

CITY OF WINSTON-SALEM

2019 DISPARITY STUDY

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EXECUTIVE SUMMARY

2019 Disparity Study

City of Winston-Salem, North Carolina



INTRODUCTION

Winston-Salem, North Carolina is the fifth most populous city in North Carolina, and the third largest urban area in North Carolina. In 2018, the estimated population was 246,328 making it the second largest municipality in the Piedmont Triad region. The Piedmont Triad region is a north-central region of North Carolina that consists of the area within and surrounding the three major parts: Greensboro, Winston-Salem, and High Point with an estimated population of 676,673 who live and work in the region.

The procurement practice of the City is to increase procurement opportunities for minority or women business enterprises¹ (M/WBE). In March 2011, City Council adopted a resolution establishing a minimum 10 percent M/WBE goal on formal City construction and repair projects. In January 2018, the City included a 10 percent M/WBE goal for professional and other services. The Office of Business Inclusion and Advancement (BIA), which consists of the Business Development Division, the M/WBE Division, and Reintegration & Youth Development provides the structure and organization for coordinating and collaborating with other City departments as well as reaching out to the minority and women vendor community.

In March 2019, the City retained MGT of America Consulting, LLC (MGT) to conduct a disparity study to determine if there are any disparities between the utilization of minority, or women business enterprises (M/WBEs) compared to the availability of M/WBEs in the marketplace who are ready, willing, and able to perform work. MGT examined the statistical data within the following business categories:

- ◆ Construction Services;
- ◆ Professional Services;
- ◆ Other Services; and
- ◆ Goods and Supplies.

STUDY TEAM

The MGT team who conducted the City's M/WBE Disparity Study is the most experienced and skilled team in the disparity study business. MGT staff has extensive social science research experience and experience in all aspects of disparity research. The experience of our team enables us to navigate the challenges, obstacles, and volatility associated with conducting a thorough disparity study, which can derail even the most well-planned and executed study.

MGT PROJECT TEAM

MGT is a Tampa-based research and management consulting firm. Since 1990, MGT has conducted over 214 disparity and disparity-related studies. The team of experts who dedicated their time, attention, and expertise to this study include:

¹ "Woman-owned businesses" refers to non-Hispanic white woman owned businesses.

Dr. Fred Seamon, Executive Vice President/Qualitative Researcher

Dr. Seamon was responsible for ensuring the team had the necessary staff and resources to address the deliverables set forth in the scope of work. Dr. Seamon also conducted policy interviews with City officials and stakeholders. Dr. Seamon has over 30 years of consulting, research, and teaching experience. He has been conducting research related to access and equity since he was a graduate student. Dr. Seamon has been involved in over 100 of MGT's disparity- and disparity-related research studies. His disparity study areas of expertise include qualitative research methods, community engagement, and outreach and policy analysis. He has extensive experience analyzing the structure, operations, and processes of public sector organizations and nonprofit agencies and conducting research studies related to access, equity, and disparities in education, business, and human services. His consulting experience also includes workforce development, organizational development, program evaluation, program auditing, and performance management in workforce development, developmental disabilities, and community philanthropy.

Mr. Reggie Smith, Vice President/Project Director

Mr. Smith is the leader of MGT's disparity study business unit and is nationally recognized for managing and directing disparity studies. He has directed over 36 disparity studies since joining MGT and has managed some of the largest disparity studies in the country. He plays a key role in developing, refining, and executing MGT's methodology and quality standards for conducting disparity studies. Mr. Smith is a highly skilled project manager with the knowledge and skills necessary to manage the complexity of a disparity study. In addition to his disparity study experience, Mr. Smith has extensive experience providing consulting, training, and public relations services to private and public sector agencies, particularly in local government. Mr. Smith also specializes in managing and conducting reengineering, operational assessments, organizational and performance reviews, and administrative technology projects for city, county, and state government agencies.

Ms. Vernetta Mitchell, Disparity Services Manager/Project Manager

Ms. Mitchell led the qualitative research effort for this study. She has over 20 years of experience in minority business program development, public and private sector SBE and M/WBE program administration, construction, and government procurement. She has successfully managed dozens of disparity studies since joining MGT and has functional knowledge and expertise in project management, project scheduling, analytical reporting, meeting facilitation, and public relations. Ms. Mitchell's extensive experience in procurement, construction, and program administration has enabled Ms. Mitchell to use her expertise in the development and management of qualitative data collection that has led to more efficient analyses and reporting of business participation.

Mr. Andres Bernal, JD, Senior Consultant/Quantitative Data Manager

Mr. Bernal was responsible for collecting and analyzing City's contracting and procurement data and serves as the data manager for MGT's disparity studies. He has extensive experience in the collection and analysis of large complex data and applying various statistical and mathematical computations to reach reliable and valid conclusions that are used to shape disparity study findings and recommendations. Mr.

Bernal has a law degree and an impressive background in economic theories, including Microeconomic Theory, Macroeconomic Theory, Econometrics, Urban Economics, Experimental Economics, Human and Labor Resource Economics, and Regression Analysis.

Ms. Kim Stewart, Senior Consultant/Research & Analysis

Ms. Kim Stewart assisted with the preparation and analysis of data for this report. She has over 14 years of experience conducting and managing disparity studies from start to finish and has served as the lead researcher, identifying and preparing data for study evaluation. She has been a lead researcher or project manager on over 40 disparity-related studies and has been a repeat presenter at the American Contract Compliance Association's (ACCA) National Training Institute on project goal setting, and contract data collection for disparity studies.

