%	0.23	* Underutilization
Hispanic Americans	\$0	0.00%	0.00%	N/A	N/A
Asian Americans	\$0	0.00%	0.00%	N/A	N/A
Native Americans	\$0	0.00%	0.00%	N/A	N/A
Nonminority Women	\$783,461	2.54%	10.75%	23.67	* Underutilization
Total MWBE Firms	\$792,149	2.57%	23.12%		
Professional Services Firms					
African Americans	\$262,283	0.80%	8.58%	9.33	* Underutilization
Hispanic Americans	\$0	0.00%	0.27%	0.00	* Underutilization
Asian Americans	\$0	0.00%	0.00%	N/A	N/A
Native Americans	\$0	0.00%	0.27%	0.00	* Underutilization
Nonminority Women	\$394,677	1.20%	6.17%	19.54	* Underutilization
Total MWBE Firms	\$656,960	2.01%	15.28%		
Procurement Firms					
African Americans	\$3,958,129	3.04%	6.72%	45.25	* Underutilization
Hispanic Americans	\$90,706	0.07%	0.43%	16.38	* Underutilization
Asian Americans	\$393,394	0.30%	0.09%	355.30	Overutilization
Native Americans	\$432,176	0.33%	0.34%	97.58	Underutilization
Nonminority Women	\$1,596,735	1.23%	3.83%	32.05	* Underutilization
Total MWBE Firms	\$6,471,140	4.97%	11.40%		

Source: MGT developed a prime contract and payment database for the City of Greensboro covering the period between July 1, 2005 and June 30, 2010. MGT developed an availability database based on vendor availability.

¹ The percentage of dollars is taken from prime utilization shown in **Chapter 4.0**.

² The percentage of available firms is taken from availability shown in **Chapter 4.0**.

³ The disparity index is the ratio of % of dollars (utilization) to % available firms times 100.

* An asterisk is used to indicate a substantial level of disparity – disparity index below 80.00.

N/A denotes constraint of division by zero. This occurred because there is zero availability in this category. However, the existence of disparity can be inferred due to the evidence of low utilization levels

FINDING E-3: Private Sector Commercial Construction

M/WBE utilization in private sector commercial construction in the Greensboro Metropolitan Statistical Area (MSA) was very low, as measured by data from building permits. From 2006 through 2010 permits issued to M/WBE, prime contractors were valued at \$155,375, representing 0.03% of construction values and 0.1% of the number of building permits. M/WBE subcontractors were issued 0.1 %of all subcontracting permits). Only one MBE and four WBEs were used as subcontractors in the commercial permits data, as compared to 73 M/WBE subcontractors on Greensboro projects (and 29 on Greensboro DBE projects), with an estimated 35.8% of the construction subcontractor dollars used on Greensboro projects.

There was a link between this low private sector M/WBE subcontractor utilization and Greensboro. There were a total of 46 contractors on both the Greensboro projects and private sector commercial projects. Of these 46 firms, 23 used M/WBE subcontractors on Greensboro projects. Of the 23 prime contracting firms that used M/WBE subs on City projects, only two used WBEs subcontractors on commercial construction projects, and none used MBE subcontractors on private sector commercial projects. These results seem consistent with the survey results discussed in **Chapter 8, Finding 8-6**.

E.2 Commendations and Recommendations

The following recommendations focus on combining both race- and gender-neutral (small business) and race- and gender-conscious (M/WBE) methods. In keeping with prevailing case law the priority should be on the implementation of race- and gender-neutral methods.

Commendations and recommendations that follow are broken into race- and gender-neutral and M/WBE policy proposals. Most of the following commendations and recommendation are based on multiple findings and do not necessarily tie to one finding

Commendations and Recommendations for Race- And Gender-Neutral Alternatives

RECOMMENDATION E-1: Professionals Services and Other Services

Greensboro should consider the selective use of vendor rotation to expand utilization of underutilized M/WBE groups. Some political jurisdictions use vendor rotation arrangements to limit habitual repetitive purchases from incumbent majority firms and to ensure that M/WBEs have an opportunity to bid along with majority firms. Generally, a diverse team of firms is prequalified for work and then teams alternate undertaking projects. A number of agencies, including the Port Authority of New York and New Jersey; the city of Indianapolis; Fairfax County, Virginia; and Miami-Dade County, Florida use vendor rotation to encourage utilization of underutilized M/WBE groups, particularly in professional services.

