

Executive Summary

WSSC 2015 Disparity Study

Dear Members of the WSSC Business Community and Other WSSC Friends,

It is with great pleasure that I present the Draft Executive Summary of the WSSC 2015 Disparity Study.

Conducted independently by MGT of America, Inc. from Tallahassee, FL this undertaking began in April of 2015. It is a five-year retrospective evaluation of procurement procedures for Fiscal Years 2010-2014. This Study assesses WSSC's procurement activity with women-owned and minority businesses.

In order to provide a Minority Business Enterprise (MBE) program, the U.S. Supreme Court has determined that there must be an underlying factual predicate of the existence of contractual disparities. As is reflected in this Draft Executive Summary and in the draft of the full Disparity Study report, MGT has determined that disparities do indeed still exist. Therefore, WSSC will ask the Maryland State Legislature, in its 2017 session, to extend WSSC's authority to continue our award-winning and highly-respected MBE program in accordance with findings of the study.

I want to thank the members of the WSSC Disparity Study Executive Steering Committee, especially Commission Vice-Chair Chris Lawson; Deputy General Manager of Administration Tom Street; Small, Local, and Minority Business Enterprise (SLMBE) Office Director Towanda R. Livingston; Acting General Counsel Russel Beers; Chief Engineer Gary Gumm; SLMBE Project Manager Linda Mann; Chief Procurement Officer David Malone; Communications Director Jim Neustadt; Chief Information Officer Mujib Lodhi; and Director of the Intergovernmental Relations Office Karyn Riley. A special thanks to Crystal Miller and Teresa McCarter for their administrative assistance throughout the process. Additionally, the Study could not have been conducted without the cooperation of our subject matter expert, Dr. Paul J. Smith of the University of Maryland; the WSSC Disparity Study Data Collection Team; and the SLMBE Team. They all worked tirelessly and very closely with MGT to ensure that a quality study was completed. And I want to thank all of the people who participated in the study, including those who already do business with us, and those who wish to do business with us in the future. *Diversity is just the way we do business!*

Should you seek additional information, the full 2015 Disparity Study is available on the WSSC website at www.wsscwater.com/disparitystudy.

Sincerely,
Carla A. Reid
WSSC GM/CEO

EXECUTIVE SUMMARY

1. STUDY OVERVIEW

STUDY TEAM

In April 2015, the Washington Suburban Sanitary Commission (WSSC) contracted with MGT of America, Inc. (MGT) to conduct a Disparity Study. MGT subcontracted with:

- ▶ McMillon Communications, Inc., based in the Washington, D.C. Metropolitan area developed and implemented the Community Outreach Plan tailored to inform the business community about WSSC's Disparity Study, coordinated and managed the focus groups, and conducted in-depth interviews with area business owners.
- ▶ Transformation Consultants, a Richmond, VA-based firm coordinated and managed the public meetings, and conducted data verification of area firms.
- ▶ Oppenheim Research, a Tallahassee, FL-based firm conducted the survey of vendors and conducted the custom census surveys.

CHAPTER SECTIONS

1. Study Overview
2. Methodology
3. Important Findings
4. Commendations and Recommendations

STUDY OBJECTIVES

The objectives of this study were:

- ▶ Determine whether the WSSC, either in the past or currently, engages in discriminatory practices in the solicitation and award of contracts in Construction, Architecture and Engineering, Professional Service, and Goods and General Services to minority- and women-owned business enterprises (M/WBEs).
- ▶ Determine if a legally justified basis exists for the establishment of an M/WBE program in accordance with the guidelines set forth by the Supreme Court and relevant subsequent cases.

STUDY DEFINITIONS

Study Period. MGT analyzed expenditures between July 1, 2009, and June 30, 2014.

Procurement Categories. MGT analyzed Construction, Architecture and Engineering, Professional Services, and Goods and General Services expenditures.