MGT SUBCONSULTANTS

Lain Consulting Group – (MBE)

LaPronda Spann is the Principal and Chief Visionary Architect of Lain Consulting LLC, a Minority Owned and Disadvantaged Business Enterprise located in Charlotte, North Carolina. Established in 2004 and incorporated in 2010, Lain Consulting LLC is an award-winning full-service consulting firm that specializes in diversity certification support services, supplier growth planning, program development and government contracting. For the City's study, Ms. Spann provided research and input on the community outreach plan and managed the community meetings including the coordination and management of a local court reporter for the meetings.

M&V Consulting and Contracts, LLC – (MBE)

Mr. Michael McKoy has over 30 years of engineering and transportation experience. He brings experience in all modes of construction, highway, transit, rail, aviation, and ferry. Mr. McKoy served the state of North Carolina working with the North Carolina Department of Transportation as the State Contractor Utilization Engineer from 2005 - 2015. Mr. McKoy currently works in several areas of business development and minority/women business assistance programs. Mr. McKoy conducted in-depth interviews with businesses located in the Winston-Salem Combined Statistical Area and area trade associations and business organizations.

Thompson Consulting and Analytics, LLC – (MBE)

Mr. Ron Thompson provides economic impact analysis (employment, personal income, tax, and economic activity), econometric modeling and forecasting, commercial real estate market research, analysis, and site feasibility studies. Mr. Thompson produces economic research studies, industry and competitive analysis, white papers, written reports, and presentation of actionable insights. Mr. Thompson conducted the regression analysis using data provided from the business owner surveys.

Oppenheim Research – Anneliese Oppenheim, President (WBE)

Ms. Anneliese Oppenheim is the CEO of Oppenheim Research and a longtime partner with MGT. Ms. Oppenheim was responsible for conducting the custom census surveys and the business owner telephone surveys for this project. She has over 15 years of experience in the field of survey analysis and opinion

research. Her work has included public opinion polling, policy study, program evaluation, and product and advertising research.

OVERVIEW OF STUDY APPROACH

The City's study includes procurement activity from July 1, 2013, through June 30, 2018 (FY2014 – FY2018). The objectives of this study were:

- ◆ Determine whether City, either in the past or currently, engages in discriminatory practices in the solicitation and award of contracts in Construction, Professional Services, Other Services, and Goods & Supplies to M/WBEs.
- ◆ Determine if a legally justified need exists for the continuation of a M/WBE program in accordance with the guidelines set forth by the Supreme Court and relevant subsequent cases.

The Study analyzed contracting opportunities in these procurement categories in order to identify with particularity whether a statistical disparity exists. A statistical disparity demonstrates whether the City is a passive participant in private sector discrimination and/or lingering effects of past discrimination exist that give rise to a compelling governmental interest for City's M/WBE Programs.

The work plan consisted of, but was not limited to, the following major tasks:

- ◆ Establish data parameters and finalize the work plan.
- ◆ Conduct a legal review.
- ◆ Review City's policies, procedures, and programs.
- ◆ Determine City's geographic and product markets.
- ◆ Conduct market area and utilization analyses.
- ◆ Determine the availability of qualified firms.
- ◆ Analyze the availability and utilization of primes or subcontractors in City's geographic and product markets.

RESEARCH QUESTIONS

These research questions are embedded in relevant chapters throughout this report.

1. Is there factual predicate evidence to support a race- and gender-conscious M/WBE program for the City?
2. How does case law inform the research methodology for City's disparity study?
3. Are there disparities between the availability and utilization of M/WBE primes and subcontractors?
4. If so, what is the cause of the disparity? Is there other evidence that supports and/or explains why there is disparity?
5. Does the City passively engage in private sector discrimination?
6. Are there statistically significant disparities in the utilization of M/WBEs by primes on projects where there are no MWBE goals?
7. Is there qualitative/anecdotal evidence of disparate treatment of M/WBE subcontractors by prime contractors?

- ◆ Quantify the disparity between availability and utilization for primes and subcontractors.
- ◆ Conduct a survey of business owners.
- ◆ Collect and analyze anecdotal information.
- ◆ Prepare and present draft and final reports for the study

The Supreme Court decisions in *Richmond v. Croson Company (Croson)*,² *Adarand v. Peña (Adarand)*,³ and later cases have established and applied the constitutional standards for an affirmative action program. This chapter identifies and discusses those decisions, summarizing how courts evaluate the constitutionality of race-specific and gender-specific programs. Decisions of the Fourth Circuit offer the most directly binding authority; in particular, the recent decision involving the North Carolina Department of Transportation’s (NCDOT) M/WBE program in *H.B. Rowe v. Tippett*.⁴ Where the Fourth Circuit has not directly addressed an issue involving MWBE programs since the *Croson* decision, this review considers decisions from other circuits.