RECOMMENDATION E-2: Small Business Enterprise (SBE) Program

A strong SBE program is central to maintaining a narrowly tailored program to promote M/WBE utilization. In particular, Greensboro should focus on increasing M/WBE

utilization through an SBE program. Greensboro does not face constitutional restrictions on its SBE program, only those procurement restrictions imposed by State law.

RECOMMENDATION E-3: SBE Program for Subcontracts

Small business programs are an important component of race- and gender-neutral alternatives to address identified disparities in purchasing. Greensboro should consider imposing mandatory subcontracting clauses on contracts where there are subcontracting opportunities and such clauses would promote M/WBE utilization.¹

COMMENDATION AND RECOMMENDATION E-4: Business Development Assistance

Greensboro should be commended for its partnerships with North Carolina A&T, North Carolina State University, and the Small Business and Technology Development Center. Greensboro should consider devoting more resources to business development assistance. Greensboro should review examples of other agencies with substantial business development initiatives. Greensboro should evaluate the impact of these initiatives on M/WBE utilization. In particular, Greensboro should follow the example of the Port Authority of New York and New Jersey, for which management and technical assistance contracts have been structured to include incentives for producing results, such as increasing the number of M/WBEs being registered as qualified vendors with the Port Authority, and increasing the number M/WBEs graduating from subcontract work to prime contracting.

RECOMMENDATION E-5: Narrowly Tailored M/WBE Program

This study provides evidence to support continuing the Greensboro M/WBE program. This conclusion is based primarily on statistical disparities in current M/WBE utilization, particularly in subcontracting; substantial disparities in the private marketplace; evidence of discrimination in business formation and revenue earned from self-employment; evidence of passive participation in private sector disparities; credit disparities; and anecdotal evidence of discrimination. Greensboro should tailor its women and minority participation policy to remedy each of these specific disparities.

RECOMMENDATION E-6: Annual Aspirational M/WBE Goals

The study provides strong evidence to support the setting of annual aspirational goals by business category, not rigid project goals. To establish a benchmark for goal setting, aspirational goals should be based on relative M/WBE availability. The primary means for achieving these aspirational goals should be an SBE program, race-neutral joint ventures, outreach, and adjustments in City procurement policy. As in the DOT DBE program goals on particular projects should, in general, vary from overall aspirational goals.

Possible revised aspirational goals based on M/WBE availability are proposed below in **Exhibit E-6**. These proposed goals are similar in structure to the DBE goal setting

¹ San Diego as part of its Subcontractor Outreach Program (SCOPE) has mandatory outreach, mandatory use of subcontractors, and mandatory submission of an outreach document. Whether a contract has subcontracting is determined by the engineer on the project.

process in that the goals are a weighted average of estimated M/WBE availability and prior M/WBE utilization.

**EXHIBIT E-6
CITY OF GREENSBORO
PROPOSED M/WBE ASPIRATIONAL GOALS
BY PROCUREMENT CATEGORY**

Procurement Category	MBE Goal	WBE Goal	Total M/WBE Goal	Current M/WBE Utilization %
Construction Prime Contracting	7%	7%	14%	2.95%
Professional Services	6%	5%	11%	2.01%
Goods & Services	5%	3%	8%	4.97%
Construction Subcontracting*	8%	7%	15%	13.37%

Source: Availability estimates are based on a 50/50 weighted average of current utilization and census availability data in Chapter 6.0.

*Subcontractor goals and utilization percentage are the percentage of the total construction prime contract dollars, not the percentage of subcontract dollars.

RECOMMENDATION E-7: M/WBE Subcontractor Plans

The basis for reestablishing good faith efforts for M/WBE subcontractor requirements is disparities in construction subcontracting, the very low utilization in private sector commercial construction and other evidence of private sector disparities, even after controlling for capacity and other race-neutral variables. The core theme should be that prime contractors should document their outreach efforts and the reasons why they may have rejected qualified M/WBEs that were the low-bidding subcontractors. Accordingly, the following narrow tailoring elements must be considered:

1. Good faith effort requirements should apply to both M/WBE and non-M/WBE prime contractors.
2. Project goals should vary by project and reflect realistic M/WBE availability for particular projects.
3. A documented excessive subcontractor bid can be a basis for not subcontracting with an M/WBE.
4. A documented record of poor performance can be a basis for not subcontracting with an M/WBE.²

A stronger M/WBE subcontractor program will require more resources for monitoring contract compliance.

² The last two elements were adopted by the North Carolina Department of Transportation (NCDOT). 19A NCAC 02D.1110(7). These and other elements of the NCDOT M/WBE program were found to be narrowly tailored in *H.B. Rowe v. Tippett*, 615 F.3d 233(4th Cir 2010).