ETHNIC GENDER GROUPS

- ▶ **African Americans:** an individual having origins in any of the black racial groups of Africa.

- ▶ **American Indians/Native Americans:** an individual having origins in any of the original peoples of North America and who is a documented member of a North American tribe, band, or otherwise has a special relationship with the United States or a state through treaty, agreement, or some other form of recognition. This includes an individual who claims to be an American Indian/Native American and who is regarded as such by the American Indian/Native American community of which the individual claims to be a part, but does not include an individual of Eskimo or Aleutian origin.
- ▶ **Asian Americans:** an individual having origins in the Far East, Southeast Asia, or the Indian subcontinent, and who is regarded as such by the community of which the person claims to be a part.
- ▶ **Hispanic Americans:** an individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race, and who is regarded as such by the community of which the person claims to be a part. Hispanics of African ancestry are not counted among the African American group.
- ▶ **Nonminority Woman (Female):** a woman, regardless of race or ethnicity, unless she is also a member of an ethnic or racial minority group and elects that category in lieu of the gender category.
- ▶ **Non-M/WBE Firms.** Firms that were identified as nonminority male or majority-owned were classified as non-M/WBE firms. If there was no indication of business ownership, these firms were also classified as non-M/WBE firms.

RELEVANT MARKET

- ▶ Most WSSC contract payments were made to firms located in the following cities and counties in Maryland, Virginia, West Virginia, and the District of Columbia:

Anne Arundel, MD	City of Fredericksburg, VA,	Howard County, MD
Arlington County, VA	City of Manassas, VA	Jefferson County, WV
Baltimore County, MD	Clarke County, VA	Loudoun County, VA
Calvert County, MD	District of Columbia, DC,	Montgomery County, MD
Carroll County, MD	Fairfax County, VA	Prince George's County, MD
Charles County, VA	Fauquier County, VA	Prince William County, VA
City of Baltimore, MD	City of Fredericksburg, VA	Spotsylvania County, VA
City of Fairfax, VA	City of Manassas Park, VA	Stafford County, VA
City of Falls Church, VA	Fredrick County, VA	Warren County, VA

STUDY DATA

The study used the following sources:

1. MAPS – WSSC’s financial account system that stores vendor payment information.
2. PRISM – a secure, web-based portal that tracks WSSC’s spend with subcontractors working with primes on WSSC projects.

3. CBR – Centralized Bidder Registration is a mandatory web-based system where all prospective bidders, contractors, vendors, and subcontractors that provide the goods and services procured by WSSC must register.
4. SLMBE Approval/Certification Database – the listing of MBE-certified firms and WSSC approved small local business enterprises (SLBEs).

Thus, electronic data on awards and payment transactions at the prime level were extracted from MAPS, and subcontractor payment data was extracted from PRISM. In terms of WSSC vendor data, electronic data was extracted from CBR and MAPS.

Custom census, used as a source for subcontractor availability, involves using Dun & Bradstreet as a source of business availability. A short survey is conducted on a random sample of firms supplied by Dun & Bradstreet, asking ethnic and gender status, had they bid or considered bidding on projects by the WSSC, had they bid or considered bidding as a prime contractor, subcontractor, or both, and had they worked as a prime contractor, subcontractor, or both.

2. METHODOLOGY

The study is driven by the following research questions:

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 WSSC?
2. How does case law inform the research methodology in a particular region for a particular client?
3. Are there disparities between the availability and utilization of M/WBE primes and subcontractors? If there are disparities, what are the most relevant causal factors that contribute directly or indirectly to the disparities between the availability and utilization of M/WBE primes and subcontractors?
4. Does the WSSC passively engage in practices that result in disparities?
5. Are there statistically significant disparities in the utilization of M/WBEs by prime contractors on projects where there are no M/WBE goals?
6. Is there qualitative/anecdotal evidence of disparate treatment of M/WBE subcontractors by prime contractors?