By way of a preliminary outline, the courts have determined that an affirmative action program involving governmental procurement of goods or services must meet the following standards:

- ◆ A remedial race-conscious program is subject to strict judicial scrutiny under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
 - Strict scrutiny has two basic components: a compelling governmental interest in the program and a narrow tailoring of the program to serve or address the government’s compelling interest.
 - To survive the strict scrutiny standard, a remedial race-conscious program must be based on a compelling governmental interest.
 - “Compelling interest” means the government must prove past or present racial discrimination requiring remedial attention.
 - There must be a specific “strong basis in the evidence” for the compelling governmental interest.
 - Statistical evidence is preferred and possibly necessary as a practical matter; anecdotal evidence is permissible and can offer substantial support, but it probably cannot stand on its own.
 - Program(s) designed to address the compelling governmental interest must be narrowly tailored to remedy the identified discrimination.
 - “Narrow tailoring” means the remedy must fit the findings.
 - The evidence showing compelling interest must guide the tailoring very closely.
 - Race-neutral alternatives must be considered first.

² *Richmond v. Croson*, 488 U.S. 469 (1989).

³ *Adarand v. Peña*, 515 U.S. 200 (1995).

⁴ *H.B. Rowe v. Tippett*, 2010 WL 2871076 (4th Cir. 2010).

- A lesser standard, intermediate judicial scrutiny, applies to programs that establish gender preferences.
- To survive the intermediate scrutiny standard, the remedial gender-conscious program must serve important governmental objectives and be substantially related to the achievement of those objectives.
- The evidence does not need to be as strong and the tailoring does not need to be as specific under the lesser standard.

STANDARDS OF REVIEW FOR RACE-SPECIFIC AND GENDER-SPECIFIC PROGRAMS

RACE-SPECIFIC PROGRAMS: THE *CROSON* DECISION

Croson established the framework for testing the validity of programs based on racial discrimination. In 1983, the Richmond City Council (Council) adopted a Minority Business Utilization Plan (the Plan) following a public hearing in which seven citizens testified about historical societal discrimination. In adopting the Plan, the Council also relied on a study indicating that “while the general population of Richmond was 50 percent African American, only 0.67 percent of the city’s prime construction contracts had been awarded to minority businesses in the five-year period from 1978 to 1983.”⁵

The evidence before the Council also established that a variety of state and local contractor associations had little or no minority business membership. The Council relied on statements by a Council member whose opinion was that “the general conduct of the construction industry in this area, the state, and around the nation, is one in which race discrimination and exclusion on the basis of race is widespread.”⁶ There was, however, no direct evidence of race discrimination on the part of the city in its contracting activities, and no evidence that the city’s prime contractors had discriminated against minority-owned subcontractors.⁷

The Plan required the city’s prime contractors to subcontract at least 30 percent of the dollar amount of each contract to one or more minority-owned business enterprises (MBEs). The Plan did not establish any geographic limits for eligibility. Therefore, an otherwise qualified MBE from anywhere in the United States could benefit from the 30 percent set-aside.

J.A. Croson Company, a non-MBE mechanical plumbing and heating contractor, filed a lawsuit against the city of Richmond alleging that the Plan was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment. After a considerable record of litigation and appeals, the Fourth Circuit struck down the Richmond Plan and the Supreme Court affirmed this decision.⁸ The Supreme Court determined that strict scrutiny was the appropriate standard of judicial review for MBE programs, which

⁵ Id. at 479-80.

⁶ Id. at 480.

⁷ Id.

⁸ Id. at 511.

means that a race-conscious program must be based on a compelling governmental interest and be narrowly tailored to achieve its objectives. This standard requires a firm evidentiary basis for concluding that the underutilization of minorities is a product of past discrimination.⁹

GENDER-SPECIFIC PROGRAMS

The Supreme Court has not addressed the specific issue of a gender-based classification in the context of a woman-owned business enterprise (WBE) program. *Croson* was limited to the review of an MBE program. In evaluating gender-based classifications, the Court has used what some call “intermediate scrutiny,” a less stringent standard of review than the “strict scrutiny” applied to race-based classifications. Intermediate scrutiny requires that classifying persons on the basis of sex “must carry the burden of showing an exceedingly persuasive justification for the classification.”¹⁰

The Fourth Circuit has ruled that the intermediate scrutiny standard is satisfied by “by showing at least that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.”¹¹ The Fourth Circuit in *H.B. Rowe* agreed with other federal circuits that intermediate scrutiny “can rest safely on something less than the ‘strong basis in evidence’.”¹² This ‘something less’ can mean that the statute must “present [] sufficient probative evidence in support of its stated rationale for enacting a gender preference, i.e., . . . the evidence [must be] sufficient to show that the preference rests on evidence- informed analysis rather than on stereotypical generalizations.”¹³

QUANTITATIVE AND QUALITATIVE FINDINGS

FINDING A: RELEVANT GEOGRAPHIC MARKET AREA (CHAPTER 4, APPENDIX A)

MGT determined the total spend during the study period in all procurement categories was \$666 million dollars as reflected in **Table ES-1** below. Prime expenditure data was utilized to determine the relevant geographic market area for the study.¹⁴ Based on the results of the market area analysis conducted for each business category, the recommended relevant market area, as shown in **Figure ES-1**, contains the city of Winston-Salem in addition to the following: Alamance County, Davidson County, Davie County, Forsyth County, Guilford County, Randolph County, Rockingham County, Stokes County, Surry County, and Yadkin County. Known as the Greensboro-Winston-Salem-High Point, NC Combined Statistical Area (CSA). Findings of the relevant market area establishes the area in which your outreach is conducted and identification of firms to meet program goals.

⁹ *Id.* at 493.

¹⁰ *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982) (quoting *Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981)); see also *United States v. Virginia*, 518 U. S. 515, 531 (1996), *Nguyen v. U.S.*, 533 U.S. 53, 60 (2001). For an earlier Fourth Circuit application of intermediate scrutiny see *Adkins v. Rumsfeld*, 464 F.3d 456, 468 (4th Cir. 2006).

¹¹ *Hogan*, 458 U.S. at 724 (internal quotation marks omitted).

¹² *H.B. Rowe*, at 10 (citing *Engineering Contractors* at 909).

¹³ *Id.* at 10 (citing *Engineering Contractors* at 910, *Concrete Works* at 959).

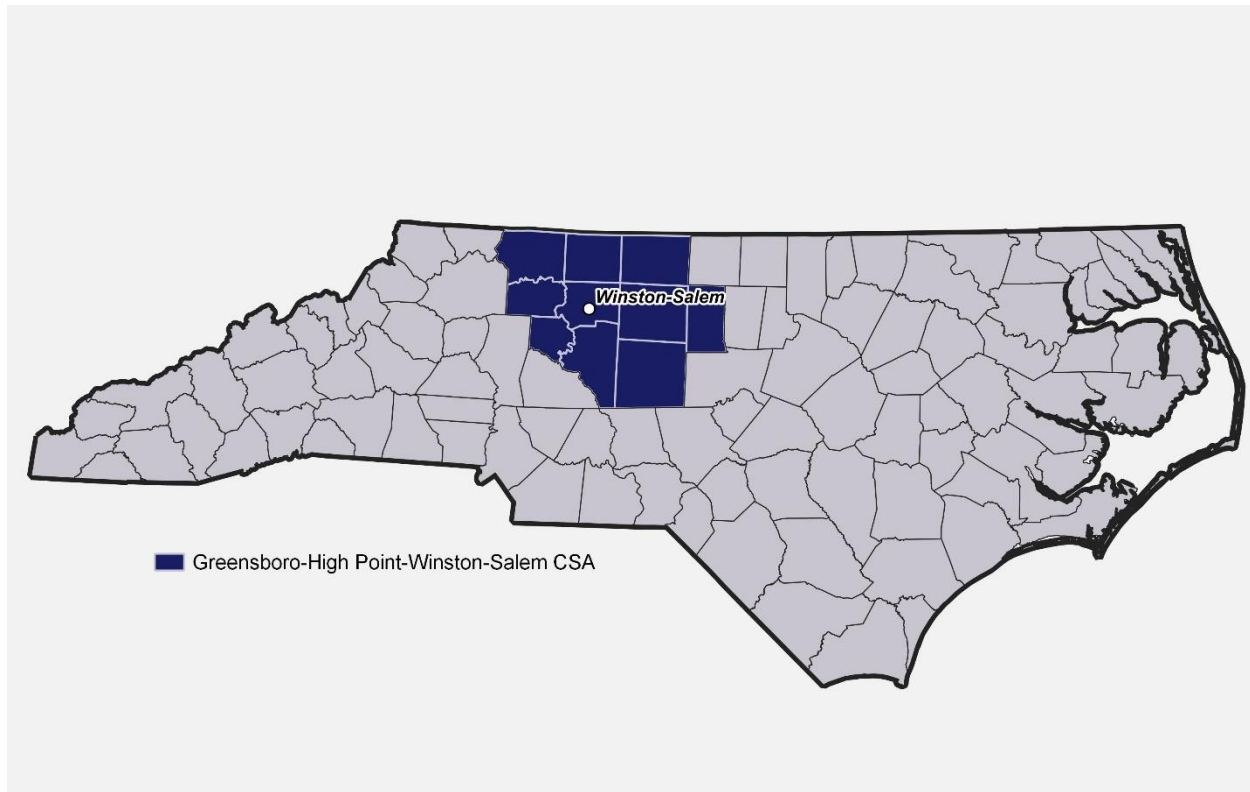
¹⁴ **Chapter 4, Market Area and Utilization Analyses.**

TABLE ES-1. RELEVANT GEOGRAPHIC MARKET AREA ANALYSIS
DISTRIBUTION OF DOLLARS BY PROCUREMENT CATEGORY,
WINSTON-SALEM'S CSA

CONSTRUCTION	Amount	Percent
<i>Inside Winston-Salem CSA</i>	\$ 250,594,418.35	71.88%
Outside Winston-Salem CSA	\$ 98,039,991.25	28.12%
CONSTRUCTION, TOTAL	\$ 348,634,409.60	100.00%
PROFESSIONAL SERVICES	Amount	Percent
<i>Inside Winston-Salem CSA</i>	\$ 56,675,914.77	71.17%
Outside Winston-Salem CSA	\$ 22,957,189.10	28.83%
PROFESSIONAL SERVICES, TOTAL	\$ 79,633,103.87	100.00%
OTHER SERVICES	Amount	Percent
<i>Inside Winston-Salem CSA</i>	\$ 60,297,108.85	59.89%
Outside Winston-Salem CSA	\$ 40,381,036.70	40.11%
OTHER SERVICES, TOTAL	\$ 100,678,145.55	100.00%
GOODS & SUPPLIES	Amount	Percent
<i>Inside Winston-Salem CSA</i>	\$ 55,904,600.33	40.61%
Outside Winston-Salem CSA	\$ 81,754,351.01	59.39%
GOODS & SUPPLIES, TOTAL	\$ 137,658,951.34	100.00%
ALL BUSINESS CATEGORIES	Amount	Percent
<i>Inside Winston-Salem CSA</i>	\$ 423,472,042.30	63.53%
Outside Winston-Salem CSA	\$ 243,132,568.06	36.47%
ALL BUSINESS CATEGORIES, TOTAL	\$ 666,604,610.36	100.00%

Source: MGT developed a Master Utilization Database based on the city of Winston-Salem's FMS system between fiscal years July 1, 2013 and June 30, 2018.