STUDY TASKS

The study 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 policies, procedures, and programs.
- ▶ Conduct market area and utilization analysis.
- ▶ Determine the availability of qualified firms.
- ▶ Analyze prime and subcontractor utilization and availability data for disparity.
- ▶ Conduct a survey of business owners.
- ▶ Collect and analyze anecdotal information.
- ▶ Prepare and present draft and final reports for the study.

REPORT ORGANIZATION

The report consists of the following chapters:

CHAPTER 2 LEGAL FRAMEWORK

Presents the legal framework and an overview of the controlling legal precedents that impact remedial procurement programs with a particular concentration on the United States Court of Appeals for the Fourth Circuit.

CHAPTER 3 REVIEW OF POLICIES, PROCEDURES, AND PROGRAMS

Provides a review of the WSSC's policies, procedures, M/WBE programs, and race- and gender-neutral efforts.

CHAPTER 4 MARKET AREA, AND PRIME UTILIZATION, AVAILABILITY, AND DISPARITY ANALYSES

Presents the methodology used to determine the WSSC's relevant market area and statistical analysis of prime vendor utilization, availability, and disparity by the WSSC for the procurement of Construction, Architectural and Engineering, Professional Services, and Goods and General Services contracts.

CHAPTER 5 TOTAL UTILIZATION, AVAILABILITY, AND DISPARITY ANALYSES

Presents the methodology used to determine the WSSC's statistical analysis of total utilization, availability, and disparity by the WSSC for the procurement of Construction, Architectural and Engineering, Professional Services, and Goods and General Services contracts.

CHAPTER 6 PRIVATE SECTOR AND NON-GOAL ANALYSES

Provides an analysis of the presence of disparity in the private sector and its effect on the ability of firms to win procurement contracts from the WSSC.

CHAPTER 7 ANECDOTAL ANALYSIS

Presents an analysis of anecdotal data collected from the survey of business owners, personal interviews, focus groups, and public meetings.

CHAPTER 8 FINDINGS AND RECOMMENDATIONS

A summary of the findings and recommendations based upon the analyses presented in the report chapters.

APPENDICES Additional analyses, documents used to conduct the study, and back up documentation.

The report is accompanied by Appendices with supporting details:

- Appendix A** Detailed Market Area Analyses
- Appendix B** Detailed Prime Disparity Indices
- Appendix C** Detailed Prime Utilization Analyses by Based on Expenditures
- Appendix D** Prime Utilization Analyses Based on Contract Awards
- Appendix E** Detailed Total Utilization Analyses
- Appendix F** Detailed Total Disparity Indices
- Appendix G** Public Use Microdata Sample (PUMS) Regression
- Appendix H** Survey of Vendors Instrument
- Appendix I** Survey of Vendors Results
- Appendix J** In-depth Interview Guide
- Appendix K** Survey of Vendor Regression
- Appendix L** Standard Deviation Tests
- Appendix M** Procurement Card Transaction Analysis
- Appendix N** Private Sector Disparities

3. IMPORTANT FINDINGS

FINDING A: M/WBE PRIME UTILIZATION (*Reference Chapter 4 and Appendix C*)

The dollar value of M/WBE prime utilization on WSSC projects over the current study period within the relevant market was as follows:

- ▶ Across all contract categories, minority firms were paid \$205.36 million, 16.74 percent of all prime dollars. Nonminority women-owned firms were paid \$91.80 million, 7.49 percent of all prime dollars.
- ▶ In Architecture & Engineering, minority firms were paid \$16.97 million at the prime level, 7.10 percent of the total Architecture & Engineering prime dollars; nonminority women-owned firms were paid \$1.60 million at the prime level, 0.67 percent of the total Architecture & Engineering

prime contract dollars (**Table E-1**). There was disparity for all M/WBE groups. (There was no Architecture & Engineering prime availability for Native Americans.)