FIGURE ES-1. MAP OF RELEVANT GEOGRAPHIC MARKET AREA

**FINDING B: M/WBE PRIME UTILIZATION (CHAPTER 4, APPENDIX B)**

In **Table ES-2** the prime utilization analysis shows that non-M/WBE firms are utilized at substantially higher rates than their M/WBE counterparts. The City's spending with non-M/WBE firms totaled 88.60 percent, while only 11.40 percent went to M/WBE firms. The highest utilization rates among M/WBE classifications included Nonminority Women firms accounting for 9.13 percent of dollars spent during the study period at the prime level. Further analyzing the individual procurement categories, Nonminority Women had the greatest utilization in Other Services at 32.39 percent or \$19.5 million followed by African American firms in Other Services at 3.63 percent or \$2.1 million.

**TABLE ES-2. PRIME UTILIZATION ANALYSIS
BY BUSINESS OWNERSHIP CLASSIFICATION AND BY PROCUREMENT CATEGORIES
WITHIN THE RELEVANT GEOGRPHIC MARKET AREA**

BUSINESS OWNERSHIP CLASSIFICATION	ALL	Construction	Professional Services	Other Services	Goods & Supplies
African Americans	\$ 9,618,771.79	\$ 6,622,884.94	\$ 700,648.44	\$ 2,188,951.73	\$ 106,286.68
Asian Americans	\$ -	\$ -	\$ -	\$ -	\$ -
Hispanic Americans	\$ 2,400.00	\$ 300.00	\$ 2,100.00	\$ -	\$ -
Native Americans	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL MINORITY FIRMS	\$ 9,621,171.79	\$ 6,623,184.94	\$ 702,748.44	\$ 2,188,951.73	\$ 106,286.68
Nonminority Women Firms	\$ 38,675,390.88	\$ 14,596,398.83	\$ 375,747.62	\$ 19,532,918.29	\$ 4,170,326.14
TOTAL M/WBE FIRMS	\$ 48,296,562.67	\$ 21,219,583.77	\$ 1,078,496.06	\$ 21,721,870.02	\$ 4,276,612.82
TOTAL Non-M/WBE Firms	\$ 375,175,479.63	\$ 229,374,834.58	\$ 55,597,418.71	\$ 38,575,238.83	\$ 51,627,987.51
TOTAL FIRMS	\$ 423,472,042.30	\$ 250,594,418.35	\$ 56,675,914.77	\$ 60,297,108.85	\$ 55,904,600.33
BUSINESS OWNERSHIP CLASSIFICATION	ALL	Construction	Professional Services	Other Services	Goods & Supplies
African Americans	2.27%	2.64%	1.24%	3.63%	0.19%
Asian Americans	0.00%	0.00%	0.00%	0.00%	0.00%
Hispanic Americans	0.00%	0.00%	0.00%	0.00%	0.00%
Native Americans	0.00%	0.00%	0.00%	0.00%	0.00%
TOTAL MINORITY FIRMS	2.27%	2.64%	1.24%	3.63%	0.19%
Nonminority Women Firms	9.13%	5.82%	0.66%	32.39%	7.46%
TOTAL M/WBE FIRMS	11.40%	8.47%	1.90%	36.02%	7.65%
TOTAL Non-M/WBE Firms	88.60%	91.53%	98.10%	63.98%	92.35%

Source: Chapter 4, Market Area and Utilization Analysis.

FINDING C: CONSTRUCTION SUBCONTRACTING UTILIZATION (CHAPTER 4)

The estimated construction subcontracting utilization dollars and percentages with M/WBEs amounted to 23.94 percent of total payments within the relevant geographic market area; 4.75 percent for African American firms, 0.23 percent for Asian American firms, 4.56 percent for Hispanic American firms and 14.40 percent to Nonminority Women firms.

**TABLE ES-3.
SUBCONTRACTOR UTILIZATION
BY BUSINESS OWNERSHIP CLASSIFICATION
CONSTRUCTION ONLY**

BUSINESS OWNERSHIP CLASSIFICATION	Construction
African Americans	\$4,163,381.24
Asian Americans	\$203,958.36
Hispanic Americans	\$4,000,573.89
Native Americans	\$0.00
TOTAL MINORITY FIRMS	\$8,367,913.49
Nonminority Women Firms	\$12,627,480.35
TOTAL M/WBE FIRMS	\$20,995,393.84
TOTAL Non-M/WBE Firms	\$66,712,652.58
TOTAL FIRMS	\$87,708,046.42