- ▶ In Construction, minority firms were paid \$87.26 million at the prime level, 16.11 percent of the total Construction prime contract dollars; nonminority women-owned firms were paid \$3.91 million at the prime level, 0.72 percent of the total Construction prime contract dollars (**Table E-1**). There was disparity for all M/WBE groups except Hispanic American-owned firms.
- ▶ In Professional Services, minority firms were paid \$15.95 million at the prime level, 15.68 percent of the total Professional Services prime dollars; nonminority women-owned firms were paid \$6.96 million at the prime level, 6.85 percent of the total Professional Services prime dollars (**Table E-1**). There was disparity for all M/WBE groups except Hispanic Americans. (There was no professional services prime availability for Native Americans.)
- ▶ In Goods and General Services, minority firms were paid \$85.16 million at the prime level, 24.78 percent of the Goods and General Services prime contract dollars; nonminority women-owned firms were paid \$79.32 million at the prime level, 23.08 percent of the Goods and General Services prime contract dollars (**Table E-1**). There was only substantial disparity for Hispanic Americans.

TABLE E-1
SUMMARY OF PRIME CONTRACTOR UTILIZATION
BY PROCUREMENT CATEGORY AND BUSINESS OWNERSHIP CLASSIFICATION

BUSINESS OWNERSHIP CLASSIFICATION	ARCHITECTURE & ENGINEERING	CONSTRUCTION	PROFESSIONAL SERVICES	GOODS AND GENERAL SERVICES
	(\$)	(\$)	(\$)	(\$)
Total Minority Firms	\$16,972,187	\$87,265,659	\$15,955,963	\$85,167,909
Total Nonminority Women Firms	\$1,604,441	\$3,912,049	\$6,967,205	\$79,322,798
Total M/WBE Firms	\$18,576,628	\$91,177,708	\$22,923,168	\$164,490,707
	(%)	(%)	(%)	(%)
Total Minority Firms	7.10%	16.11%	15.68%	24.78%
Total Nonminority Women Firms	0.67%	0.72%	6.85%	23.08%
Total M/WBE Firms	7.77%	16.84%	22.53%	47.86%

Source: **Chapter 4, Market Area, and Prime Utilization, Availability, and Disparity Analyses.**

Chapter 4 found that M/WBEs overall were underutilized in all business categories as prime contractors, overall during the study period, except for in the Goods and General Services category.

FINDING B: PROCURMENT CARDS (P-CARDS) (*Reference Chapter 4 and Appendix M*)

For P-cards, minority firms were paid \$794,659, 3.16 percent of p-card dollars; nonminority women-owned firms were paid \$829,865, 3.30 percent of p-card dollars.

FINDING C: M/WBE TOTAL UTILIZATION AND DISPARITY (*Reference Chapter 5 and Appendix E*)

The dollar value of M/WBE total utilization (prime contractors and subcontractors combined) on WSSC projects over the study period from within the relevant market was as follows:

- ▶ Across all contract categories, minority firms were paid approximately \$388.07 million, 31.65 percent of total dollars. Nonminority women-owned firms were paid approximately \$142.31 million, 11.61 percent of total dollars.
- ▶ In Architecture & Engineering, minority firms were paid approximately \$70.78 million, 29.61 percent of the total Architecture & Engineering dollars; nonminority women-owned firms were paid approximately \$9.09 million at the sub level, 3.80 percent of total Architecture & Engineering dollars (**Table 8-2**). There was disparity for all M/WBE groups. (There was no Architecture and Engineering subcontractor availability for Native American-owned firms.)
- ▶ In Construction, minority firms were paid approximately \$175.90 million, 32.48 percent of total Construction dollars; nonminority women-owned firms were paid approximately \$22.62 million, 4.18 percent of total Construction dollars (**Table 8-2**). There was disparity for all M/WBE groups except Hispanic Americans.
- ▶ In Professional Services, minority firms were paid approximately \$26.96 million, 26.50 percent of total Professional Services dollars; nonminority women-owned firms were paid approximately \$7.59 million, 7.46 percent of total Professional Services dollars (**Table 8-2**). There was disparity for all M/WBE groups except Hispanic Americans.
- ▶ In Goods and Nonprofessional Services, minority firms were paid approximately \$114.41 million, 33.39 percent of total Goods and Nonprofessional Services dollars; nonminority women-owned firms were paid approximately \$103.00 million, 29.97 percent of total Goods and Nonprofessional Services dollars (**Table 8-2**). There was disparity for all M/WBE groups except Asian Americans and Nonminority Women.