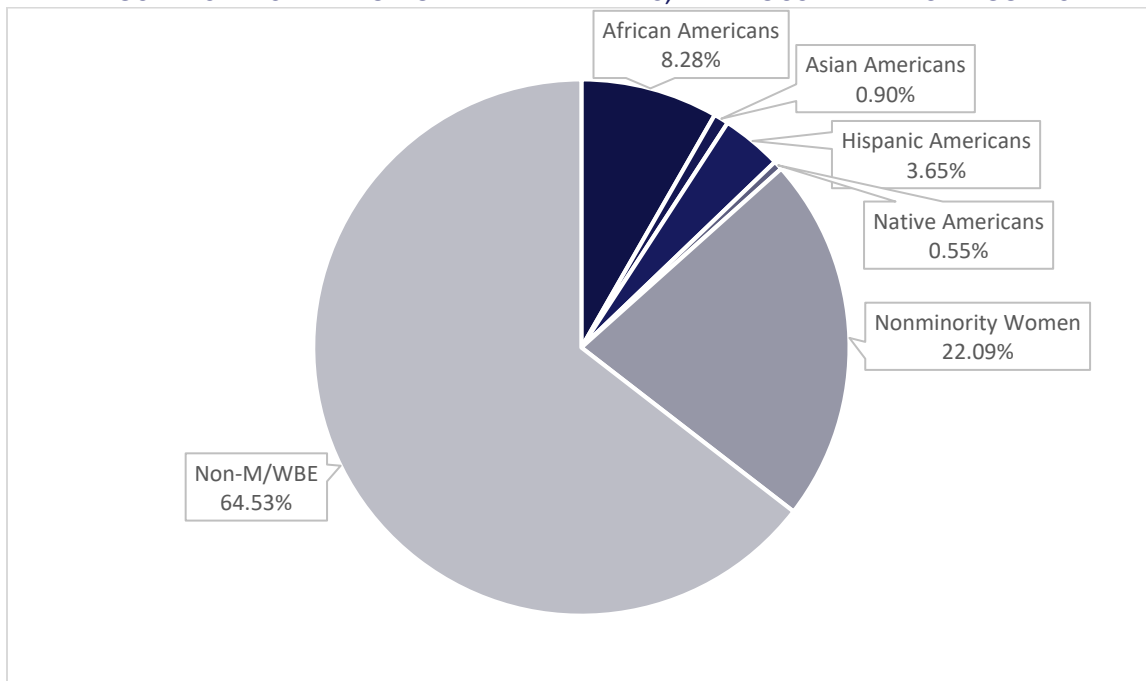
BUSINESS OWNERSHIP CLASSIFICATION	Construction
African Americans	4.75%
Asian Americans	0.23%
Hispanic Americans	4.56%
Native Americans	0.00%
TOTAL MINORITY FIRMS	9.54%
Nonminority Women Firms	14.40%
TOTAL M/WBE FIRMS	23.94%
TOTAL Non-M/WBE Firms	76.06%

FINDING D: AVAILABILITY ESTIMATES (CHAPTER 5)

A reliable estimation of the number of firms *willing* and *able* to provide each of the respective services under the scope of examination is an incumbent element in the determination of disparity. Post-*Croscon* case law has not prescribed a single, approach to deriving firm availability, and agencies have used a variety of means to estimate pools of available vendors that have withstood legal scrutiny.

MGT uses the availability estimates for primes to calculate aspirational goals proposed later in this chapter. Therefore, the availability estimates are illustrated in **Figure ES-2**.

FIGURE ES-2. ESTIMATION OF AVAILABLE FIRMS, ALL PROCUREMENT CATEGORIES



FINDING E: DISPARITY (CHAPTER 5)

Included in this section are aggregate inputs and calculations of disparity ratios and significance testing for primes by ownership classifications by race, ethnicity, and gender. Detailed disparity analysis for each procurement category are located in **Chapter 5** of this report. Analysis of disparities across all procurement categories combined in **Table 8-4** reveals:

- ♦ African American-owned firms were underutilized, with a substantial and statistically significant disparity ratio of 27.42;
- ♦ Asian American-owned firms were underutilized, with a substantial and statistically significant disparity ratio of 0.00;
- ♦ Hispanic American-owned firms were underutilized, with a substantial and statistically significant disparity ratio of 0.02;
- ♦ Native American-owned firms were underutilized, with a substantial and statistically significant disparity ratio of 0.00;
- ♦ Nonminority Women-owned firms were underutilized, with a substantial and statistically significant disparity ratio of 41.34; and
- ♦ M/WBEs firms were underutilized, with a substantial and statistically significant disparity ratio of 32.15.

TABLE ES-4.
DISPARITY RATIO AND SIGNIFICANCE TESTING, ALL PROCUREMENT CATEGORIES

BUSINESS OWNERSHIP CLASSIFICATION	PERCENT OF DOLLARS	AVAILABLE FIRMS ESTIMATE	DISPARITY INDEX	DISPARATE IMPACT OF UTILIZATION		
		(%)				
African Americans	2.27%	8.28%	27.42	Underutilization	*	¥¥
Asian Americans	0.00%	0.90%	0.00	Underutilization	*	¥¥
Hispanic Americans	0.00%	3.65%	0.02	Underutilization	*	¥¥
Native Americans	0.00%	0.55%	0.00	Underutilization	*	¥¥
TOTAL MINORITY FIRMS	2.27%	13.38%	16.98	Underutilization	*	¥¥
Nonminority Women Firms	9.13%	22.09%	41.34	Underutilization	*	¥¥
TOTAL M/WBE FIRMS	11.40%	35.47%	32.15	Underutilization	*	¥¥
TOTAL NON-M/WBE FIRMS	88.60%	64.53%	137.30	Overutilization		¥¥

Source: MGT developed the Utilization Analysis and Availability Analysis for the study.