TABLE E-2
SUMMARY OF TOTAL UTILIZATION
BY PROCUREMENT CATEGORY AND BUSINESS OWNERSHIP CLASSIFICATION

BUSINESS OWNERSHIP CLASSIFICATION	ARCHITECTURE & ENGINEERING	CONSTRUCTION	PROFESSIONAL SERVICES	GOODS AND GENERAL SERVICES
	(\$)	(\$)	(\$)	(\$)
Total Minority Firms	\$70,789,913	\$175,900,325	\$26,965,021	\$114,416,589
Total Nonminority Women Firms	\$9,094,497	\$22,624,666	\$7,592,791	\$103,003,449
Total M/WBE Firms	\$79,884,410	\$198,524,990	\$34,557,812	\$217,420,038
Total Minority Firms	29.61%	32.48%	26.50%	33.29%
Total Nonminority Women Firms	3.80%	4.18%	7.46%	29.97%
Total M/WBE Firms	33.41%	36.66%	33.97%	63.26%

Source: **Chapter 5, Prime Plus Subcontractor Utilization, Availability, and Disparity Analyses**

FINDING D: REGRESSION ANALYSIS *(Reference Appendix K)*

A statistical analysis of survey data in the Washington area that controlled for the effects of variables related to company capacity variables (e.g., company capacity, owner level of education, and experience), found that African American firms with the same capacity and experience earned less than comparable non-M/WBE firms.

The private sector results from **Chapter 6** summarized in **Findings E, F** and **G** below are consistent with the reports from business owners in **Finding I** below that M/WBE utilization is very low in the absence of requirements and incentives.

FINDING E: DISPARITIES IN SURVEY OF BUSINESS OWNERS DATA *(Reference Chapter 6 and Appendix N)*

In 240 disparity ratios in the Survey of Business Owners data from the U.S. Census Bureau for six procurement categories, covering Washington MSA and surrounding areas, only ten instances of over-utilization were found for M/WBE groups.

FINDING F: PRIVATE SECTOR COMMERCIAL CONSTRUCTION *(Reference Chapter 6 and Appendix N)*

As a whole, M/WBE utilization in private sector commercial construction was very low, as measured by data from building permits from Prince George's County. From between July 1, 2009, and June 30, 2014, minority prime contractors won 0.15 percent of prime permits and nonminority women-owned firms received 0.00 percent of permits. MBE subcontractors were issued 2.93 percent of all subcontracting permits and WBEs 0.00 percent of subcontracting permits. When subcontractors utilized on WSSC construction projects were cross referenced with the commercial construction projects, a total of two M/WBE firms were utilized on commercial construction projects as subcontractors.

FINDING G: DISPARITIES IN SELF-EMPLOYMENT AND REVENUE EARNINGS (*Reference Chapter 6 and Appendix N*)

Econometric analysis using data from 2014 American Community Survey U.S. Census Bureau data for the Washington area found African Americans and nonminority women were much less likely to be self-employed than nonminority males with the same background. The research also found that African Americans, Hispanic Americans, Asian Americans, and Nonminority Women who were self-employed earned less than comparable nonminority males who were self-employed.

FINDING H: ACCESS TO CAPITAL (*Reference Chapter 7 and Appendix I*)

An analysis of data in the National Survey of Small Business Finance (NSSBF) found that African American businesses were much more likely to be denied loans than comparable businesses owned by nonminority males. These NSSBF results are consistent with data in the 2016 local survey for this report. About 2.7 percent of non-M/WBE loan applicants reported being denied commercial bank loans, as compared to 50.0 percent of African American loan applicants. Access to capital is a barrier to business formation and growth on top of the barriers in the previous findings.

FINDING I: SURVEY RESULTS (*Reference Chapter 7 and Appendix I*)

Among the M/WBE firms who responded to survey questions about barriers to doing business, the biggest concern for prime contractors was competing with larger firms (58 or 21.7% of M/WBEs). M/WBE subcontractors stated their biggest barrier working with primes on WSSC projects is competing with large companies (35 or 13.1% of M/WBEs).

With respect to disparate treatment, M/WBE subcontractor respondents in **Chapter 7** reported:

- ▶ Seldom or never solicit firms on projects (private or public) without M/WBE goals – 28.1 percent or 75 respondents.
- ▶ An informal network precluded their firms from obtaining work in the private sector – 26.2 percent or 70 respondents.
- ▶ Selected to satisfy good faith efforts requirements and then dropped on other public sector/private sector projects – 13.5 percent or 36 respondents.

4. COMMENDATIONS AND RECOMMENDATIONS

Most of the following commendations and recommendations from **Chapter 8, Findings and Recommendations** are based on multiple findings and do not necessarily tie to one finding.

RECOMMENDATION A: SUBCONTRACTOR PROJECT GOALS

In response to the primary research question, this study provides evidence to support a WSSC M/WBE program. This conclusion is based primarily on statistical disparities in current M/WBE utilization; evidence of discrimination in business formation and revenue earned from self-employment; very low M/WBE utilization in the commercial building permit evidence; credit disparities; and business owner reports of

disparate treatment. WSSC should tailor its M/WBE and Small Local Business Enterprise (SLBE) participation policy to remedy each of these specific disparities. The core theme should be that prime contractors should document their outreach efforts and the reasons why they may have rejected qualified M/WBEs and M/WBEs who were the low-bidding subcontractors.

COMMENDATION B: SMALL LOCAL BUSINESS ENTERPRISE (SLBE) PROGRAM

WSSC should be commended for its extensive set of incentives for SLBE participation, including SLBE bid incentives, sheltered markets, subcontractor goals, mentor-protégé program, and small contracts rotation. These SLBE incentives are some of the broadest set of small business incentives by a local government agency in general, let alone a local public utility, in the country. Small business programs, such as WSSC's SLBE incentives, have the advantage that they are not subject to constitutional challenge on equal protection grounds even in the absence of a disparity study.

COMMENDATION C: OUTREACH

WSSC should be commended for its extensive outreach activities, which include widespread coverage of the program on the WSSC website, partnerships with numerous business organizations, participation in numerous events, monthly training, and other activities discussed in **Chapter 3, Review of Policies, Procedures, and Programs**.

RECOMMENDATION D: TWO-TIER SIZE STANDARDS.

Size standards for procurement/WBE programs face a dilemma. If the size standard is placed too high, large firms crowd out new firms. If the size standard is placed too low, too many experienced firms lose the advantages of the program. One solution to this dilemma is to adopt a two-tier standard for M/WBE and SLBE certification. Thus, for example, contracts can be set aside for small and very small firms and goals that included very large SLBEs and M/WBEs can be established on large projects. A standard approach is to use the SBA size standard for small firms and a percentage of the SBA size standard (e.g., 25 or 50 percent) for very small firms.

RECOMMENDATION E: DATA

WSSC should work to improve prime contractor compliance with entering non-M/WBE subcontractor data in PRISM.

CONCLUSION

This study provides factual predicate evidence for continuing remedial efforts to include M/WBEs in WSSC procurement. This evidence is based on quantitative and qualitative data from public and private sources. While WSSC has made progress in M/WBE inclusion, any future efforts must be narrowly tailored to rectify the issues identified in this report.