Disparity index is the ration of the percentage of dollars to the percentage of available firms multiplied by 100.00.

The index is based on actual percentage value and not the rounded utilization and availability estimates percentage values presented. The disparity indices have been rounded.

¥¥denotes the ratio of utilization to availability is statistically significant at a 0.05 level.

The totals may not equal the sum of components due to rounding.

FINDING F: DISPARITIES IN COMMERCIAL AND PUBLIC CONSTRUCTION (CHAPTER 6)

The commercial construction permits analysis presented a summary of firm utilization by racial, ethnic and gender classification comparing M/WBE utilization for the City private sector construction projects with commercial construction projects from July 1, 2013 through June 31, 2018. According to the findings from commercial construction projects, substantial M/WBE underutilization was evident in the private sector. When compared to findings from the commercial construction projects, M/WBE firms fared better on City projects.

FINDING G: DISPARITIES IN SELF-EMPLOYMENT AND REVENUE EARNINGS (CHAPTER 6)

Findings from the Public Use Microdata Sample (PUMS) from 2013-2017 data indicate minorities were significantly less likely than nonminority males to be self-employed and, if they were self-employed, they earned significantly less in 2013-2017 than did self-employed nonminority males. When self-employment rates were stratified by race and by business type, trends varied within individual race-by-type cells, but disparities persisted, in general, for all minorities and nonminority women.

FINDING H: ANECDOTAL COMMENTS (CHAPTER 7)

Among the M/WBEs who responded to questions about barriers to doing business, the biggest concern for both primes and subcontractors were identifying opportunities to bid with the City.

COMMENDATIONS AND RECOMMENDATIONS

Most of the following commendations and recommendations are based on multiple findings and do not necessarily tie to one finding.

COMMENDATION: M/WBE PROGRAM IMPROVEMENTS

In recent years and prior to the conclusion of the disparity study, the City has adopted and implemented processes to increase outreach, business development, and reporting. Items implemented are listed in Table 8-5 below.

TABLE ES-5.
IMPLEMENTED PROGRAM PROCESSES

1. Updated City/County bid webpage to include pre-bid date
2. Implemented weekly email of upcoming projects which included category and initiating department
3. Added renewable contract information on City/County bid webpage
4. Created bidding and estimating workshop to assist HUB firms
5. Created good faith effort program to assist contractors, consultants, engineers, etc. in conducting an efficient good faith
6. Created “Upcoming Purchase Opportunity” to increase M/WBE participation in discretionary spend
7. Created Project Summary Reports to track M/WBE compliance for formal construction
8. Emailed pre-bid meeting sign-in sheets to M/WBE firms
9. Updated the M/WBE Program Policy
10. Lowered M/WBE goal setting threshold to \$100,000
11. Implemented M/WBE Replacement Request Form for formal construction projects
12. Implemented Subcontractor Quote Comparison Form for formal construction projects
13. Initiated the creation of the City Vendor Listing
14. Revised Special Instructions to Bidders
15. Implemented M/WBE Program reminders included with the prime’s Notice of Award
16. Increased accessibility of M/WBE forms, information, policies, etc. via the City’s intranet to staff

RECOMMENDATION A: ASPIRATIONAL M/WBE GOALS

Proposed goals are listed in **Table ES-6**. The proposed goals are based on a weighted average of M/WBE utilization and availability. These aspirational goals should not be applied rigidly to every individual City procurement. Instead M/WBE goals should vary from project to project. Aspirational goals should be based on relative M/WBE availability.

TABLE ES-6.
PROPOSED M/WBE GOALS

BUSINESS CATEGORY	ASPIRATIONAL MWBE GOALS
Construction	11.44%
Construction Subs	25.74%
Professional Services	4.04%
Other Services	36.78%
Materials and Supplies	9.60%

RECOMMENDATION B: NARROWLY TAILORED M/WBE PROGRAM

Any new M/WBE Program modifications implemented to address the findings of this report should be narrowly tailored to specifically address identified disparity in accordance with guidance from case law regarding race- and gender-based procurement programs. Developments in court cases involving federal disadvantaged business enterprise (DBE) programs provide important insight into the design of local M/WBE programs. Federal courts have consistently found DBE regulations in 49 CFR 26 to be narrowly tailored.¹⁵ The federal DBE program has the features in **Table ES-7** that contribute to this characterization as a narrowly tailored remedial procurement preference program. The City should adopt these features in any new M/WBE program.

TABLE ES-7.
NARROWLY TAILORED M/WBE PROGRAM FEATURES

	Narrowly Tailored Goal-setting Features	DBE Regulations
1.	The City should not use M/WBE quotas.	49 CFR 26(43)(a)
2.	The City should use race- or gender-conscious set-asides only in extreme cases.	49 CFR 26(43)(b)
3.	The City should meet the maximum amount of M/WBE goals through race-neutral means.	49 CFR 26(51)(a)

Source: Suggested features in a proposed narrowly tailored M/WBE program based on USDOT 49 CFR 26.

RECOMMENDATION C: SUBCONTRACTOR PROJECT GOALS

The current M/WBE policy has a 10 percent goal for construction, repair and maintenance, other services, and professional services contracts. To ensure all M/WBE firms in the relevant market area have opportunities, project specific subcontracting goals should continue to be established where there is availability for specific scopes of work across all procurement categories and based on the historical

¹⁵ *Adarand v. Slater*, 228 F.3d 1147 (10th Cir. 2000), *Gross Seed. v. State of Nebraska*, 345 F.3d 968 (8th Cir. 2003); cert denied, 158 L.Ed. 2d 729 (2004).

participation of M/WBE on identical or similar projects. Project specific subcontract goals will assist the City in addressing identified disparities found in this report.

RECOMMENDATION D: EXPANDED DATA COLLECTION AND MANAGEMENT

The City should implement data systems and processes to monitor and track progress on key performance measures and establish solid processes to collect and analyze M/WBE utilization data by race, ethnicity, and gender to monitor goal attainment. Data collection should include:

- ◆ Require primes to report subcontractor and supplier utilization (both M/WBE and non-M/WBE). As identified in this report, M/WBE subcontracting data were available for construction only. All subcontracting/supplier utilization should be maintained to analyze and report total M/WBE subcontracting participation.
- ◆ Validate subcontractor utilization using compliance reporting. A contract compliance system should allow subcontractors to verify that they received payment for work performed. This feature will allow more accurate reporting of utilization.
- ◆ Consistently collect bid and proposal responses and identify those that are M/WBE firms. Bid and proposal data will assist the City in monitoring marketplace availability. For example, if data illustrates there are enough M/WBEs in the market presumed to be available to bid but do not bid, the City should contact firms and determine the cause.
- ◆ Data system should connect intuitively with the City's payment data system from the beginning of a contract to its completion.
- ◆ Collect and report spend and percentage of spend by each City department.
- ◆ List of certified M/WBE firms in the established relevant market area. The database of firms located in the relevant market area should be readily available to City departments and potential bidders or proposers.

COMMENDATION AND RECOMMENDATION E: M/WBE OUTREACH FOR INFORMAL PURCHASES

The City should be commended the City's Upcoming Purchase Opportunity Form for all departments making a purchase between \$1,000 (p-card max) - \$19,999.99 (discretionary spend max). The City should continue to include outreach to M/WBE firms for informal contracts and purchases. Departments that have purchasing authority should document and report their outreach efforts to M/WBEs to encourage and solicit bids and quotes. The City should consider mandating the use of the online "Upcoming Purchase Opportunity Form" by City departments for all goods and services estimated to cost between \$1,000 and \$19,999.99. By doing so department staff can coordinate with the M/WBE Division to increase the likelihood of M/WBE participation.

RECOMMENDATION F: RIGHT TO AUDIT LANGUAGE IN CONTRACTS

The City should consider incorporating language in all contracts that primes must maintain subcontract/supplier documentation for M/WBE and non-M/WBE firms for a period of time; usually the time will match the City's record retention policy.

RECOMMENDATION H: ON-CALL SERVICES

The City should consider utilizing a vendor rotation system for on-call contracts to increase the opportunity for M/WBE firms to do business with the city as prime. Implementing a vendor rotation model on contracts of this nature will maintain a diverse pool of available services providers instead of “locking-in” one vendor for a multi-year contract.

RECOMMENDATION I: HISTORICALLY UNDERUTILIZED BUSINESSES (HUB)

The City should define minority and woman-owned enterprises as businesses approved and certified by the Department of Administration’s Office for Historically Underutilized Businesses under the Statewide Uniform Certification Program (SWUC). The SWUC program streamlines the certification process by reducing the number of public sector entities by which businesses must apply for certification. By applying this standard, the city promotes economic opportunities for businesses owned and operated by M/WBE’s in government contracting and procurement.

RECOMMENDATION I: M/WBE STAFF AND DEPARTMENTAL LIAISONS

The M/WBE Division has a significant role in education, compliance, and advocacy of staff as well as for the M/WBE community. Partnerships with City departments and area trade associations increases the outreach and education, however, there should be enough staff to monitor, track, report, and coordinate all of the efforts and policies of the M/WBE Program. The City should consider increasing the budget of the M/WBE Division to support additional outreach, workshops, marketing materials, professional development, and overall capacity building of M/WBE firms. The City should consider allocating resources to support a staff member whose responsibilities include inspecting the work performed on the site of construction and repair projects. Having an advocate in the field could ensure inspection standards are applied fairly, subcontract agreements are upheld, and verification of scope issues that may arise. This person could also use their knowledge of market conditions in the goal setting process. The Office of Performance and Accountability should conduct a desk audit to determine the purpose and function of additional staff necessary to meet program’s objectives. If necessary, the City should consider hiring an outside consultant to assist with M/WBE functions until new staff are hired.

All City departments can play a role in promoting the City M/WBE utilization. Staff within departments with purchasing authority and seek out bidders for discretionary purchasing should act as a liaison between the department and the M/WBE Division. Liaisons will maintain outreach and bid records and report activity to the M/WBE Division. The liaison will also work with the M/WBE Division to identify available M/WBE firms

CONCLUSIONS

The City has implemented various methods to inform, education, and increase M/WE utilization. The City should continue their momentum. MGT found sufficient evidence of disparity and recommends the continuation of a narrowly tailored race- and gender-based procurement program to address identified disparities. Disparity was identified overall in all business ownership categories except for Non-M/WBE

firms. This evidence is based on quantitative and qualitative data from public and private sources. Any program efforts must be narrowly tailored to rectify the issues identified in this report.

The City of Winston-Salem has implemented a solid program to increase the utilization of M/WBE firms in the market area. The recommendations of this study provide guidance on policy modifications that will meet the narrowly tailored standard.